



Fort Myers Beach Town Council

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

Agenda

Monday, March 7, 2022

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. PRESENTATIONS, LOCAL ACHIEVEMENTS AND RECOGNITIONS
 - A. Lee County Sheriff's Update
 - B. Problem Gambling Awareness Month
The Florida Council on Compulsive Gambling requests the Town Council proclaim March 2021 as *Problem Gambling Awareness Month* in Fort Myers Beach
 - C. FMB Citizens Academy Graduation
- VII. ~~ RECESS AND REFRESHMENTS ~~
- VIII. ADVISORY COMMITTEES ITEMS AND REPORTS
 - A. Public Safety Committee (PSC)
- IX. APPROVAL OF MINUTES
 - A. February 7, 2022 Town Council meeting
 - B. February 10, 2022 Management & Planning Session

X. PUBLIC HEARINGS**A. Ordinance 22-04; Motorized Micromobility Devices**

Second Reading and Final Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTIONS SECTION 28-19, SECTION 28-82, AND SECTION 28-84 OF CHAPTER 28, "TRAFFIC AND VEHICLES" OF THE CODE OF ORDINANCES, TOWN OF FORT MYERS BEACH, FLORIDA, TO DEFINE AND REGULATE MOTORIZED MICRO-MOBILITY DEVICES; PROVIDING FOR CODIFICATION; CONFLICTS; SCRIVENER'S ERRORS; SEVERABILITY AND AN EFFECTIVE DATE.

XI. ADMINISTRATIVE AGENDA**A. Flock Safety License Plate Camera Agreement**

Adopt Resolution 22-08 approving an Agreement between the Town and Flock Group, Inc. to provide automatic license plate detection software and hardware to monitor the Town's sidewalks, shared use paths, streets, and roads in an amount not to exceed \$15,000 annually, with a one-time implementation fee of \$1,500.

B. Resolution 22-07: FDEP Grant Agreement

Adopt Resolution 22-07 re Ratifying the Town Manager's execution of a Grant Agreement between the Town and the Florida Department of Environmental Regulation accepting a \$1 million grant award for the expansion of outdoor recreation facilities as part of the redevelopment of Bay Oaks.

C. Resolution 22-06; WCIND Grant Application

Approve Resolution 22-06 authorizing the Town Manager or his designee to submit a grant application to West Coast Inland Navigational District (WCIND) for Law Enforcement Grant Requests for marine patrol and enforcement; and execute the WCIND grant agreement.

XII. FINAL PUBLIC COMMENT**XIII. TOWN MANAGER'S ITEMS****XIV. TOWN ATTORNEY'S ITEMS****A. PWVL / PAL's Renewal Procedures****XV. COUNCILMEMBERS ITEMS AND REPORTS****A. Lee County TDC Seat**

Ex-Officio, Non-Voting Seat on TDC

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.

1. **Requested Motion:**

Meeting Date: March 7, 2022

Captain Timothy Lalor, West District, Lee County Sheriff's Office

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

PRESENTATIONS, LOCAL
ACHIEVEMENTS AND
RECOGNITIONS

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Attachments:

Financial Impact:

6. **Alternative Action**

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 - 3/1/2022
Approved - 3/1/2022
Approved - 3/1/2022
Final Approval - 3/1/2022

1. Requested Motion:

Meeting Date: March 7, 2022

The Florida Council on Compulsive Gambling requests the Town Council proclaim March 2021 as *Problem Gambling Awareness Month* in Fort Myers Beach

Why the action is necessary:

What the action accomplishes:

2. Agenda:

PRESENTATIONS, LOCAL
ACHIEVEMENTS AND
RECOGNITIONS

3. Requirement/Purpose:

Other

4. Submitter of Information:

5. Background:

The Florida Council on Compulsive Gambling, Inc. (FCCG) is a not-for-profit corporation under contract with Florida State government, serving as the designated state affiliate of the National Council on Problem Gambling (NCPG). In addition to operating the 24-hour Problem Gambling HelpLine (888- ADMIT-IT), the FCCG increases awareness of problem gambling through education and outreach efforts throughout the state of Florida, advocates on behalf of the public regarding issues relating to problem gambling, and provides programs, resources, and other population specific supports to those in need of assistance. For more information, please visit <https://gamblinghelp.org/>

March is Problem Gambling Awareness Month (PGAM), a grassroots effort to raise awareness about gambling disorder, classified by the American Psychiatric Association as a behavioral addiction, that impacts millions of Floridians who struggle directly with gambling related difficulties or are adversely affected by a loved one's gambling problem.

For most, gambling is recreational and does not present negative consequences. But, for hundreds of thousands of Floridians, gambling progresses from a leisure-time activity to a compulsion. The good news: gambling addiction is treatable for those who seek help. For further information: www.problemgamblingawarenessmonth.org

Attachments:

1. Problem Gambling Awareness Month - March 2022

Financial Impact:

None

6. Alternative Action

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 - 2/17/2022
Approved - 3/1/2022
Approved - 3/1/2022
Final Approval - 3/1/2022

Town of Fort Myers Beach PROCLAMATION

WHEREAS, problem gambling is a serious public health issue affecting one to three percent of the general adult population and often results in personal, financial, familial, legal, and other costs, including a high risk of suicide; and

WHEREAS, it is estimated that OVER 200,000 Florida adults suffer from past-year gambling problems, and 700,000 more are at risk of developing such difficulties, constituting 4.7% of the adult population ages 18 and older, and

WHEREAS, it is further important to note that these statistics do not account for youth, who are now actively engaged in diverse forms of gambling and are at an increased risk for developing gambling related problems; and

WHEREAS, it is essential to recognize problem gambling as a societal issue, increasing the affected population by an estimated additional 1.5 million individuals, with conservative costs amounting to more than \$9 billion nationally each year; and

WHEREAS, the Florida Council on Compulsive Gambling's 2022 PGAM Awareness Campaign, "**Shine the Light on Problem gambling: When Gambling is No Longer a Game...888-ADMIT-IT is the Game Plan!**" provides an opportunity for public, policymakers, educators, businesses, mental health providers, criminal justice professionals, and others, about the potential adverse effects of gambling, as well as social, legal financial, and emotional impacts and available supports; and

WHEREAS, any individual, professional or other organization dedicated to assisting those in need can participate in raising awareness and preventing problem gambling by promoting the statewide, confidential, toll-free and 24-hour Problem Gambling Help Line 888-ADMIT-IT.

NOW, therefore, be it proclaimed that the Town Council of the Town of Fort Myers Beach, Florida proclaims **March 2022** as

PROBLEM GAMBLING AWARENESS MONTH

Given under my hand and the seal of the office of the Mayor this 7th of March 2022.

Raymond P. Murphy, Mayor

1. **Requested Motion:**

Meeting Date: March 7, 2022

Recognition of the inaugural class of the FMB Citizens Academy

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

PRESENTATIONS, LOCAL
ACHIEVEMENTS AND
RECOGNITIONS

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

The inaugural class of the newly redesigned FMB Citizens Academy met with Town staff to gain knowledge about the Town and its operations.

Participants met over the course of 3 weeks learning about the various services and functions provided by the Town and its six uniquely different departments, the Lee County Sheriffs office, Fort Myers Beach Fire Control District, staff from the Fort Myers Beach Library. Participants received tours and talks from Lee County Parks and Recreation staff members of Bowditch Point Park, Lynn Hall Park and Matanzas Pass Preserve, along with a quick stop at the Estero Island Historic Society. Participants toured Bay Oaks Recreational Campus, the Fort Myers Beach Community Pool, Mound House, Newton Park, the Town's Mooring Field offices, culminating with a boat tour through Matanzas Harbor and Pass, and Gulf of Mexico.

Congratulations to:

Daniel Blanchette, Gayle Crabtree-Pergoli, Bonnie Frommeyer, John Frommeyer, Marianne Lacey, Christy Mathis, P Gary Mathis, John Wesley Nash, Kathleen Nash, Barb Neddo, Tom Neddo Jr., Albert Ponzio, Timothy Quinton, Jennifer Rusk, Mary Shields and Carol Vittert.

Attachments:

Financial Impact:

6. **Alternative Action**

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 - 2/24/2022
Approved - 2/28/2022
Approved - 3/1/2022
Final Approval - 3/1/2022

Public Safety Committee Update to Town Council

March 7th

a. HOMELESS COMMUNITY OUTREACH

1. Met with the ministerial association members and had a special meeting regarding the homeless and the roles of the church, county and law enforcement.

1. We were given the communication tools to reach out to the church as well as Lee County Homeless Coalition.

AGENDA ITEMS:

b. BICYCLE LIGHTS AND BELLS

1. Besides selling at Town Hall, we are still finding areas to distribute the bells and lights.

c. PUBLIC SAFETY WEBPAGE AND EDUCATION

1. Met with Jenny the PIO

1. Jenny has updated the website to include a Safety Page

d. NEIGHBORHOOD WATCH EDUCATION

1. Spoke with Tiffany Wood

- a. We are looking at doing a community event sponsored by LCSO. We are working on dates to have a community event.

e. FMBFD FIRE SAFETY EDUCATIONAL MATERIALS

1. Spoke with Jennifer Campbell

- a. The fire dept is redoing their website and would like to link with a safety page on the current FMB town page.
- b. We would like to hold a joint FMB Fire and Safety event during fire prevention month in October 2022 where we can highlight current issues and tips.
 - i. We will work with them on the actual event
- c. Jennifer will provide us with PDFs of safety tips for the website

f. Bikes and Pedestrian Issues

- 1. We are concerned about the Bike and Pedestrian congestion from the Red Coconut to Times Square, so we spoke with Lee County Senior Engineer, Rob Phelan.**

- a. Rob spoke to the group about our idea for additional signage stating bikes and pedestrians share the road. We also discussed options for painting the bike lanes, ideas for highlighting the crosswalks. Pending council approval/direction, we are now waiting to hear back from him to see if we can help with a study to see where we need crosswalk notices. (ex: lighting, road reflectors, etc.)**



Fort Myers Beach Town Council

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

Minutes

Monday, February 7, 2022

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. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

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

Motion carried unanimously.

V. PUBLIC COMMENT

Lee County Supervisor of Elections Tommy Doyle reported that 85% of the voters on Fort Myers Beach voted by mail, and 75% of voters voted before election day. He stated they reduced precincts to 100 and Fort Myers Beach would have one precinct and one voting site. An early voting site will open on Bass Road to mitigate crowds and voting sites will have three or four tabulators instead of two. Council Member Atterholt questioned whether they could have a site on the north end and one on the south end. Council Member Veach mentioned rule changes to mail-in voting and brought up potential confusion among voters. He felt that one voting site would not be adequate. Supervisor Doyle replied that every vote by mail request expired at the same time and they would continue to push voting by mail and early voting. He stated that the voting site would be at Chapel by the Sea. Vice Mayor Hosafros suggested that they be very careful regarding the location and noted that St. Peters would be a good mid-island compromise. Supervisor Doyle discussed the popularity of voting by mail and early voting. He added that he would take their suggestions under consideration.

Mayor Murphy questioned whether the early voting site in North Bonita on the Estero line would remain open. Supervisor Doyle replied affirmatively.

Attorney Sara Spector from Roetzel and Andress represented Persaud Properties. She reported that due to a settlement agreement with the town, the houses on 3050 and 3056 Estero Blvd. were under contract and closing would take place as soon as the final certificate of completion was issued. She stated that Persaud Properties also owned two properties on 1028 and 1046 Estero Blvd. that had liens attached to them. She requested that the homes on 3050 and 3056 Estero Blvd. be released from the liens so the homes could be sold as contemplated by the settlement agreement.

Dawn Thomas, Chair of the Public Safety Committee (PSC), addressed bicycles, scooters and sidewalks from Coconut Point up to the north end. She noted that more people were on the sidewalks and there was a battle for space between bikers and walkers. She requested input to help alleviate the situation and an update on the lighting plan.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Veach thanked Chapel by the Sea for hosting the FDOT (Florida Department of Transportation) event regarding the base of the bridge design. No items from other members.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

Steve Johnson, Chair of the Marine Resources Task Force (MRTF), requested that the name of MRTF be changed to Marine and Environmental Resources TaskForce (MERTF) to better reflect their scope. Jennifer Rusk, MRTF Member, provided an update regarding the pop-up events and displayed handouts distributed. She thanked everyone for their support and noted that they would be at the Shrimp Fest Parade in Lynn Hall Park. She invited Town Council Members to volunteer at the pop-up booth.

VIII. PROCLAMATIONS

A. 100th Birthday Celebration

Mayor Murphy read a proclamation recognizing his father, John E. Murphy's 100th birthday. February 26, 2022, was proclaimed as John E. Murphy day.

IX. PRESENTATION

A. Florida Power & Light - Electric Charging Stations

Peter Martinez from Florida Power and Light (FPL) reviewed their EVolution program regarding electric charging stations. He utilized PowerPoint for his presentation. Slides included: Electric Vehicle Outlook; New EVs Coming to Market; Switching to an EV; FPL Evolution is bringing 1,000 charge ports to our customers; EV Charging 101; Becoming an FPL EVolution Partner

benefits you and your community; Partnering with FPL is easy; FPL's fast charging facilitates charging opportunities in metro areas; FPL's fast charging network makes it easier to drive electric; FPL EVolution Fast Charge Installations; Existing Site Hosts Partners and Driving toward FPL EVolution. Discussion was held regarding managing charging stations on public streets and the potential loss of revenue. Council Member Atterholt questioned whether FPL would be responsible for upgrading the stations under the 10- year agreement. Mr. Martinez replied that the software would be upgraded and the language in the agreement did not prohibit them from upgrading the stations. Town Attorney Herin, Jr. noted that a section in the agreement allowed FPL to remove the chargers at their discretion. Mr. Martinez responded that they had no intention of removing charging stations before the 10-year mark, but the Florida Public Service Commission requested the language be included in the agreement. Town Attorney Herin, Jr. indicated that the town could request the removal of charging stations if they became obsolete. Mr. Martinez commented that he would verify that point. Town Manager Hernstadt stated that he would present an option on Thursday where the town owned, operated and maintained the charging stations. Town Attorney Herin, Jr. indicated there was a provision in the agreement that provided for additional replacement equipment. He agreed to forward the agreement to Council Members before Thursday. The presentation concluded with Proposed Location - 200 Old San Carlos Blvd. Parking Lot. Mr. Martinez noted that private shopping centers made a lot of sense.

X. APPROVAL OF MINUTES

A. January 24, 2022 Town Council

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

Motion carried unanimously.

XI. CONSENT AGENDA

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

Motion carried unanimously.

A. Historic Recognition Signage

Approve updated Historic Recognition Signs with new logo

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

Motion carried unanimously.

XII. PUBLIC HEARINGS

A. Resolution 22-05: VAR20210112 - 50 Aberdeen Ave.

Approve/Approve with Conditions/Deny VAR20210112, a variance to allow the principal structure and elevated pool to encroach 10 feet into the 25 feet street setback at 50 Aberdeen Avenue.

Mayor Murphy read the variance. Town Attorney Herin, Jr. swore in those providing testimony. Ex parte communications: all Members disclosed a drive-by or a walk-by.

Planner Fred Drovdic from RVI Planning and Landscape Architecture represented Ken and Candace Kochenour. PowerPoint slides included: 50 Aberdeen Ave.; Introductions; Location Map; Property Overview; Site Plan; Variance Request; Site Plan; Property Overview; LDC Overview and Variance Criteria.

Community Development Director Jason Green reviewed the variance request, existing conditions and LPA recommendations. He summarized LPA conversations concerning the view corridor. He indicated that the neighbors did not voice objections.

Public comment:

Bruce Pieratt on Gulf Island Drive, supported their request. Public comment closed.

Vice Mayor Hosafros moved that based on the information in the staff report and the testimony presented before them, the applicant has not met the standards set forth in the Comprehensive Plan and the Land Development Regulations for the requested variance and she moved for denial of the variance; second by Council Member Allers.

Council Member Veach discussed corner lots and consistency. Town Attorney Herin, Jr. stated that each variance request was reviewed individually, and the issue was not the view corridor. Council Member Allers did not think it was a de minimus request.

Motion carried unanimously.

B. Ordinance 22-01; Minimum Setbacks for Large Homes and Lots

Second Reading and Public Hearing: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AMENDMENT TO TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE, ARTICLE III., DIVISION 3, SECTIONS 34-638 MINIMUM SETBACKS AND TABLE 34-3 DIMENSIONAL REGULATIONS IN CONVENTIONS ZONING DISTRICTS; PROVIDING FOR SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

Mayor Murphy read the title of the ordinance.

Community Development Planner Sarah Propst noted that she received an email to be discussed at the end of her presentation. She reviewed two options and displayed Side Setbacks with 15% Lot Width, Additional Examples and Building Massing Examples. She noted comments from an architect and a designer were included in their packets.

The changes recommended by staff were in the strike through and underline format. She noted changes from the last meeting were double underlined. Planner Propst indicated the earlier email concerned corner lots. She stated that the 15% side setback would apply to all lots but a 50-foot wide lot would not be affected because the side setback would still be 7.5 feet. Director Green addressed homes that were in the process of being designed and how the new regulations would affect them. Town Manager Hernstadt added that they would review them on a case-by-case basis.

Vice Mayor Hosafros questioned whether they could pass the ordinance today with the understanding that at a future meeting they would adjust table 34-1 with additional advertising. Town Attorney Herin, Jr. replied affirmatively. Council Member Veach commented that he was uncomfortable applying the side setbacks to corner lots. Director Green indicated that the street impact was the same but the depth of corner lots was a unique condition they would have to consider.

Public comment:

Nate Johnson from Potter Homes stated it was a big deal for builders, developers and clients and they had three properties they were working on. He suggested that they talk through the ordinance with architects, builders and developers before voting on the ordinance.

Nicole Pieratt agreed with Mr. Johnson and noted that corner lots would be shrunk drastically.

Public comment closed.

Vice Mayor Hosafros moved to approve Ordinance 22-01 noting that it did not include table 34-01 that needed additional advertising with the past to make it consistent at a future date; second by Council Member Veach.

Council Member Allers supported tabling the ordinance so they could discuss the 7,500 square foot area with builders and address concerns regarding corner lots. Council Member Atterholt was comfortable moving forward.

Motion carried 4-1 by roll call vote with Council Member Allers dissenting.

C. Ordinance 22-03; Bicycle and Vehicle Safety Amendments

Second Reading, Public Hearing and Adoption: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING ARTICLE III "BEACH BICYCLE AND VEHICLE SAFETY OF CHAPTER 28 "TRAFFIC AND VEHICLES" OF THE CODE OF ORDINANCES, TOWN OF FORT MYERS BEACH, FLORIDA, REQUIRING SAFETY EQUIPMENT ON ALL RENTAL OR LOANED BICYCLES OPERATED WITHIN THE TOWN'S JURISDICTION AS REQUIRED BY STATE LAW; AND PROVIDING FOR CODIFICATION; CONFLICTS; SCRIVENER'S ERRORS; SEVERABILITY AND AN EFFECTIVE DATE.

Mayor Murphy read the title of the ordinance.

Town Attorney Herin, Jr. noted they added specific language that included a requirement for lighting and was reflected by double underlines.

No public comment.

Council Member Veach moved to approve Ordinance 22-03; second by Council Member Allers.

Vice Mayor Hosafros discussed alcohol consumption on the island and fatalities. Mayor Murphy suggested they add it to a future agenda and invite Captain Lalor.

Motion carried unanimously by roll call vote.

D. Ordinance 22-04; Motorized Micromobility Devices

First Reading and Public Hearing: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTIONS SECTION 28-19, SECTION 28-82, AND SECTION 28-84 OF CHAPTER 28, "TRAFFIC AND VEHICLES" OF THE CODE OF ORDINANCES, TOWN OF FORT MYERS BEACH, FLORIDA, TO DEFINE AND REGULATE MOTORIZED MICRO- MOBILITY DEVICES; PROVIDING FOR CODIFICATION; CONFLICTS; SCRIVENER'S ERRORS; SEVERABILITY AND AN EFFECTIVE DATE.

Open the first public hearing and schedule for second reading and final adoption on March 7, 2022.

Mayor Murphy read the title of the ordinance. Town Manager Hernstadt stated that the code had to be updated to include one-wheel motorized vehicles.

Council Member Veach moved to continue it to a second reading; second by Vice Mayor Hosafros.

Council Member Allers questioned whether they could add a medical exemption for pedal-assisted bicycles. Vice Mayor Hosafros expressed support. Town Attorney Herin, Jr. replied that he would look into it and bring back changes to address the issue. He suggested not bringing it back for a second hearing until the end of the legislative session due to potential preemption. Council Member Veach wanted to continue, and Vice Mayor Hosafros agreed. Council Member Veach discussed ADA vehicles and the difficulty of enforcing bicycles.

Motion carried unanimously.

XIII. ADMINISTRATIVE AGENDA

A. CrowderGulf Contract Renewal

Approve and authorize the Town Manager to execute Renewal #3 (of 3) to the CrowderGulf Agreement for Disaster Recovery Services.

Vice Mayor Hosafros moved to approve and authorize; second by Council Member Veach.

Motion carried unanimously.

B. Thompson Consulting Contract Renewal

Approve and authorize the Town Manager to execute renewal #3 (of 3) to the Thompson Consulting Agreement for Disaster Debris Monitoring Services.

Council Member Veach moved to approve and authorize; second by Vice Mayor Hosafros.

Motion carried unanimously.

XIV. FINAL PUBLIC COMMENT

No public comment.

XV. TOWN MANAGER'S ITEMS

Town Manager Hernstadt stated that residents on Pearl St. wanted to plant the free trees, from the tree giveaway, at the end of the street adjacent to the bay. He noted they received one email in support and one objecting to the location. Vice Mayor Hosafros indicated there were more than two people who supported planting the trees in that location. She thought whoever objected did so because they believed the trees would obstruct their view. She added that people who objected threatened to vandalize the trees if they were planted.

Town Manager Hernstadt pointed out that Cultural Parks & Recreation Director Alison Giesen would be looking at rate adjustments to cultural programs at a future date.

XVI. TOWN ATTORNEY'S ITEMS

Town Attorney Herin, Jr. noted that Attorney Sanabria might be sitting in for him during the M&P Session on Thursday.

XVII. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Allers met with property owners on Santos Rd. regarding drainage issues. He reported that the road had not been constructed correctly, he described hazardous repairs made to help alleviate the situation. He questioned whether they could add the topic to an M&P. Vice Mayor Hosafros suggested having an independent expert evaluate the situation before they add it to an agenda. Council Member Allers agreed. Town Manager Hernstadt noted he discussed the issues with residents on Santos Rd. and informed them that an expert would inspect the situation. Council Member Allers mentioned the 2003 Fort Myers Beach Waterways Group that tried to implement an island-wide dredging program. He suggested adding it to an M&P for further discussion. Mayor Murphy supported him. Council Member Allers discussed moving forward with lighting on Estero Blvd. Mayor Murphy stated that he made phone calls and was waiting to hear back.

Vice Mayor Hosafros was against the request to lift liens on two of the Persaud properties. Council Member Veach agreed and noted that compliance with the other properties was never mentioned. Town Attorney Herin, Jr. explained that the Town had the leverage to negotiate with the property owner to come into compliance with his four other properties before the two unencumbered properties could be sold. Vice Mayor Hosafros brought up motorized parachutes on the south end of the beach. She questioned whether the FAA (Federal Aviation Administration) regulated them. Town Attorney Herin, Jr. will research the issue.

Council Member Atterholt questioned whether they were waiting for the county to make a decision on lighting Estero Blvd. He noted the Town had to take action themselves if the County was not going to participate. Mayor Murphy replied that he was not sure what stage they were in. He questioned how the Town could move forward on a road they did not own. He stated it was the county's responsibility and he was assured that they would participate. Council Member Atterholt questioned whether they should individually petition the commissioners in writing or attend their meetings. Mayor Murphy did not think it would hurt. Town Manager Hernstadt suggested they find out what their strategy was and find out how to support their efforts. Council Member Allers stated that it needed to be done before another life was lost. He noted they did not even give the commissioners a plan. Town Manager Hernstadt disagreed and indicated the County did have information regarding the costs. He added that they could always pick up the phone if they had questions. Council Member Allers reiterated that they needed a decision from the commissioners. Mayor Murphy commented that they were discussing numbers.

Council Member Atterholt questioned whether they could gather data concerning rental properties to help them create better policy. Council Member Veach noted data was available in the monthly departmental reports. Council Member Atterholt described accessing specific data to help the public understand what was happening to the island regarding all rentals. Vice Mayor Hosafros agreed and noted that the personality of her street changed because of short-term rentals.

Town Manager Hernstadt agreed to engage with the consultant to provide the data. Vice Mayor Hosafros suggested sharing the short-term rental registration list with the Lee County Appraisers Office so they could compare it to owners who claimed a homestead exemption. Town Manager Hernstadt revealed that a Lee County Housing Specialist was scheduled to attend the second meeting in March. Vice Mayor Hosafros questioned whether she had support to share the rental registration information with the Appraisers Office. Town Attorney Herin, Jr. agreed with Vice Mayor Hosafros. Council Member Atterholt suggested that the Town Attorney contact the Appraisers Office to find out who to send the information to and whether it would be helpful. Vice Mayor Hosafros agreed. Council Member Veach suggested they have a conversation regarding a better enforcement plan surrounding housing and short-term rentals encroaching into areas where short-term rentals were not allowed. Vice Mayor Hosafros supported having a discussion. Council Member Veach suggested having another discussion regarding corner lots. Vice Mayor Hosafros agreed.

Council Member Veach discussed changing the name of MRTF. Council Member Atterholt liked the change and felt the name change better described their focus. Vice Mayor Hosafros agreed. Mayor Murphy discussed the history of Mr. Mulholland and MRTF. Town Attorney Herin, Jr. referred to the code and stated they would have to adopt an ordinance to change the name. Vice Mayor Hosafros agreed with adopting an ordinance and noted MRTF's responsibilities were very broad. Town Attorney Herin, Jr. will bring back a draft of an ordinance.

Mayor Murphy discussed the fishing pier under the bridge and wanted to reconsider taking it over if the Florida Department of Transportation (FDOT) agreed to turn it over to the town. He spoke to an engineer in charge of the pier and was told that assuming maintenance did not cost that much. The engineer revealed that the pier was sound but the steps needed work and they would be repaired before giving it to the Town. The engineer noted that Lee County maintained the pier on the other side. Vice Mayor Hosafros questioned why they removed the steps if repairing them did not cost much. Mayor Murphy was not sure. Council Member Veach supported getting additional information. Town Manager Hernstadt stated the steps were dangerous, so they contacted the state. The state provided an estimate to repair the steps but stated they would not repair them unless the town agreed to maintain the pier. Town Manager Hernstadt noted the town did not maintain other bridge structures. Mayor Murphy brought up an interlocal agreement. Town Manager Hernstadt suggested they invite the engineer to a future meeting to explain the costs involved. Mayor Murphy agreed. Vice Mayor Hosafros suggested requesting the estimate from the state before they do anything else. Town Manager Hernstadt commented that the state agreed to repair the steps but he would contact Lee County for information on maintenance costs.

Mayor Murphy reminded everyone that the memorial service for Dan Hughes was on Saturday, February 26, 2022, at 11:00 a.m. at Saint Rafael's Church. He congratulated Betty Simpson for turning 90 next week and described her many accomplishments. He thanked her for her years-long service and wished her a happy birthday.

XVIII. ADJOURNMENT

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

The meeting was adjourned at 1:08 p.m.



Fort Myers Beach Management & Planning Session

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

Minutes

**Thursday, February 10,
2022**

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. Lighting Presentation by DRMP Inc.

Presentation by DRMP Inc. regarding lighting for Bayside Park, Times Square and Bay Oaks.

DRMP Project Manager Paul Benvie provided an update of the three projects and noted that permitting was holding them up. Slides included: Bay Oaks Recreational Campus Progress Update; the National Fitness Area; Floor Plan and Renderings; Times Square Update; Construction Timeline; Bayside Park; Renderings and Shade Sails.

Matt Horton from Ensite continued the presentation with Site and Landscape Lighting Review; Key Elements; Proposed Site Lighting and Proposed Landscape Lighting; Applicable Code Sections; Site Lighting Fixture Review; Division 20- Lighting Standards; Illuminance; Specific Standards; Definitions - Shielded; Full Cutoff; BUG (Backlight, Uplight & Glare) Rating; Landscape Lighting Fixture Review; Luminaire Standards; Landscape Lighting Fixture Controls; Selected Lighting; Chapter 32; Site Lighting Fixture Review; FWC Lighting Guidelines Compliant; Proposed Site Lighting Control Scenario; Article V. - Sea Turtle Conservation and Key Takeaways.

Vice Mayor Hosafros did not feel that she was being heard regarding Coconut Palms and the use of the word, "intent" in the presentation. Mr. Horton apologized for coming across that way and noted they did come back

with an alternate tree selection. Council Member Veach suggested eliminating uplights in trees and commented on pedestrian safety with different colored lights. A discussion regarding intent was had between Council Member Veach and Council Member Allers. Town Manager Hernstadt noted they had to make a decision soon. Council Member Allers was in favor of the proposal. Vice Mayor Hosafros indicated they were not given options or ideas for alternatives. Town Manager Hernstadt explained that the light spectrum was controllable, which gave the town options. Mr. Horton agreed and noted the lights were flexible. Council Members Veach and Allers discussed what the code said regarding uplights in trees.

Environmental Services project Manager Chadd Chustz commented that, in his opinion, the lights met the exceptions. Council Member Veach questioned whether installing white street lights in Times Square would jeopardize anything else they were doing with the FWC (Fish & Wildlife Conservation Commission). Project Manager Chustz replied that it would trigger FDEP (Florida Department of Environmental Protection) permitting with FWC commenting on the lighting. Town Manager Hernstadt noted they would check with the FWC. Council Member Veach discussed specifics of the controllable lighting system. Town Manager Hernstadt added that they were able to aim the tree lights wherever they wanted. He stated that they could also pre-wire the area and add the lights later. Vice Mayor Hosafros agreed with eliminating the uplights in the trees. Council Member Atterholt and Mayor Murphy supported the flexibility of the plan. Town Manager Hernstadt indicated they would move forward with the plan.

B. Presentation: ChargePoint - Electric Charging Stations

Presentation: ChargePoint - Electric Charging Stations

Ben Pauluhn from Optimus Energy Solutions, LLC introduced himself and described his company. He utilized PowerPoint for his presentation. Slides included: Sourcewell Public Procurement; Optimus Energy Solutions, LLC. Mr. Pauluhn discussed why some entities chose to purchase their equipment rather than lease. He recommended charging by the hour and noted their machines are level 2 charging. He continued the presentation with a Proposal. He discussed the rate of return, the lifespan (eight years) of the equipment and the level of risk versus FPL's proposal. (Microphone cut in and out.) He described the fast chargers and upgrades involved. He noted the average DC fast charger would cost approximately \$70,000.00.

Town Manager Hernstadt summarized that FPL wanted to install the quick chargers in the Times Square area only because that location would provide them with the greatest rate of return. He indicated they would have to create a hybrid system if they wanted chargers in different locations. He suggested using FPL for fast chargers in Times Square and town-owned chargers if they wanted to install them in other locations. Town Manager Hernstadt mentioned that grants might be available to help fund the charging stations.

IV. AGENDA MANAGEMENT**A. February 2022**

Council Member Atterholt suggested that Town Manager Hernstadt create an official record with FDOT by including their comments in a letter regarding the base of the bridge. Town Manager Hernstadt replied that he would write a draft for their review.

Add discussion of corner lots.

Add discussion of law enforcement philosophies.

Add discussion of the housing situation.

Add MRTF's name change.

V. ADJOURNMENT

Mayor Murphy adjourned the meeting at 1:42 p.m.

1. Requested Motion:

Meeting Date: March 7, 2022

Second Reading and Final Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTIONS SECTION 28-19, SECTION 28-82, AND SECTION 28-84 OF CHAPTER 28, "TRAFFIC AND VEHICLES" OF THE CODE OF ORDINANCES, TOWN OF FORT MYERS BEACH, FLORIDA, TO DEFINE AND REGULATE MOTORIZED MICRO-MOBILITY DEVICES; PROVIDING FOR CODIFICATION; CONFLICTS; SCRIVENER'S ERRORS; SEVERABILITY AND AN EFFECTIVE DATE.

Why the action is necessary:

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;

What the action accomplishes:

Clarification of motorized micromobility devices definitions.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Ordinance

4. Submitter of Information:

5. Background:

As requested by the Town Council at their December 6, 2021 regular meeting, this proposed Ordinance is scheduled for second reading and adoption. At first reading Councilmember Allers inquired if the Ordinance, as written, prohibits the use of an electric personal assistive mobility device on the Town's sidewalks? No it does not. Pursuant to Section 316.2068, Fla. Stat., such devices are specifically permitted to travel on Town sidewalks if the person operating the device yields the right-of-way to pedestrians and gives an audible signal before overtaking and passing a pedestrian. Furthermore, the Town's existing regulations state that motorized wheelchairs having three or more wheels are not prohibited from traveling on the Town's sidewalks (Sec. 28-84 of the Town Code).

ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE is defined by state law as "any self-balancing, two-nontandem-wheeled device, designed to transport only one person, with an electric propulsion system with average power of 750 watts (1 horsepower), the maximum speed of which, on a paved level surface when powered solely by such a propulsion system while being ridden by an operator who weighs 170 pounds, is less than 20 miles per hour."

Attachments:

1. Ordinance 22-04 re Regulating Motorized Micro-mobility Devices(130216935.1)-C

Financial Impact:

6. Alternative Action

7. Management Recommendations:

8. Recommended Approval:

Daphnie Bercher, Community Services Administrator

Created/Initiated - 2/28/2022

Daphnie Bercher, Community Services Administrator
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Approved - 2/28/2022
Approved - 3/2/2022
Approved - 3/3/2022
Final Approval - 3/3/2022

ORDINANCE NO. 22-04

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTIONS SECTION 28-19, SECTION 28-82, AND SECTION 28-84 OF CHAPTER 28, “TRAFFIC AND VEHICLES” OF THE CODE OF ORDINANCES, TOWN OF FORT MYERS BEACH, FLORIDA, TO DEFINE AND REGULATE MOTORIZED MICRO-MOBILITY DEVICES; PROVIDING FOR CODIFICATION; CONFLICTS; SCRIVENER’S ERRORS; SEVERABILITY AND AN EFFECTIVE DATE.

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

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach (“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 finds that motorized micro-mobility devices need to be regulated, because the use of motorized micro-mobility devices on sidewalks, shared use paths, streets, and roads presents a potential hazard in part due to the heavy use of such public areas by pedestrians, other bicyclists, inline skaters, pet owners who are walking dogs, vehicles, and similar public use of such areas; and

WHEREAS, the Town finds that it is in the best interests of the health, safety, and welfare of the Town’s residents and visitors to prohibit motorized micro-mobility devices on the Town’s sidewalks, shared use paths, streets, and roads.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS: ¹

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. Sec. 28-19, Definitions; Sec. 28-82, Vehicles Prohibited, and Sec. 28-84, Assisted Bicycles Prohibited, Chapter 28 of the Code of Ordinance, Town of Fort Myers Beach are hereby amended to read as follows:

CHAPTER 28 – TRAFFIC AND VEHICLES

Sec. 28-19. Definitions.

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

Motorized micro-mobility devices means self-propelled mobility devices that have a motor, gas or electric, and a deck which a person may ride, which includes, but is not limited to, electric scooters, electric skateboards, one-wheeled devices, and hoverboards.

Sec. 28-82. – Vehicles Prohibited.

No person shall drive any vehicle, other than by human power upon any public sidewalk or path except for authorized government personnel, emergency vehicles, and special mobile equipment for repair or maintenance of the sidewalk areas. This section does not apply to motorized wheelchairs having three or more wheels. ~~Electric scooters and all types of motorized mopeds are prohibited.~~ Motorized micro-mobility devices, including but not limited to electric scooters, electric skateboards, one-wheeled devices, and hoverboards are prohibited.

Section 28-84. Assisted Bicycles Prohibited.

No bicycle having any type of helper motor and having two or more wheels shall be driven upon any public sidewalk, path, or beach. This section does not apply to motorized wheelchairs having three or more wheels. ~~Electric scooters and all types of motorized mopeds are prohibited.~~ Motorized micro-mobility devices, including but not limited to electric scooters, electric skateboards, one-wheeled devices, and hoverboards are prohibited.

Section 3. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted Land Development Code, Ordinance, Resolution, Town Code provision, or statute, the most restrictive shall apply.

Section 5. Any typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 7. This Ordinance shall become effective upon adoption by the Town Council.

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

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

ADOPTED this _____ day of February 2022, 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 February 2022.

1. Requested Motion:

Meeting Date: March 7, 2022

Adopt Resolution 22-08 approving an Agreement between the Town and Flock Group, Inc. to provide automatic license plate detection software and hardware to monitor the Town's sidewalks, shared use paths, streets, and roads in an amount not to exceed \$15,000 annually, with a one-time implementation fee of \$1,500.

Why the action is necessary:

Authorizes the Town Manager to execute a service agreement to provide six license plate reader cameras on the island.

What the action accomplishes:

Provides a service agreement with Flock Safety subject to modifications and in a form acceptable to the Town Manager and Town Attorney.

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

4. Submitter of Information:

5. Background:

At the December 8th Management & Planning Session, Town Council approved installing six license plate reader cameras through Flock Safety.

Suggested locations from Town Council and Lee County Sheriff's Office include:

The two bridges (4 cameras, 2 on each bridge going both directions)
Times Square (Estero Boulevard/ 5th Street/ North Estero/ OSC Intersection) catching both lanes of travel for Estero Boulevard

Attachments:

1. 22-08, Approving Agreement between Town and Flock Group for License Reader Cameras(131374444.1)-C

Financial Impact:

6. Alternative Action

7. Management Recommendations:

8. Recommended Approval:

Jason Freeman, Contracts Manager/Deputy Town Clerk
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 3/1/2022
Approved - 3/1/2022
Approved - 3/1/2022
Final Approval - 3/1/2022

RESOLUTION NO. 22-08

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AN AGREEMENT BETWEEN THE TOWN AND FLOCK GROUP, INC. FOR THE PROVISION OF SOFTWARE AND HARDWARE FOR AUTOMATIC LICENSE PLATE DETECTION THROUGH FLOCK'S TECHNOLOGY PLATFORM IN AN AMOUNT NOT TO EXCEED \$15,000 ANNUALLY; AUTHORIZING THE TOWN MANAGER TO EXECUTE RELATED DOCUMENTS AND EXPEND BUDGETED FUNDS; 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 wishes to enter into an agreement ("Agreement") with Flock Group, Inc. ("Flock") for the provision of software and hardware for automatic license plate detection through Flock's technology platform in an amount not to exceed \$15,000 annually; and

WHEREAS, the Town finds that it is in the best interests of the health, safety, and welfare of the Town's residents and visitors to enter into the Agreement with Flock to provide automatic license plate detection software and hardware to monitor the Town's sidewalks, shared use paths, streets, and roads.

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

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

Section 2. The Town Council approves the Agreement between the Town and Flock for automatic license plate detection software and hardware in an amount not to exceed 15,000 annually; and the Town Manager is authorized to execute the Agreement and spend budgeted funds on behalf of the Town.

Section 3. This Resolution shall take effect immediately upon its adoption.

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

DULY PASSED AND ADOPTED on this 7th day of March 2022.

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

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 March 2022.

1. Requested Motion:

Meeting Date: March 7, 2022

Adopt Resolution 22-07 re Ratifying the Town Manager's execution of a Grant Agreement between the Town and the Florida Department of Environmental Regulation accepting a \$1 million grant award for the expansion of outdoor recreation facilities as part of the redevelopment of Bay Oaks.

Why the action is necessary:

This agreement will allow for funding to be allocated for the Bay Oaks redevelopment. Without the agreement, the Town cannot commence starting work on deliverables that were specified within the application.

What the action accomplishes:

It allows the Town to receive grant funding for the project.

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

4. Submitter of Information:

Chelsea O'Riley, Public Works
Director

5. Background:

The Town of Fort Myers Beach was selected to receive a \$1 million grant for the redevelopment of Bay Oaks Recreational Campus. The grant is from the National Park Service (NPS) - Land and Water Conservation Fund (LWCF). In the State of Florida, NPS/LWCF partners with the Department of Environmental Protection - Division of State Lands and its Land and Recreation Grants Program. The funding will be available starting January 1, 2022 and is predicated by a match from the Town. The grant funding will be used strictly for outdoor recreation facility improvements.

Attachments:

1. LWCF Requested Deliverables
2. Resolution 22-07 re Ratifying Town Manager's Execution of Grant Agreement with FDEP for \$1 Million(131387655.1)-C
3. LW738 Bay Oaks Recreational Campus Redevelopment_Executed Grant Agreement

Financial Impact:

The Town will match \$1 million.

6. Alternative Action

Do not authorize and approve the execution grant agreement.

7. Management Recommendations:

Ratify the Town Manager's execution of the grant agreement

8. Recommended Approval:

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

Created/Initiated - 2/25/2022
Approved - 2/25/2022

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

Approved - 3/2/2022
Approved - 3/3/2022
Final Approval - 3/3/2022



Florida Department of Environmental Protection

LAND AND WATER CONSERVATION FUND PROGRAM GRANT APPLICATION PACKAGE

Project Name: Bay Oaks Recreational Campus Redevelopment

Grantee Name: Town of Fort Myers Beach

The project reimbursement is limited to one (1) invoice upon completion of all Project Elements listed below and submittal of all Deliverables and required documentation identified in the table below. Completion Documentation required prior to Reimbursement Request.

Project Tasks, Deliverables and Required Documentation

Task #1: Development of: <u>Bay Oaks Recreational Campus Redevelopment</u>	Amount of Costs to be Paid with Grant Funds	Amount of Costs to be Paid with Grantee Match	Deliverables and Documentation to Be Submitted Upon Completion and Before Reimbursement Can Be Approved
<u>(List each Primary facilities)</u>	Provide Budget Detail	Provide Budget Detail	
Multi-Sport Field Use (NEW)	\$500,000	\$500,000	Project Completion Certification
Basketball Court (Renovation)	\$7,000	\$7,000	Final as-built site plan
Tennis Courts (Renovation)	\$25,000	\$25,000	Florida Recreation and Parks Inventory Form
Pickleball Courts (NEW)	\$35,000	\$35,000	Color Photographs of Project
Loop Trail (NEW)	\$25,000	\$25,000	Notice of Limitation of Use
Picnic Areas (NEW)	\$25,000	\$25,000	Boundary Survey
Playground (NEW)	\$75,000	\$75,000	
Batting Cages (NEW)	\$8,000	\$8,000	



Florida Department of Environmental Protection

LAND AND WATER CONSERVATION FUND PROGRAM GRANT APPLICATION PACKAGE

<u>(List each Support facilities)</u> *All work will be completed in accordance with the approved plans.			
Parking Lot (NEW)	\$230,000	\$230,000	
Miscellaneous Improvements Incidental to the Renovation :			
Sidewalks (NEW)	\$25,000	\$25,000	
Utilities (NEW)	\$20,000	\$20,000	
Grading (NEW)	\$10,000	\$10,000	
Code Minimum Landscaping (NEW)	\$15,000	\$15,000	
TOTALS:	\$1,000,000	\$1,000,000	

Performance Standard: Approval of deliverables is based upon review for compliance with the requirements for funding under the Land and Water Conservation Fund Program (LWCF); approved plans and application approved for funding.

RESOLUTION NO. 22-07

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA RATIFYING THE TOWN MANAGER OR DESIGNEE'S SUBMISSION OF A GRANT APPLICATION AND EXECUTION OF A GRANT AGREEMENT WITH THE FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION IN THE AMOUNT OF \$1 MILLION FOR THE BAY OAKS RECREATIONAL CAMPUS REDEVELOPMENT PROJECT; AUTHORIZING A MATCHING EXPENDITURE OF \$1 MILLION IN TOWN FUNDS AS REQUIRED BY THE GRANT AGREEMENT; AUTHORIZING THE TOWN MANAGER TO ADMINISTER THE GRANT AGREEMENT AND EXPEND BUDGETED AND GRANT FUNDS; 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 applied for grant funding from the Florida Department of Environmental Protection ("Grant") for outdoor recreation facilities as part of the Bay Oaks Campus Redevelopment ("Project"); and

WHEREAS, the Town was awarded the Grant and will commit funds (up to \$1,000,000) to complete the match requirement, which funding is available within the current Fiscal Year Budget for the Project; and

WHEREAS, the Town Council at its Management and Planning Meeting on February 10th 2022 authorized the Town Manager to execute an agreement with the Florida Department of Environmental Protection ("Grant Agreement") to receive the Grant funding; and

WHEREAS, the Town Council wishes to ratify the Town Manager's execution of the Grant Agreement, designate the Town Manager (or designee) to administer the Grant Agreement on behalf of the Town

WHEREAS, the Town finds that it is in the best interests of the health, safety, and welfare of the Town's residents and visitors to enter into the Grant Agreement.

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

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

Section 2. The Town Council ratifies the Town Manager's execution of the Grant Agreement in the amount of up to \$1 million, authorizes the Town Manager to expend matching funds in the amount of \$1 million and other budgeted funds for the Project, and authorizes the Town Manager or designee to administer the Grant Agreement.

Section 3. This Resolution shall take effect immediately upon its adoption.

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

DULY PASSED AND ADOPTED on this 7th day of March 2022.

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

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 _____ 2022.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Standard Grant Agreement**

This Agreement is entered into between the Parties named below, pursuant to Section 215.971, Florida Statutes:

1. Project Title (Project): **Bay Oaks Recreational Campus Redevelopment** Agreement Number: **LW738**

2. Parties **State of Florida Department of Environmental Protection,
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000** (Department)

Grantee Name: **Town of Fort Myers Beach** Entity Type: **a local government**

Grantee Address: **2525 Estero Boulevard, Fort Myers Beach, FL 33931** FEID: **65-0632342** (Grantee)

3. Agreement Begin Date: **Upon Execution** Date of Expiration: **12/31/2024**

4. Project Number: **LW738** Project Location(s): **2731 Oak Street, Fort Myers Beach, FL 33931**
(If different from Agreement Number)

Project Description: **New multi-sport field use (soccer, baseball, softball, football, little league, outdoor fitness and community engagement events), four pickleball courts, loop trail, four picnic areas, playground, two batting cages, parking lot, sidewalks, landscaping, renovate basketball court and two tennis courts.**

5. Total Amount of Funding:	Funding Source?	Award #s or Line Item Appropriations:	Amount per Source(s):
\$1,000,000.00	☐ State ☒ Federal	Line Item No. 1692A, GAA, FY2021-2022	\$1,000,000.00
	☐ State ☐ Federal		
	☒ Grantee Match		\$1,000,000.00
Total Amount of Funding + Grantee Match, if any:			\$2,000,000.00

6. Department's Grant Manager	Grantee's Grant Manager
Name: Tamika Bass	Name: Ms. Chelsea O'Riley
or successor	or successor
Address: 3900 Commonwealth Blvd. MS# 585 Tallahassee, FL 32399	Address: 2525 Estero Boulevard Fort Myers Beach, FL 33931
Phone: 850-245-2501	Phone: 239-765-0202
Email: tamika.bass@floridadep.gov	Email: Cheslea@fmbgov.com

7. The Parties agree to comply with the terms and conditions of the following attachments and exhibits which are hereby incorporated by reference:

☒ Attachment 1: Standard Terms and Conditions Applicable to All Grants Agreements
☒ Attachment 2: Special Terms and Conditions
☒ Attachment 3: Grant Work Plan
☒ Attachment 4: Public Records Requirements
☒ Attachment 5: Special Audit Requirements
☒ Attachment 6: Program-Specific Requirements
☒ Attachment 7: LW738 Grant Award Terms (Federal) *Copy available at https://facts.fldfs.com , in accordance with §215.985, F.S.
☒ Attachment 8: Federal Regulations and Terms (Federal)
☐ Additional Attachments (if necessary):
☒ Exhibit A: Progress Report Form
☐ Exhibit B: Property Reporting Form
☒ Exhibit C: Payment Request Summary Form
☐ Exhibit D: Quality Assurance Requirements for Grants
☐ Exhibit E: Advance Payment Terms and Interest Earned Memo
☐ Additional Exhibits (if necessary):

8. The following information applies to Federal Grants only and is identified in accordance with 2 CFR 200.331(a)(1):

Federal Award Identification Number(s) (FAIN):	P21AP12035
Federal Award Date to Department:	1/1/22
Total Federal Funds Obligated by this Agreement:	\$1,000,000.00
Federal Awarding Agency:	National Park Service
Award R&D?	☐ Yes ☒ N/A

IN WITNESS WHEREOF, this Agreement shall be effective on the date indicated by the Agreement Begin Date above or the last date signed below, whichever is later.

Town of Fort Myers Beach

GRANTEE

Grantee Name

By


(Authorized Signature)

CO

2/10/2022

Date Signed

Roger T. Hernstadt, Town Manager

Print Name and Title of Person Signing

State of Florida Department of Environmental Protection

DEPARTMENT

By

Callie DeHaven

Digitally signed by Callie DeHaven
Date: 2022.02.10 17:46:28 -05'00'

Secretary or Designee

Date Signed

Callie DeHaven, Florida ASLO

Print Name and Title of Person Signing

☐ Additional signatures attached on separate page.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STANDARD TERMS AND CONDITIONS
APPLICABLE TO GRANT AGREEMENTS**

ATTACHMENT 1

1. Entire Agreement.

This Grant Agreement, including any Attachments and Exhibits referred to herein and/or attached hereto (Agreement), constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter. Any terms and conditions included on Grantee's forms or invoices shall be null and void.

2. Grant Administration.

- a. Order of Precedence. If there are conflicting provisions among the documents that make up the Agreement, the order of precedence for interpretation of the Agreement is as follows:
- i. Standard Grant Agreement
 - ii. Attachments other than Attachment 1, in numerical order as designated in the Standard Grant Agreement
 - iii. Attachment 1, Standard Terms and Conditions
 - iv. The Exhibits in the order designated in the Standard Grant Agreement
- b. All approvals, written or verbal, and other written communication among the parties, including all notices, shall be obtained by or sent to the parties' Grant Managers. All written communication shall be by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt, a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. If the notice is delivered in multiple ways, the notice will be considered delivered at the earliest delivery time.
- c. If a different Grant Manager is designated by either party after execution of this Agreement, notice of the name and contact information of the new Grant Manager will be submitted in writing to the other party and maintained in the respective parties' records. A change of Grant Manager does not require a formal amendment or change order to the Agreement.
- d. This Agreement may be amended, through a formal amendment or a change order, only by a written agreement between both parties. A formal amendment to this Agreement is required for changes which cause any of the following:
- (1) an increase or decrease in the Agreement funding amount;
 - (2) a change in Grantee's match requirements;
 - (3) a change in the expiration date of the Agreement; and/or
 - (4) changes to the cumulative amount of funding transfers between approved budget categories, as defined in Attachment 3, Grant Work Plan, that exceeds or is expected to exceed twenty percent (20%) of the total budget as last approved by Department.
- A change order to this Agreement may be used when:
- (1) task timelines within the current authorized Agreement period change;
 - (2) the cumulative transfer of funds between approved budget categories, as defined in Attachment 3, Grant Work Plan, are less than twenty percent (20%) of the total budget as last approved by Department;
 - (3) changing the current funding source as stated in the Standard Grant Agreement; and/or
 - (4) fund transfers between budget categories for the purposes of meeting match requirements.
- This Agreement may be amended to provide for additional services if additional funding is made available by the Legislature.
- e. All days in this Agreement are calendar days unless otherwise specified.

3. Agreement Duration.

The term of the Agreement shall begin and end on the dates indicated in the Standard Grant Agreement, unless extended or terminated earlier in accordance with the applicable terms and conditions. The Grantee shall be eligible for reimbursement for work performed on or after the date of execution through the expiration date of this Agreement, unless otherwise specified in Attachment 2, Special Terms and Conditions. However, work performed prior to the execution of this Agreement may be reimbursable or used for match purposes if permitted by the Special Terms and Conditions.

4. Deliverables.

The Grantee agrees to render the services or other units of deliverables as set forth in Attachment 3, Grant Work Plan. The services or other units of deliverables shall be delivered in accordance with the schedule and at the pricing outlined in the Grant Work Plan. Deliverables may be comprised of activities that must be completed prior to Department making payment on that deliverable. The Grantee agrees to perform in accordance with the terms and conditions set forth in this Agreement and all attachments and exhibits incorporated by the Standard Grant Agreement.

5. Performance Measures.

The Grantee warrants that: (1) the services will be performed by qualified personnel; (2) the services will be of the kind and quality described in the Grant Work Plan; (3) the services will be performed in a professional and workmanlike manner in accordance with industry standards and practices; (4) the services shall not and do not knowingly infringe upon the intellectual property rights, or any other proprietary rights, of any third party; and (5) its employees, subcontractors, and/or subgrantees shall comply with any security and safety requirements and processes, if provided by Department, for work done at the Project Location(s). The Department reserves the right to investigate or inspect at any time to determine whether the services or qualifications offered by Grantee meet the Agreement requirements. Notwithstanding any provisions herein to the contrary, written acceptance of a particular deliverable does not foreclose Department's remedies in the event deficiencies in the deliverable cannot be readily measured at the time of delivery.

6. Acceptance of Deliverables.

- a. Acceptance Process. All deliverables must be received and accepted in writing by Department's Grant Manager before payment. The Grantee shall work diligently to correct all deficiencies in the deliverable that remain outstanding, within a reasonable time at Grantee's expense. If Department's Grant Manager does not accept the deliverables within 30 days of receipt, they will be deemed rejected.
- b. Rejection of Deliverables. The Department reserves the right to reject deliverables, as outlined in the Grant Work Plan, as incomplete, inadequate, or unacceptable due, in whole or in part, to Grantee's lack of satisfactory performance under the terms of this Agreement. The Grantee's efforts to correct the rejected deliverables will be at Grantee's sole expense. Failure to fulfill the applicable technical requirements or complete all tasks or activities in accordance with the Grant Work Plan will result in rejection of the deliverable and the associated invoice. Payment for the rejected deliverable will not be issued unless the rejected deliverable is made acceptable to Department in accordance with the Agreement requirements. The Department, at its option, may allow additional time within which Grantee may remedy the objections noted by Department. The Grantee's failure to make adequate or acceptable deliverables after a reasonable opportunity to do so shall constitute an event of default.

7. Financial Consequences for Nonperformance.

- a. Withholding Payment. In addition to the specific consequences explained in the Grant Work Plan and/or Special Terms and Conditions, the State of Florida (State) reserves the right to withhold payment when the Grantee has failed to perform/comply with provisions of this Agreement. None of the financial consequences for nonperformance in this Agreement as more fully described in the Grant Work Plan shall be considered penalties.
- b. Corrective Action Plan. If Grantee fails to correct all the deficiencies in a rejected deliverable within the specified timeframe, Department may, in its sole discretion, request that a proposed Corrective Action Plan (CAP) be submitted by Grantee to Department. The Department requests that Grantee specify the outstanding deficiencies in the CAP. All CAPs must be able to be implemented and performed in no more than sixty (60) calendar days.
 - i. The Grantee shall submit a CAP within ten (10) days of the date of the written request from Department. The CAP shall be sent to the Department's Grant Manager for review and approval. Within ten (10) days of receipt of a CAP, Department shall notify Grantee in writing whether the CAP proposed has been accepted. If the CAP is not accepted, Grantee shall have ten (10) days from receipt of Department letter rejecting the proposal to submit a revised proposed CAP. Failure to obtain Department approval of a CAP as specified above may result in Department's termination of this Agreement for cause as authorized in this Agreement.
 - ii. Upon Department's notice of acceptance of a proposed CAP, Grantee shall have ten (10) days to commence implementation of the accepted plan. Acceptance of the proposed CAP by Department does not relieve Grantee of any of its obligations under the Agreement. In the event the CAP fails to correct or eliminate performance deficiencies by Grantee, Department shall retain the right to require additional or further remedial steps, or to terminate this Agreement for failure to perform. No actions approved by Department or steps taken by Grantee shall preclude Department from subsequently asserting any deficiencies in performance. The Grantee shall continue to implement

the CAP until all deficiencies are corrected. Reports on the progress of the CAP will be made to Department as requested by Department's Grant Manager.

- iii. Failure to respond to a Department request for a CAP or failure to correct a deficiency in the performance of the Agreement as specified by Department may result in termination of the Agreement.

8. Payment.

- a. Payment Process. Subject to the terms and conditions established by the Agreement, the pricing per deliverable established by the Grant Work Plan, and the billing procedures established by Department, Department agrees to pay Grantee for services rendered in accordance with Section 215.422, Florida Statutes (F.S.).
- b. Taxes. The Department is exempted from payment of State sales, use taxes and Federal excise taxes. The Grantee, however, shall not be exempted from paying any taxes that it is subject to, including State sales and use taxes, or for payment by Grantee to suppliers for taxes on materials used to fulfill its contractual obligations with Department. The Grantee shall not use Department's exemption number in securing such materials. The Grantee shall be responsible and liable for the payment of all its FICA/Social Security and other taxes resulting from this Agreement.
- c. Maximum Amount of Agreement. The maximum amount of compensation under this Agreement, without an amendment, is described in the Standard Grant Agreement. Any additional funds necessary for the completion of this Project are the responsibility of Grantee.
- d. Reimbursement for Costs. The Grantee shall be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of each deliverable identified in the Grant Work Plan. Reimbursement shall be requested on Exhibit C, Payment Request Summary Form. To be eligible for reimbursement, costs must be in compliance with laws, rules, and regulations applicable to expenditures of State funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address:
<https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf>.
- e. Invoice Detail. All charges for services rendered or for reimbursement of expenses authorized by Department pursuant to the Grant Work Plan shall be submitted to Department in sufficient detail for a proper pre-audit and post-audit to be performed. The Grantee shall only invoice Department for deliverables that are completed in accordance with the Grant Work Plan.
- f. Interim Payments. Interim payments may be made by Department, at its discretion, if the completion of deliverables to date have first been accepted in writing by Department's Grant Manager.
- g. Final Payment Request. A final payment request should be submitted to Department no later than sixty (60) days following the expiration date of the Agreement to ensure the availability of funds for payment. However, all work performed pursuant to the Grant Work Plan must be performed on or before the expiration date of the Agreement.
- h. Annual Appropriation Contingency. The State's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of Department if the Legislature reduces or eliminates appropriations.
- i. Interest Rates. All interest rates charged under the Agreement shall be calculated on the prevailing rate used by the State Board of Administration. To obtain the applicable interest rate, please refer to:
www.myfloridacfo.com/Division/AA/Vendors/default.htm.
- j. Refund of Payments to the Department. Any balance of unobligated funds that have been advanced or paid must be refunded to Department. Any funds paid in excess of the amount to which Grantee or subgrantee is entitled under the terms of the Agreement must be refunded to Department. If this Agreement is funded with federal funds and the Department is required to refund the federal government, the Grantee shall refund the Department its share of those funds.

9. Documentation Required for Cost Reimbursement Grant Agreements and Match.

If Cost Reimbursement or Match is authorized in Attachment 2, Special Terms and Conditions, the following conditions apply. Supporting documentation must be provided to substantiate cost reimbursement or match requirements for the following budget categories:

- a. Salary/Wages. Grantee shall list personnel involved, position classification, direct salary rates, and hours spent on the Project in accordance with Attachment 3, Grant Work Plan in their documentation for reimbursement or match requirements.

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- b. Overhead/Indirect/General and Administrative Costs. If Grantee is being reimbursed for or claiming match for multipliers, all multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by Grantee exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate.
- c. Contractual Costs (Subcontractors). Match or reimbursement requests for payments to subcontractors must be substantiated by copies of invoices with backup documentation identical to that required from Grantee. Subcontracts which involve payments for direct salaries shall clearly identify the personnel involved, salary rate per hour, and hours spent on the Project. All eligible multipliers used (i.e., fringe benefits, overhead, indirect, and/or general and administrative rates) shall be supported by audit. If Department determines that multipliers charged by any subcontractor exceeded the rates supported by audit, Grantee shall be required to reimburse such funds to Department within thirty (30) days of written notification. Interest shall be charged on the excessive rate. Nonconsumable and/or nonexpendable personal property or equipment costing \$5,000 or more purchased for the Project under a subcontract is subject to the requirements set forth in Chapters 273 and/or 274, F.S., and Chapter 691-72, Florida Administrative Code (F.A.C.) and/or Chapter 691-73, F.A.C., as applicable. The Grantee shall be responsible for maintaining appropriate property records for any subcontracts that include the purchase of equipment as part of the delivery of services. The Grantee shall comply with this requirement and ensure its subcontracts issued under this Agreement, if any, impose this requirement, in writing, on its subcontractors.
 - i. For fixed-price (vendor) subcontracts, the following provisions shall apply: The Grantee may award, on a competitive basis, fixed-price subcontracts to consultants/contractors in performing the work described in Attachment 3, Grant Work Plan. Invoices submitted to Department for fixed-price subcontracted activities shall be supported with a copy of the subcontractor's invoice and a copy of the tabulation form for the competitive procurement process (e.g., Invitation to Bid, Request for Proposals, or other similar competitive procurement document) resulting in the fixed-price subcontract. The Grantee may request approval from Department to award a fixed-price subcontract resulting from procurement methods other than those identified above. In this instance, Grantee shall request the advance written approval from Department's Grant Manager of the fixed price negotiated by Grantee. The letter of request shall be supported by a detailed budget and Scope of Services to be performed by the subcontractor. Upon receipt of Department Grant Manager's approval of the fixed-price amount, Grantee may proceed in finalizing the fixed-price subcontract.
 - ii. If the procurement is subject to the Consultant's Competitive Negotiation Act under section 287.055, F.S. or the Brooks Act, Grantee must provide documentation clearly evidencing it has complied with the statutory or federal requirements.
- d. Travel. All requests for match or reimbursement of travel expenses shall be in accordance with Section 112.061, F.S.
- e. Direct Purchase Equipment. For the purposes of this Agreement, Equipment is defined as capital outlay costing \$5,000 or more. Match or reimbursement for Grantee's direct purchase of equipment is subject to specific approval of Department, and does not include any equipment purchased under the delivery of services to be completed by a subcontractor. Include copies of invoices or receipts to document purchases, and a properly completed Exhibit B, Property Reporting Form.
- f. Rental/Lease of Equipment. Match or reimbursement requests for rental/lease of equipment must include copies of invoices or receipts to document charges.
- g. Miscellaneous/Other Expenses. If miscellaneous or other expenses, such as materials, supplies, non-excluded phone expenses, reproduction, or mailing, are reimbursable or available for match or reimbursement under the terms of this Agreement, the documentation supporting these expenses must be itemized and include copies of receipts or invoices. Additionally, independent of Grantee's contract obligations to its subcontractor, Department shall not reimburse any of the following types of charges: cell phone usage; attorney's fees or court costs; civil or administrative penalties; or handling fees, such as set percent overages associated with purchasing supplies or equipment.
- h. Land Acquisition. Reimbursement for the costs associated with acquiring interest and/or rights to real property (including access rights through ingress/egress easements, leases, license agreements, or other site access agreements; and/or obtaining record title ownership of real property through purchase) must be supported by the following, as applicable: Copies of Property Appraisals, Environmental Site Assessments, Surveys and Legal Descriptions, Boundary Maps, Acreage Certification, Title Search Reports, Title Insurance, Closing Statements/Documents, Deeds, Leases, Easements, License Agreements, or other legal instrument documenting

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acquired property interest and/or rights. If land acquisition costs are used to meet match requirements, Grantee agrees that those funds shall not be used as match for any other Agreement supported by State or Federal funds.

10. Status Reports.

The Grantee shall submit status reports quarterly, unless otherwise specified in the Attachments, on Exhibit A, Progress Report Form, to Department's Grant Manager describing the work performed during the reporting period, problems encountered, problem resolutions, scheduled updates, and proposed work for the next reporting period. Quarterly status reports are due no later than twenty (20) days following the completion of the quarterly reporting period. For the purposes of this reporting requirement, the quarterly reporting periods end on March 31, June 30, September 30 and December 31. The Department will review the required reports submitted by Grantee within thirty (30) days.

11. Retainage.

The following provisions apply if Department withholds retainage under this Agreement:

- a. The Department reserves the right to establish the amount and application of retainage on the work performed under this Agreement up to the maximum percentage described in Attachment 2, Special Terms and Conditions. Retainage may be withheld from each payment to Grantee pending satisfactory completion of work and approval of all deliverables.
- b. If Grantee fails to perform the requested work, or fails to perform the work in a satisfactory manner, Grantee shall forfeit its right to payment of the retainage associated with the work. Failure to perform includes, but is not limited to, failure to submit the required deliverables or failure to provide adequate documentation that the work was actually performed. The Department shall provide written notification to Grantee of the failure to perform that shall result in retainage forfeiture. If the Grantee does not correct the failure to perform within the timeframe stated in Department's notice, the retainage will be forfeited to Department.
- c. No retainage shall be released or paid for incomplete work while this Agreement is suspended.
- d. Except as otherwise provided above, Grantee shall be paid the retainage associated with the work, provided Grantee has completed the work and submits an invoice for retainage held in accordance with the invoicing procedures under this Agreement.

12. Insurance.

- a. Insurance Requirements for Sub-Grantees and/or Subcontractors. The Grantee shall require its sub-grantees and/or subcontractors, if any, to maintain insurance coverage of such types and with such terms and limits as described in this Agreement. The Grantee shall require all its sub-grantees and/or subcontractors, if any, to make compliance with the insurance requirements of this Agreement a condition of all contracts that are related to this Agreement. Sub-grantees and/or subcontractors must provide proof of insurance upon request.
- b. Deductibles. The Department shall be exempt from, and in no way liable for, any sums of money representing a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Grantee providing such insurance.
- c. Proof of Insurance. Upon execution of this Agreement, Grantee shall provide Department documentation demonstrating the existence and amount for each type of applicable insurance coverage *prior to* performance of any work under this Agreement. Upon receipt of written request from Department, Grantee shall furnish Department with proof of applicable insurance coverage by standard form certificates of insurance, a self-insured authorization, or other certification of self-insurance.
- d. Duty to Maintain Coverage. In the event that any applicable coverage is cancelled by the insurer for any reason, or if Grantee cannot get adequate coverage, Grantee shall immediately notify Department of such cancellation and shall obtain adequate replacement coverage conforming to the requirements herein and provide proof of such replacement coverage within ten (10) days after the cancellation of coverage.
- e. Insurance Trust. If the Grantee's insurance is provided through an insurance trust, the Grantee shall instead add the Department of Environmental Protection, its employees, and officers as an additional covered party everywhere the Agreement requires them to be added as an additional insured.

13. Termination.

- a. Termination for Convenience. When it is in the State's best interest, Department may, at its sole discretion, terminate the Agreement in whole or in part by giving 30 days' written notice to Grantee. The Department shall notify Grantee of the termination for convenience with instructions as to the effective date of termination or the specific stage of work at which the Agreement is to be terminated. The Grantee must submit all invoices for work to be paid under this Agreement within thirty (30) days of the effective date of termination. The Department shall not pay any invoices received after thirty (30) days of the effective date of termination.
- b. Termination for Cause. The Department may terminate this Agreement if any of the events of default described in the Events of Default provisions below occur or in the event that Grantee fails to fulfill any of its other

obligations under this Agreement. If, after termination, it is determined that Grantee was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Department. The rights and remedies of Department in this clause are in addition to any other rights and remedies provided by law or under this Agreement.

- c. Grantee Obligations upon Notice of Termination. After receipt of a notice of termination or partial termination unless as otherwise directed by Department, Grantee shall not furnish any service or deliverable on the date, and to the extent specified, in the notice. However, Grantee shall continue work on any portion of the Agreement not terminated. If the Agreement is terminated before performance is completed, Grantee shall be paid only for that work satisfactorily performed for which costs can be substantiated. The Grantee shall not be entitled to recover any cancellation charges or lost profits.
- d. Continuation of Prepaid Services. If Department has paid for any services prior to the expiration, cancellation, or termination of the Agreement, Grantee shall continue to provide Department with those services for which it has already been paid or, at Department's discretion, Grantee shall provide a refund for services that have been paid for but not rendered.
- e. Transition of Services Upon Termination, Expiration, or Cancellation of the Agreement. If services provided under the Agreement are being transitioned to another provider(s), Grantee shall assist in the smooth transition of Agreement services to the subsequent provider(s). This requirement is at a minimum an affirmative obligation to cooperate with the new provider(s), however additional requirements may be outlined in the Grant Work Plan. The Grantee shall not perform any services after Agreement expiration or termination, except as necessary to complete the transition or continued portion of the Agreement, if any.

14. Notice of Default.

If Grantee defaults in the performance of any covenant or obligation contained in the Agreement, including, any of the events of default, Department shall provide notice to Grantee and an opportunity to cure that is reasonable under the circumstances. This notice shall state the nature of the failure to perform and provide a time certain for correcting the failure. The notice will also provide that, should the Grantee fail to perform within the time provided, Grantee will be found in default, and Department may terminate the Agreement effective as of the date of receipt of the default notice.

15. Events of Default.

Provided such failure is not the fault of Department or outside the reasonable control of Grantee, the following non-exclusive list of events, acts, or omissions, shall constitute events of default:

- a. The commitment of any material breach of this Agreement by Grantee, including failure to timely deliver a material deliverable, failure to perform the minimal level of services required for a deliverable, discontinuance of the performance of the work, failure to resume work that has been discontinued within a reasonable time after notice to do so, or abandonment of the Agreement;
- b. The commitment of any material misrepresentation or omission in any materials, or discovery by the Department of such, made by the Grantee in this Agreement or in its application for funding;
- c. Failure to submit any of the reports required by this Agreement or having submitted any report with incorrect, incomplete, or insufficient information;
- d. Failure to honor any term of the Agreement;
- e. Failure to abide by any statutory, regulatory, or licensing requirement, including an entry of an order revoking the certificate of authority granted to the Grantee by a state or other licensing authority;
- f. Failure to pay any and all entities, individuals, and furnishing labor or materials, or failure to make payment to any other entities as required by this Agreement;
- g. Employment of an unauthorized alien in the performance of the work, in violation of Section 274 (A) of the Immigration and Nationality Act;
- h. Failure to maintain the insurance required by this Agreement;
- i. One or more of the following circumstances, uncorrected for more than thirty (30) days unless, within the specified 30-day period, Grantee (including its receiver or trustee in bankruptcy) provides to Department adequate assurances, reasonably acceptable to Department, of its continuing ability and willingness to fulfill its obligations under the Agreement:
 - i. Entry of an order for relief under Title 11 of the United States Code;
 - ii. The making by Grantee of a general assignment for the benefit of creditors;
 - iii. The appointment of a general receiver or trustee in bankruptcy of Grantee's business or property; and/or
 - iv. An action by Grantee under any state insolvency or similar law for the purpose of its bankruptcy, reorganization, or liquidation.

16. Suspension of Work.

The Department may, in its sole discretion, suspend any or all activities under the Agreement, at any time, when it is in the best interest of the State to do so. The Department shall provide Grantee written notice outlining the particulars of suspension. Examples of reasons for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. After receiving a suspension notice, Grantee shall comply with the notice. Within 90 days, or any longer period agreed to by the parties, Department shall either: (1) issue a notice authorizing resumption of work, at which time activity shall resume; or (2) terminate the Agreement. If the Agreement is terminated after 30 days of suspension, the notice of suspension shall be deemed to satisfy the thirty (30) days' notice required for a notice of termination for convenience. Suspension of work shall not entitle Grantee to any additional compensation.

17. Force Majeure.

The Grantee shall not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of Grantee or its employees or agents contributed to the delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires, floods, or other similar cause wholly beyond Grantee's control, or for any of the foregoing that affect subcontractors or suppliers if no alternate source of supply is available to Grantee. In case of any delay Grantee believes is excusable, Grantee shall notify Department in writing of the delay or potential delay and describe the cause of the delay either (1) within ten days after the cause that creates or will create the delay first arose, if Grantee could reasonably foresee that a delay could occur as a result; or (2) if delay is not reasonably foreseeable, within five days after the date Grantee first had reason to believe that a delay could result. **THE FOREGOING SHALL CONSTITUTE THE GRANTEE'S SOLE REMEDY OR EXCUSE WITH RESPECT TO DELAY.** Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages, other than for an extension of time, shall be asserted against Department. The Grantee shall not be entitled to an increase in the Agreement price or payment of any kind from Department for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist Grantee shall perform at no increased cost, unless Department determines, in its sole discretion, that the delay will significantly impair the value of the Agreement to Department, in which case Department may: (1) accept allocated performance or deliveries from Grantee, provided that Grantee grants preferential treatment to Department with respect to products subjected to allocation; (2) contract with other sources (without recourse to and by Grantee for the related costs and expenses) to replace all or part of the products or services that are the subject of the delay, which purchases may be deducted from the Agreement quantity; or (3) terminate Agreement in whole or in part.

18. Indemnification.

- a. The Grantee shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless Department and its officers, agents, and employees, from suits, actions, damages, and costs of every name and description arising from or relating to:
 - i. personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by Grantee, its agents, employees, partners, or subcontractors; provided, however, that Grantee shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of Department;
 - ii. the Grantee's breach of this Agreement or the negligent acts or omissions of Grantee.
- b. The Grantee's obligations under the preceding paragraph with respect to any legal action are contingent upon Department giving Grantee: (1) written notice of any action or threatened action; (2) the opportunity to take over and settle or defend any such action at Grantee's sole expense; and (3) assistance in defending the action at Grantee's sole expense. The Grantee shall not be liable for any cost, expense, or compromise incurred or made by Department in any legal action without Grantee's prior written consent, which shall not be unreasonably withheld.
- c. Notwithstanding sections a. and b. above, the following is the sole indemnification provision that applies to Grantees that are governmental entities: Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. However, nothing contained herein shall constitute a waiver by either party of its sovereign immunity or the provisions of Section 768.28, F.S. Further, nothing herein shall be construed as consent by a state agency or subdivision of the State to be sued by third parties in any matter arising out of any contract or this Agreement.
- d. No provision in this Agreement shall require Department to hold harmless or indemnify Grantee, insure or assume liability for Grantee's negligence, waive Department's sovereign immunity under the laws of Florida, or

otherwise impose liability on Department for which it would not otherwise be responsible. Any provision, implication or suggestion to the contrary is null and void.

19. Limitation of Liability.

The Department's liability for any claim arising from this Agreement is limited to compensatory damages in an amount no greater than the sum of the unpaid balance of compensation due for goods or services rendered pursuant to and in compliance with the terms of the Agreement. Such liability is further limited to a cap of \$100,000.

20. Remedies.

Nothing in this Agreement shall be construed to make Grantee liable for force majeure events. Nothing in this Agreement, including financial consequences for nonperformance, shall limit Department's right to pursue its remedies for other types of damages under the Agreement, at law or in equity. The Department may, in addition to other remedies available to it, at law or in equity and upon notice to Grantee, retain such monies from amounts due Grantee as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against it.

21. Waiver.

The delay or failure by Department to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of Department's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

22. Statutory Notices Relating to Unauthorized Employment and Subcontracts.

- a. The Department shall consider the employment by any Grantee of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. If Grantee/subcontractor knowingly employs unauthorized aliens, such violation shall be cause for unilateral cancellation of this Agreement. The Grantee shall be responsible for including this provision in all subcontracts with private organizations issued as a result of this Agreement.
- b. Pursuant to Sections 287.133, 287.134, and 287.137 F.S., the following restrictions apply to persons placed on the convicted vendor list, discriminatory vendor list, or the antitrust violator vendor list:
 - i. Public Entity Crime. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, F.S., for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.
 - ii. Discriminatory Vendors. An entity or affiliate who has been placed on the discriminatory vendor list may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity.
 - iii. Antitrust Violator Vendors. A person or an affiliate who has been placed on the antitrust violator vendor list following a conviction or being held civilly liable for an antitrust violation may not submit a bid, proposal, or reply on any contract to provide any good or services to a public entity; may not submit a bid, proposal, or reply on any contract with a public entity for the construction or repair of a public building or public work; may not submit a bid, proposal, or reply on leases of real property to a public entity; may not be awarded or perform work as a Grantee, supplier, subcontractor, or consultant under a contract with a public entity; and may not transact new business with a public entity.
 - iv. Notification. The Grantee shall notify Department if it or any of its suppliers, subcontractors, or consultants have been placed on the convicted vendor list, the discriminatory vendor list, or antitrust violator vendor list during the life of the Agreement. The Florida Department of Management Services is responsible for maintaining the discriminatory vendor list and the antitrust violator vendor list and posts the list on its website. Questions regarding the discriminatory vendor list or antitrust violator vendor list may be directed to the Florida Department of Management Services, Office of Supplier Diversity, at (850) 487-0915.

23. Compliance with Federal, State and Local Laws.

- a. The Grantee and all its agents shall comply with all federal, state and local regulations, including, but not limited to, nondiscrimination, wages, social security, workers' compensation, licenses, and registration requirements. The Grantee shall include this provision in all subcontracts issued as a result of this Agreement.
- b. No person, on the grounds of race, creed, color, religion, national origin, age, gender, or disability, shall be excluded from participation in; be denied the proceeds or benefits of; or be otherwise subjected to discrimination in performance of this Agreement.
- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- d. Any dispute concerning performance of the Agreement shall be processed as described herein. Jurisdiction for any damages arising under the terms of the Agreement will be in the courts of the State, and venue will be in the Second Judicial Circuit, in and for Leon County. Except as otherwise provided by law, the parties agree to be responsible for their own attorney fees incurred in connection with disputes arising under the terms of this Agreement.

24. Scrutinized Companies.

- a. Grantee certifies that it is not on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.
- b. If this Agreement is for more than one million dollars, the Grantee certifies that it is also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Department may immediately terminate this Agreement at its sole option if the Grantee is found to have submitted a false certification; or if the Grantee is placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.
- c. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize these contracting prohibitions then they shall become inoperative.

25. Lobbying and Integrity.

The Grantee agrees that no funds received by it under this Agreement will be expended for the purpose of lobbying the Legislature or a State agency pursuant to Section 216.347, F.S., except that pursuant to the requirements of Section 287.058(6), F.S., during the term of any executed agreement between Grantee and the State, Grantee may lobby the executive or legislative branch concerning the scope of services, performance, term, or compensation regarding that agreement. The Grantee shall comply with Sections 11.062 and 216.347, F.S.

26. Record Keeping.

The Grantee shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with United States generally accepted accounting principles (US GAAP) consistently applied. The Department, the State, or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following the completion date or termination of the Agreement. In the event that any work is subcontracted, Grantee shall similarly require each subcontractor to maintain and allow access to such records for audit purposes. Upon request of Department's Inspector General, or other authorized State official, Grantee shall provide any type of information the Inspector General deems relevant to Grantee's integrity or responsibility. Such information may include, but shall not be limited to, Grantee's business or financial records, documents, or files of any type or form that refer to or relate to Agreement. The Grantee shall retain such records for the longer of: (1) three years after the expiration of the Agreement; or (2) the period required by the General Records Schedules maintained by the Florida Department of State (available at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>).

27. Audits.

- a. Inspector General. The Grantee understands its duty, pursuant to Section 20.055(5), F.S., to cooperate with the inspector general in any investigation, audit, inspection, review, or hearing. The Grantee will comply with this duty and ensure that its sub-grantees and/or subcontractors issued under this Agreement, if any, impose this requirement, in writing, on its sub-grantees and/or subcontractors, respectively.
- b. Physical Access and Inspection. Department personnel shall be given access to and may observe and inspect work being performed under this Agreement, with reasonable notice and during normal business hours, including by any of the following methods:
 - i. Grantee shall provide access to any location or facility on which Grantee is performing work, or storing or staging equipment, materials or documents;

- ii. Grantee shall permit inspection of any facility, equipment, practices, or operations required in performance of any work pursuant to this Agreement; and,
 - iii. Grantee shall allow and facilitate sampling and monitoring of any substances, soils, materials or parameters at any location reasonable or necessary to assure compliance with any work or legal requirements pursuant to this Agreement.
- c. **Special Audit Requirements.** The Grantee shall comply with the applicable provisions contained in Attachment 5, Special Audit Requirements. Each amendment that authorizes a funding increase or decrease shall include an updated copy of Exhibit 1, to Attachment 5. If Department fails to provide an updated copy of Exhibit 1 to include in each amendment that authorizes a funding increase or decrease, Grantee shall request one from the Department's Grants Manager. The Grantee shall consider the type of financial assistance (federal and/or state) identified in Attachment 5, Exhibit 1 and determine whether the terms of Federal and/or Florida Single Audit Act Requirements may further apply to lower tier transactions that may be a result of this Agreement. For federal financial assistance, Grantee shall utilize the guidance provided under 2 CFR §200.331 for determining whether the relationship represents that of a subrecipient or vendor. For State financial assistance, Grantee shall utilize the form entitled "Checklist for Nonstate Organizations Recipient/Subrecipient vs Vendor Determination" (form number DFS-A2-NS) that can be found under the "Links/Forms" section appearing at the following website: <https://apps.fldfs.com/fsaa>.
- d. **Proof of Transactions.** In addition to documentation provided to support cost reimbursement as described herein, Department may periodically request additional proof of a transaction to evaluate the appropriateness of costs to the Agreement pursuant to State guidelines (including cost allocation guidelines) and federal, if applicable. Allowable costs and uniform administrative requirements for federal programs can be found under 2 CFR 200. The Department may also request a cost allocation plan in support of its multipliers (overhead, indirect, general administrative costs, and fringe benefits). The Grantee must provide the additional proof within thirty (30) days of such request.
- e. **No Commingling of Funds.** The accounting systems for all Grantees must ensure that these funds are not commingled with funds from other agencies. Funds from each agency must be accounted for separately. Grantees are prohibited from commingling funds on either a program-by-program or a project-by-project basis. Funds specifically budgeted and/or received for one project may not be used to support another project. Where a Grantee's, or subrecipient's, accounting system cannot comply with this requirement, Grantee, or subrecipient, shall establish a system to provide adequate fund accountability for each project it has been awarded.
 - i. If Department finds that these funds have been commingled, Department shall have the right to demand a refund, either in whole or in part, of the funds provided to Grantee under this Agreement for non-compliance with the material terms of this Agreement. The Grantee, upon such written notification from Department shall refund, and shall forthwith pay to Department, the amount of money demanded by Department. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the original payment(s) are received from Department by Grantee to the date repayment is made by Grantee to Department.
 - ii. In the event that the Grantee recovers costs, incurred under this Agreement and reimbursed by Department, from another source(s), Grantee shall reimburse Department for all recovered funds originally provided under this Agreement and interest shall be charged for those recovered costs as calculated on from the date(s) the payment(s) are recovered by Grantee to the date repayment is made to Department.
 - iii. Notwithstanding the requirements of this section, the above restrictions on commingling funds do not apply to agreements where payments are made purely on a cost reimbursement basis.

28. Conflict of Interest.

The Grantee covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.

29. Independent Contractor.

The Grantee is an independent contractor and is not an employee or agent of Department.

30. Subcontracting.

- a. Unless otherwise specified in the Special Terms and Conditions, all services contracted for are to be performed solely by Grantee.
- b. The Department may, for cause, require the replacement of any Grantee employee, subcontractor, or agent. For cause, includes, but is not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with an applicable Department policy or other requirement.

Attachment 1

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- c. The Department may, for cause, deny access to Department's secure information or any facility by any Grantee employee, subcontractor, or agent.
- d. The Department's actions under paragraphs b. or c. shall not relieve Grantee of its obligation to perform all work in compliance with the Agreement. The Grantee shall be responsible for the payment of all monies due under any subcontract. The Department shall not be liable to any subcontractor for any expenses or liabilities incurred under any subcontract and Grantee shall be solely liable to the subcontractor for all expenses and liabilities incurred under any subcontract.
- e. The Department will not deny Grantee's employees, subcontractors, or agents access to meetings within the Department's facilities, unless the basis of Department's denial is safety or security considerations.
- f. The Department supports diversity in its procurement program and requests that all subcontracting opportunities afforded by this Agreement embrace diversity enthusiastically. The award of subcontracts should reflect the full diversity of the citizens of the State. A list of minority-owned firms that could be offered subcontracting opportunities may be obtained by contacting the Office of Supplier Diversity at (850) 487-0915.
- g. The Grantee shall not be liable for any excess costs for a failure to perform, if the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both Grantee and the subcontractor(s), and without the fault or negligence of either, unless the subcontracted products or services were obtainable from other sources in sufficient time for Grantee to meet the required delivery schedule.

31. Guarantee of Parent Company.

If Grantee is a subsidiary of another corporation or other business entity, Grantee asserts that its parent company will guarantee all of the obligations of Grantee for purposes of fulfilling the obligations of Agreement. In the event Grantee is sold during the period the Agreement is in effect, Grantee agrees that it will be a requirement of sale that the new parent company guarantee all of the obligations of Grantee.

32. Survival.

The respective obligations of the parties, which by their nature would continue beyond the termination or expiration of this Agreement, including without limitation, the obligations regarding confidentiality, proprietary interests, and public records, shall survive termination, cancellation, or expiration of this Agreement.

33. Third Parties.

The Department shall not be deemed to assume any liability for the acts, failures to act or negligence of Grantee, its agents, servants, and employees, nor shall Grantee disclaim its own negligence to Department or any third party. This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties. If Department consents to a subcontract, Grantee will specifically disclose that this Agreement does not create any third-party rights. Further, no third parties shall rely upon any of the rights and obligations created under this Agreement.

34. Severability.

If a court of competent jurisdiction deems any term or condition herein void or unenforceable, the other provisions are severable to that void provision, and shall remain in full force and effect.

35. Grantee's Employees, Subcontractors and Agents.

All Grantee employees, subcontractors, or agents performing work under the Agreement shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Grantee shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under Agreement must comply with all security and administrative requirements of Department and shall comply with all controlling laws and regulations relevant to the services they are providing under the Agreement.

36. Assignment.

The Grantee shall not sell, assign, or transfer any of its rights, duties, or obligations under the Agreement, or under any purchase order issued pursuant to the Agreement, without the prior written consent of Department. In the event of any assignment, Grantee remains secondarily liable for performance of the Agreement, unless Department expressly waives such secondary liability. The Department may assign the Agreement with prior written notice to Grantee of its intent to do so.

37. Compensation Report.

If this Agreement is a sole-source, public-private agreement or if the Grantee, through this agreement with the State, annually receive 50% or more of their budget from the State or from a combination of State and Federal funds, the Grantee shall provide an annual report, including the most recent IRS Form 990, detailing the total compensation for the entities' executive leadership teams. Total compensation shall include salary, bonuses, cashed-in leave, cash equivalents, severance pay, retirement benefits, deferred compensation, real-property gifts, and any other payout. The Grantee must also inform the Department of any changes in total executive compensation between the annual

reports. All compensation reports must indicate what percent of compensation comes directly from the State or Federal allocations to the Grantee.

38. Execution in Counterparts and Authority to Sign.

This Agreement, any amendments, and/or change orders related to the Agreement, may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument. In accordance with the Electronic Signature Act of 1996, electronic signatures, including facsimile transmissions, may be used and shall have the same force and effect as a written signature. Each person signing this Agreement warrants that he or she is duly authorized to do so and to bind the respective party to the Agreement.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Terms and Conditions
AGREEMENT NO. LW738**

ATTACHMENT 2

These Special Terms and Conditions shall be read together with general terms outlined in the Standard Terms and Conditions, Attachment 1. Where in conflict, these more specific terms shall apply.

1. Scope of Work.

The Project funded under this Agreement is Bay Oaks Recreational Campus Redevelopment. The Project is defined in more detail in Attachment 3, Grant Work Plan.

2. Duration.

- a. Reimbursement Period. The reimbursement period for this Agreement begins on or after January 1, 2022, through the Project Completion Date.
- b. Extensions. There are extensions available for this Project.
- c. Service Periods. Additional service periods are not authorized under this Agreement.

3. Payment Provisions.

- a. Compensation. This is a cost reimbursement Agreement. The Grantee shall be compensated under this Agreement as described in Attachment 3.
- b. Invoicing. Invoicing will occur after approval of the final deliverable(s).
- c. Advance Pay. Advance Pay is not authorized under this Agreement.

4. Cost Eligible for Reimbursement or Matching Requirements.

Reimbursement for costs or availability for costs to meet matching requirements shall be limited to the following budget categories, as defined in the Reference Guide for State Expenditures, as indicated:

<u>Reimbursement</u>	<u>Match</u>	<u>Category</u>
☒	☒	Salaries/Wages
		Overhead/Indirect/General and Administrative Costs:
☒	☒	a. Fringe Benefits, which shall be calculated at the rate of 40% of direct salaries.
☒	☒	b. Indirect Costs, which shall be calculated at the rate of 15% of direct costs.
☒	☒	Contractual (Subcontractors)
☐	☐	Travel, in accordance with Section 112, F.S.
☐	☐	Equipment
☒	☒	Rental/Lease of Equipment
☒	☒	Miscellaneous/Other Expenses
☐	☐	Land Acquisition

5. Equipment Purchase.

No Equipment purchases shall be funded under this Agreement.

6. Land Acquisition.

There will be no Land Acquisitions funded under this Agreement.

7. Match Requirements

This Agreement requires at least a fifty percent (50%) non-federal match from the Grantee towards the work funded under this Agreement. Therefore, the Grantee is responsible for providing \$1,000,000.00 towards the Project funded under this Agreement. It is understood that any additional funds necessary for the completion of this project are the responsibility of the Grantee.

All required matching funds shall meet the federal requirements established in 2 CFR § 200.306 and other federal statutory requirements, as applicable. Grantee acknowledges and agrees to provide eligible match types as set forth in the LWCF Federal Financial Assistance Manual <https://www.nps.gov/subjects/lwcf/lwcf-manual.htm>). Grantee acknowledges and agrees not to provide ineligible match sources, including real property acquired or funds obtained from any of the following sources:

- a. Florida Recreation Development Assistance Program (FRDAP), Recreation Trails Program (RTP), and LWCF;
- b. Donated value of real property acquired prior to Department approval or through Land and Water Conservation Fund; and
- c. Other state or federal grant or land acquisition programs such as: legislative special interest projects, Save Our Coast Program, Preservation 2000, Florida Forever, Conservation and Recreation Lands Program, Save Our Rivers Program, and Land Acquisition Trust Fund.

Real property donated as all, or part of the Grantee's required match must be appraised prior to commencement of the Project. Pursuant to subsection 62D-5.071(9), F.A.C., the Grantee shall submit appraisal(s), obtained at its own expense and prepared in accordance with the Uniform Appraisal Standards for Federal Land Acquisitions ("UASFLA"). The appraisal must establish the fair market value of the Project site. Property appraised at \$500,000 or less requires one (1) appraisal. Property exceeding \$500,000 in appraised value requires a second appraisal. The appraisal(s) shall be dated no earlier than six (6) months prior to the closing date of the LWCF application submission period. The appraisal must be prepared by an appraiser on the list of approved appraisers maintained by the Department's Division of State Lands under the provisions of Sections 253.025(6)(b), 259.041(7)(c), F.S., and Rule 18-1.007, F.A.C. Property value is based on the purchase price or appraised value, whichever is lower; if two (2) appraisals are required, the property value is lowest of the two appraisals or the purchase price. Appraisal costs shall not be reimbursed under the terms and conditions of this Agreement. If the negotiated purchase price or approved appraised value is greater than the annual appropriation by USDOJ, NPS and the Florida Legislature, the Grantee must pay the additional cost.

8. Insurance Requirements

Required Coverage. At all times during the Agreement the Grantee, at its sole expense, shall maintain insurance coverage of such types and with such terms and limits described below. The limits of coverage under each policy maintained by the Grantee shall not be interpreted as limiting the Grantee's liability and obligations under the Agreement. Grantee shall provide coverage through a self-insurance program established and operating under the laws of Florida. Additional insurance requirements for this Agreement may be required elsewhere in this Agreement, however the minimum insurance requirements applicable to this Agreement are:

a. Comprehensive General Liability Insurance.

The Grantee shall provide adequate comprehensive general liability insurance coverage and hold such liability insurance at all times during the Agreement. The minimum limits shall be \$200,000 for each person and \$300,000 per occurrence.

b. Commercial Automobile Insurance.

If the Grantee's duties include the use of a commercial vehicle, the Grantee shall maintain automobile liability, bodily injury, and property damage coverage. Insuring clauses for both bodily injury and property damage shall provide coverage on an occurrence basis. The minimum limits shall be as follows:

\$200,000/300,000	Automobile Liability for Company-Owned Vehicles, if applicable
\$200,000/300,000	Hired and Non-owned Automobile Liability Coverage

c. Workers' Compensation.

The Grantee shall comply with the workers' compensation requirements of Chapter 440, F.S.

d. Other Insurance. None.

9. Quality Assurance Requirements.

There are no special Quality Assurance requirements under this Agreement.

10. Retainage.

Retainage is permitted under this Agreement. Retainage may be up to a maximum of 10% of the total amount of the Agreement.

Attachment 2

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11. Subcontracting.

The Grantee may subcontract work under this Agreement without the prior written consent of the Department's Grant Manager. Regardless of any subcontract, the Grantee is ultimately responsible for all work to be performed under this Agreement.

12. State-owned Land.

The work will not be performed on State-owned land.

13. Office of Policy and Budget Reporting.

There are no special Office of Policy and Budget reporting requirements for this Agreement.

14. Additional Terms.

None.

ATTACHMENT 3
GRANT WORK PLAN
LAND AND WATER CONSERVATION FUND PROGRAM (LWCF)
Project Name: Bay Oaks Recreational Campus Redevelopment
Grantee Name: Town of Fort Myers Beach
LWCF Project # LW738

SUMMARY: The Grantee shall complete the Project Element(s), which were approved by the Department through the LWCF Application Evaluation Criteria, pursuant to Chapter 62D-5, Florida Administrative Code (F.A.C.). Any alteration(s) to the Project Element(s) as submitted in the Grantee's application and listed in the Grant Work Plan is considered a significant change, and must be pre-approved by the Department and NPS, and may require a formal Amendment to this Agreement. All work must be completed in accordance with the LWCF Program, and local, state and federal laws, the approved Project plans, all required permits, and the Florida Building Code. Prior to the Department issuing a "Notice to Commence" to the Grantee, as specified in Attachment 6 of the Agreement, Program Specific Requirements, the Department must receive evidence of and have approved all Deliverables in Task 1.

For the purpose of this Agreement, the terms "Project Element" and "Project Task" are used interchangeably to mean an identified facility within the Project.

The Project is located at 2731 Oak Street, Fort Myers Beach, FL 33931 and is considered a "Development Project" pursuant to subsection 62D-5.070(5)(b), F.A.C.

Project Completion: The Project Completion Date for this Agreement is 8/31/2024.

Budget: Reimbursement for allowable costs for the Project shall not exceed the maximum Grant Award Amount outlined below. Required match for development projects will be provided by cash, in-kind services, or donated real property, as set forth in subparagraph 62D-5.070(6)(b)1., F.A.C. Required match for acquisition projects will be provided by cash or real property donated, as set forth in subparagraph 62D-5.070(6)(b)2., F.A.C. The total estimated Project cost provided below is based on the approved LWCF Application. A detailed cost analysis will be provided in the Deliverables for Task 1, prior to the Department issuing the "Notice to Commence." All final Project Costs shall be submitted to the Department with the payment request.

Maximum Grant Award Amount:	\$1,000,000.00
Required Grantee Match Amount:	\$1,000,000.00
Total Estimated Project Cost:	\$2,000,000.00
Match Ratio:	50%

Scope of Work/Tasks	Deliverables	Due Date	Financial Consequences
TASK 1 1.A. Development of Commencement Documentation Checklist (DRP-122) ¹ . 1.B. A Cost Analysis Form, with detailed budget (and In-House Cost Schedule(s), if applicable).	DELIVERABLE 1 The Department will issue "Notice to Commence" upon receipt and approval of: 1.A. All applicable Project specific Commencement documentation listed on Commencement Documentation Checklist (DRP-122) 1.B. A Cost Analysis Form, with detailed budget (and In-House Cost Schedule(s), if applicable). Project planning expenses, such as application preparation, architectural and engineering fees, permitting fees, Project	180 calendar days after Execution of Agreement ²	The Department shall terminate the Project Agreement if the required Deliverables are not submitted and approved by the Department.

	inspection, and other similar fees are eligible for reimbursement. However, reimbursement, if requested, shall not exceed fifteen (15%) of total Project cost, and shall be invoiced upon Project completion, in accordance with the Payment Request Schedule.		
	The Grantee may not proceed with development of the Project until Notice to Commence has been issued.		
TASK 2 2.A. Development of Primary and Support Project Elements, which includes: New multi-sport field use (soccer, baseball, softball, football, little league, outdoor fitness and community engagement events), four pickleball courts, loop trail, four picnic areas, playground, two batting cages, parking lot, sidewalks, landscaping, renovate basketball court and two tennis courts. 2.B. Development of Completion of Documentation Checklist (DRP-125). 2.C. Completion of Final Status Report (DRP-109).	DELIVERABLE 2 The Grantee may request reimbursement upon Department receipt and approval of: 2.A. Development of required Project Elements. 2.B. All applicable Project specific Completion documentation listed on Completion Documentation Checklist (DRP-125) 2.C. Final Status Report (DRP-109). The Grantee may request reimbursement for allowable budgeted expenses and costs pursuant to the Agreement that are directly related to the successful development of the Project site. Reimbursement shall not exceed the Grant Award Amount, less any reimbursement requested for in Deliverable 1, and shall be invoiced upon Project completion, in accordance with the Payment Request Schedule below. Ten percent (10%) of the Grant Award will be retained until the Project is designated complete by the Department.	Due 8/31/2024, which shall also be the Project Completion Date ³	No reimbursement will be made for Deliverable(s) deemed unsatisfactory by the Department. Payment(s) will not be made for unsatisfactory or incomplete work. In addition, a Task may be terminated for Grantee's failure to perform.

Project Task Performance Standard: The Department's Grant Manager will review the Project Completion Certificate and the Deliverables to verify compliance with the requirements for funding under LWCF; approved plans and application approved for funding. Upon review and written acceptance by the Department's Grant Manager of the Project Completion Certificate and the Deliverables under each Project Task, the Grantee may proceed with the payment request submittal.

Payment Request Schedule: Following Department approval of all Deliverables, the Grantee may submit a **single payment request** on Exhibit C, Payment Request Summary Form, DRP-115, along with all required documentation as outlined in the Financial Reporting Procedures (DRP-110), as applicable, to support payment. A payment request submitted as part of the reimbursement process must correspond with the Cost Analysis and supporting documents provided under Project Tasks.

Endnotes:

1. LWCF documentation is available at <https://floridadep.gov/lands/land-and-recreation-grants/content/land-and-water-conservation-fund-program> and/or from the Land and Recreational Grants Section, State of Florida Department of Environmental Protection, 3900 Commonwealth Boulevard, MS# 585, Tallahassee, Florida, 32399-3000.
2. Project Agreement is subject to termination if Commencement documentations under Task 1 are not received and approved by the Department within 180 calendar days of the Project Agreement execution.
3. Due Date will not be extended beyond the Grant Period as outlined in Rule 62D-5.073, F.A.C.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Public Records Requirements**

Attachment 4

1. Public Records.

- a. If the Agreement exceeds \$35,000.00, and if Grantee is acting on behalf of Department in its performance of services under the Agreement, Grantee must allow public access to all documents, papers, letters, or other material, regardless of the physical form, characteristics, or means of transmission, made or received by Grantee in conjunction with the Agreement (Public Records), unless the Public Records are exempt from section 24(a) of Article I of the Florida Constitution or section 119.07(1), F.S.
- b. The Department may unilaterally terminate the Agreement if Grantee refuses to allow public access to Public Records as required by law.

2. Additional Public Records Duties of Section 119.0701, F.S., If Applicable.

For the purposes of this paragraph, the term “contract” means the “Agreement.” If Grantee is a “contractor” as defined in section 119.0701(1)(a), F.S., the following provisions apply and the contractor shall:

- a. Keep and maintain Public Records required by Department to perform the service.
- b. Upon request, provide Department with a copy of requested Public Records or allow the Public Records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law.
- c. A contractor who fails to provide the Public Records to Department within a reasonable time may be subject to penalties under section 119.10, F.S.
- d. Ensure that Public Records that are exempt or confidential and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the Public Records to Department.
- e. Upon completion of the contract, transfer, at no cost, to Department all Public Records in possession of the contractor or keep and maintain Public Records required by Department to perform the service. If the contractor transfers all Public Records to Department upon completion of the contract, the contractor shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. If the contractor keeps and maintains Public Records upon completion of the contract, the contractor shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to Department, upon request from Department’s custodian of Public Records, in a format specified by Department as compatible with the information technology systems of Department. These formatting requirements are satisfied by using the data formats as authorized in the contract or Microsoft Word, Outlook, Adobe, or Excel, and any software formats the contractor is authorized to access.

f. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, F.S., TO THE CONTRACTOR’S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE DEPARTMENT’S CUSTODIAN OF PUBLIC RECORDS AT:

Telephone: (850) 245-2118
Email: public.services@floridadep.gov
Mailing Address: Department of Environmental Protection
ATTN: Office of Ombudsman and Public Services
Public Records Request
3900 Commonwealth Boulevard, MS 49
Tallahassee, Florida 32399

STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
PROGRAM SPECIFIC REQUIREMENTS

LAND AND WATER CONSERVATION FUND PROGRAM

ATTACHMENT 6

1. Project Submittal Forms.

Grantees can find the Administrative Forms, Reimbursement Forms, and Guidelines referenced in this Agreement at <https://floridadep.gov/lands/land-and-recreation-grants/content/lwcf-assistance>, or by contacting the Department's Grant Manager.

2. Notice to Commence.

Prior to starting the Project, the Grantee will provide to the Department all documentation listed on the Commencement Documentation Checklist, DRP-122. Once the commencement documentation is approved, the Department will issue a written "Notice to Commence" to the Grantee. **The Grantee MAY NOT proceed until the Department issues a "Notice to Commence."** Until the Department issues the "Notice to Commence," the Department is not obligated to reimburse Grantee for fees, costs, or general expenses of any kind.

Grantees are required to provide the Department with a description of any foreseeable impacts to the environment from grant-supported activities or demonstrate that no impacts will occur through documentation provided to the Department. The applicant must submit an Application & revision form in order to assist the Department and the NPS in determining the appropriate NEPA pathway when grant-assisted development and other ground disturbing activities are expected.

3. Site Plans.

Project site facilities must be attractive for public use and compatible with the environment. Plans and specifications for Project site improvements and facilities must be in accordance with current engineering and architectural standards. Grantees should emphasize the health and safety of users, accessibility to the general public, and the protection of the recreational and natural values of the area. **A Grantee may alter a conceptual site plan only after written approval by the Department and National Park Service (NPS).** All utility lines installed within the Project site must be placed underground.

The Grantee shall have final site plans (site, engineering, and architectural) prepared for the Project and sealed by a registered architect or engineer licensed in accordance with the laws of the State of Florida (collectively the "Project Plans"). The Grantee must deliver a complete original, signed, and sealed set of the Project Plans to the Department.

4. The following supplements paragraph 2.d., Attachment 1, Standard Terms and Conditions:

The Department may, and in certain circumstances the NPS must, approve any changes to this Agreement. The Grantee may submit a request for an amendment to the Department's Grant Manager, who will determine whether the request requires NPS approval. This Agreement may be amended to provide for additional services if additional funding is made available by USDO, NPS, and the Florida Legislature.

5. The following paragraphs is added to paragraph 2, Attachment 1, Standard Terms and Conditions:

- f. The costs must meet all requirements and financial reporting of the LWCF Program and rules and regulations applicable to expenditures of federal and state funds. These rules and regulations are hereby adopted and incorporated by reference.
- g. This Agreement is not transferable.

6. The following replaces paragraph 8.d, Attachment 1, Standard Terms and Conditions:

d. Reimbursement for Costs.

Project costs will be reimbursed as provided in paragraph 62D-5.073(2)(a), F.A.C., the LWCF Manual, and in the Project Agreement. Project costs must be incurred between the effective date of this Agreement and the Project Completion Date. The Grantee will be paid on a cost reimbursement basis for all eligible Project costs upon the completion, submittal, and approval of all deliverables identified in the Grant Work Plan.

Attachment 6

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Reimbursement must be requested on Exhibit C, Payment Request Summary Form. To be eligible for reimbursement, cost(s) must meet all LWCF requirements, financial reporting requirements, and rules and regulations applicable to expenditures of state funds, including, but not limited to, the Reference Guide for State Expenditures, which can be accessed at the following web address: <https://www.myfloridacfo.com/Division/AA/Manuals/documents/ReferenceGuideforStateExpenditures.pdf>. If the total cost of the Project exceeds the grant amount and the required match, the Grantee must pay the excess cost. The Grantee must submit all project completion and reimbursement documentation to the Department within 60 days of the project completion date to ensure timely authorization of payment by NPS.

7. The following paragraph is added to paragraph 8, Attachment 1, Standard Terms and Conditions:
 - k. **Cost Limits.** Pursuant to paragraph 62D-5.073(2)(b), F.A.C., project planning expenses, such as application preparation, surveys (boundary and topographic), title searches, project signs, architectural and engineering fees, permitting fees, project inspection fees, and other similar fees are eligible Project costs provided that they do not exceed fifteen percent (15%) of the total Project cost.
 8. The following replaces paragraph 8.h, Attachment 1, Standard Terms and Conditions:
 - h. **Annual Appropriation Contingency.** The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Florida Legislature and the availability of funding and grants from the USDOJ and NPS. This Agreement is not a commitment of future appropriations. Authorization for continuation and completion of work and any associated payments may be rescinded, with proper notice, at the discretion of the Department if USDOJ, NPS, and/or the Florida Legislature reduces or eliminates appropriations. It is further understood that Grant Awards may be revised by the Department due to the availability of LWCF Program Funds.
 9. The following replaces paragraph 10, Attachment 1, Standard Terms and Conditions:
- Status Reports.**
- a. The Grantee must utilize Project Status Report Form, DRP-109, available online and incorporated herein by reference, to describe the work performed during the reporting period, problems encountered, problem resolutions, and to schedule updates and proposed work for the next reporting period. The Project Status Reports must be submitted to the Department's Grant Manager no later than January 5, May 5, and September 5. The Department's Grant Manager has thirty (30) calendar days to review the required reports and deliverables submitted by the Grantee.
 - b. Additionally, the Grantee shall comply with the reporting and inventory requirements set forth in the Statewide Comprehensive Outdoor Recreation Plan (SCORP), available online: <https://floridadep.gov/parks/florida-scorp-outdoor-recreation-florida> and hereby incorporated by reference, by updating the Florida Outdoor Recreation Inventory (FORI) system (<https://floridadep.gov/parks/florida-outdoor-recreation-inventory>).

10. Site Dedication.

The interest in land developed or acquired by the Grantee with LWCF Program Funds shall be subject to the site dedication requirements set forth in Chapter 62D-5, F.A.C. and of the LWCF Act, as codified in 36 CFR § 59.3. Pursuant to the LWCF Act and general requirements of the LWCF Program, land owned by the Grantee that is developed or acquired with LWCF Program Funds shall be dedicated in perpetuity as an outdoor recreation site for the use and benefit of the public. Land that is leased from the federal government or another public agency by Grantee must include safeguards to ensure the perpetual use requirement contained in the LWCF Act. Safeguards include such things as joint sponsorship of the Project or an agreement between the Parties that the lessor will assume compliance responsibility for the Project site in the event of default by the lessee (Grantee) or termination or expiration of the lease. Execution of this Agreement by the Department constitutes an acceptance of a Project site(s) dedication on behalf of the public of the State of Florida. These dedications must be recorded in the county's public property records by the Grantee in accordance with subsection 62D-5.074(1), F.A.C.

11. Management of Project Sites.

- a. **Site Inspections.** Department staff will periodically inspect LWCF Projects to ensure compliance with subsections 62D-5.074(1)-(3), F.A.C., and section 675.9 of the LWCF manual. Grantees must ensure by site inspections that the property acquired or developed through the LWCF is being operated and maintained for outdoor recreation purposes.

- b. Management. All projects must be open at reasonable times and be managed in a safe and attractive manner appropriate for public use. Facilities must be kept in reasonable repair for a minimum of 25 years from the date set forth on the project completion certificate to prevent undue deterioration.
- c. Non-Compliance. Before a project is closed, the Department and the NPS have the right to terminate a project agreement and demand return of the program funds for non-compliance by a grantee. Failure by a grantee to comply with the Agreement will result in the Department declaring the grantee ineligible for further participation in LWCF until the Grantee comes into compliance as determined by the Department under this rule and the LWCF Manual.
- d. Survival. This provision shall survive termination, cancellation, or expiration of this Agreement.

12. Procurement Requirements for Grantee.

The Grantee must secure all goods and services for the Project according to its adopted procurement procedures.

13. Project Completion Certification.

Project completion means the Project is open and available for use by the public. To certify completion, the Grantee will submit to the Department the Project Completion Certification, DRP-126, available online and incorporated herein by reference. The Project must be designated complete prior to the Department releasing final reimbursement.

14. Signage.

Grantee must erect a permanent information sign on the Project site that credits funding, or a portion thereof, to the Florida Department of Environmental Protection and the Land and Water Conservation Fund Program. Use of the LWCF Logo on the permanent Project signs is required. Grantee is encouraged to position signage acknowledging LWCF assistance at entrances to outdoor recreation sites, at other appropriate on-site locations, and in folders and park literature. The acknowledgement of LWCF assistance will be checked during compliance inspections. The sign must be installed on the Project site and approved by the Department before the final Project reimbursement request is processed. The required LWCF Logo, LWCF Terms of Use, and sample sign are available online: <https://floridadep.gov/lands/land-and-recreation-grants/content/land-and-water-conservation-fund-program>. This provision shall survive termination, cancellation, or expiration of this Agreement.

15. Termination and Ineligibility.

In addition to the remedies provided elsewhere in this Agreement, if the Grantee fails to comply with the terms stated in this Agreement or with any provisions in Rule Chapter 62D-5, F.A.C., the Department will terminate this Agreement and demand return of the LWCF program funds (including interest). Furthermore, the Department will declare the Grantee ineligible for further participation in LWCF until the Grantee is in compliance pursuant to subsection 62D-5.074(4), F.A.C. Further, the Grantee agrees to ensure that all necessary permits are obtained prior to implementing any Grant Work Plan activity that may fall under applicable federal, state, or local laws. This provision shall survive termination, cancellation, or expiration of this Agreement.

16. Conversion.

This Project site acquired and/or developed with LWCF assistance must be retained and used for public outdoor recreation. This Project site so acquired and/or developed may not be wholly or partly converted to other than public outdoor recreation uses without the written approval of the NPS pursuant to the conversion provisions of Section 6(f)(3) of the LWCF Act, 36 CFR Part 59, the LWCF Manual, and all other applicable regulations. All conversion provisions and guidelines apply to each area or facility for which LWCF assistance is obtained, regardless of the extent of participation of the Project in the assisted area or facility and consistent with the contractual agreement between USDOl, NPS, and the State of Florida.

Should Grantee convert all or part of the Project site to other than public outdoor recreational uses, the Grantee is required to replace the area, facilities, resource, or Project site at its own expense with an acceptable project of comparable or greater value, scope, and quality pursuant to LWCF mandates. All conversions require amendments to the original Project agreement (36 CFR § 59.3(c)). Therefore, amendment requests should be submitted concurrently with conversion requests. Project boundary maps must be submitted with the amendment request to identify the changes to the original area caused by the proposed conversion and to establish a new Project area pursuant to the substitution. Once conversion has been approved, replacement property should be immediately acquired. When it is not possible for replacement property to be acquired immediately, an express commitment to satisfy Section 6(f)(3) substitution requirements with a specified period, normally not to exceed one (1) year following conversion approval,

is required. This commitment will be in the form of an amendment to the original Agreement. This provision shall survive termination, cancellation, or expiration of this Agreement.

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Special Audit Requirements
(State and Federal Financial Assistance)**

Attachment 5

The administration of resources awarded by the Department of Environmental Protection (*which may be referred to as the "Department", "DEP", "FDEP" or "Grantor", or other name in the agreement*) to the recipient (*which may be referred to as the "Recipient", "Grantee" or other name in the agreement*) may be subject to audits and/or monitoring by the Department of Environmental Protection, as described in this attachment.

MONITORING

In addition to reviews of audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and Section 215.97, F.S., as revised (see "AUDITS" below), monitoring procedures may include, but not be limited to, on-site visits by DEP Department staff, limited scope audits as defined by 2 CFR 200.425, or other procedures. By entering into this Agreement, the recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Department of Environmental Protection. In the event the Department of Environmental Protection determines that a limited scope audit of the recipient is appropriate, the recipient agrees to comply with any additional instructions provided by the Department to the recipient regarding such audit. The recipient further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer (CFO) or Auditor General.

AUDITS

PART I: FEDERALLY FUNDED

This part is applicable if the recipient is a State or local government or a non-profit organization as defined in 2 CFR §200.330

1. A recipient that expends \$750,000 or more in Federal awards in its fiscal year, must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F. EXHIBIT 1 to this Attachment indicates Federal funds awarded through the Department of Environmental Protection by this Agreement. In determining the federal awards expended in its fiscal year, the recipient shall consider all sources of federal awards, including federal resources received from the Department of Environmental Protection. The determination of amounts of federal awards expended should be in accordance with the guidelines established in 2 CFR 200.502-503. An audit of the recipient conducted by the Auditor General in accordance with the provisions of 2 CFR Part 200.514 will meet the requirements of this part.
2. For the audit requirements addressed in Part I, paragraph 1, the recipient shall fulfill the requirements relative to auditee responsibilities as provided in 2 CFR 200.508-512.
3. A recipient that expends less than \$750,000 in federal awards in its fiscal year is not required to have an audit conducted in accordance with the provisions of 2 CFR Part 200, Subpart F-Audit Requirements. If the recipient expends less than \$750,000 in federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, Subpart F-Audit Requirements, the cost of the audit must be paid from non-federal resources (i.e., the cost of such an audit must be paid from recipient resources obtained from other federal entities).
4. The recipient may access information regarding the Catalog of Federal Domestic Assistance (CFDA) via the internet at www.cfda.gov

Attachment 5

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PART II: STATE FUNDED

This part is applicable if the recipient is a nonstate entity as defined by Section 215.97(2), Florida Statutes.

1. In the event that the recipient expends a total amount of state financial assistance equal to or in excess of \$750,000 in any fiscal year of such recipient (for fiscal years ending June 30, 2017, and thereafter), the recipient must have a State single or project-specific audit for such fiscal year in accordance with Section 215.97, F.S.; Rule Chapter 69I-5, F.A.C., State Financial Assistance; and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General. EXHIBIT I to this form lists the state financial assistance awarded through the Department of Environmental Protection by this agreement. In determining the state financial assistance expended in its fiscal year, the recipient shall consider all sources of state financial assistance, including state financial assistance received from the Department of Environmental Protection, other state agencies, and other nonstate entities. State financial assistance does not include federal direct or pass-through awards and resources received by a nonstate entity for Federal program matching requirements.
2. In connection with the audit requirements addressed in Part II, paragraph 1; the recipient shall ensure that the audit complies with the requirements of Section 215.97(8), Florida Statutes. This includes submission of a financial reporting package as defined by Section 215.97(2), Florida Statutes, and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General.
3. If the recipient expends less than \$750,000 in state financial assistance in its fiscal year (for fiscal year ending June 30, 2017, and thereafter), an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, is not required. In the event that the recipient expends less than \$750,000 in state financial assistance in its fiscal year, and elects to have an audit conducted in accordance with the provisions of Section 215.97, Florida Statutes, the cost of the audit must be paid from the non-state entity's resources (i.e., the cost of such an audit must be paid from the recipient's resources obtained from other than State entities).
4. For information regarding the Florida Catalog of State Financial Assistance (CSFA), a recipient should access the Florida Single Audit Act website located at <https://apps.fldfs.com/fsaa> for assistance. In addition to the above websites, the following websites may be accessed for information: Legislature's Website at <http://www.leg.state.fl.us/Welcome/index.cfm>, State of Florida's website at <http://www.myflorida.com/>, Department of Financial Services' Website at <http://www.fldfs.com/> and the Auditor General's Website at <http://www.myflorida.com/audgen/>.

PART III: OTHER AUDIT REQUIREMENTS

(NOTE: This part would be used to specify any additional audit requirements imposed by the State awarding entity that are solely a matter of that State awarding entity's policy (i.e., the audit is not required by Federal or State laws and is not in conflict with other Federal or State audit requirements). Pursuant to Section 215.97(8), Florida Statutes, State agencies may conduct or arrange for audits of State financial assistance that are in addition to audits conducted in accordance with Section 215.97, Florida Statutes. In such an event, the State awarding agency must arrange for funding the full cost of such additional audits.)

PART IV: REPORT SUBMISSION

1. Copies of reporting packages for audits conducted in accordance with 2 CFR Part 200, Subpart F-Audit Requirements, and required by PART I of this form shall be submitted, when required by 2 CFR 200.512, by or on behalf of the recipient directly to the Federal Audit Clearinghouse (FAC) as provided in 2 CFR 200.36 and 200.512
 - A. The Federal Audit Clearinghouse designated in 2 CFR §200.501(a) (the number of copies required by 2 CFR §200.501(a) should be submitted to the Federal Audit Clearinghouse), at the following address:

By Mail:

Federal Audit Clearinghouse
Bureau of the Census
1201 East 10th Street
Jeffersonville, IN 47132

Submissions of the Single Audit reporting package for fiscal periods ending on or after January 1, 2008, must be submitted using the Federal Clearinghouse's Internet Data Entry System which can be found at <http://harvester.census.gov/facweb/>

2. Copies of financial reporting packages required by PART II of this Attachment shall be submitted by or on behalf of the recipient directly to each of the following:

- A. The Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director
Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

- B. The Auditor General's Office at the following address:

Auditor General
Local Government Audits/342
Claude Pepper Building, Room 401
111 West Madison Street
Tallahassee, Florida 32399-1450

The Auditor General's website (<http://flauditor.gov/>) provides instructions for filing an electronic copy of a financial reporting package.

3. Copies of reports or management letters required by PART III of this Attachment shall be submitted by or on behalf of the recipient directly to the Department of Environmental Protection at one of the following addresses:

By Mail:

Audit Director
Florida Department of Environmental Protection
Office of Inspector General, MS 40
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Electronically:

FDEPSingleAudit@dep.state.fl.us

4. Any reports, management letters, or other information required to be submitted to the Department of Environmental Protection pursuant to this Agreement shall be submitted timely in accordance with 2 CFR 200.512, section 215.97, F.S., and Chapters 10.550 (local governmental entities) or 10.650 (nonprofit and for-profit organizations), Rules of the Auditor General, as applicable.

Attachment 5

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5. Recipients, when submitting financial reporting packages to the Department of Environmental Protection for audits done in accordance with 2 CFR 200, Subpart F-Audit Requirements, or Chapters 10.550 (local governmental entities) and 10.650 (non and for-profit organizations), Rules of the Auditor General, should indicate the date and the reporting package was delivered to the recipient correspondence accompanying the reporting package.

PART V: RECORD RETENTION

The recipient shall retain sufficient records demonstrating its compliance with the terms of the award and this Agreement for a period of **five (5)** years from the date the audit report is issued, and shall allow the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General access to such records upon request. The recipient shall ensure that audit working papers are made available to the Department of Environmental Protection, or its designee, Chief Financial Officer, or Auditor General upon request for a period of **three (3)** years from the date the audit report is issued, unless extended in writing by the Department of Environmental Protection.

EXHIBIT - 1

FUNDS AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Note: If the resources awarded to the recipient represent more than one federal program, provide the same information shown below for each federal program and show total federal resources awarded

Federal Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following:					
Federal Program	Federal Agency	CFDA Number	CFDA Title	Funding Amount	State Appropriation Category
A	U.S. Department of Interior, National Park Service	15.916	Outdoor Recreation, Acquisition, Development and Planning – Land and Water Conservation Fund Grants	\$ 1,000,000.00	14001
B					

Note: Of the resources awarded to the recipient represent more than one federal program, list applicable compliance requirements for each federal program in the same manner as shown below:

Federal Program A	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	
Federal Program B	First Compliance requirement: i.e.: (what services of purposes resources must be used for)	
	Second Compliance requirement: i.e.: (eligibility requirement for recipients of the resources)	
	Etc.	

Note: If the resources awarded to the recipient for matching represent more than one federal program, provide the same information shown below for each federal program and show total state resources awarded for matching.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Matching Resources for Federal Programs:				
Federal Program	Federal Agency	CFDA	CFDA Title	Funding Amount
A				
Federal Program B	Federal Agency	CFDA	CFDA Title	Funding Amount

Note: If the resources awarded to the recipient represent more than one state project, provide the same information shown below for each state project and show total state financial assistance awarded that is subject to section 215.97, F.S.

State Resources Awarded to the Recipient Pursuant to this Agreement Consist of the Following Resources Subject to Section 215.97, F.S.:				
State Program	State Awarding Agency	State Fiscal Year ¹	CSFA Number	CSFA Title or Funding Source Description
A				
State Program B	State Awarding Agency	State Fiscal Year ²	CSFA Number	CSFA Title or Funding Source Description

Total Award	\$ 1,000,000.00
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Note: List applicable compliance requirement in the same manner as illustrated above for federal resources. For matching resources provided by the Department for DEP for federal programs, the requirements might be similar to the requirements for the applicable federal programs. Also, to the extent that different requirements pertain to different amount for the non-federal resources, there may be more than one grouping (i.e. 1, 2, 3, etc.) listed under this category.

For each program identified above, the recipient shall comply with the program requirements described in the Catalog of Federal Domestic Assistance (CFDA) [www.cfda.gov] and/or the Florida Catalog of State Financial Assistance (CSFA) [https://apps.fldfs.com/fsaa/searchCatalog.aspx], and State Projects Compliance Supplement (Part Four: State Projects Compliance Supplement [https://apps.fldfs.com/fsaa/state_project_compliance.aspx]. The services/purposes for which the funds are to be used are included in the Agreement's Grant Work Plan. Any match required by the Recipient is clearly indicated in the Agreement.

¹ Subject to change by Change Order.

² Subject to change by Change Order.

ATTACHMENT 8

Contract Provisions for DOI-Funded Agreements

The Department, as a Non-Federal Entity as defined by 2 CFR §200.69, shall comply with the following provisions, where applicable. For purposes of this Grant Agreement between the Department and the Grantee, the term "Recipient" shall mean "Grantee."

Further, the Department, as a pass-through entity, also requires the Grantee to pass on these requirements to all lower tier subrecipients, and to comply with the provisions of the award, including applicable provisions of the OMB Uniform Guidance (2 CFR Part 200), and all associated terms and conditions. Therefore, Grantees must include these requirements in all related subcontracts and/or sub-awards. Grantees can include these requirements by incorporating this Attachment in the related subcontract and/or sub-awards, however for all such subcontracts and sub-awards, the Grantee shall assume the role of the Non-Federal Entity and the subrecipients shall assume the role of the Recipient.

2 CFR PART 200 APPENDIX 2 REQUIREMENTS

1. Administrative, Contractual, and Legal Remedies

The following provision is required if the Agreement is for more than \$150,000. In addition to any of the remedies described elsewhere in the Agreement, if the Recipient materially fails to comply with the terms and conditions of this Contract, including any Federal or State statutes, rules or regulations, applicable to this Contract, the Non-Federal Entity may take one or more of the following actions.

- i. Temporarily withhold payments pending correction of the deficiency by the Recipient.
- ii. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- iii. Wholly or partly suspend or terminate this Contract.
- iv. Take other remedies that may be legally available.

The remedies identified above, do not preclude the Recipient from being subject to debarment and suspension under Presidential Executive Orders 12549 and 12689. The Non-Federal entity shall have the right to demand a refund, either in whole or part, of the funds provided to the Recipient for noncompliance with the terms of this Agreement.

2. Termination for Cause and Convenience

Termination for Cause and Convenience are addressed elsewhere in the Agreement.

3. Equal Opportunity Clause

The following provision applies if the agreement meets the definition of "federally assisted construction contract" as defined by 41 CFR Part 60-1.3:

During the performance of this Agreement, the Recipient agrees as follows:

- i. The Recipient will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Recipient will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
 - a. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Recipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- ii. The Recipient will, in all solicitations or advertisements for employees placed by or on behalf of the Recipient, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- iii. The Recipient will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired

about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Recipient's legal duty to furnish information.

- iv. The Recipient will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Agreement or understanding, a notice to be provided advising the said labor union or workers' representatives of the Recipient's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- v. The Recipient will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- vi. The Recipient will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- vii. In the event of the Recipient's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Recipient may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- viii. The Recipient will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Recipient will take such action with respect to any subcontractor purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

4. Davis Bacon Act

If the Agreement is a prime construction contract in excess of \$2,000 awarded by the Recipient, and if required by the Federal Legislation, the Recipient must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must pay wages not less than once a week. The Recipient must comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each Recipient or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

5. Contract Work Hours and Safety Standards Act

Where applicable, if the Agreement is in excess of \$100,000 and involves the employment of mechanics or laborers, the Recipient must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each Recipient must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not

less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

6. Rights to Inventions Made Under Agreement

If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the Non-Federal Entity or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Non-Federal Entity or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

7. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387)

If the Agreement is in excess of \$150,000, the Recipient shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).

8. Debarment and Suspension (Executive Orders 12549 and 12689)

The Recipient certifies that it is not listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension."

9. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

The Recipient certifies that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. If applicable, the Recipient shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award, using form SF-LLL, available at:

https://apply07.grants.gov/apply/forms/sample/SFLLL_1_2_P-V1.2.pdf.

10. Procurement of Recovered Materials

The Recipient must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act as described in 2 CFR part 200.322.

11. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

The Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. See Section 889 of Public Law 115-232 (National Defense Authorization Act 2019). Also, see 2 CFR 200.216 and 200.471.

12. Domestic Preferences for Procurement

The Recipients and subrecipients must to the greatest extent practical give preference to the purchase, acquisition, or use of goods, products, or materials produced in the United States in accordance with 2 CFR 200.322.

ADMINISTRATIVE

1. General Federal Regulations

Recipients shall comply with the regulations listed in 2 CFR 200, 48 CFR 31, and 40 U.S.C. 1101 *et sequence*.

2. Rights to Patents and Inventions Made Under a Contract or Agreement

Rights to inventions made under this assistance agreement are subject to federal patent and licensing regulations, which are codified at Title 37 CFR Part 401 and Title 35 U.S.C. 200 through 212.

3. Compliance with the Trafficking Victims Protection Act of 2000 (2 CFR Part 175)

Recipients, their employees, subrecipients under this award, and subrecipients' employees may not:

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
- ii. Procure a commercial sex act during the period of time that the award is in effect; or
- iii. Use forced labor in the performance of the award or subawards under the award.

4. Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234)

Recipients must comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234), if applicable. This act requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.

5. Water Resources Reform and Development Act (WRRDA) P.L. 113-121

Recipients must comply with the Water Resources Reform and Development Act (WRRDA) P.L. 113-121, if applicable. This act provides for improvements to the rivers and harbors of the United States, to provide for the conservation and development of water and related resources.

6. Whistleblower Protection

Recipients shall comply with U.S.C. §4712, Enhancement of Recipient and Subrecipient Employee Whistleblower Protection. This requirement applies to all awards issued after July 1, 2013 and effective December 14, 2016 has been permanently extended (Public Law (P.L.) 114-261).

(a) This award, related subawards, and related contracts over the simplified acquisition threshold and all employees working on this award, related subawards, and related contracts over the simplified acquisition threshold are subject to the whistleblower rights and remedies in the pilot program on award recipient employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239).

(b) Recipients, their subrecipients, and their contractors awarded contracts over the simplified acquisition threshold related to this award, shall inform their employees in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 U.S.C. 4712.

(c) The Recipient shall insert this clause, including this paragraph (c), in all subawards and in contracts over the simplified acquisition threshold related to this award; best efforts should be made to include this clause, including this paragraph (c) in any subawards and contracts awarded prior to the effective date of this provision.

7. Notification of Termination (2 CFR § 200.340)

In accordance with 2 CFR § 200.340, in the event that the Agreement is terminated prior to the end of the period of performance due to the Recipient's or subcontractor's material failure to comply with Federal statutes, regulations or the terms and conditions of this Agreement or the Federal award, the termination shall be reported to the Office of Management and Budget (OMB)-designated integrity and performance system, accessible through System for Award Management (SAM) currently the Federal Awardee Performance and Integrity Information System (FAPIIS). The Non-Federal Entity will notify the Recipient of the termination and the Federal requirement to report the termination in FAPIIS. See 2 CFR § 200.340 for the requirements of the notice and the Recipient's rights upon termination and following termination.

8. Additional Lobbying Requirements

- (a) The Recipient certifies that no funds provided under this Agreement have been used or will be used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.
- (b) The Lobbying Disclosure Act of 1995, as amended (2 U.S.C. §1601 *et seq.*), prohibits any organization described in Section 501(c)(4) of the Internal Revenue Code, from receiving federal funds through an award, grant (and/or subgrant) or loan unless such organization warrants that it does not, and will not engage in lobbying activities prohibited by the Act as a special condition of such an award, grant (and/or subgrant), or loan. This restriction does not apply to loans made pursuant to approved revolving loan programs or to contracts awarded using proper procurement procedures.

- (c) Pursuant to 2 CFR §200.450 and 2 CFR §200.454(e), the Recipient is hereby prohibited from using funds provided by this Agreement for membership dues to any entity or organization engaged in lobbying activities.

COMPLIANCE WITH ASSURANCES

9. Assurances

Recipients shall comply with any and all applicable assurances made by the Department or the Recipient to the Federal Government during the Grant application process.

FEDERAL REPORTING REQUIREMENTS

Grant Recipients awarded a new Federal grant greater than or equal to \$30,000 awarded on or after October 1, 2015, are subject to the FFATA the Federal Funding Accountability and Transparency Act ("FFATA") of 2006. The FFATA legislation requires that information on federal awards (federal financial assistance and expenditures) be made available to the public via a single, searchable website, which is www.USASpending.gov. The Grantee agrees to provide the information necessary, within one (1) month of execution, for the Department to comply with this requirement.

DEPARTMENT OF INTERIOR-SPECIFIC

10. Department of Interior (DOI) General Terms and Conditions

Recipients shall comply with DOI General Terms and Conditions available at https://www.doi.gov/pam/programs/financial_assistance/TermsandConditions, and incorporated by reference.

11. DOI Regulations

Recipients shall comply with the following regulations: 2 CFR 1400-1402, 43 CFR 9, 43 CFR 17, 43 CFR 18, 43 CFR 41, and 43 CFR 44.

12. Drug-Free Workplace

Recipients must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1401. Additionally, in accordance with these regulations, the recipients must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

13. Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act

As applicable, Recipient shall comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) to provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

14. Deposit of Publications Produced under Grants

Pursuant to Departmental Manual 505 DM4 (DOI) and Service Manual FW1 (USFWS), any grant or cooperative agreement that will produce a publication (other than those listed as exceptions) must provide two copies of each publication to the Department of Interior's Natural Resources Library. For a list of exceptions, transmittal requirements, and delivery information see Departmental Manual 505 DM 4, Deposit of Publications Produced under Grants at: <http://elips.doi.gov/ELIPS/DocView.aspx?id=1671>.

UNITED STATES FISH & WILDLIFE SERVICE-SPECIFIC

15. USFWS Financial Assistance Award Terms and Conditions

Recipients shall comply with the USFWS Financial Assistance Award Terms and Conditions applicable to the specific Federal Award funding source, available at <https://www.fws.gov/grants/atc.html>, and incorporated by reference.

NATIONAL PARKS SERVICE LAND AND WATER CONSERVATION FUND STATE ASSISTANCE PROGRAM-SPECIFIC

16. LWCF Federal Financial Assistance Manual

As applicable, Recipients shall comply with the LWCF Federal Financial Assistance Manual Effective March 11, 2021, or later, available at <https://www.nps.gov/subjects/lwcf/lwcf-manual.htm>, and incorporated by reference.

17. Historic Preservation

As applicable, Recipients shall comply with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), E.O. 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 *et seq.*).

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Land and Water Conservation Fund Program Florida Recreation Development Assistance Program Project Status Report

Project Name: _____

Project Number: _____

Project Sponsor: _____

Identify primary and support recreation areas and facilities to be constructed. (50% of total costs must be in primary facilities).

PROVIDE PHOTOS OF WORK IN PROGRESS

PRIMARY FACILITIES/ELEMENTS:

DRP-109 (Effective 05-22-2015)

[illegible]

Period Covered (Check Appropriate Period):	Due May 5 th	Due September 5 th	Due January 5 th
☐ January through April:			
☐ May through August:			
☐ September through December:			

Page 74 of 93



Florida Department of Environmental Protection

EXHIBIT C
PAYMENT REQUEST SUMMARY FORM

Required Signatures: **Adobe Signature**

Date: _____

Grantee

Project Name and Number

Billing Period:

Billing #:

DEP Division:

DEP Program:

	Project Costs This Billing	Cumulative Project Costs
Contractual Services DRP-116		
Grantee Labor DRP-117		
Employee Benefits (_____ % of Salaries)		
Direct Purchases: Materials & Supplies DRP-118		
Grantee Stock DRP-120		
Equipment DRP-119		
Land Value		
Indirect Costs (15% of Grantee Labor)		
TOTAL PROJECT COSTS	\$0.00	\$0.00

CERTIFICATION: I hereby certify that the above expenses were incurred for the work being accomplished in the attached progress reports.

Project Administrator

Date

CERTIFICATION: I hereby certify that the documentation has been maintained as required to support the project expenses as reported above and is available for audit upon request.

Project Financial Officer

Date



FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Federal Funding Accountability and Transparency Act Form – Subaward to a Recipient

Purpose: The Federal Funding Accountability and Transparency Act (FFATA) was signed on September 26, 2006. The intent of this legislation is to empower every American with the ability to hold the government accountable for each spending decision. The FFATA legislation requires information on federal awards (federal assistance and expenditures) be made available to the public via a single, searchable website, which is <http://www.usaspending.gov/>.

The FFATA Subaward Reporting System (FSRS) is the reporting tool the Florida Department of Environmental Protection ("DEP") must use to capture and report subaward and executive compensation data regarding first-tier subawards that obligate \$30,000 or more in Federal funds (excluding Recovery funds as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5).

[Note: This reporting requirement is not applicable for the procurement of property and services obtained by the DEP through a Vendor relationship. Refer to 2 CFR Ch. 1 Part 170 Appendix A, Section I.c.3 for the definition of "subaward".]

Organization and Project Information: As of October 1, 2015, the following information must be provided to the DEP prior to the DEP's issuance of a subaward (Agreement) that obligates \$30,000 or more in federal funds as described above. Please provide the following information and return the signed form to DEP as requested. If you have any questions, please contact the DEP's Bureau of General Services, Monitoring and Compliance Unit (MAC) at email MAC_Adm@dep.state.fl.us or at telephone number 850/245-2361 for assistance.

DUNS #: 809043685

(DUNS # must be nine (9) digits not including dashes.)*

Federal Award ID Number (FAIN#): P21AP12035

Catalog of Federal Domestic Assistance (CFDA)#: 15.916

DEP Assigned Grant Agreement#: LW738

Dollar Amount of Grant Disbursement: \$ 1,000,000.00

** If your company or organization does not have a DUNS number, you will need to obtain one from Dun & Bradstreet at 866-705- 5711 or use the webform (<http://fedgov.dnb.com/webform>). The process to request a DUNS number takes about ten minutes and is free of charge.*

Business Name: Town of Fort Myers Beach

DBA Name (If applicable):

Principal Place of Business Address:

Address Line 1: 2525 Estero Boulevard

Address Line 2:

Address Line 3:

City: Fort Myers Beach

State: FL

Zip+4: 33931-3354



FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Federal Funding Accountability and Transparency Act Form – Subaward to a Recipient

Description of Project (up to 4000 characters):

The Bay Oaks Recreational Campus Redevelopment will include physical improvements that will be developed with federal LWCF assistance. In the first phase concept plan, the new structures/developments would be the bocce court, pickleball courts, volleyball court, loop trail, four square court, picnic areas, playground, batting cage, pavilion, outdoor amphitheater, parking lot reconfiguration and a multi-sport field for outdoor use. The project proposed the usage of LWCF assistance for resurfacing an existing basketball court, tennis courts and renovating outdoor restrooms if allotted.



FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Federal Funding Accountability and Transparency Act Form – Subaward to a Recipient

Principal Place of Project Performance (If different than principal place of business)

Address Line 1: 2731 Oak Street

Address Line 2: _____

Address Line 3: _____

City: Fort Myers Beach

State: FL

Zip+4: 33931-3354

Congressional District for Principal Place of Project Performance: 19

(Providing the Zip+4 ensures that the correct Congressional District is reported.)

Executive Compensation Information:

☐	☒	1. In your business or organization's previous fiscal year, did your business or organization (including parent organization, all branches, and all affiliates worldwide) receive (a) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act, as defined at 2 CFR 170.320; and, (b) \$30,000,000 or more in annual gross revenues from U.S. Federal procurement contracts (and subcontracts) and Federal financial assistance (e.g. loans, grants, subgrants, and/or cooperative agreements, etc.) subject to the Transparency Act?
YES	NO	

If the answer to Question 1 is "Yes," continue to Question 2.

If the answer to Question 1 is "No", move to the signature block below to complete the certification and submittal process.

☐	☒	2. Does the public have access to information about the compensation of the executives in your business or organization (including parent organization, all branches, and all affiliates worldwide) through periodic reports filed under section 13(a) or 15 (d) of the Securities Exchange Act of 1934 (15 U.S.C. 78 m (a), 78 o(d)), or Section 6104 of the Internal Revenue Code of 1986?
YES	NO	

If the answer to Question 2 is "Yes," move to the signature block below to complete the certification and submittal process. [Note: Securities Exchange Commission information should be accessible at <http://www.sec.gov/answers/excomp.htm>. Requests for Internal Revenue Service (IRS) information should be directed to the local IRS for further assistance.]

If the answer to Question 2 is "NO" FFATA reporting is required. Provide the information required in the "TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR" appearing below to report the "Total Compensation" for the five (5) most highly compensated "Executives", in rank order, in your organization.

For purposes of this request, the following terms apply as defined in 2 CFR Ch. 1 Part 170 Appendix A:

"Executive" is defined as "officers, managing partners, or other employees in management positions".

"Total Compensation" is defined as the cash and noncash dollar value earned by the executive during the most recently completed fiscal year and includes the following:

- Salary and bonus.
- Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives and are available generally to all salaried employees.
- Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- Above-market earnings on deferred compensation which is not tax-qualified.
- Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.



FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
Federal Funding Accountability and Transparency Act Form – Subaward to a Recipient

Total Compensation Chart for Most Recently Completed Fiscal Year

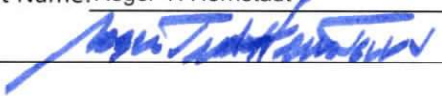
Date of Fiscal Year Completion (mm/dd/yyyy) 9/30/21

The undersigned as (enter position title) Town Manager

of (enter Business Name) Town of Fort Myers Beach

Certifies that on the date written below, the information provided herein is accurate.

Type or Print Name: Roger T. Hernstadt Title: Town Manager

Signature:  ^{CO} Date: 2/10/22



FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
Federal Funding Accountability and Transparency Act Form

Total Compensation Chart for Most Recently Completed Fiscal Year

Date of Fiscal Year Completion (mm/dd/yyyy): 09/30/2021

Rank (Highest to Lowest)	Last Name	First Name	MI	Title	Total Compensation for Most Recently Completed Fiscal Year

The undersigned as (enter position title) Town Manager

Of (enter Business Name) Town of Fort Myers Beach

Certifies that on the date written below, the information provided herein is accurate.

Roger T. Hernstadt

Town Manager

Print Name

Title

9

2/10/2022

Date

Signature

1. **Requested Motion:**

Meeting Date: March 7, 2022

Approve Resolution 22-06 authorizing the Town Manager or his designee to submit a grant application to West Coast Inland Navigational District (WCIND) for Law Enforcement Grant Requests for marine patrol and enforcement; and execute the WCIND grant agreement.

Why the action is necessary:

Authorizes staff to apply for the WCIND Grant Requests and authorizes the Town Manager or his designee to execute the WCIND grant agreement.

What the action accomplishes:

Gives staff direction to apply for a grant through the WCIND for additional marine patrol around Estero Island and authorizes the grant execution.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Resolution

4. **Submitter of Information:**

Chelsea O'Riley, Public Works
Director

5. **Background:**

The West Coast Inland Navigational District (WCIND) grant request cycle has opened and applications are due by March 2022.

The total grant request is \$50,000; \$25,000 Town Match and \$25,000 Grant Request.

This grant cycle will coincide with the Town's Fiscal Year in which funds being requested will be available effective October 1, 2022.

The WCIND Grant provides funding for additional enforcement of waterways around Estero Island beyond the standard scheduled patrol.

Attachments:

1. 22-06 WCIND Grant Application and Execution FY 22

Financial Impact:

6. **Alternative Action**

Do not approve.

7. **Management Recommendations:**

Authorize the Town Manager or his designee to apply and execute agreement.

8. **Recommended Approval:**

Randy Paniagua, Administrative Officer
Chelsea O'Riley, Public Works Director
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk

Created/Initiated - 2/4/2022
Approved - 2/4/2022
Approved - 2/17/2022
Approved - 2/25/2022

RESOLUTION NO. 22-06

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER OR DESIGNEE TO EXECUTE, APPLY FOR, AND ADMINISTER A GRANT FROM THE WEST COAST INLAND NAVIGATIONAL DISTRICT PROGRAM FOR ADDITIONAL MARINE PATROL AROUND ESTERO ISLAND FOR FUNDS IN THE AMOUNT NOT TO EXCEED \$50,000; AUTHORIZING THE TOWN MANAGER OR DESIGNEE TO EXECUTE RELATED DOCUMENTS; 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 has an opportunity to apply for grant funding from the West Coast Inland Navigational District (“Grant”) for additional marine patrol around Estero Island (“Project”); and

WHEREAS, the Town will commit funds (up to \$25,000) to complete the match requirement, which funding will be requested in the 2022-2023 Fiscal Year Budget for the Project; and

WHEREAS, the Town desires to apply for the Grant in the amount of up to \$50,000.00 in order to provide the Town with funds to complete the Project; and

WHEREAS, to apply for the Grant, a Resolution of the Town is required designating a “Liaison Agent”, and authorizing the Liaison Agent to apply for and administer the Grant on behalf of the Town; and

WHEREAS, the Town desires to designate the Town Manager or designee as Liaison Agent and authorize the Town Manager or designee, to apply for and administer the Grant on behalf of the Town; and

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

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

Section 2. The Town Council hereby designates the Town Manager or designee as Liaison Agent and authorizes the Town Manager or designee to apply for the Grant in the amount of up to \$50,000.00 and administer the grant on behalf of the Town, which includes additional marine patrol around Estero Island

Section 3. This Resolution shall take effect immediately upon its adoption.

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

DULY PASSED AND ADOPTED on this 7th day of March 2022.

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

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 _____ 2022.

1. Requested Motion:

Meeting Date: March 7, 2022

Discussion regarding proposed amendments to Chapter 27 "Personal Watercraft and Parasailing", Section 27-53 "PWVL & PAL Renewals" to provide that PWVL and PAL that are not annually renewed or are inactive revert back to the Town.

Why the action is necessary:

What the action accomplishes:

2. Agenda:

TOWN ATTORNEY'S ITEMS

3. Requirement/Purpose:

4. Submitter of Information:

5. Background:

Attachments:

1. Ordinance 22-__ Amending Chapter 27 _Personal Watercraft Parasailing_ Section 27-53 of Town Code - PWVL PAL License Renewals(131473245.1)-C

Financial Impact:

6. Alternative Action

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 - 3/1/2022
Approved - 3/3/2022
Approved - 3/3/2022
Final Approval - 3/3/2022

ORDINANCE NO. 22-

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 27 “PERSONAL WATERCRAFT AND PARASAILING”, SECTION 27-53 “PERSONAL WATERCRAFT VENDOR LICENSE AND PARASAILING ACTIVITY LICENSE RENEWALS” OF THE CODE OF ORDINANCES, TOWN OF FORT MYERS BEACH, FLORIDA, TO PROVIDE THAT PERSONAL WATERCRAFT VENDOR LICENSES AND PARASAILING ACTIVITY LICENSE THAT ARE NOT ANNUALLY RENEWED OR ARE INACTIVE FOR ONE-YEAR OR MORE SHALL REVERT BACK TO THE TOWN; PROVIDING FOR CODIFICATION; CONFLICTS; SCRIVENER’S ERRORS; SEVERABILITY AND AN EFFECTIVE DATE.

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

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach (“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 finds that regulating personal watercraft and parasailing activities within the Town’s jurisdiction through the licensing of personal watercraft and parasailing vendors is in the best interests of the health, safety, and welfare of the Town’s residents and visitors.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AS FOLLOWS:¹

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

Section 2. Article IV, of Chapter 27 of the Code of Ordinance, Town of Fort Myers Beach is hereby amended to read as follows:

ARTICLE IV. - ADDITIONAL RULES AND PROCEDURES APPLYING TO BOTH PERSONAL WATERCRAFT AND PARASAILING

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

Sec. 27-45. - Definitions.

For the purposes of this chapter, the following terms, phrases, words, and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

Beach means that area of sand along the Gulf of Mexico that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.

Business shall mean any personal watercraft rental or parasailing activity business, including any commercial activity engaged in the rental, leasing, or bailment for consideration of personal watercraft or parasailing.

Eco-tour shall mean an educational tour led by a guide knowledgeable in environmental and ecological preservation, where the guide can communicate with the tour members and offer commentary about the ecological, environmental, and archaeological significance of Estero Bay.

Edge of wet sand means the point where the visible darkening or staining of the beach sand from wave action is no longer detectable.

FWCC means the Florida Fish and Wildlife Conservation Commission or its successor.

Littoral waters mean that part of the ocean or sea which abuts the shoreline and includes the shore to the ordinary high-water mark. For purposes of this chapter, the littoral right to use such waters shall be limited to the waters within the boundaries of the land-based site as those boundaries extend into the water at right angles from the shoreline.

Operate means to navigate or otherwise use any vessel in, on, or under the water.

PAL shall mean parasailing activity license.

Parasailing or parasailing activity shall mean the act of towing a person or object over the water, suspended beneath a parachute, kite, or other similar contrivance.

Person means any individual, partnership, firm, corporation, association, or other entity.

Personal watercraft means a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

PWVL shall mean personal watercraft vendor's license.

Town manager shall include the designee(s) of the Town Manager of the Town of Fort Myers Beach.

Site means the plot or parcel of land or combination of contiguous lots or parcels of land.

Slow speed means no speed greater than that which is reasonable and prudent to avoid either intentionally or negligently disturbing, colliding with, or injuring manatees and which comports with the duty of all persons to use due care under the circumstances. A vessel in a slow speed zone that:

- (1) Is operating on a plane is not proceeding at slow speed;
- (2) That is in the process of coming off plane and settling into the water, which action creates more than no or minimum wake, is not proceeding at slow speed;
- (3) That produces no wake or minimum wake is proceeding at slow speed;
- (4) That is completely off plane and which has settled into the water and is proceeding without wake or with minimum wake is proceeding at slow speed. "Slow speed" means any through-the-water speed slow enough that the boat is neither planing nor moving with an elevated bow. A vessel that is operating at slow speed shall not be emitting a wake.

Steerage way means the minimum rate of motion required for the helm of the vessel to have effect.

Vessel means a motor propelled or artificially propelled vehicle and every other description of boat, watercraft, barge, and air boat other than a seaplane on the water, used or capable of being used as a means of transportation on water including personal watercraft. This term shall not include rafts, floats, or floatation devices, whether of canvas, vinyl, rubber, Styrofoam, or other substance, intended or capable of assisting in the floatation of a person on or in the water.

Wet sand means the area on the beach where the sand is saturated by sea water from wave action. This area is identified by a visible darkening or staining of the beach sand from the water driven onshore by wave action.

Sec. 27-53. - PWVL and PAL renewals.

(a) Except as provided in this chapter, upon application the town manager may renew the PWVL or PAL of any applicant who:

(1) Held a valid PWVL or PAL and operated the personal watercraft rental or parasailing activity business during the previous year. The following evidence of such operation shall be accepted if provided separately for the specific business location or the specific license (PWVL or PAL) for which the renewal is requested:

- a. Copy of a valid application to collect and/or report tax in Florida (DR-1) for the previous year; and
- b. Evidence that tax payments have been made at least quarterly during the previous year in accordance with that specific application.

(2) Has provided the town with new or updated information, documents and fees listed in this chapter and continues to meet the other regulations set forth in this code; and

- (3) Pays a late processing fee of \$25.00 for any renewal application filed after October 1.

(b) Upon application, the town manager may renew any PWVL or PAL suspended under this chapter, but any remaining term of suspension shall be applied to the renewed license, and during said term the PWVL or PAL confers no rights to offer the rental of any personal watercraft or to operate any parasailing activity.

(c) Any PWVL or PAL not renewed by October 15 shall be void and of no further use or effect whatsoever and shall revert to the Town. No business deemed to be a nonconforming use in accordance with the provisions of this chapter or other provisions of this code, which fails to renew its license in a timely manner, shall again be issued a license except in conformity with the regulations then in effect.

(d) The holder of a valid PWVL or PAL ~~license~~ may renew a license as inactive, where no specific land-based site has been identified, ~~each year~~ for up to one (1) year even provided that all other provisions of this chapter have been met and provided that the transferability provisions of § 27-55 are met before the license may be reactivated and any PWVL or PAL activities resume, however during the pendency of the inactivity, no insurance is required. If the holder of a valid PWVL or PAL fails to activate the license after the one (1) year inactive period, the PWVL or PAL shall revert to the Town

(e) All PWVL's or PAL's Licenses which have not been renewed as provided herein ~~of October 15~~ shall evert back to the Town and shall be available on a first-come first-serve basis.

Section 3. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification.

Section 4. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted Land Development Code, Ordinance, Resolution, Town Code provision, or statute, the most restrictive shall apply.

Section 5. Any typographical errors that do not affect intent may be corrected with

notice to and authorization of the Town Manager without further process.

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 7. This Ordinance shall become effective upon adoption by the Town Council.

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

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 2022, 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 April 2022.

1. **Requested Motion:**

Ex-Officio, Non-Voting Seat on TDC

Meeting Date: March 7, 2022

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

COUNCILMEMBERS ITEMS AND
REPORTS

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Lee County recently voted to add four ex-officio non-voting seats to the Lee County Tourist Development Council (TDC) to allow each of the municipalities to have a seat on the TDC.

Attachments:

1. TDC Appointment Town of Fort Myers Beach

Financial Impact:

6. **Alternative Action**

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 - 2/25/2022
Approved - 2/28/2022
Approved - 3/1/2022
Final Approval - 3/1/2022

VIA EMAIL ONLY

Kevin Ruane
District One

February 10, 2022

Cecil L. Pendergrass
District Two

Ray Sandelli
District Three

Brian Hamman
District Four

Frank Mann
District Five

Roger Desjarlais
County Manager

Richard Wesch
County Attorney

Donna Marie Collins
County Hearing
Examiner

The Honorable Ray Murphy, Mayor of Fort Myers Beach
and Members of the Fort Myers Beach Town Council

Dear Mayor Murphy and Members of the Fort Myers Beach Town Council:

This letter is to inform you that on January 18, 2022 the Lee County Board of County Commissioners (BoCC) voted to add four (4) ex-officio non-voting seats to the Lee County Tourist Development Council (TDC) to allow each of the municipalities to have a seat on the TDC.

The four additional ex-officio members would represent the incorporated municipalities not currently serving on the TDC in one of the two 'city rotating' seats and will not affect the rotation of these seats. The term for the 'city rotating' seat currently held by an elected official from the City of Sanibel is set to expire in June 2023. This voting seat would continue to rotate for two (2) year terms between the Town of Fort Myers Beach and the City of Sanibel, so long as they remain the two highest areas of municipal collection.

By way of this letter, we invite the Fort Myers Beach Town Council to nominate an elected official from the Town of Fort Myers Beach to occupy an ex-officio non-voting seat on the TDC beginning at the March 17, 2022 TDC meeting. The TDC meeting will begin at 9:30 a.m. in the Admin East building, conference room #118, located at 2201 Second Street, Fort Myers, FL 33901.

Your appointee will rotate into the voting seat for a two-year term as described above. When the term ends, your appointee will then sit as an ex-officio member until the voting seat rotates back to Fort Myers Beach.

Please notify my office no later than March 14, 2022 with the name of your nominee to be included on the agenda for formal appointment at the March 15 meeting of the BoCC.

Sincerely,



Cecil L. Pendergrass, Chairman
Lee County Board of County Commissioners & Lee County TDC