



Fort Myers Beach Town Council

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

Agenda

Monday, April 4, 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. LOCAL ACHIEVEMENTS AND RECOGNITIONS**
- VII. ADVISORY COMMITTEES ITEMS AND REPORTS**
- VIII. PROCLAMATIONS**
 - A. National Donate Life Month
- IX. APPROVAL OF MINUTES**
 - A. March 21, 2022 Town Council
- X. PUBLIC HEARINGS**
 - A. Ordinance 22-08; Election Qualifying Period
Second Reading and Final Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING THE QUALIFYING PERIOD FOR TOWN COUNCIL CANDIDATES FOR THE NOVEMBER 2022 ELECTION AND FUTURE ELECTIONS; PROVIDING FOR SCRIVENER'S ERRORS; CONFLICTS OF LAW; SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.
 - B. Ordinance 22-06: Tuckaway Cafe Commercial Planned Development (CPD) Amendment
First Reading and Public Hearing for proposed Ordinance 22-06: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPLACING TOWN OF FORT MYERS BEACH RESOLUTION NO. 12-07,

AND AMENDING THE SCHEDULE OF USES FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 2301, 2307 & 2311 ESTERO BLVD. AND 111 & 121 MANGO ST., FORT MYERS BEACH; AMENDING THE MASTER CONCEPT PLAN FOR THE RESTAURANT USE(S); PROVIDING FOR REVISIONS TO CONDITIONS OF APPROVAL, AND OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on April 18, 2022 at 9:00 AM

C. Ordinance 22-05; Building Footprint Limits

First Reading and Public Hearing for proposed Ordinance 22-05: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING ARTICLE III., DIVISION 3, SECTIONS 34-638 "MINIMUM SETBACKS", TABLE 34-3 "DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS", AND TABLE 34-1 "LAND USES ASSIGNED TO USE GROUPS AND SUB-GROUPS" OF THE TOWN OF FORT MYERS LAND DEVELOPMENT CODE; 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 April 18, 2022 at 9:00 AM

D. Ordinance 22-09; PWVL/PAL

First Reading and Public Hearing for proposed Ordinance 22-09: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 27 "PERSONAL WATERCRAFT AND PARASAILING", SECTION 27-52 "PERSONAL WATERCRAFT VENDOR LICENSE AND PARASAILING ACTIVITY LICENSE APPLICATIONS AND REGULATORY FEES"; 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 A LIMITED EXEMPTION TO THE CAP ON THE NUMBER OF ANNUAL LICENSES; PROVIDING 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. Open the first public hearing and schedule for second reading and final adoption on April 18, 2022 at 9:00 AM

XI. ADMINISTRATIVE AGENDA

A. Royal Auction Group Inc. Piggyback Contract

Authorize the Town Manager to execute a Piggyback contract with Royal Auction Group, Inc's for auctioneering services that was competitively procured by Pinellas County.

- B. Resolution 22-14, Florida Division of Emergency Management
Adopt Resolution 22-14 authorizing the Town Manager or designee to apply for and administer a grant from the Florida Department of Emergency Management Mitigation Bureau in the amount of \$536,513.25 for Residential Intrusion Prevention Drainage on Williams Dr.

XII. FINAL PUBLIC COMMENT

XIII. TOWN MANAGER'S ITEMS

XIV. TOWN ATTORNEY'S ITEMS

XV. COUNCILMEMBERS ITEMS AND REPORTS

XVI. ADJOURNMENT

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

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



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



Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained from the Town Clerk's Office.

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

Town of Fort Myers Beach

PROCLAMATION

WHEREAS, one of the most meaningful gifts that a human being can bestow upon another is the gift of life; and

WHEREAS, more the 106,500 men, women and children are currently on the national waiting list for organ transplantation, of which nearly 4,800 reside in Florida; and

WHEREAS, a record number of transplants occurred in the calendar year 2021 thanks to the generosity of over 20,000 deceased and living donors, and

WHEREAS, more than 2.5 million people throughout the country and in Florida benefit annually from tissue transplantation thanks to thousands of tissue donors; and

WHEREAS, the need for organ, eye and tissue donation remains critical as a new patient is added to the national waiting list for an organ transplant every 10 minutes; and

WHEREAS, more than 11.8 million Floridians have already registered their decision to give the Gift of Life through organ and tissue donation at www.DonateLifeFlorida.org or on their driver license; and

WHEREAS, LifeLink of Florida, the non-profit organization dedicated to the recovery of organs and tissue for transplantation therapy in Florida, with a mission to honor donors and save lives through organ and tissue donation.

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

DONATE LIFE MONTH

Given under my hand and the seal of the office of the Mayor this 4th day of April 2022.

Raymond P. Murphy, Mayor



Fort Myers Beach Town Council

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

Minutes

Monday, March 21, 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

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

Motion carried unanimously.

V. PUBLIC COMMENT

Dave Nussbaum, President of Island Winds Condominiums, commented on the beach renourishment proposal. He stated their beach was a beach of accretion, not a critical erosion beach. He noted the proposal recommended that an erosion control line extend through their beach, which meant they no longer gained access to accretion on their property. He suggested that the town not pursue the matter. He discussed water ponding on the beach and noted it was not a critical issue but a nuisance. Property owners did not support bringing in sand to eliminate ponding.

Patty Rittinger, resident, read a letter from Gulfview Manor regarding beach renourishment. Residents requested that their beach not be classified as a critical erosion beach by the FDEP (Florida Department of Environmental Protection) beach because it did not erode. Residents were not in favor of an erosion control line and did not want to lose control of the property seaward of the line. They did not need additional sand. Ponding was not an issue that required taxpayer money to remedy, as property owners maintained their beach for years without taxpayer

dollars. Ms. Rittinger suggested that eroding properties be taken care of rather than adding sand to their beach.

George Repetti, resident, agreed with previous commenters. Erosion control would take control away from residents. He discussed the erosion control line and indicated it did not make sense for the residents at Island Winds because their beach accreted.

Jay Light, resident, discussed the attempt to build an upland facility at Bayside Park and renting the two units at Harbor House instead of purchasing them. He commented on staffing an office and noted boaters only needed restrooms, showers and a laundry facility. He suggested the town build those facilities above the old bank drive-through at Town Hall.

Gloria Abramoff, resident, did not support using their canal as a waterway for the boats in the Mooring Field. She described wildlife in the mangroves and noted the mangroves provided protection from storms. The canal was too shallow, the plan was costly and there were other places to build a facility. She urged the council to vote against the project.

Todd Zaccanelli, resident, stated he did not support an upland facility on Tropical Shores Way because of increased traffic and trash in their canal. He requested that the council not vote on the plan.

Star Sherwood, resident, was 100% opposed to an upland facility being built at the end of their canal. She stated she was not against a facility for boaters, but she did not want one in her neighborhood. She indicated that gas and oil could leak into the canal and wildlife would be affected. She stated the neighborhood would be anxious and afraid due to the increased traffic all hours of the day and night.

She read the mission statement from the Town Council's Policy and Procedures Manual. Ms. Sherwood urged them to explore other possibilities.

Melanie Emmerich, resident, questioned how residents with boats would get in and out of their canal due to increased traffic. She commented on the shallow and narrow canal. She was against building a facility on any residential canal when commercial properties were on the bayside. She brought up losing privacy, security and a peaceful life.

Harvey Staley, resident, agreed with Ms. Emmerich.

Mike Ratliff, resident and AAC (Anchorage Advisory Committee) member, spoke as a resident. He asked that the council reflect upon their decision to reject the Bayside Park location for the upland services in favor of the property along the canal in the Tropical Shores neighborhood. He compared the positives and the negatives of each location expressed by other commenters. He supported building the facility at Bayside Park and noted it would cost less money, be more practical, have a minimal effect on neighbors, and serve both residents and mariners.

Lori Kensinger, resident, commented on destroying the natural environment in the canal and destroying the neighborhoods' sense of security and privacy.

David Jensen, resident, discussed the degradation of some of the residential communities. He stated the canals were beautiful but shallow. He did not support removing mangroves or the increased traffic. He felt the decision was rushed and other options were not adequately reviewed. He mentioned locating a facility at

Bay Oaks.

Tim Shadle thanked Town Council, Town Manager, Town Attorney and staff for many things. He questioned their decision to purchase land for an upland service provider without more input from the public. He mentioned the impact on the neighborhood and felt the facility should be located in a more commercialized setting. He commented on Estero Blvd. and indicated the pavers would have to be maintained and repaired before eventually being replaced. He felt the county should continue ownership of Estero Blvd. regarding the lighting project due to the expense and liability issues. He supported pouring concrete or pavers between the curb and sidewalk rather than trees or grass.

Penny Jarrett, resident, did not support the upland services facility on Tropical Shores Way. She described how the community helped one another and felt for the residents' concerns regarding the disruption and invasion of their privacy. She implored the council to reconsider relocating the facility to a more appropriate location.

Ellen Vaughan, resident, thanked Town Council for their service. She questioned why the town decided to take the upland services provider in-house. She stated that Friends of the Mound House was holding their annual fundraiser from 7:00-9:00 p.m. at the Mound House on April 8, 2022, and tickets were \$75.00. She encouraged everyone to attend.

Jennifer Rusk, resident, stated that Bowditch Point Park and Lynn Hall Park were installing amber lights and she requested that the council send back the lighting plans for Bayside Park and Times Square. She asked Town Council to expedite the name change for MRTF (Marine Resources Task Force). She marked the first anniversary of the pop-up events. She thanked the town, community and volunteers for supporting her and the pop-up events. She questioned whether anyone thought about including a permanent structure for community outreach programs in Times Square.

George Kormos, resident, explained why he did not support the upland services facility on Tropical Shores Way. He felt the neighborhood was being railroaded and no one did the homework to determine how many boats would use the canal. He requested that they vote no on applying for the grant.

Marty Weit, resident, stated that the upland facility was commercial, but their canal was residential. He brought up Bowditch Point and Snug Harbor as locations. He indicated the vote needed to be no.

Larry Abramoff, resident, indicated that putting the upland services facility at the end of their canal did not make financial or common sense. He stated they supported a facility for the Mooring Field, but not in their neighborhood. He listed other locations in commercial districts and noted even if the town subsidized the facility, the town would still save money. He commented on the increased traffic on the canal and the loss of privacy. He asked that they vote no to apply for the grant.

Wayne Murrah, Board Member for Carlos Point Homeowner's Association, stated the association opposed the beach renourishment project.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Allers congratulated the Shrimp Fest and Mayor Murphy for the St. Patrick's Day parade. Vice Mayor Hosafros thanked Chris Holder from Public Works and Nello Cernoia for assisting with a cormorant rescue. She noted that Nello was retiring and recognized him for his seven and a half years with the town.

Council Member Veach recognized the Shrimp Parade and the Mound House fundraiser. He noted it was a good cause and thanked Ellen Vaughn for organizing the event.

Mayor Murphy brought up the waterspout at the Lani Kai and noted there was minor damage.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

Steve Johnson, Chair of MRTF, reported that MRTF recommended that the town provide consistent lighting throughout the downtown commercial district. He read the entire motion from the March 9, 2022 meeting.

Katherine Light, Chair of the AAC, stated that they spent three and a half years discussing the upland services provider facility. She noted that the AAC was frustrated regarding the purchase of the property because they were not able to vet the property. She displayed a pro and con chart concerning different properties. She indicated that operations were brought in-house in September of 2018. She noted that the property on Virginia was discussed, but AAC members were concerned that the neighborhood would not want it in their backyard. Chair Light discussed their support for the Bayside Park location before the neighbors voted it down. She indicated the property on Tropical Shores was purchased and AAC has been unable to make a pro and con list for the property.

Council Member Veach indicated he would appreciate the AAC's advice regarding the new property.

VIII. APPROVAL OF MINUTES**A. March 7, 2022 Town Council meeting**

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

Motion carried unanimously.

B. March 10, 2022 Management & Planning

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

Motion carried unanimously.

IX. PRESENTATION**A. Beach Renourishment Project****Presentation: Coastal Engineering Consultants update on the Beach Renourishment Project**

Michael Poff utilized PowerPoint for his presentation. Slides included: Estero Island Shore Protection Project Update; Outline; Overview of Project; Beach

Fill Design; Design Plan: North; Design Plan: Central; Design Plan: R-198 to R-202; Typical Design Section; Non-Critically Eroding Segment: R-200 to R-203; Design Plan: South; Permit Status; Funding; Cost Sharing/Grant Opportunities; Public Access; Contracting; Pay Down Schedule; Erosion Control Line; State Policy; ECL Approval Process; Easements; Construction Easement Definition Sketch; Construction Details; Pipeline Corridor & Landing; Pipeline Corridor South; What to Expect and Post-Construction Requirements.

X. CONSENT AGENDA

Council Member Veach moved to move Resolution 22-09 forward in the agenda; second by Council Member Atterholt.
Motion carried unanimously.

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

A. Special Event: Newton Beach Park

Special Event Application for Private Anniversary Party at Newton Beach Park on May 29, 2022

Vice Mayor Hosafros moved to approve the application; second by Council Member Allers.
Motion carried unanimously.

~ Council Member Atterholt left the meeting at 12:28 p.m. ~

XI. PUBLIC HEARINGS

A. RES 22-12, SEZ 20210129 Consumption on Premise for Outdoor Seating at 6241 Estero Boulevard (Charley's Boathouse)

Approve/Approve with Conditions/Deny Resolution 22-12, granting a Special Exception authorizing the extension of use of the restaurant's COP to allow service to an outside area (830 sq ft) within 500 feet of a dwelling unit at Charley's Boathouse.

Mayor Murphy read the title of the resolution. Attorney Sanabria stated that it was properly advertised and he swore in those providing testimony.

Paul Joeckel, applicant, stated that they had to redesign their parking lot due to the expansion of Estero Blvd. He created a patio to encourage people to eat outdoors during the pandemic and then learned he needed a license to serve in that area. He did not receive objections from the neighbors.

Town Manager Hernstadt described the improved parking lot. Mayor Murphy requested that Mr. Joeckel install two stop signs at the exit with "No Entrance" on the back of the signs. Mr. Joeckel agreed and suggested signs be installed like the Fish House. Vice Mayor Hosafros commended Mr. Joeckel for improving the property and stated he was a good neighbor.

Council Member Allers questioned how alcohol would be served. Mr. Joeckel replied that the service staff would have to use the restaurant's back door. Director Green stated that the staff and the LPA recommended approval.

Council Member Veach moved that, based on the information in the staff report and the testimony presented, the applicant has met the standard set forth in our comprehensive plan and land development regulations for the requested use and special exception and therefore move approval of Resolution 22-12; second by Vice Mayor Hosafros.

Roll call vote.

Motion carried unanimously.

B. Ordinance 22-04; Motorized Micromobility Devices

Second Reading and Final 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.

Mayor Murphy read the title of the ordinance. Attorney Sanabria stated the hearing was properly advertised.

Town Manager Hernstadt reviewed the reason for the ordinance as stated on the blue sheet.

No public comment.

Vice Mayor Hosafros moved to approve Ordinance 22-04; second by Council Member Veach.

Roll call vote.

Motion carried unanimously.

C. Ordinance 22-08; Election Qualifying Period

First Reading and Public Hearing for proposed Ordinance 22-08: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING THE QUALIFYING PERIOD FOR TOWN COUNCIL CANDIDATES FOR THE NOVEMBER 2022 ELECTION AND FUTURE ELECTIONS; PROVIDING FOR SCRIVENER'S ERRORS; CONFLICTS OF LAW; SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Open the first public hearing and schedule for second reading and final adoption on April 4, 2022 at 9:00 AM

Mayor Murphy read the title of the ordinance. Town Manager Hernstadt noted that the action was generated from a request by the Supervisor of Elections to synch up elections.

No public comment.

Vice Mayor Hosafros moved to move Ordinance 22-08 to a second reading and final adoption on April 4, 2022, at 9:00 a.m.; second by Council Member Veach.

Motion carried unanimously.

XII. ADMINISTRATIVE AGENDA

A. Resolution 22-10 - Approving Piggyback Contract with Vektor Contracting Services, LLC

Adopt Resolution 22-10, approving a piggy-back contract for utility repairs with Vektor Contracting, LLC pursuant to Collier County's competitively procured contract, ITB # 20-7771 for emergency and routine utility repairs.

Mayor Murphy read the title of the resolution. Town Manager Hernstadt reviewed the reason for the resolution.

Vice Mayor Hosafros moved to adopt Resolution 22-10; second by Council Member Veach.

Motion carried unanimously.

B. Status Report on Laguna Shores Dredging Project

Status Report on Laguna Shores Dredging Project

Town Manager Hernstadt stated bids were received and contractors agreed to hold the price for a specific time. It

was now up to residents of Laguna Shores to come back to Town Council with a plan for how they would fund their share. He indicated he would contact the representative of Laguna Shores today and inform him of the deadline. Consensus was reached to move forward.

C. Resolution 22-09, FBIP Grant Application, Grant Agreement and Grant Administration

Adopt Resolution 22-09, authorizing the Town Manager or designee to apply for, execute related grant application and grant agreement documents, and administer a grant from the Florida Boating Improvement Program for funds not-to-exceed \$3,000,000 for the construction of upland services for the Mooring Field Operations; providing an effective date.

Vice Mayor Hosafros moved to adopt Resolution 22-09; second by Council Member Veach for discussion.

Council Member Veach noted the resolution was to apply for the grant this year. If they did not apply for the grant this year, things would stop moving forward. Town Manager Hernstadt stated it was not good practice to apply for a grant they knew they would not use. He added that the property's purchase price would potentially be used as a match for the grant.

Vice Mayor Hosafros questioned what could be built on the property if it was not used for upland services. Community Development Director Jason Green noted that potentially four homes could be built on the west side of the

property and offices could be built on the east side. He indicated the zoning was RC on the east side and RM on the west side. Vice Mayor Hosafros suggested there could be more intensity of building than what the town was proposing. Director Green discussed density calculations in different zoning districts. Vice Mayor Hosafros stated the fire department was building on the canal next to the property. She commented that The Dolphin Inn was at the end of another canal and the boat traffic was not a problem. She added that the AAC did do their homework and explored options for several locations. She explained that there were reasons why some locations would not be feasible. Vice Mayor Hosafros felt they should apply for the grant. Council Member Allers voted against the Bayside Park location because he did not think an upland service provider should be located in a park. He took his pontoon boat down the canal at high tide and was able to turn around easily. He stated that taxpayers would have to pay for the building without gaining anything. He felt there were too many unanswered questions and the current facilities served the purpose. He did not support applying for the grant. Town Manager Hernstadt described the current situation with the upland facilities and noted they were subject to the whims of the landlord. He stated they were leasing Harbor House from Matanzas. Vice Mayor Hosafros added that the current location would not be adequate if and when the Mooring Field was expanded. Town Manager Hernstadt indicated the town would have to find a permanent location for the facility in the near future. Council Member Atterholt explained that he voted against the location at Bayside Park because the view of the bay would have been obstructed. He was concerned about damage to the people's faith in the system because it happened so abruptly. He did not support the proposition and would vote no. Council Member Veach described his conversations with residents in the neighborhood and felt many concerns could be addressed. He felt there could be more disturbance in the canal from private developers. He commented that using the \$1 million purchase price to get a \$3 million grant was fiscally responsible. He listed the pros of the facility being near Town Hall. He stated he supported moving forward with the grant. Mayor Murphy noted there were other possibilities for the property.

Motion denied 3-2 by roll call vote, with Council Members Allers, Atterholt and Mayor Murphy dissenting. 4-1 by roll call vote with Council Member Allers dissenting.

D. Resolution 22-11; Participation in Program for Public Information (PPI) for Community Rating System (CRS)

Adopt Resolution 22-11, authorizing the Town's participation in the multi-jurisdictional Program for Public Information documents as part of the Town's Community Rating System (CRS) efforts under the National Flood Insurance Program (NFIP).

Mayor Murphy read the title of the resolution.

Council Member Allers moved to adopt Resolution 22-11; second by Council Member Veach.

Motion carried unanimously.

XIII. FINAL PUBLIC COMMENT

No public comment.

XIV. TOWN MANAGER'S ITEMS

Town Manager Hernstadt stated he was working with FPL and the lighting consultants to schedule a meeting with Town Council.

The Lee County workforce housing staff was unable to attend the meeting today and would reschedule.

XV. TOWN ATTORNEY'S ITEMS

No items.

XVI. COUNCILMEMBERS ITEMS AND REPORTS

Vice Mayor Hosafros questioned whether Council Members were interested in Sabal Palms as an alternative to Coconut Palms in the Times Square project. Two Council Members agreed to plant Sabal Palms and Mayor Murphy agreed to find an option. Vice Mayor Hosafros questioned whether the town was responsible for inspecting the dock at Nervous Nellies after a portion of it collapsed. Town Manager Hernstadt replied that he would send out an inspector. Vice Mayor Hosafros questioned whether they should require that condominiums inspect their buildings or whether they wanted to stay out of it. Mayor Murphy suggested that they meet with the Fire Department for their input. Council Member Veach agreed to include the topic in a future M&P agenda. Vice Mayor Hosafros warned people in condominiums to start taking the lighting regulations seriously. Town Manager Hernstadt stated that staff would inform condominiums of violations before turtle season.

No items by other members.

XVII. ADJOURNMENT

Council Member Veach moved to adjourn; second by Council Member Allers. Motion carried unanimously.

The meeting was adjourned at 1:05 p.m.

1. **Requested Motion:**

Meeting Date: April 4, 2022

Second Reading and Final Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING THE QUALIFYING PERIOD FOR TOWN COUNCIL CANDIDATES FOR THE NOVEMBER 2022 ELECTION AND FUTURE ELECTIONS; PROVIDING FOR SCRIVENER'S ERRORS; CONFLICTS OF LAW; SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

Why the action is necessary:

Will allow for sufficient time to prepare, proof, and mail official ballots containing federal, state, and municipal contests.

What the action accomplishes:

Moves the candidate-qualifying period in accordance with Section 101.75(3), Florida Statutes.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Under State law, the qualifying period for Town candidates for the November 8, 2022, municipal election and other future elections is from the 50th day to the 46th day before the election, or Monday, September 19, 2022, to Friday, September 23, 2022. This candidate qualifying period for Town Council elections severely impacts and limits the Town and the Lee County Supervisor of Elections' ability to prepare and timely mail official ballots in accordance with state law. The deadline to mail overseas ballots in the November 8, 2022 General Election is Saturday, September 24.

The Lee County Supervisor of Elections (LCSOE) has requested that the Town, in accordance with Section 101.75(3), Florida Statutes, move its candidate-qualifying period to Monday, June 13, 2022, through Friday, June 17. In doing so, LCSOE will be afforded sufficient time to prepare, proof, and mail official ballots containing federal, state and municipal contests - including the Town's.

Attachments:

1. 22-08, Ordinance 22-08 Amending the Town's Election Qualifying Period(131924244.1)-C

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

Amy Baker, Town Clerk
John R Herin Jr, Town Attorney

Created/Initiated - 3/21/2022
Approved - 3/30/2022

Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Approved - 3/30/2022
Final Approval - 3/30/2022

ORDINANCE NO. 22-08

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA
AMENDING THE QUALIFYING PERIOD FOR TOWN COUNCIL
CANDIDATES FOR THE NOVEMBER 2022 ELECTION AND FUTURE
ELECTIONS; PROVIDING FOR SCRIVENER'S ERRORS; CONFLICTS
OF LAW; SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE
DATE.**

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

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

WHEREAS, Section 5.01 of the Town of Fort Myers Beach ("Town") Charter establishes the time period that candidates for Town Council must qualify from noon of the 50th day to noon of the 46th day before the November 8, 2022 election; and

WHEREAS, the current time frame for Town candidates to qualify severely impacts and limits the Lee County Supervisor of Elections' ability to prepare and timely mail official ballots in accordance with state law; and

WHEREAS, Section 101.75(3), *Florida Statutes*, provides that the Town may move the dates for qualifying for the Town elections by ordinance; and

WHEREAS, the Lee County Supervisor of Elections has requested that the Town Council move the Town Council candidate qualifying period for the 2022 election year – and all years thereafter - to noon of the 71st day to noon of the 67th day prior to the November general election date for 2022, and all general elections in November thereafter; and

WHEREAS, the Town has the legal authority to adopt this Ordinance pursuant to its broad home rule powers and Section 101.75(3), *Florida Statutes*; and

WHEREAS, the Town hereby desires to change the candidate qualifying period for the November 8, 2022 Town Council election and future Town Council Elections in November.

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

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

Section 2. In accordance with Section 101.75(3), *Florida Statutes*, the Town Council candidate qualifying period shall be from noon of the 71st day to noon of the 67th day prior to the November 8, 2022 election, and all general elections in November thereafter.

Section 3. The Town Council intends that this Ordinance be made part of the Code of Ordinances, Town of Fort Myers Beach, Florida. Typographical errors and clarification of ambiguous wording that does not affect the intent of this Ordinance can be corrected with the authorization of the Town Manager without the need for a public hearing.

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

Section 5. If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force or effect of any other Section or part of this Ordinance.

Section 6. This Ordinance will take effect immediately upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon motion by Councilmember _____ and seconded by Councilmember _____ 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:

Meeting Date: April 4, 2022

First Reading and Public Hearing for proposed Ordinance 22-06: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPLACING TOWN OF FORT MYERS BEACH RESOLUTION NO. 12-07, AND AMENDING THE SCHEDULE OF USES FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 2301, 2307 & 2311 ESTERO BLVD. AND 111 & 121 MANGO ST., FORT MYERS BEACH; AMENDING THE MASTER CONCEPT PLAN FOR THE RESTAURANT USE(S); PROVIDING FOR REVISIONS TO CONDITIONS OF APPROVAL, AND OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on April 18, 2022 at 9:00 AM

Why the action is necessary:

The restaurant has a CPD, the CPD does not include the use of brewing for on-site consumption. In order to allow the brewing activity, the CPD must be amended. The purpose of the review is to insure no additional impacts are created by the use.

What the action accomplishes:

Adoption of the amendment will allow the additional use of brewing for consumption on premises with additional conditions which are included in the staff report.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

The CPD amendment will
require an ordinance.

4. Submitter of Information:

5. Background:

Tre Gillet, the applicant for 2301 Estero Blvd, Tuckaway Café, is requesting an amendment to the existing CPD (approved by Resolution 12-07), to allow the brewing of craft beer for consumption on premises. The existing approved CPD allows the current restaurant use with eight conditions and 11 deviations. The hours of operation for the restaurant are 6 am to 12 midnight. The hours of operation for the indoor restaurant are 7 am to 12 midnight with the outdoor seating area limited to between the hours of 7 am and 10 pm, seven days a week. The restaurant currently holds a 2COP to allow for the sale of alcohol for consumption on premises. The applicant is requesting an amendment to the existing CPD to allow a small brewing operation in the interior of the existing building. Brewing would be for sale and consumption of alcohol on premises only. The applicant is not requesting any other modification of the existing conditions or deviations found in the current CPD. Additional conditions have been recommended by staff and LPA to address the impacts of the brewing use.

Attachments:

1. 22-06, Ordinance 22-06 re Amending Tuckaway Cafe's CPD to Allow On-site Brewing of Beer(132497980.2)-C
2. Staff Report Tuckaway CPD Amend
3. Exhibit A - Survey - amended 4-23-18 (002)
4. Exhibit B - Public hearing app
5. Exhibit C - Letter to adjacent property owners

Financial Impact:

None

6. Alternative Action

Denial or modification of proposed conditions.

7. Management Recommendations:

Schedule a second hearing for the CPD amendment to allow brewing for consumption on premises.

8. Recommended Approval:

Sarah Propst, Planning & Zoning
Daphnie Bercher, Community Services Administrator
Jason Green, Community Development Services
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 3/28/2022
Approved - 3/29/2022
Approved - 3/29/2022
Approved - 3/31/2022
New - 1/1/1900

ORDINANCE 22-06

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA REPLACING TOWN OF FORT MYERS BEACH RESOLUTION NO. 12-07, AND AMENDING THE SCHEDULE OF USES FOR THE COMMERCIAL PLANNED DEVELOPMENT ZONING FOR THE PROPERTY LOCATED AT 2301, 2307 & 2311 ESTERO BLVD. AND 111 & 121 MANGO ST., FORT MYERS BEACH; AMENDING THE MASTER CONCEPT PLAN FOR THE RESTAURANT USE(S); PROVIDING FOR REVISIONS TO CONDITIONS OF APPROVAL, AND OTHER CLARIFICATIONS AS NECESSARY; PROVIDING FOR CONFLICTS OF LAW, SCRIVENER'S ERRORS, SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, Tre and Amy, Inc. ("Applicant"), the owner of the property generally located at 2301, 2307 & 2311 Estero Blvd., and 111 and 121 Mango St. and identified by STRP numbers 19-46-24-W3-0110D.0010, 19-46-24-W3-0120E.0010, 19-46-24-W3-0120E.0020 and 19-46-24-W3-0120E.0030 - comprising .66 +/- acre of land ("Property"), filed an application to amend the Property's Commercial Planned Development ("CPD") to allow on-site brewing and consumption of beer; and

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

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on March 22, 2022, at which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 6-0 to recommend approval of the CPD amendment with conditions, and

WHEREAS, on April 4, 2022 the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the Fort Myers Beach Land Development Code ("LDC"); and

WHEREAS, the Town Council set a second reading of the proposed Ordinance and a public

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hearing on this matter to be legally advertised and held before the Town Council on April 18, 2022; at which time the Town Council gave full and complete consideration to the request of the Applicant, the recommendation of the LPA, the recommendation of staff, including the consideration and findings in the staff report, the documents in the record, and the testimony of all interested persons, as required by Section 34-85 of the LDC; and

WHEREAS, the Town Council finds the proposed CPD amendment with conditions of approval are **consistent/not consistent** with the Town of Fort Myers Beach Comprehensive Plan and LDC and voted to **approve/approve with conditions/deny** the Application.

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

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

Section 2. The Town Council determines the Applicant **did/did not** meet its burden of proof that the requested zoning amendment **does/does not** meet the requirements of the Town Comprehensive Plan and LDC and approving the request to allow the use of on-site brewing and consumption of malt liquor with conditions **is/is not** in the best interest of the Town. Therefore, based upon the recommendations, testimony, and evidence presented by the Applicant, Town staff, and interested parties, the Town Council **APPROVES/DENIES** the requested amendment to the CPD zoning of the Property.

Section 3. Town Resolution 12-07 is repealed and replaced by this Ordinance and the schedule of uses and conditions of approval for the Property's CPD set forth in Exhibit "A," attached hereto and incorporated herein by this reference is approved.

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

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

Section 9. 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 10. This Ordinance will take effect immediately 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 vote, the result was as follows:

DULY PASSED AND ADOPTED on this ____ day of April 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 Ordinance was filed in the Office of the Town Clerk on this ____ day of April 2022.

This Ordinance was filed in the Office of the Town Clerk on this __ day of __, 2022.

Exhibits
Exhibit "A"

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EXHIBIT “A”

The Town Council APPROVES the applicant's request for an amendment to the existing CPD, formerly known as Big John's Board Walk Eatery, to provide required parking on-site for the existing restaurant uses, stormwater management improvements, and landscape buffers, with such approval subject to the Schedule of Allowable Uses, 8 conditions of approval eleven (11) Conditions of Approval, and 11 deviations Deviation from the LDC set forth with specificity below.

Schedule of Allowable Uses:

Residential – Open

Lodging – Limited

Office – Limited

- Offices, general or medical

- Personal services

Retail – Limited

- Restaurant (limited to two (2) with a total maximum area of 4,000 square feet of indoor space with additional outdoor seating as indicated on the MCP)

- On-premises consumption of alcoholic beverages (limited to beer and wine served only in conjunction with meals) including approximately 1000 square feet of outdoor seating in conjunction with the proposed deck.

- On-site brewing of beer for consumption on premises.

Civic – Open

In approving the amendment to the CPD zoning of the Property, the Council imposes following eConditions of aApproval ~~are imposed~~ on the Applicant and the Property:

1. If the principal building on the subject property (2301 parcel) is removed or replaced for any reason, deviations 3, 4, 5, 6, and 7 will become null and void. Any new buildings replaced on the subject property must comply with required setbacks and any other regulations in effect at the time of permitting.
2. Any changes or fracturing of ownership of the four parcels within the subject property will require, at a minimum, an administrative amendment to the Master Concept Plan to reflect the change in ownership, which will include recorded unified control documentation.
3. The parking lot must be stabilized in accordance with the provisions in Section 34-2017 (b) of the LDC.
4. A local development order is required prior to any expansion of the existing restaurant or any use of the second restaurant bay in accordance with this planned development approval. Approval of this request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order, including payment of additional impact fees.

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5. A Traffic Impact Study (TIS) is not warranted, and the Town Council hereby overrules the Director's decision to require a TIS. The Applicant has provided mitigation for traffic impacts by providing the following: additional on-site parking for tenants and customers, landscape buffers, bicycle racks, extension of the sidewalk along Estero Boulevard in front of the property, elimination of the back out parking in front of the existing building, a reduction in the outdoor dining area to 1,000 square feet, and provision of storm water management improvements. The current restaurant use has demonstrated that it is mainly a pedestrian and bicycle-oriented destination and, as a result, the traffic impacts may actually be less than would be expected from a traffic impact study.
6. Bicycle racks shall be provided for a minimum of 8 bicycles.
7. The hours of operation for business use are 6am to 12 midnight. The hours of operation for indoor restaurant uses are 7am to 12 midnight with outdoor seating area limited to between the hours of 7am and 10 pm, seven days a week.
8. ~~No outdoor entertainment is permitted.~~
8. No amplified music or entertainment is permitted outdoors.
9. All brewing activities shall be contained within the building.
10. No outdoor storage shall be allowed including the use of portable storage units, cargo containers and tractor trailers except as follows: spent grain may be placed outdoors for a period not to exceed 24 hours. Spent grain must be stored in fully enclosed containers that are screened from adjacent properties and Estero Blvd.
11. Must comply with guidelines set forth by the Florida Department of Alcoholic Beverages and Tobacco for the CMBP permit.

In approving the CPD zoning of the Property, the Council grants the following dDeviations to the LDC:

Deviation #1

Deviation from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8, which requires a Type C/F buffer where proposed commercial uses abut single family residential uses, to allow for an eight (8) foot high solid stockade fence and 14–15-foot Type C buffers without a wall, as indicated on the MCP and landscape plan is APPROVED.

Deviation #2

Deviation from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8, which requires a 15 foot Type D buffer between parking areas and right-of-way, to allow for a 5 foot Type D buffer between parking areas and right-of-way is APPROVED.

Deviation #3

Deviation from the requirement of LDC Section 34-704(a), which requires buildings to be constructed between five (5) to ten (10) feet from Estero Boulevard, to allow a front setback of 46 feet to accommodate the existing building is APPROVED.

Deviation #4

Deviation from the requirements of LDC Section 34-707(b)(1)a, which requires a minimum 10 foot street setback to allow for a 2.39 foot street setback from Fairweather Lane to accommodate the existing building is APPROVED.

Deviation #5

Deviation from the requirement of LDC Section 34-704(b)(1)b, which requires a minimum 20 foot rear setback, to allow for a two-foot rear setback to accommodate the existing building is APPROVED.

Deviation #6

Deviation from the requirement of LDC Section 34-995(a)(3), which prohibits a principal facade facing a primary street from having blank walls greater than 10 feet in length, to allow for one (1) section of the principal facade to be 16 feet in length is APPROVED.

Deviation #7

Deviation from the requirements of LDC Section 34-995(d), which requires corner buildings to be located no more than 20 feet from the intersection of right-of-way lines, to allow the existing corner building to be located a distance of 48.5 feet from the intersection of Estero Boulevard and Fairweather Lane is APPROVED.

Deviation #8

Deviation from LDC Section 34-2020(d)(2)h, which requires 8 parking spaces per 1,000 square feet of total floor area, including any outdoor seating area (for a total of 47 required parking spaces) to allow for a 30% reduction from the LDC requirement for a total of 34 provided spaces is APPROVED.

Deviation #9

Deviation from LDC Section 34-2017, which requires high turnover parking lots to have a paved surface, to allow for a crushed shell or limerock surface is APPROVED.

Deviation #10

Deviation from LDC Section 34-285 and Table 10-1, which requires 125 feet of connection separation along local roads, to allow for 96± feet of connection separation along Mango Street is APPROVED.

Deviation #11

Deviation from LDC Section 10-289(d) which requires an 8 foot wide sidewalk along the property's Estero Boulevard frontage, to allow for a 5 foot wide sidewalk is APPROVED.

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

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Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT
STAFF REPORT

TYPE OF CASE: Commercial Planned Development Amendment

CASE NUMBER: DCI Rezoning, 20210115

CASE NAME: 2301/2307 Estero Blvd, amend the existing Commercial Planned Development to allow brewing of beer for consumption on-site.

TOWN COUNCIL HEARING DATE: April 4, 2022 at 9:00 AM

LPA HEARING DATE: March 22, 2022 at 9:00 AM

STAFF RECOMMENDATION: Approve with conditions

**PREPARED/
SUBMITTED BY:** Sarah Propst, AICP, PMP/ Jason Green AICP, CFM

I. APPLICATION SUMMARY

Applicant/Owner: Tre Gillette

Request: The applicant is requesting an amendment to the existing CPD to allow on-site brewing of beer to serve to patrons.

Subject property: See attached site plan

Physical Address: 2301/2307 & 2311 Estero Blvd, 111 & 121 Mango St

STRAP #: 19-46-24-W3-0110D.0010, 19-46-24-W3-0120E.0010, 19-46-24-W3-0120E.0020, 19-46-24-W3-0120E.0030

FLU: Boulevard

Zoning: Commercial Planned Development

Adjacent zoning and land uses:

North:	RESIDENTIAL MULTI-FAMILY (RS) Single-Family Residence
South:	COMMERCIAL RESORT (CR) AND COMMERCIAL BOULEVARD (CB) Commercial
East:	COMMERCIAL PLANNED DEVELOPMENT (CPD) Parking lot
West:	COMMERCIAL BOULEVARD (CB) Commercial

II. BACKGROUND AND ANALYSIS

Background:

Tre Gillette, the applicant for 2301 Estero Blvd, Tuckaway Café, is requesting an amendment to the existing CPD, resolution 12-07, to allow the brewing of craft beer for consumption on premises. The existing approved CPD allows the current restaurant use with eight conditions and 11 deviations. The hours of operation for the restaurant are 6am to 12 midnight. The hours of operation for the indoor restaurant uses are 7am to 12 midnight with outdoor seating area limited to between the hours of 7am and 10 pm, seven days a week.

The restaurant currently holds a 2COP to allow for the sale of alcohol for consumption on premises. The applicant is requesting an amendment to the existing CPD to allow a small brewing operation interior to the existing building. Brewing would be for sale and consumption of alcohol on premises only. The applicant is not requesting any modification from the existing conditions or deviations found in the current CPD. Additional conditions have been recommended by staff and LPA to address impacts of the brewing use.

Analysis:

Tuckaway Café has been on Fort Myers Beach for over 10 years. The property has had a 2COP license to serve beer and wine since 12/13/2017, with no complaint for noise or any other disturbances. The café has passed all state and local inspections. The property is located within a CPD zoning district, which allows the consumption on-premises currently held by the applicant.

The CMBP license is required by the Florida Division of Alcoholic Beverages and Tobacco for manufacturing of malt beverages on vendor premises. The class CMBP permit allows the production and consumption on premises of less than 10,000 kegs annually of malt beverage. This license is issued in connection with a primary consumption on premises vendor license.

The existing conditions and deviations can be found in this staff report under the headings "Conditions of Approval" and "Approved Deviations". No additional deviations are proposed, the new conditions associated with the request for brewing are underlined.

Neighborhood Compatibility:

In review of the aerial photography of the neighborhood, staff found the property is similar to other properties located along that portion of Estero Blvd. The existing building has received deviations for the site which does not meet all locational requirements. The proposed brewing use for consumption on premises would likely have no negative impact on the surrounding area, as the property already has a consumption on premises permit and has had no complaints.

Findings and Conclusions:

LDC Sec. 34-88 sets forth the required findings and conclusions for the approval of a special exception:

- a. *Whether there exist changed or changing condition which make approval of the request appropriate*

The property with the current use and consumption on premises is existing. Any exterior impacts from brewing are addressed by the proposed conditions.

- b. *Whether the request is consistent with the goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.*

The request is consistent with goals, objectives, policies, and intent of the Fort Myers Beach Comprehensive Plan.

- c. *Whether the request meets or exceeds all performance and locational standards for the proposed use*

The request meets performance and location standards if approved

- d. *Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.*

The request will have no impact on protection, conservation, or preservation of environmentally critical areas and natural resources

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

There is no anticipated negative impact or injury to surrounding properties as the business is already in operation and all brewing activities will be indoors.

- f. *Whether a requested use will be in compliance with the applicable general zoning provisions and supplemental regulations set forth in Chapter 34 of the Town's Land Development Code.*

The request will be in compliance with the applicable zoning provisions and supplemental regulations.

III. RECOMMENDATION

Staff finds that the amendment to the CPD meets the criteria set forth in Section 34-88 of the LDC and recommends approval of DCI20210115, with the attached conditions.

At the March 22, 2022 LPA hearing the LPA recommended one change to eliminate existing condition number 8 and amend proposed condition number 9. Those changes are reflected in strikethrough underline format in the conditions below. The LPA recommended **APPROVAL WITH CONDITIONS** for DCI20210115, to allow brewing of beer for consumption on premises.

IV. CONDITIONS OF APPROVAL

1. If the principal building on the subject property (2301 parcel) is removed or replaced for any reason, deviations 3, 4, 5, 6, and 7 will become null and void. Any new buildings replaced on the subject property must comply with required setbacks and any other regulations in effect at the time of permitting.
2. Any changes or fracturing of ownership of the four parcels within the subject property will require, at a minimum, an administrative amendment to the Mast Concept Plan to reflect the change in ownership, which will include recorded unified control documentation.
3. The parking lot must be stabilized in accordance with the provisions in Section 34- 2017 (b){~~1~~}.
4. A local development order is required prior to any expansion of the existing restaurant or any use of the second restaurant bay in accordance with this planned development approval. Approval of this zoning request does not address mitigation of the project's vehicular or pedestrian traffic impacts. Additional conditions consistent with the LDC may be required to obtain a local development order, including payment of additional impact fees.
5. A Traffic Impact Study (TIS) is not warranted and Town Council hereby overrules the Director's decision to require a TIS. The applicant has provided mitigation for traffic impacts by providing the following: additional on-site parking for tenants and customers, landscape buffers, bicycle racks, extension

of the sidewalk along Estero Boulevard in front of the property, elimination of the back out parking in front of the existing building, a reduction in the outdoor dining area to 1,000 square feet, and provision of storm water management improvements. The current restaurant use has demonstrated that it is mainly a pedestrian and bicycle-oriented destination and, as a result, the traffic impacts may actually be less than would be expected from a traffic impact study.

6. Bicycle racks shall be provided for a minimum of 8 bicycles.
7. The hours of operation for business use are 6am to 12 midnight. The hours of operation for indoor restaurant uses are 7am to 12 midnight with outdoor seating area limited to between the hours of 7am and 10 pm, seven days a week.
8. ~~No outdoor entertainment is permitted.~~
8. No amplified music or entertainment is permitted outdoors.
9. All brewing activities shall be contained within the building.
10. No outdoor storage shall be allowed including the use of portable storage units, cargo containers and tractor trailers except as follows: spent grain may be placed outdoors for a period not to exceed 24 hours. Spent grain must be stored in fully enclosed containers that are screened from adjacent properties and Estero Blvd.
11. Must comply with guidelines set forth by the Florida Department of Alcoholic Beverages and Tobacco for the CMBP permit.

V. APPROVED DEVIATIONS (deviations were approved by CPD Resolution12-07)

Deviation #1

Deviation from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8, which requires a Type C/F buffer where proposed commercial uses abut single family residential uses, to allow for an eight (8) foot high solid stockade fence and 14-15 foot Type C buffers without a wall, as indicated on the MCP and landscape plan.

Deviation #2

Deviation from the requirements of LDC Section 10-416(d)(2) and LDC Table 10-8, which requires a 15 foot Type D buffer between parking areas and right-of-way, to allow for a 5 foot Type D buffer between parking areas and right-of-way.

Deviation #3

Deviation from the requirement of LDC Section 34-704(a), which requires buildings to be constructed between five (5) to ten (10) feet from Estero Boulevard, to allow a front setback of 46 feet to accommodate the existing building.

Deviation #4

Deviation from the requirements of LDC Section 34-707(b)(1)a, which requires a minimum 10-foot street setback to allow for a 2.39 foot street setback from Fairweather Lane to accommodate the existing building.

Deviation #5

Deviation from the requirement of LDC Section 34-704(b)(1)b, which requires a minimum 20-foot rear setback, to allow for a two-foot rear setback to accommodate the existing building.

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Deviation #7

Deviation from the requirements of LDC Section 34-995(d), which requires corner buildings to be located no more than 20 feet from the intersection of right-of-way lines, to allow the existing corner building to be located a distance of 48.5 feet from the intersection of Estero Boulevard and Fairweather Lane.

Deviation #8

Deviation from LDC Section 34-2020(d)(2)h, which requires 8 parking spaces per 1,000 square feet of total floor area, including any outdoor seating area (for a total of 47 required parking spaces) to allow for a 30% reduction from the LDC requirement for a total of 34 provided spaces.

Deviation #9

Deviation from LDC Section 34-2017, which requires high turnover parking lots to have a paved surface, to allow for a crushed shell or limerock surface.

Deviation #10

Deviation from LDC Section 34-285 and Table 10-1, which requires 125 feet of connection separation along local roads, to allow for 96± feet of connection separation along Mango Street.

Deviation #11

Deviation from LDC Section 10-289(d) which requires an 8-foot-wide sidewalk along the property's Estero Boulevard frontage, to allow for a 5 foot wide sidewalk.

Staff Report Exhibits:

A – Site Plan

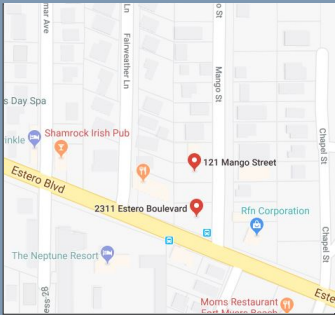
B – Complete Application

C – Letter to Adjacent Property Owners

PREPARED BY:



www.exactaland.com
Toll Free 866-735-1916 • F 866-744-2882



PROPERTY ADDRESS: 2301/2307 ESTERO BOULEVARD AND 2311 ESTERO BOULEVARD AND 111 AND 121 MANGO STREE, FORT MYERS BEACH, FLORIDA 33931

SURVEY NUMBER: 1804.0347

FIELD WORK DATE: 4/18/2018 REVISION DATE(S): (REV.2 4/20/2018) (REV.1 4/20/2018)

18040347
BOUNDARY SURVEY
LEE COUNTY

SURVEYOR'S NOTES:
LOT APPEARS TO BE SERVICED BY CITY WATER AND SEWER
FENCE OWNERSHIP NOT DETERMINED

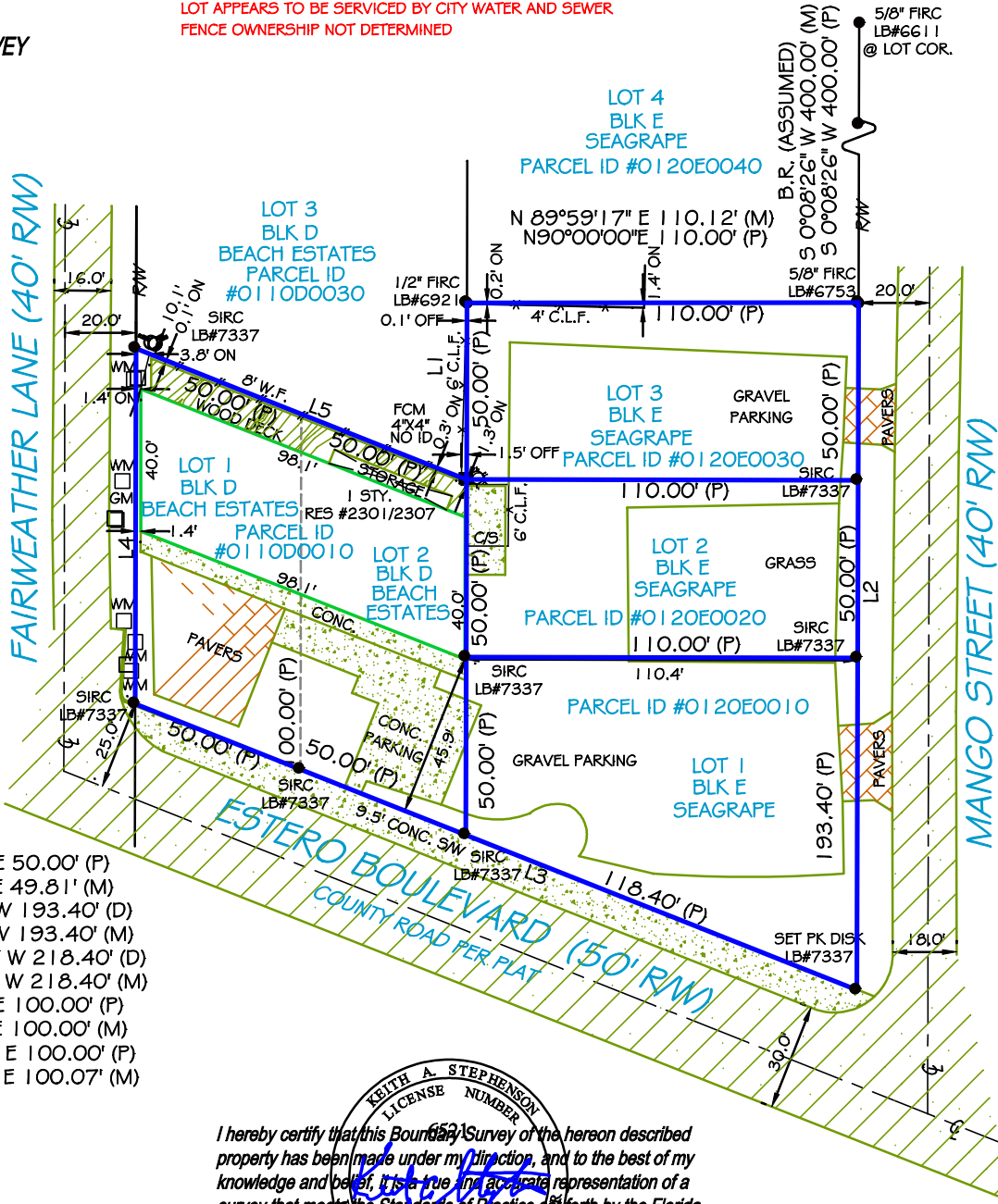


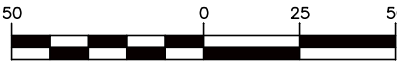
TABLE:

L1	N 0°08'26" E 50.00' (P)
	N 0°09'03" E 49.81' (M)
L2	S 00°00'00" W 193.40' (D)
	S 0°08'26" W 193.40' (M)
L3	N 68°30'00" W 218.40' (D)
	N 68°21'34" W 218.40' (M)
L4	N 00°00'00" E 100.00' (P)
	N 0°08'26" E 100.00' (M)
L5	S 68°30'00" E 100.00' (P)
	S 68°18'45" E 100.07' (M)

I hereby certify that this Boundary Survey of the hereon described property has been made under my direction, and to the best of my knowledge and belief, it is a true and accurate representation of a survey that meets the Standards of Practice set forth by the Florida Board of Professional Surveyors and Mappers in Chapter 5J-17 of the Florida Administrative Code.

KEITH A. STEPHENSON

State of Florida Professional Surveyor and Mapper
License No. 6521



GRAPHIC SCALE (In Feet)
1 inch = 50' ft.



Use of This Survey for Purposes other than Intended, Without Written Verification, will be at the User's Sole Risk and Without Liability to the Surveyor.
Nothing hereon shall be Construed to Give ANY Rights or Benefits to Anyone Other than those Certified.

FLOOD INFORMATION:

BY PERFORMING A SEARCH WITH THE LOCAL GOVERNING MUNICIPALITY OR WWW.FEMA.GOV, THE PROPERTY APPEARS TO BE LOCATED IN ZONE AE (WITH A BASE FLOOD ELEVATION OF 13). THIS PROPERTY WAS FOUND IN THE TOWN OF FORT MYERS BEACH, COMMUNITY NUMBER 120673, DATED 08/28/08.

POINTS OF INTEREST
NONE VISIBLE

CLIENT NUMBER: 18-0004

DATE: 04/20/18

BUYER: CJT Properties, LLC, a Florida limited liability company

SELLER:

CERTIFIED TO: CJT PROPERTIES, LLC, A FLORIDA LIMITED LIABILITY COMPANY; JOHN M. WICKER, P.A.; D/B/A COSTELLO & WICKER, P.A.; DIVITO, HIGHAM & VASTI, P.A.; OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY; BUSEY BANK; SUNSHINE STATE ECONOMIC DEVELOPMENT CORPORATION; U.S. SMALL BUSINESS ADMINISTRATION; ITS SUCCESSORS AND/OR ASSIGNS; AS THEIR INTERESTS MAY APPEAR



AFFILIATE
MEMBERS

EXACTA LAND SURVEYORS, INC.

11940 Fairway Lakes Drive, Suite 1, Ft. Myers, FL 33913
LB# 7337 | P: 866.735.1916 | F: 866.744.2882

Please Remit Payment To: 2132 E9th St | Suite 310, Cleveland, OH 44115

This is page 1 of 2 and is not valid without all pages.

LEGAL DESCRIPTION:

LOTS 1 AND 2, BLOCK D, BEACH ESTATES, ACCORDING TO THE MAP OR PLAT THEREOF, ON FILE AND RECORDED IN PLAT BOOK 6, PAGE 68, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

AND

LOTS 1, 2, AND 3, BLOCK E, OF THAT CERTAIN SUBDIVISION KNOWN AS SEAGRAPE, ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN OFFICE OF THE CLERK OF THE CIRCUIT COURT IN PLAT BOOK 4, PAGE 17, PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

JOB SPECIFIC SURVEYOR NOTES:

THE ASSUMED BEARING REFERENCE OF NORTH 0 DEGREES 08 MINUTES 26 SECONDS EAST IS BASED ON THE EASTERLY RIGHT-OF-WAY LINE OF LOT 1, 2 & 3, BLOCK E, LOCATED WITHIN SEAGRAPE ACCORDING TO THE MAP OR PLAT THEREOF ON FILE AND RECORDED IN OFFICE OF THE CLERK OF THE CIRCUIT COURT IN PLAT BOOK 4, PAGE 17, PUBLIC RECORDS OF LEE COUNTY, FLORIDA

GENERAL SURVEYOR NOTES:

1. The Legal Description used to perform this survey was supplied by others. This survey does not determine or imply ownership.
2. This survey only shows improvements found above ground. Underground footings, utilities and encroachments are not located on this survey map.
3. If there is a septic tank, or drain field shown on this survey, the location is approximate as the location was either shown to Exacta by a third party or it was estimated by metal detection, probing rods, and visual above ground inspection only. No excavation was performed in order to determine the exact and accurate location.
4. This survey is exclusively for the use of the parties to whom it is certified.
5. Additions or deletions to this survey map and report by other than the signing party or parties is prohibited without written consent of the signing party or parties.
6. Dimensions are in feet and decimals thereof.
7. Due to varying construction standards, house dimensions are approximate.
8. Any FEMA flood zone data contained on this survey is for informational purposes only. Research to obtain such data was performed at www.fema.gov.
9. All corners marked as set are at a minimum a 1/2" diameter, 18" iron rebar with a cap stamped LB#7337.
10. If you are reading this survey in an electronic format, the information contained on this document is only valid if this document is electronically signed as specified in Chapter 5J-17.062 (3) of the Florida Administrative Code and Florida Statute 472.025. The Electronic Signature File related to this document is prominently displayed on the invoice for this survey which is sent under separate cover. Manually signed and sealed logs of all survey signature files are kept in the office of the performing surveyor. If this document is in paper format, it is not valid without the signature and original raised seal of a Florida Licensed Surveyor.
11. Unless otherwise noted, an examination of the abstract of title was NOT performed by the signing surveyor to determine which instruments, if any, are affecting this property.
12. The symbols reflected in the legend and on this survey may have been enlarged or reduced for clarity. The symbols have been plotted at the center of the field location, and may not represent the actual shape or size of the feature.
13. Points of Interest (POI's) are selected above-ground improvements which may be in conflict with boundary, building setback or easement lines, as defined by the parameters of this survey. There may be additional POI's which are not shown, not called-out as POI's, or which are otherwise unknown to the surveyor. These POI's may not represent all items of interest to the viewer.
14. Utilities shown on the subject property may or may not indicate the existence of recorded or unrecorded utility easements.
15. The information contained on this survey has been performed exclusively, and is the sole responsibility, of Exacta Surveyors. Additional logo or references to third party firms are for informational purposes only.
16. Pursuant to F.S. 558.0035, an individual employee or agent may not be held individually liable for negligence.
17. House measurements should not be used for new construction or planning. Measurements should be verified prior to such activity.

LEGEND:

LINETYPES: (UNLESS OTHERWISE NOTED)

BOUNDARY LINE	IRON FENCE
STRUCTURE	OVERHEAD LINES
CENTERLINE	WALL OR PARTY WALL
CHAIN-LINK or WIRE FENCE	WOOD FENCE
EASEMENT	VINYL FENCE
EDGE OF WATER	

SURVEYOR'S LEGEND

SURFACE TYPES: (UNLESS OTHERWISE NOTED)

ASPHALT	BRICK or TILE
CONCRETE	COVERED AREA
WATER	WOOD

SYMBOLS: (UNLESS OTHERWISE NOTED)

BENCH MARK	FIRE HYDRANT
CENTERLINE	FIND OR SET MONUMENT
CENTRAL ANGLE or DELTA	GUYWIRE OR ANCHOR
COMMON OWNERSHIP	MANHOLE
CONTROL POINT	TREE
CONCRETE MONUMENT	UTILITY OR LIGHT POLE
CATCH BASIN	WELL
ELEVATION	

(C)	CALCULATED	E.O.W.	EDGE OF WATER
(D)	DEED	ELEV.	ELEVATION
(F)	FIELD	EM	ELECTRIC METER
(M)	MEASURED	ENCL.	ENCLOSURE
(P)	PLAT	ENT.	ENTRANCE
(R)	RECORD	EUB	ELECTRIC UTILITY BOX
(S)	SURVEY	F.F.	FINISHED FLOOR
A.S.B.L.	ACCESSORY SETBACK LINE	F.O.P.	EDGE OF PAVEMENT
A/C	AIR CONDITIONING	F/DH	FOUND DRILL HOLE
B.C.	BLOCK CORNER	FND.	FOUND CONCRETE MONUMENT
B.F.P.	BACKFLOW PREVENTOR	FIP	FOUND IRON PIPE
B.R.	BEARING REFERENCE	FIPC	FOUND IRON PIPE & CAP
B.R.L.	BUILDING RESTRICTION LINE	FIR	FOUND IRON ROD
B/W	BAY/BOX WINDOW	FIRC	FOUND IRON ROD & CAP
BLDG.	BUILDING	FN	FOUND NAIL
BLK.	BLOCK	FN&D	FOUND NAIL AND DISC
BM	BENCHMARK	FND.	FOUND
BSMT.	BASEMENT	FPM	FOUND PARKER-KALON NAIL
C	CURVE	FPM&D	FOUND PK NAIL & DISC
C.B.	CONCRETE BLOCK	FRSPK	FOUND RAILROAD SPIKE
C.L.F.	CHAIN LINK FENCE	GAR.	GARAGE
C.O.	CLEAN OUT	GM	GAS METER
C.V.G.	CONCRETE VALLEY GUTTER	ID.	IDENTIFICATION
C/L	CENTER LINE	ILL.	ILLEGIBLE
C/P	COVERED PORCH	INST.	INSTRUMENT
C/S	CONCRETE SLAB	INT.	INTERSECTION
CATV	CABLE TV RISER	L	LENGTH
CH	CHORD BEARING	LB#	LICENSE # - BUSINESS
CHIM.	CHIMNEY	LS#	LICENSE # - SURVEYOR
CONC.	CONCRETE	M.B.	MAP BOOK
COR.	CORNER	M.E.S.	MITERED END SECTION
CS/W	CONCRETE SIDEWALK	M.F.	METAL FENCE
D.F.	DRAIN FIELD	MES	MITERED END SECTION
D.H.	DRILL HOLE	MH	MANHOLE
D/W	DRIVEWAY	N.R.	NON RADIAL

N.T.S.	NOT TO SCALE
NAV88	NORTH AMERICAN VERTICAL DATUM OF 1988
NGVD29	NATIONAL GEODETIC VERTICAL DATUM OF 1929
O.C.S.	ON CONCRETE SLAB
O.G.	ON GROUND
O.R.B	OFFICIAL RECORD BOOK
O.R.V.	OFFICIAL RECORD VOLUME
O/A	OVERALL
O/S	OFFSET
OFF	OUTSIDE OF SUBJECT PARCEL
OH.	OVERHANG
OHL	OVERHEAD LINES
ON	INSIDE OF SUBJECT PARCEL
P.B.	PLAT BOOK
P.C.	POINT OF CURVATURE
P.C.C.	POINT OF COMPOUND CURVATURE
P.C.P.	PERMANENT CONTROL POINT
P.I.	POINT OF INTERSECTION
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
P.P.	PINCHED PIPE
P.R.C.	POINT OF REVERSE CURVATURE
P.R.M.	PERMANENT REFERENCE MONUMENT
P.T.	POINT OF TANGENCY
P/E	POOL EQUIPMENT
PG.	PAGE
PLS	PROFESSIONAL LAND SURVEYOR
PLT	PLANTER
PSM	PROFESSIONAL SURVEYOR AND MAPPER
R	RADIUS or RADIAL

R.P.	RADIUS POINT
R/W	RIGHT OF WAY
RES.	RESIDENCE
RGE.	RANGE
S.B.L.	SET BACK LINE
S.C.L.	SURVEY CLOSURE LINE
S.T.L.	SURVEY TIE LINE
S.W.	SEAWALL
S/GD	SET GLUE DISC
S/W	SIDEWALK
SCR.	SCREEN
SEC.	SECTION
SEP.	SEPTIC TANK
SEW.	SEWER
SIRC	SET IRON ROD & CAP
SN&D	SET NAIL & DISC
SQ.FT.	SQUARE FEET
STY.	STORY
SV	SEWER VALVE
T.O.B.	TOP OF BANK
TBM	TEMPORARY BENCHMARK
TEL.	TELEPHONE FACILITIES
TWP.	TOWNSHIP
TX	TRANSFORMER
TYP.	TYPICAL
U.R.	UTILITY RISER
UG	UNDERGROUND
UR	UTILITY RISER
V.F.	VINYL FENCE
W.F.	WOODEN FENCE
W/C	WITNESS CORNER
W/F	WATER FILTER
WM	WATER METER/VALVE BOX
WV	WATER VALVE

A.E.	ACCESS EASEMENT
A.N.E.	ANCHOR EASEMENT
C.M.E.	CANAL MAINTENANCE ESMT.
C.U.E.	COUNTY UTILITY ESMT.
D.E.	DRAINAGE EASEMENT
D.U.E.	DRAINAGE AND UTILITY ESMT.
ESMT.	EASEMENT
I.E./E.E.	INGRESS/EGRESS ESMT.
IRR.	IRRIGATION EASEMENT
L.A.E.	LIMITED ACCESS ESMT.
L.B.E.	LANDSCAPE BUFFER ESMT.
L.E.	LANDSCAPE ESMT.
L.M.E.	LAKE OR LANDSCAPE MAINTENANCE EASEMENT
M.E.	MAINTENANCE EASEMENT
P.U.E.	PUBLIC UTILITY EASEMENT
R.O.E.	ROOF OVERHANG ESMT.
S.W.E.	SIDEWALK EASEMENT
S.W.M.E.	STORM WATER MANAGEMENT EASEMENT
T.U.E.	TECHNOLOGICAL UTILITY ESMT.
U.E.	UTILITY EASEMENT

ELECTRONIC SIGNATURE:

In complete accordance with Florida Statute 472.025 and Pursuant to the Electronic Signature Act of 1996 or Florida Statute TITLE XXXIX, Chapter 668, if this document was received electronically via PDF, then it has been lawfully Electronically Signed. Therefore, this survey PDF, if authentic, is completely official and insurable. In order to validate the "Electronic Signature" of PDF surveys sent via www.surveystars.com, you must use a hash calculator. A free hash calculator is available for download at: www.softpedia.com/get/System/File-Management/Hash-Calculator-Kirill.shtml

In order to validate the Electronic Signature of any survey PDF sent via www.surveystars.com:

1. Download the Hash Calculator available at: www.softpedia.com/get/System/File-Management/Hash-Calculator-Kirill.shtml
2. Save the Survey PDF onto your computer from www.surveystars.com or from the email sent from www.surveystars.com.
3. Click the square Browse button in the upper right hand corner of the Hash Calculator to find and select the saved Survey PDF document, and click the COMPUTE button in the lower right hand corner of the Hash Calculator.
4. Compare the 40 digit string of characters in the SHA-1 line to the 40 digit SHA-1 characters for the survey in the job file in www.surveystars.com which is also printed on the invoice for that survey.
5. If the 40 digit string of SHA-1 characters are exactly the same on the invoice (or in the survey file at www.surveystars.com) as they are in the Hash Calculator, then this PDF is authentic. If the 40 digit string of characters does not match exactly, then this PDF has been tampered with and it is not authentic.

PRINTING INSTRUCTIONS:

1. While viewing the survey in Adobe Reader, select the "Print" button under the "File" tab.
2. Select a printer with legal sized paper.
3. Under "Print Range", click select the "All" toggle.
4. Under the "Page Handling" section, select the number of copies that you would like to print.
5. Under the "Page Scaling" selection drop down menu, select "None."
6. Uncheck the "Auto Rotate and Center" checkbox.
7. Check the "Choose Paper size by PDF" checkbox.
8. Click OK to print.
- TO PRINT IN BLACK + WHITE:

1. In the main print screen, choose "Properties".
2. Choose "Quality" from the options.
3. Change from "Auto Color" or "Full Color" to "Gray Scale".

OFFER VALID ONLY FOR:

CJT Properties, LLC, a Florida limited liability company

EXACTA

10% OFF

OF FUTURE SURVEYING SERVICES

ON THIS PROPERTY, UP TO \$500.

*Offer valid for fence stakeouts and additions to the existing structures only. Valid only for the buyer as listed on the first page of this survey for up to one year after survey issuance date. Total discount not to exceed \$500.



COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

This is a first part of a two-part application. Please be sure to fill out this form, which requires general information, as well as the Supplemental Form application specific to action requested for the subject property. Please submit a complete Public Hearing application with required, supplemental information, exhibits and documents to zoningpermits@fmbgov.com. Please do not submit the instructions at the end of the application.

Site Address: 2301 Estero Blvd, Fort Myers Beach 33931
 STRAP Number: 19-46-24-W3-0110D.0010
 Applicant: Tre and Amy Inc. DBA Truckway Cafe Phone: 239-463-5398
 Contact Name: Tre Gillette Phone: 918-406-6495
 Email: tre.gillette@gmail.com Fax: _____
 Current Zoning District: CB
 Future Land Use Map (FLUM) Category: Boulevard
 FLUM Density Range: _____ Platted Overlay: ☒ YES ☐ NO

ACTION REQUESTED

- ☒ Special Exception
☐ Variance
☐ Conventional Rezoning
☐ Planned Development ☐ Commercial ☐ Residential
☐ Master Concept Plan Extension
☐ Appeal of Administrative Action
☐ Vacation of Platted Right-of-way and Easement
☐ Other – cite LDC Section: _____

SUPPLEMENTAL FORM REQUIRED

PH-A
 PH-B
 PH-C
 PH-D
 PH-E
 PH-F
 PH-G
 attach on separate sheet

PART I – General Information

A. Applicant*: Tre Gillette Phone: 918-406-6495
**Applicant must submit a statement under oath that he/she is the authorized representative of the property owner. Please see PART III to complete the appropriate Affidavit form for the type of applicant.*
 Applicant Mailing Address: 435 Donna Blvd
 Email: tre.gillette@gmail.com Fax: _____
 Contact Name: Tre Gillette Phone: 918-406-6495



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

B. Relationship of Applicant to subject property:

- | | | |
|---|---|--|
| ☒ Owner* | ☐ Land Trust* | ☐ Partnership* |
| ☐ Corporation* | ☐ Association* | ☐ Condominium* |
| ☐ Subdivision* | ☐ Timeshare Condo* | ☐ Contract Purchaser* |
| ☐ Authorized Representative* | ☒ Other* (please indicate) <u>LLC</u> | |

*Applicant must submit a statement under oath that he/she is the authorized representative of the property owner.
Please see PART III to complete the appropriate Affidavit form for the type of applicant.

C. Authorized Agent(s). Please list the name of Agent authorized to receive correspondence Agents

Name: Tre Gillette Phone: 918-406-6495
Address: 435 Donora Blvd. Fort Myers Beach, FL 33931
Email: tre.gillette@gmail.com Fax: _____

D. Other Agent(s). Please list the names of all Authorized Agents (attach extra sheets if necessary)

Name: Amy Gillette Phone: 918-289-3985
Address: 435 Donora Blvd. Fort Myers Beach FL 33931
Email: agillette24@gmail.com Fax: _____

Name: _____ Phone: _____
Address: _____
Email: _____ Fax: _____

PART II - Nature of Request

Requested Action (each request requires a separate application)

- ☒ Special Exception
- ☐ Variance from LDC Section _____ - _____
- ☐ Conventional Rezoning from _____ to _____
- ☐ Planned Development
- ☐ Rezoning from _____ to ☐ Commercial PD ☐ Residential PD
- ☐ Amendment. List the project number: _____
- ☐ Extension/reinstatement of Master Concept Plan. List project number: _____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

☐ Appeal of Administrative Action

☐ Vacation

☐ Right-of-Way

☐ Easement

☐ Other. Please Explain: _____

PART III – Waivers

Please indicate any specific submittal items that have been waived by the Director for the request. Attach a copy of the signed approval as Exhibit 3-1. (Use additional sheets if necessary)

Code Section: _____ Description: _____

Code Section: _____ Description: _____

Code Section: _____ Description: _____

PART IV – Property Ownership (Single Owner)

☐ Single Owner (individual or husband and wife)

Name: _____ Phone: _____

Mailing Address: _____

Email: _____ Fax: _____

AFFIDAVIT

APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, _____ swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the Town of Fort Myers Beach in accordance with this application and the Land Development Code;

All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

I have authorized the staff of the Town of Fort Myers Beach Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application; and that
The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Signature

Printed Name

STATE OF _____ COUNTY OF _____

The foregoing instrument was certified and subscribed before me by means of _____ physical

presence OR _____ online notarization, this _____ day of _____, 20____, by

_____, ☐ who is personally known to me OR ☐ who has produced

_____ as identification.

Notary Public Signature

PART V

Property Ownership (Multiple Owners)

☐ Multiple Owners (including corporation, partnership, trust, association, condominium, timeshare, or subdivision)

- ☐ Complete Disclosure of Interest Form (see below)
- ☐ Attach list of property owners as Exhibit 5-1
- ☐ Attach map showing property owners interests as Exhibit 5-2 (for multiple parcels)
- ☐ For condominiums and timeshares see Explanatory Notes Part V - Exhibit 5-3
- ☐ Letter of Opinion - Exhibit 5-4

DISCLOSURE OF OWNERSHIP INTEREST

If the property is owned in fee simple by an INDIVIDUAL, tenancy by the entirety, tenancy in common, or joint tenancy, list all parties with an ownership interest as well as the percentage of such interest.

Name and Address

Percentage Ownership



COMMUNITY DEVELOPMENT DEPARTMENT

APPLICATION for PUBLIC HEARING

If the property is owned by a CORPORATION, list the officers and stockholders and the percentage of stock owned by each.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a TRUSTEE, list the beneficiaries of the trust with percentage of interest.

Name and Address

Percentage of Interest

_____	_____
_____	_____
_____	_____
_____	_____

If the property is in the name of a GENERAL PARTNERSHIP OR LIMITED PARTNERSHIP, list the names of the general and limited partners.

Name and Address

Percentage of Ownership

<u>Tra Gillette 435 Donora Blvd FMB</u>	<u>50%</u>
<u>Amy Gillette 435 Donora Blvd FMB</u>	<u>50%</u>
_____	_____
_____	_____

If there is a CONTRACT FOR PURCHASE, whether contingent on this application or not, and whether a Corporation, Trustee, or Partnership, list the names of the contract purchasers below, including the officers, stockholders, beneficiaries, or partners.

Name, Address and Office

Percentage of Stock

_____	_____
_____	_____
_____	_____
_____	_____



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

Date of Contract: _____

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership, or trust.

Name	Address
_____	_____
_____	_____
_____	_____

For any changes of ownership or changes in contracts for purchase subsequent to the date of the application, but prior to the date of final certificate of compliance, a supplemental disclosure of interest must be filed.

The above is a full disclosure of all parties of interest in this application, to the best of my knowledge and belief.

_____	_____
Signature	Printed Name

AFFIDAVIT

APPLICATION IS SIGNED BY A CORPORATION, LIMITED LIABILITY COMPANY (L.L.C.), LIMITED COMPANY (L.C.), PARTNERSHIP, LIMITED PARTNERSHIP, OR TRUSTEE

I, Tre Gillette (name), as manager (title) of CJT Properties LLC (company), swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

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

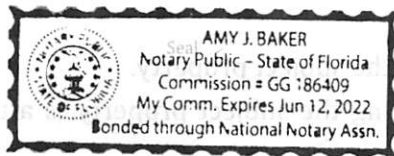


COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

CJT Properties LLC
Name of Entity (corporation, partnership, LLP, LLC, etc)
[Signature]
Signature
Tre Gillette
Typed or Printed Name
Manager
Title
11-17-2021
Date

STATE OF Florida COUNTY OF Lee

The foregoing instrument was certified and subscribed before me by means of ☒ physical presence OR ☐ online notarization, this 17 day of November, 2021, by [Signature] ☐ who is personally known to me OR ☒ who has produced Florida Driver License as identification.



[Signature]
Notary Public Signature

PART VI- Property Information

A. Legal Description:

STRAP: 19-46-24-W3-0110D.0010
Property Address: 2301 Estero Blvd. FMB

Is the subject property within a platted subdivision recorded in the official Plat Books of Lee County? ☐ No. Attach a legible copy of the legal description as Exhibit 6-1.

☒ Yes. Property identified in subdivision: Beach Estates

Book: 6 Page: 68 Unit: Block: D Lot(s): 1+2

B. Boundary Survey:

☒ Attach a Boundary Survey of the property meeting the minimum standards of Chapter 61G17-6 of the Florida Administrative Code. A Boundary Survey must bear the raised seal and original signature of a Professional Surveyor and Mapper licensed to practice Surveying and Mapping by the State of Florida. Attach and label as Exhibit 6-2.



COMMUNITY DEVELOPMENT DEPARTMENT APPLICATION for PUBLIC HEARING

C. Property Dimensions:

Width (please provide an average width if irregular in shape) 164 Ft. feet
Depth (please provide an average width if irregular in shape) 137 Ft feet
Frontage on street: 168 feet. Frontage on waterbody: NA feet
Total land area: 28700 ☐ acres ☒ square feet

D. General Location of Subject Property (from Sky Bridge or Big Carlos Pass Bridge):

Estero Blvd, .9 miles to Sky Bridge

☒ Attach Area Location Map as Exhibit 6-3

E. Property Restrictions (check applicable):

- ☒ There are no deed restrictions and/or covenants on the subject property.
☒ A list of deed restrictions and/or covenants affecting the subject property is attached as Exhibit 6-4.
☒ A narrative statement detailing how the restrictions/covenants may or may not affect the request is attached as Exhibit 6-5.

F. Surrounding Property Owners (these items can be obtained from the Lee County Property Appraiser):

- ☒ Attach a list of surrounding property owners within 500 feet as Exhibit 6-6.
☒ Attach a map showing the surrounding property owners as Exhibit 6-7.
☐ Provide Staff with two (2) sets of surrounding property owner mailing labels.

G. Future Land Use Category (see Future Land Use Map):

- | | |
|--|--|
| ☐ Low Density | ☐ Marina |
| ☐ Mixed Residential | ☐ Recreation |
| ☒ Boulevard | ☐ Wetlands |
| ☐ Pedestrian Commercial | ☐ Platted Overlay |



Town of Fort Myers Beach
Community Development Services - Planning Division
2525 Estero Blvd,
Fort Myers Beach, FL 33966

NOTICE TO PROPERTY OWNERS WITHIN 500 FEET

Notice is hereby given that the Town Council of the Town of Fort Myers Beach will hold a public hearing which will take place at Town Hall, 2525 Estero Boulevard, Fort Myers Beach, Florida, 33931.

TIME: 9:00AM

DATE: MARCH 22, 2022

CASE: DCI20210115

ADDRESS: 2301/2307 ESTERO BLVD

APPLICANT: TRE GILLETTE

REQUEST: THE APPLICANT IS REQUESTING AN AMENDMENT TO THE EXISTING CPD TO ALLOW ON-SITE BREWING OF BEER TO SERVE TO PATRONS.

TOWN CONTACT: DAPHNIE BERCHER daphnieb@fmbgov.com

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence to become a participant in the hearing. At this hearing the **Local Planning Agency** will review the application materials and make a **recommendation**. If any person should desire to have verbatim record of the proceedings, which record indicates the testimony and evidence presented, that person will have to make arrangements on their own.

Copies of the application and staff report are available for viewing at Fort Myers Beach Town Hall. Call 239-765-0202 for more information. Town Hall is open between the hours of 8:30 AM and 4:30 PM. Reasonable accommodations will be made in accordance with the Americans with Disabilities Act. If you need reasonable accommodation, contact Town Hall at 239-765-0202.

1. Requested Motion:

Meeting Date: April 4, 2022

First Reading and Public Hearing for proposed Ordinance 22-05: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING ARTICLE III., DIVISION 3, SECTIONS 34-638 "MINIMUM SETBACKS", TABLE 34-3 "DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS", AND TABLE 34-1 "LAND USES ASSIGNED TO USE GROUPS AND SUB-GROUPS" OF THE TOWN OF FORT MYERS LAND DEVELOPMENT CODE; 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 April 18, 2022 at 9:00 AM

Why the action is necessary:

Town Council directed staff to recommend an approach to address large home square footage.

What the action accomplishes:

The proposed amendment creates limits and new processes to evaluate large homes

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

This will be an ordinance.

4. Submitter of Information:

5. Background:

Ordinance 22-01 was adopted in February 2022 to address large lot setbacks and front setbacks on homes longer than 65 feet on January 10, 2022. At the first Town Council hearing for that Ordinance, the Council requested that staff provide options on size limits for single family and two-family homes. The research revealed that communities handle this issue in a variety of ways; some use a percentage of the lot size, limit the size of the second story or have a set square footage limit. The Council directed staff to propose an amendment to the LDC to create limits and processes for large homes and square footage. This process had to meet a different notification requirement than the setback amendment completed February 7, 2022.

The LPA voted 6-0 to recommend approval of the proposed amendment at their meeting on March 22, 2022.

Attachments:

1. 22-05, Ordinance 22-05 re Amending Dimensional Regulations for Large SFRs(132444811.2)-C
2. TC Memo
3. Exhibit A Strikethrough Underline
4. Exhibit B Randy Lane
5. Exhibit C 7200 square foot first floor
6. Exhibit D e-mail to builders

Financial Impact:

unknown

6. Alternative Action

Recommend alternative language or deny the proposal.

7. Management Recommendations:

Provide recommendations or support for the proposed ordinance.

8. Recommended Approval:

Sarah Propst, Planning & Zoning
Daphnie Bercher, Community Services Administrator
Jason Green, Community Development Services
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 3/28/2022
Approved - 3/29/2022
Approved - 3/29/2022
Approved - 3/31/2022
Approved - 3/31/2022
Final Approval - 3/31/2022

ORDINANCE 22-05

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING ARTICLE III., DIVISION 3, SECTIONS 34-638 “MINIMUM SETBACKS”, TABLE 34-3 “DIMENSIONAL REGULATIONS IN CONVENTIONAL ZONING DISTRICTS”, AND TABLE 34-1 “LAND USES ASSIGNED TO USE GROUPS AND SUB-GROUPS” OF THE TOWN OF FORT MYERS LAND DEVELOPMENT CODE; 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 empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the Town Council desires update the Fort Myers Beach Land Development Code to clarify, improve, and create consistency among sections; and

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on March 22, 2022, at which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted 6-0, to recommend approval of the requested amendment to Article III., Division 3, Sections 34-638 Minimum Setbacks, Table 34-3 Dimensional Regulations in Conventional Zoning Districts and Table 34-1 Land Uses Assigned to Use Groups and Sub-Groups of the Town of Fort Myers Land Development Code (“LDC”), and

WHEREAS, on April 4, 2022, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the proposed edits to the LDC, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

WHEREAS, the Town Council set a second reading of the proposed Ordinance and a public hearing on this matter to be legally advertised and held before the Town Council on April 18, 2022; at which time the Town Council gave full and complete consideration to the request, the recommendation of the LPA, the recommendation of staff, consistency with the Comprehensive Plan and LDC, the documents in the record, and the testimony of all interested persons; and

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

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

Section 2. Article III., Division 3, Sections 34-638 Minimum Setbacks, Table 34-3 Dimensional Regulations in Conventional Zoning Districts and Table 34-1 Land Uses Assigned to Use Groups and Sub-Groups of the Fort Myers Beach Land Development Code is hereby amended to read as follows:

Chapter 34 - ZONING DISTRICTS, DESIGN STANDARDS AND NONCONFORMITIES

ARTICLE III. - ZONING DISTRICT REGULATIONS

Sec. 34-638. - Minimum setbacks.

- (a) *Generally.* Most zoning districts require minimum setbacks between all buildings and structures and the street, the side lot line, the rear lot line, and any waterbody.
 - (1) Setbacks are minimum horizontal distances between a property line and the nearest point of all structures that ensure a minimum area without buildings. Detailed definitions are provided under "setback" in § 34-2 of this LDC.
 - a. Where an unusual lot configuration or orientation makes it unclear which property lines are street, side, or rear lot lines, the director will establish street, side, and rear lot lines for setback purposes after taking into account existing buildings on the same block as well as the intent of this code. Where access is provided by a shared driveway rather than a street, the director may determine that no street setback applies to that lot.
 - b. Once established through this process, the same setbacks will be applied by the director to other lots on that block.
 - (2) There are two types of side setbacks:
 - a. *Side setbacks - waterfront lots.* Larger side setbacks are required for waterfront lots, defined as lots that immediately adjoin a tidally influenced body of water, whether artificial or natural (see definitions in § 34-2 of this LDC).

b. *Side setbacks - non-waterfront lots.* Smaller side setbacks are required for all other lots.

(3) The distinction between street setback lines and build-to lines is explained in § 34-662 of this chapter.

(4) Certain exceptions to minimum setbacks are provided in subsection (d) below.

(b) *Where to find minimum setback dimensions.* Minimum setback dimensions are specified as follows:

(1) *For principal buildings:*

a. For all conventional zoning districts, see Table 34-3.

b. For redevelopment zoning districts, as described for the individual districts in division 5 of this article.

c. For RPD districts, see § 34-943 of this chapter.

d. For CPD districts, see § 34-953 of this chapter.

(2) *For accessory buildings,* see §§ 34-1174 - 34-1176 of this chapter.

(c) *Additional wetlands buffers.* New development must maintain a 75-foot separation between wetlands and buildings or other impervious surfaces, in accordance with Policy 4-C-12 of the Fort Myers Beach Comprehensive Plan.

(1) This requirement does not apply to lawfully existing subdivided lots.

(2) This requirement also does not apply to a previously approved development order to the extent it cannot reasonably be modified to comply with this requirement (see ch. 15 of the Fort Myers Beach Comprehensive Plan for details).

(d) *Exceptions to setbacks and dimensions.* In addition to the following general exceptions to minimum setbacks, commercial buildings that are subject to the commercial design standards may encroach into

certain setbacks as provided in §§ 34-991—34-1010 of this chapter.

(1) *Exceptions to all setbacks.*

- a. *Administrative setback variances.* Under certain limited circumstances, administrative variances can be granted to minimum setbacks as provided in § 34-268 of this chapter.
- b. *Overhangs.* An overhang which is part of a building may be permitted to encroach into any setback as long as the overhang does not extend more than three feet into the setback and does not permit any balcony, porch, or living space located above the overhang to extend into the setback.
- c. *Shutters.* A shutter which is attached to a building may be permitted to encroach one foot into the setbacks.
- d. *Awnings and canopies.*
 1. Awnings and canopies which are attached to a building may be permitted to encroach three feet into the setbacks, as long as their location does not interfere with traffic, ingress and egress, or life safety equipment.
 2. For purposes of this section, awnings and canopies may be attached to a nonconforming building and shall not be considered an extension or enlargement of a nonconformity, as long as the building is properly zoned for its use and the conditions as set forth in this section are met.
- e. *Essential services.* Essential services and essential service equipment shall not be required to meet the minimum

setbacks for the district wherein located (see § 34-1617 of this chapter).

- f. *Two-family dwelling units.* If a two-family dwelling unit is on a lot of sufficient size to allow it to be subdivided into a separate lot under each dwelling unit (see Table 34-3), the side setback regulations in this section shall not be interpreted to forbid such subdivision. Existing two-family buildings that are being subdivided must be separated by not less than one-hour fire resistance.

- g. *Mechanical equipment.* Mechanical equipment such as air conditioners may encroach up to three feet into rear and waterbody setbacks but must meet the same street and side setbacks as the building it serves. These requirements apply to new buildings and to new mechanical equipment but will not apply to replacement of mechanical equipment on existing buildings if the equipment was installed in conformance with prior regulations.

- 1. On lots where the side setbacks are not equal on both sides, mechanical equipment may not be placed on the side of the house with the smaller setback unless the smaller setback is 20 feet wide or more.

- (2) *Exceptions to street setbacks.* Certain structures are exempt from the street setback requirements as follows. See also § 34-1174 of this chapter.

- a. *Build-to lines.* Some zoning districts do not have any street setback requirements but instead have build-to lines, as described in § 34-662 of

this chapter. Awnings, canopies, balconies, bay windows, porches, stoops, arcades, and colonnades may extend forward of the build-to line provided that they comply with the commercial design standards (see § 34-995(e) of this chapter).

- b. *Porches, balconies and stoops.* Porches, balconies and stoops may extend up to ten feet into the street setback zone of residential buildings, provided that:
 - 1. Any walls, screened areas, or railings in the setback zone extend no higher than 42 inches above the floor of the porch, balcony or stoop; and
 - 2. No portion of a porch or balcony and no walls or screened areas may be closer than ten feet to the edge of any street right-of-way or street easement.
 - 3. Porches, balconies and stoops, which extend into the front setback, may not exceed 35 feet in width.
- c. *Mail and newspaper delivery boxes.* Mail and newspaper delivery boxes may be placed in accordance with U.S. Postal Service regulations; however, the support for a mail or newspaper delivery box must be of a suitable breakaway or yielding design, and any mail or newspaper delivery box placed in an unsafe or hazardous location can be removed by the government agency with jurisdiction over the right-of-way at the property owner's expense.
- d. *Bus shelters, bus stop benches and bicycle racks.* Bus shelters, bus stop

benches, and bicycle racks may be located in any district without regard for minimum setbacks, provided the location of the structure is approved by the town manager. No advertising is permitted on bus stop benches.

- e. *Telephone booths.* Telephone booths and pay telephone stations may be located in any zoning district that permits multifamily or commercial uses without regard for minimum setbacks; provided that the location shall be approved by the director.

(3) *Waterbody setbacks.*

- a. *Gulf of Mexico.* Except as provided in this section or elsewhere in this code, no building or structure shall be placed closer to the Gulf of Mexico than set forth in ch. 6, articles III and IV of this LDC, or 50 feet from mean high-water, whichever is the most restrictive. See also special regulations for the EC zoning district in § 34-652 of this chapter and the coastal zone restrictions in § 34-1575 of this chapter.
- b. *Other bodies of water.* Except as provided in this section or elsewhere in this chapter, no building or structure shall be placed closer than 25 feet to a property line adjacent to a canal, bay, or other waterbody. For purposes of measuring setbacks from a canal, bay, or other body of water, the following will also be used:
 - 1. If the body of water is subject to tidal changes, the setback will be measured from the mean high-water line.
 - 2. If the body of water is not subject to tidal changes, the setback will be measured

from the control elevation of the body of water if known, or from the ordinary high-water line if unknown.

3. In addition to the property line setback, if the property has a seawall, a minimum setback of five feet will be measured from the seaward side of the seawall, not including the seawall cap.
 4. If property lines encroach into the waterbody, then no more than five feet shall be applied to the setback measurement.
 5. If plats or legal descriptions of property reference water bodies as boundaries, the mean high-water line shall be utilized, unless otherwise stated in those legal descriptions or survey.
- c. *Exceptions for certain accessory structures.* Certain accessory buildings and structures may be permitted closer to a body of water as follows:
1. *Fences and walls.* See division 17 of this article.
 2. *Shoreline structures.* See § 34-1863 and ch. 26 of this LDC.
 3. *Nonroofed structures.* Swimming pools, tennis courts, patios, decks, and other nonroofed accessory structures or facilities which are not enclosed, except by fence, or which are enclosed on at least three sides with open-mesh screening from a height of 3½ feet above grade

to the top of the enclosure, shall be permitted up to but not closer than:

- (i) Five feet from a seawalled canal or seawalled natural body of water;
- (ii) Ten feet from a nonseawalled artificial body of water; or
- (iii) Twenty-five feet from a nonseawalled natural body of water;

whichever is greater. Enclosures with any two or more sides enclosed by opaque material shall be required to comply with the setbacks set forth in subsections (d)(3)a. and (d)(3)b. of this section.

4. *Roofed structures.*

- (i) Accessory structures with roofs intended to be impervious to weather and which are structurally built as part of the principal structure shall be required to comply with the setbacks set forth in subsections (a) and (b) of this section.
- (ii) Accessory structures with roofs intended to be impervious to weather and which are not structurally built as part of the principal structure may be permitted up to but not closer than 25 feet to a natural body of water,

and ten feet to an artificial body of water.

- (4) *Exceptions for certain nonconforming lots.*
 - a. Certain nonconforming residential lots are subject to the modified side and rear setback requirements that are found in § 34-3273 of this chapter.
 - b. Certain nonconforming mobile home lots in the village zoning district are subject to the modified side and rear setback requirements that are found in § 34-694 of this chapter.
 - c. Certain nonconforming commercial lots are subject to the modified side and rear setback requirements that are found in § 34-3277 of this chapter.
- (5) *Additional street setbacks for single-family and two-family homes exceeding 65 feet in width in the RS, RC and RM zoning district.*
 - a. Single-family and two-family homes exceeding 65 feet in width, shall have additional street setback requirements.
 - 1. No more than 65 feet of the structure may be constructed between the street setback line (25 feet from right of way property line) and 37 feet from the street property line. Any portion of the structure exceeding 65 feet in width shall be set back an additional 12 feet (37 feet from the right of way property line).
 - 2. No more than 80 percent of the portion of the structure between the street setback line (25 feet from right of way property line) and 37 feet from the street property line may be taller than one story

above flood elevation. Any portion of the building behind the 37-foot front setback may be built to the maximum buildable height for that zoning district.

3. The 65 feet of building between the 25-foot street setback and 37 feet from the street property line, must be constructed as at least two separate projections. The front façade may not be a continuous wall without setback changes. See Figure 34-2.

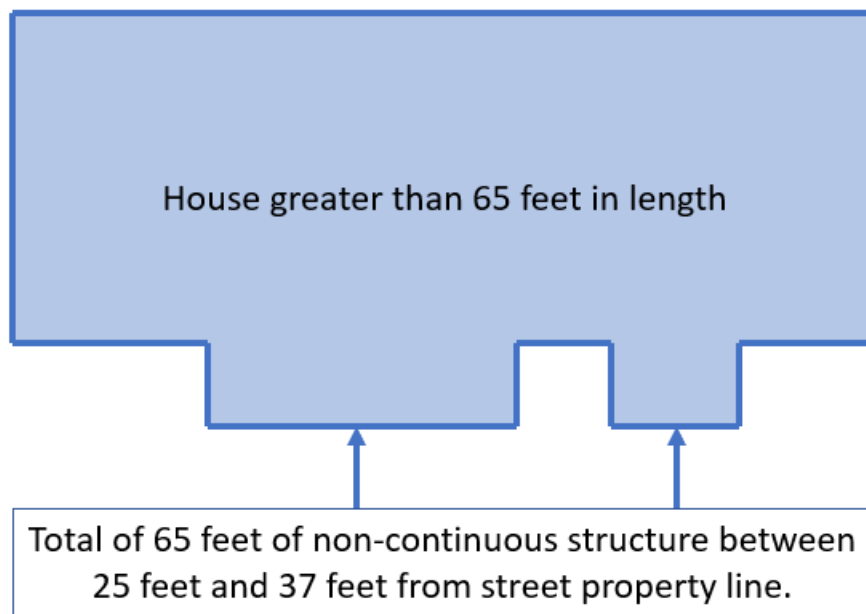


Figure 34-2

- b. *Exemption from additional setbacks for open ground level.* A residential structure greater than 65 feet in width will be exempt from the additional front and side setback requirements found in

Sec. 34-638(d)(5), if the ground-level enclosed or screened area is limited to no more than 30 feet in width, as viewed from the ROW. The enclosed area may extend the full depth of the house but limited in width to 30 feet.

(6) *Side setbacks requirements for single-family and two-family homes in the RS, RC and RM zoning districts.*

a. Single-family and two-family homes must provide side setbacks equal to 15% of the lot width, but not less than 7.5 feet, on each side.

1. Lot width is measured from the property line adjacent to the right of way. Where the property is a corner lot, the front will be the side of the property that is deemed the front based on the setbacks (in relation to where the front setback, rear setback, and side setbacks are applied).

2. The cumulative total of the side setbacks shall be 30% of the parcel width, however, the setbacks do not have to be equal on both sides. No side setback shall be less than 10% of the parcel width or a minimum of 7.5 feet, whichever is greater.

(i) Mechanical equipment may not be located on the side of the house with a smaller setback unless the smaller setback is 20 feet wide or more.

3. The setback measurement shall be rounded to the nearest half-foot.

(7) Building coverage limits. For single-family and two-family homes.

- a. A single-family or two-family home may not exceed 40% building coverage (the horizontal area of the principal and accessory buildings divided by the site's lot area) in the RS and RC zoning district.
- b. Single-family or two-family homes up to 7,500 square feet of building coverage (the horizontal area of the principal and accessory structures) may be approved administratively.
- c. A single-family or two-family home exceeding 7,500 square feet of building coverage may be approved through the special exception process.

Table 34-3— Dimensional Regulations in Conventional Zoning Districts

	street	side - waterfront lot	side - non-waterfront	rear	water body (1)	Gulf of Mexico (2)	area	width	depth	ratio	Percent age/ Max Square Feet (11)		feet	stories
ZONING DISTRICT	Setbacks (see § 34-638 for explanation and exceptions)						Lot size (see § 34-637 for explanations and exceptions)			F.A.R. §34-633	Building Coverage § 34-634 and 34-638(d)(7)	Density § 34-632	Height (see § 34-631)	
RS Residential	25 (9)	15% of lot	15% of lot	20	25	50	7,500	75	100	-	40% / 7,500	(3), (4)	30	3

<i>Single-family</i>		width (8) (10)	width (8) (10)											
<i>RC Residential Conservation</i>	25 (9)	15% of lot width, (10)	15% of lot width (10)	20	25	50	4,000	45	80	-	40% / <u>7,500</u>	(3), (4), (5)	30	3
<i>RM Residential Multifamily</i>	25 (9)	20 (6) (10)	20 (6)	20	25	50	7,500	75	100	1.2	- / <u>7,500</u>	(3), (4), (5)	35	3
<i>CR Commercial Resort</i>	10	20	15	20	25	50	20,000	100	100	1.2	-	(3)	30	3
<i>CM Commercial Marina</i>	20	20	20	20	0	50	20,000	100	100	1.0	-	-	35	3
<i>CO Commercial Office</i>	10	10	7	20	25	50	7,500	75	100	1.2	-	(3), (4), (5)	30	3
<i>Santos</i>	10	7	5	20	25	50	5,000	50	100	0.6	-	(3), (4), (5)	25	3
<i>IN Institutional</i>	20	10	7	20	25	50	7,500	75	100	0.8	-	(3)	35	3
<i>CF Community Facilities</i>	20	15	10	20	25	50	N/A	N/A	N/A	0.1	-	(3)	35	3
<i>BB Bay Beach</i>	— see § 34-651(b) —													
<i>EC Environmentally Critical</i>	20	25	-	25	20	50	(7)	N/A	N/A	.01	-	(3), (7)	25	2
<i>Note (1): An additional wetland buffer is required for new development; see § 34-638(c).</i> <i>Note (2): See § 34-638(d)(3)a.</i> <i>Note (3): Maximum densities are established by the Fort Myers Beach Comprehensive Plan; see § 34-632.</i> <i>Note (4): Accessory apartments are allowed in owner-occupied homes under certain conditions; see §34-1178.</i>														

Note (5): A second dwelling unit or accessory apartment may be allowed on larger lots; for details, see §§ 34-632, 34-1177, and 34-1178.

Note (6): Single-family and two-family homes in the RM zoning district must maintain a side setback of 15% of the lot width, but not less than a 7.5-foot side setback.

Note (7): See § 34-652(e)(3).

Note (8): For all RS lots fronting on Matanzas Street and Matanzas Court, all side setbacks shall be at least 10 feet.

Note (9): Maximum 65 feet of house may be built to the 25-foot front setback. Any house frontage exceeding 65 feet in length shall be built 37 feet from the front property line. See §34-638(d)(5)a.

Note (10): Each side setbacks shall be 15% of the lot width, but not less than 7.5 feet.

Note (11): Single family and two-family houses exceeding 7,500 square feet of horizontal area (per Sec. 34-634) can seek approval through the special exception process.

Table 34-1, Land Uses Assigned to Use Groups and Sub-Groups (p. 1 of 2)

	<i>Residential</i>	<i>Lodging</i>	<i>Office</i>	
<i>Restricted (R)</i>	Community residential home P Dwelling unit, single-family 7,500 square feet horizontal area or less (3) P Home care facility P Dwelling unit, single-family, greater than 7,500 square feet horizontal area (3) SE	Rental of any permitted P dwelling unit to a single family during any one-month period, with a minimum stay of one week (see §§ 34-2391—2410 for rules and exceptions)		<i>Restricted (R)</i>
	AS ACCESSORY USES:	AS ACCESSORY USES:	AS ACCESSORY USES:	
	Accessory apartment (1) SE (see § 34-1177)		Home occupation P (no outside help)	
	Accessory apartment EO (see § 34-1178)		Home occupation A (with outside help)	
	Residential accessory			

	uses P			
	Temporary mobile home TP (§ 34-3046)			
Limited (plus R uses) (L)	Dwelling unit: two-family <u>7500 square feet horizontal area</u> or less (3) (I) P two-family <u>7500 square feet horizontal area</u> or less (3) (I) live/work (see § 34-1773) SE Mobile home or RV park EO (VILLAGE district only, as restricted in § 34-694)	Rental of any permitted P dwelling unit to a single family for periods of one week or longer (see §§ 34-2391—2410 for rules) Bed-and-breakfast inn SE (see § 34-1801)		Limited (plus R uses) (L)
	AS ACCESSORY USES:	AS ACCESSORY USES:	AS ACCESSORY USES:	
	Accessory apartment (I) P (see § 34-1177)	On-premises consumption of AA/ alcoholic beverages (see SE division 5 of article IV)	Administrative office P	
Open (plus R & L uses) (O)	Assisted living facility P (see § 34-1411) Dwelling unit: multiple-family P live/work (see § 34-1773) P Rooming house P Timeshare units P (provided these units qualify as dwelling units and meet residential density	Bed-and-breakfast inn P (see § 34-1801) Hotel/motel (see § 34-1801) P Rental of any permitted P dwelling unit for periods of one day or longer Resorts P Timeshare	Automobile rental SE Health care facility P Offices, general or medical P Personal services P Wholesale establishment SE	Open (plus R & L uses) (O)

	levels in § 34-632)	units P		
	AS ACCESSORY USES:	AS ACCESSORY USES:	AS ACCESSORY USES:	
	Golf course EO Recreation facility: private on-site P private off-site SE Rental of Beach Furniture P when accessory to a multi- family residential building located adjacent to the Gulf of Mexico containing more than fifty dwelling units Subordinate commercial uses P (see § 34-3021)	Resort accessory uses P Personal services P Subordinate commercial uses P (see § 34-3021)	Commercial accessory uses P Drive-through Type 1 (2) P Subordinate commercial uses P (see § 34-3021)	
<i>(1) Provided density complies with the Fort Myers Beach Comprehensive Plan (see § 34-632).</i> <i>(2) Automobile fuel pumps and all drive-throughs (whether Type 1 or Type 2) cannot be constructed within the outer perimeter of the DOWNTOWN zoning district except as provided in § 34-676(f), whether the subject property is classified in the DOWNTOWN zone or in a Commercial Planned Development zone. See also § 34-620(g)(l) regarding the prohibition on restaurant drive-throughs.</i> <i><u>(3) Single family or two-family homes exceeding 7,500 square feet of horizontal area (per sec. 34-634) must be approved through a special exception. See Sec. 34-638(d)(7) for building coverage limitation.</u></i>				

Section 3. The Town Council intends that this Ordinance be made part of the Fort Myers Beach Land Development Code.

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

Section 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 vote, the result was as follows:

DULY PASSED AND ADOPTED on this ____ day of April 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 Ordinance was filed in the Office of the Town Clerk on this ____ day of April 2022.



**Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT**

To: Fort Myers Beach Town Council
From: Sarah Propst, Community Development
Date: April 4, 2022
Re: Single Family and Two-Family Footprint Limit

Background

The Town Council adopted a zoning in progress resolution 21-42, to consider amending the LDC relating to consolidation of multiple lots and the development of houses that are of a larger scale than those in the existing neighborhoods. Ordinance 22-01 was adopted in February to address large lot setbacks and front setbacks on homes longer than 65 feet.

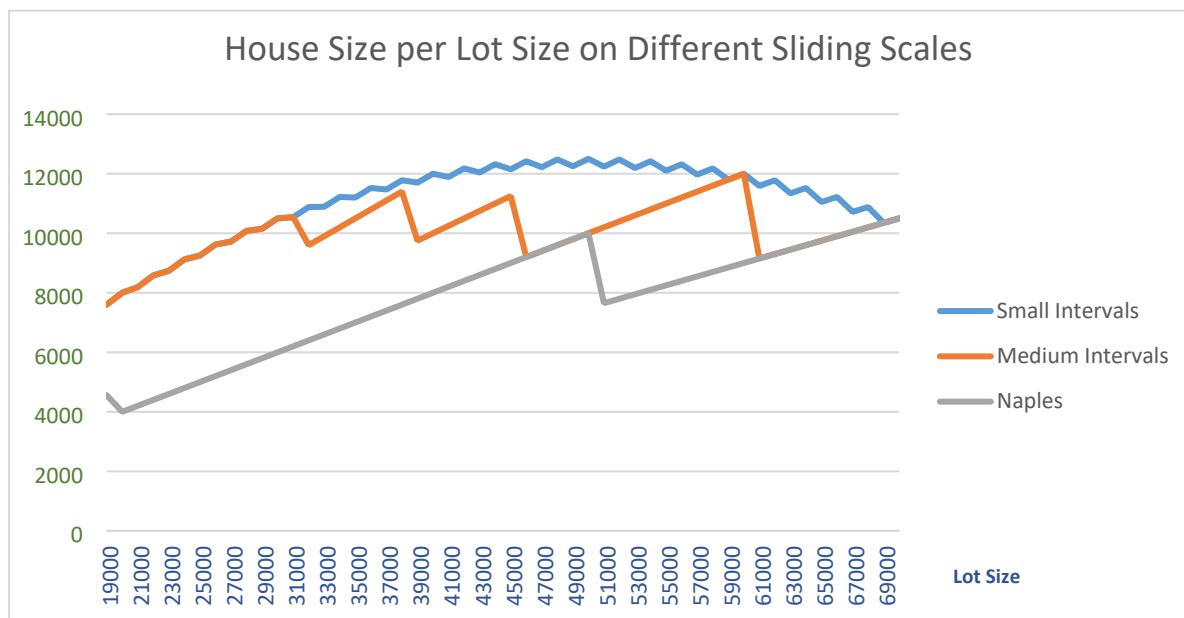
At the first Town Council hearing for the ordinance, on January 10, 2022, the Council requested that staff provide options on size limits for single family and two-family homes. This information was provided to Council at the second hearing. Because a change to the allowable house size could impact the use table, the discussion was remanded back to the LPA for their input and additional time for required advertising.

Review of Other Communities

Through a review of land development codes throughout the country, staff found the following: Palo Alto, California has a limit of 6,000 square feet for single family residential homes. Santa Monica, California limits lot coverage of a two-story house to 35% for the first story and 20 percent for the second story. Atherton, California limits a dwelling to 18% of the lot for lots over one acre. Gunnison County, Colorado limits the size of residential structures that can be reviewed without a public hearing to 5,000 square feet, with outbuildings up to 2,000 square feet for a total of 7,000 square feet of floor area. Naples has a sliding scale for building area based on the size of the lot in certain districts. Staff had concerns with the scale because depending on the lot size, a smaller lot could be allowed more square footage than a larger lot. See the graph on the following page which shows how several scale options affect building size.



The table below, *House Size per Lot Size on Different Sliding Scales*, shows several sliding scale options and how they affect structure size. Staff is concerned that all of the options would allow homes that are well out of scale with the existing neighborhoods. Additionally, the scales do not treat all property sizes equally because there is a cutoff size. For example, a 50,000 square foot lot can have a 10,000 square foot home but a 51,000 square foot lot can only have a 7,650 square foot house.



To give perspective to the sizes of these structures and the property, the home that we have often looked at as an example of the larger homes being built on the island is the home on Randy Lane. That home has a footprint of approximately 10,000 square feet on a .68 acre (approximately 30,000 square foot) parcel. The survey and pictures of this house are included as Exhibit B.

A home plan, from a different community, is attached. This home is on a .53 acre lot and has a total of 7200 square foot footprint, 8,300 under roof. This was provided to give an idea of the size home that would be in the general range of the proposed footprint limit. This home contains 5 bedrooms and 7 bathrooms and a total of 10,200 square feet interior living space.

Proposed Solution

Staff is proposing an administrative building coverage (footprint) maximum of 7,500 square feet. A footprint of 7,500 square feet would allow a two-story home with almost 14,000 square feet of living space. Property owners would have the opportunity to request a larger home

FORT MYERS BEACH ESTERO ISLAND

P. 239-765-0202 | F. 239-765-0909 | 2525 Estero Boulevard, Fort Myers Beach, FL 33931



through the special exception process but would still be limited to 40% coverage in the RS and RC zoning districts. With the 15% side setbacks and the limit of 65 feet of frontage, a home with approximately 7,500 square feet of building coverage could be built on a lot that is 200 feet by 110 feet.

A provision to limit single family and two-family residential footprints would require revisions to two sections of the LDC. Proposed language is attached as Exhibit A. Section 34-638(d)(7) addresses part of the code change to allow administrative approval for houses with 7,500 square feet of coverage and require approval of a special exception for homes with more than 7,500 square feet of coverage. Table 34-1, Land Uses Assigned to use Groups and Sub-Groups (found in Division 2, after Sec. 34-622) is also revised to address this change.

LPA Recommendation

Staff presented this item for discussion to the LPA on March 22, 2022. The LPA voiced support for the proposed language. The LPA requested that staff reach out to single family and two-family home developers to get feedback. On Monday, March 28th an e-mail was sent out to the single family and two-family developers in our permitting system. The e-mail is attached as Exhibit B.

Attachments

- Exhibit A - Strikethrough Underline language
- Exhibit B – Randy Lane Photo and Survey
- Exhibit C – 7,200 SF Footprint House
- Exhibit D - E-mail to single family and two-family developers

Sec. 34-638. - Minimum setbacks.

- (a) *Generally.* Most zoning districts require minimum setbacks between all buildings and structures and the street, the side lot line, the rear lot line, and any waterbody.
 - (1) Setbacks are minimum horizontal distances between a property line and the nearest point of all structures that ensure a minimum area without buildings. Detailed definitions are provided under "setback" in § 34-2 of this LDC.
 - a. Where an unusual lot configuration or orientation makes it unclear which property lines are street, side, or rear lot lines, the director will establish street, side, and rear lot lines for setback purposes after taking into account existing buildings on the same block as well as the intent of this code. Where access is provided by a shared driveway rather than a street, the director may determine that no street setback applies to that lot.
 - b. Once established through this process, the same setbacks will be applied by the director to other lots on that block.
 - (2) There are two types of side setbacks:
 - a. *Side setbacks - waterfront lots.* Larger side setbacks are required for waterfront lots, defined as lots that immediately adjoin a tidally influenced body of water, whether artificial or natural (see definitions in § 34-2 of this LDC).
 - b. *Side setbacks - non-waterfront lots.* Smaller side setbacks are required for all other lots.
 - (3) The distinction between street setback lines and build-to lines is explained in § 34-662 of this chapter.
 - (4) Certain exceptions to minimum setbacks are provided in subsection (d) below.
- (b) *Where to find minimum setback dimensions.* Minimum setback dimensions are specified as follows:
 - (1) *For principal buildings:*
 - a. For all conventional zoning districts, see Table 34-3.
 - b. For redevelopment zoning districts, as described for the individual districts in division 5 of this article.
 - c. For RPD districts, see § 34-943 of this chapter.
 - d. For CPD districts, see § 34-953 of this chapter.
 - (2) *For accessory buildings,* see §§ 34-1174—34-1176 of this chapter.
- (c) *Additional wetlands buffers.* New development must maintain a 75-foot separation between wetlands and buildings or other impervious surfaces, in accordance with Policy 4-C-12 of the Fort Myers Beach Comprehensive Plan.
 - (1) This requirement does not apply to lawfully existing subdivided lots.
 - (2) This requirement also does not apply to a previously approved development order to the extent it cannot reasonably be modified to comply with this requirement (see ch. 15 of the Fort Myers Beach Comprehensive Plan for details).
- (d) *Exceptions to setbacks and dimensions.* In addition to the following general exceptions to minimum setbacks, commercial buildings that are subject to the commercial design standards may encroach into certain setbacks as provided in §§ 34-991—34-1010 of this chapter.
 - (1) *Exceptions to all setbacks.*
 - a. *Administrative setback variances.* Under certain limited circumstances, administrative variances can be granted to minimum setbacks as provided in § 34-268 of this chapter.
 - b. *Overhangs.* An overhang which is part of a building may be permitted to encroach into any setback as long as the overhang does not extend more than three feet into the setback and does not permit any balcony, porch, or living space located above the overhang to extend into the setback.

- c. *Shutters.* A shutter which is attached to a building may be permitted to encroach one foot into the setbacks.
 - d. *Awnings and canopies.*
 - 1. Awnings and canopies which are attached to a building may be permitted to encroach three feet into the setbacks, as long as their location does not interfere with traffic, ingress and egress, or life safety equipment.
 - 2. For purposes of this section, awnings and canopies may be attached to a nonconforming building and shall not be considered an extension or enlargement of a nonconformity, as long as the building is properly zoned for its use and the conditions as set forth in this section are met.
 - e. *Essential services.* Essential services and essential service equipment shall not be required to meet the minimum setbacks for the district wherein located (see § 34-1617 of this chapter).
 - f. *Two-family dwelling units.* If a two-family dwelling unit is on a lot of sufficient size to allow it to be subdivided into a separate lot under each dwelling unit (see Table 34-3), the side setback regulations in this section shall not be interpreted to forbid such subdivision. Existing two-family buildings that are being subdivided must be separated by not less than one-hour fire resistance.
 - g. *Mechanical equipment.* Mechanical equipment such as air conditioners may encroach up to three feet into rear and waterbody setbacks but must meet the same street and side setbacks as the building it serves. These requirements apply to new buildings and to new mechanical equipment but will not apply to replacement of mechanical equipment on existing buildings if the equipment was installed in conformance with prior regulations.
 - 1. On lots where the side setbacks are not equal on both sides, mechanical equipment may not be placed on the side of the house with the smaller setback unless the smaller setback is 20 feet wide or more.
- (2) *Exceptions to street setbacks.* Certain structures are exempt from the street setback requirements as follows. See also § 34-1174 of this chapter.
- a. *Build-to lines.* Some zoning districts do not have any street setback requirements but instead have build-to lines, as described in § 34-662 of this chapter. Awnings, canopies, balconies, bay windows, porches, stoops, arcades, and colonnades may extend forward of the build-to line provided that they comply with the commercial design standards (see § 34-995(e) of this chapter).
 - b. *Porches, balconies and stoops.* Porches, balconies and stoops may extend up to ten feet into the street setback zone of residential buildings, provided that:
 - 1. Any walls, screened areas, or railings in the setback zone extend no higher than 42 inches above the floor of the porch, balcony or stoop; and
 - 2. No portion of a porch or balcony and no walls or screened areas may be closer than ten feet to the edge of any street right-of-way or street easement.
 - 3. Porches, balconies and stoops, which extend into the front setback, may not exceed 35 feet in width.
 - c. *Mail and newspaper delivery boxes.* Mail and newspaper delivery boxes may be placed in accordance with U.S. Postal Service regulations; however, the support for a mail or newspaper delivery box must be of a suitable breakaway or yielding design, and any mail or newspaper delivery box placed in an unsafe or hazardous location can be removed by the government agency with jurisdiction over the right-of-way at the property owner's expense.
 - d. *Bus shelters, bus stop benches and bicycle racks.* Bus shelters, bus stop benches, and bicycle racks may be located in any district without regard for minimum setbacks, provided the location of the structure is approved by the town manager. No advertising is permitted on bus stop benches.
 - e. *Telephone booths.* Telephone booths and pay telephone stations may be located in any zoning district that permits multifamily or commercial uses without regard for minimum setbacks; provided that the location shall be approved by the director.

(3) *Waterbody setbacks.*

- a. *Gulf of Mexico.* Except as provided in this section or elsewhere in this code, no building or structure shall be placed closer to the Gulf of Mexico than set forth in ch. 6, articles III and IV of this LDC, or 50 feet from mean high-water, whichever is the most restrictive. See also special regulations for the EC zoning district in § 34-652 of this chapter and the coastal zone restrictions in § 34-1575 of this chapter.
- b. *Other bodies of water.* Except as provided in this section or elsewhere in this chapter, no building or structure shall be placed closer than 25 feet to a property line adjacent to a canal, bay, or other waterbody. For purposes of measuring setbacks from a canal, bay, or other body of water, the following will also be used:
 1. If the body of water is subject to tidal changes, the setback will be measured from the mean high-water line.
 2. If the body of water is not subject to tidal changes, the setback will be measured from the control elevation of the body of water if known, or from the ordinary high-water line if unknown.
 3. In addition to the property line setback, if the property has a seawall, a minimum setback of five feet will be measured from the seaward side of the seawall, not including the seawall cap.
 4. If property lines encroach into the waterbody, then no more than five feet shall be applied to the setback measurement.
 5. If plats or legal descriptions of property reference water bodies as boundaries, the mean high-water line shall be utilized, unless otherwise stated in those legal descriptions or survey.
- c. *Exceptions for certain accessory structures.* Certain accessory buildings and structures may be permitted closer to a body of water as follows:
 1. *Fences and walls.* See division 17 of this article.
 2. *Shoreline structures.* See § 34-1863 and ch. 26 of this LDC.
 3. *Nonroofed structures.* Swimming pools, tennis courts, patios, decks, and other nonroofed accessory structures or facilities which are not enclosed, except by fence, or which are enclosed on at least three sides with open-mesh screening from a height of 3½ feet above grade to the top of the enclosure, shall be permitted up to but not closer than:
 - (i) Five feet from a seawalled canal or seawalled natural body of water;
 - (ii) Ten feet from a nonseawalled artificial body of water; or
 - (iii) Twenty-five feet from a nonseawalled natural body of water;whichever is greater. Enclosures with any two or more sides enclosed by opaque material shall be required to comply with the setbacks set forth in subsections (d)(3)a. and (d)(3)b. of this section.
 4. *Roofed structures.*
 - (i) Accessory structures with roofs intended to be impervious to weather and which are structurally built as part of the principal structure shall be required to comply with the setbacks set forth in subsections (a) and (b) of this section.
 - (ii) Accessory structures with roofs intended to be impervious to weather and which are not structurally built as part of the principal structure may be permitted up to but not closer than 25 feet to a natural body of water, and ten feet to an artificial body of water.

(4) *Exceptions for certain nonconforming lots.*

- a. Certain nonconforming residential lots are subject to the modified side and rear setback requirements that are found in § 34-3273 of this chapter.

- b. Certain nonconforming mobile home lots in the village zoning district are subject to the modified side and rear setback requirements that are found in § 34-694 of this chapter.
- c. Certain nonconforming commercial lots are subject to the modified side and rear setback requirements that are found in § 34-3277 of this chapter.
- (5) *Additional street setbacks for single-family and two-family homes exceeding 65 feet in width in the RS, RC and RM zoning district.*
 - a. Single-family and two-family homes exceeding 65 feet in width, shall have additional street setback requirements.
 - 1. No more than 65 feet of the structure may be constructed between the street setback line (25 feet from right of way property line) and 37 feet from the street property line. Any portion of the structure exceeding 65 feet in width shall be set back an additional 12 feet (37 feet from the right of way property line).
 - 2. No more than 80 percent of the portion of the structure between the street setback line (25 feet from right of way property line) and 37 feet from the street property line may be taller than one story above flood elevation. Any portion of the building behind the 37-foot front setback may be built to the maximum buildable height for that zoning district.
 - 3. The 65 feet of building between the 25-foot street setback and 37 feet from the street property line, must be constructed as at least two separate projections. The front façade may not be a continuous wall without setback changes. See Figure 34-2.

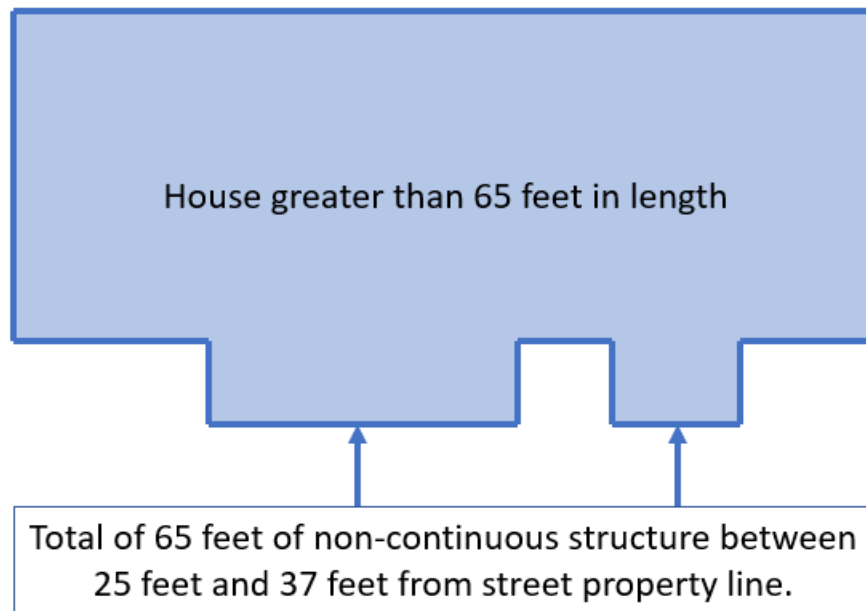


Figure 34-2

- b. *Exemption from additional setbacks for open ground level.* A residential structure greater than 65 feet in width will be exempt from the additional front and side setback requirements found in Sec. 34-638(d)(5), if the ground-level enclosed or screened area is limited to no more than 30 feet in width, as viewed from the ROW. The enclosed area may extend the full depth of the house but limited in width to 30 feet.
- (6) *Side setbacks requirements for single-family and two-family homes in the RS, RC and RM zoning districts.*
 - a. Single-family and two-family homes must provide side setbacks equal to 15% of the lot width, but not less than 7.5 feet, on each side. 4

Exhibit A

1. Lot width is measured from the property line adjacent to the right of way. Where the property is a corner lot, the front will be the side of the property that is deemed the front based on the setbacks (in relation to where the front setback, rear setback, and side setbacks are applied).
2. The cumulative total of the side setbacks shall be 30% of the parcel width, however, the setbacks do not have to be equal on both sides. No side setback shall be less than 10% of the parcel width or a minimum of 7.5 feet, whichever is greater.
 - (i) Mechanical equipment may not be located on the side of the house with a smaller setback unless the smaller setback is 20 feet wide or more.
3. The setback measurement shall be rounded to the nearest half-foot.

(7) Building coverage limits. For single-family and two-family homes.

- a. A single-family or two-family home may not exceed 40% building coverage (the horizontal area of the principal and accessory buildings divided by the site's lot area, Sec. 34-634) in the RS and RC zoning district.
- b. Single-family or two-family homes up to 7,500 square feet of horizontal area, as defined by Sec. 34-634 (of the principal and accessory structures), may be approved administratively.
- c. A single-family or two-family home exceeding 7,500 square feet of horizontal area may be approved through the special exception process.

([Ord. No. 20-08](#), § 2, 4-6-2020)

LEGEND

- = BENCHMARK, SET PK NAIL AND DISK - "LB 6896"
- = FOUND PK NAIL AND DISK - "B.W.L.K LB 4919"
- = SET PK NAIL AND DISK - "D&W LB 6896"
- = FOUND 5/8" REBAR AND CAP - "PLS 4839"
- = FOUND 5/8" REBAR - NO IDENTIFICATION
- = SET 5/8" REBAR AND CAP - "D&W LB 6896"
- (M) = FIELD MEASURED DATA
- (P) = RECORD PLAT DATA
- = SPOT ELEVATION, NAVD 1988
- = WOOD UTILITY POLE
- = GUY ANCHOR
- = WATER METER
- = SANITARY SEWER MANHOLE
- = CATCH BASIN WITH GRATE INLET
- = TELEPHONE PEDESTAL
- = METAL LIGHT POLE

CURVE TABLE					
CURVE	DELTA (M)	RADIUS (M)	ARC (M)	CHORD BEARING (M)	CHORD (M)
C1	8°26'26"	1222.38'	180.04'	N49°29'10"W	179.88'
C2	4°13'17"	1222.13'	90.04'	N55°46'47"W	90.02'
	DELTA (C)	RADIUS (P)	ARC (P)	CHORD BEARING (C)	CHORD (C)
C1	8°26'26"	1222.13'	180.0'	N49°29'10"W	179.88'
C2	4°13'13"	1222.13'	90.02'	N55°48'55"W	90.00'

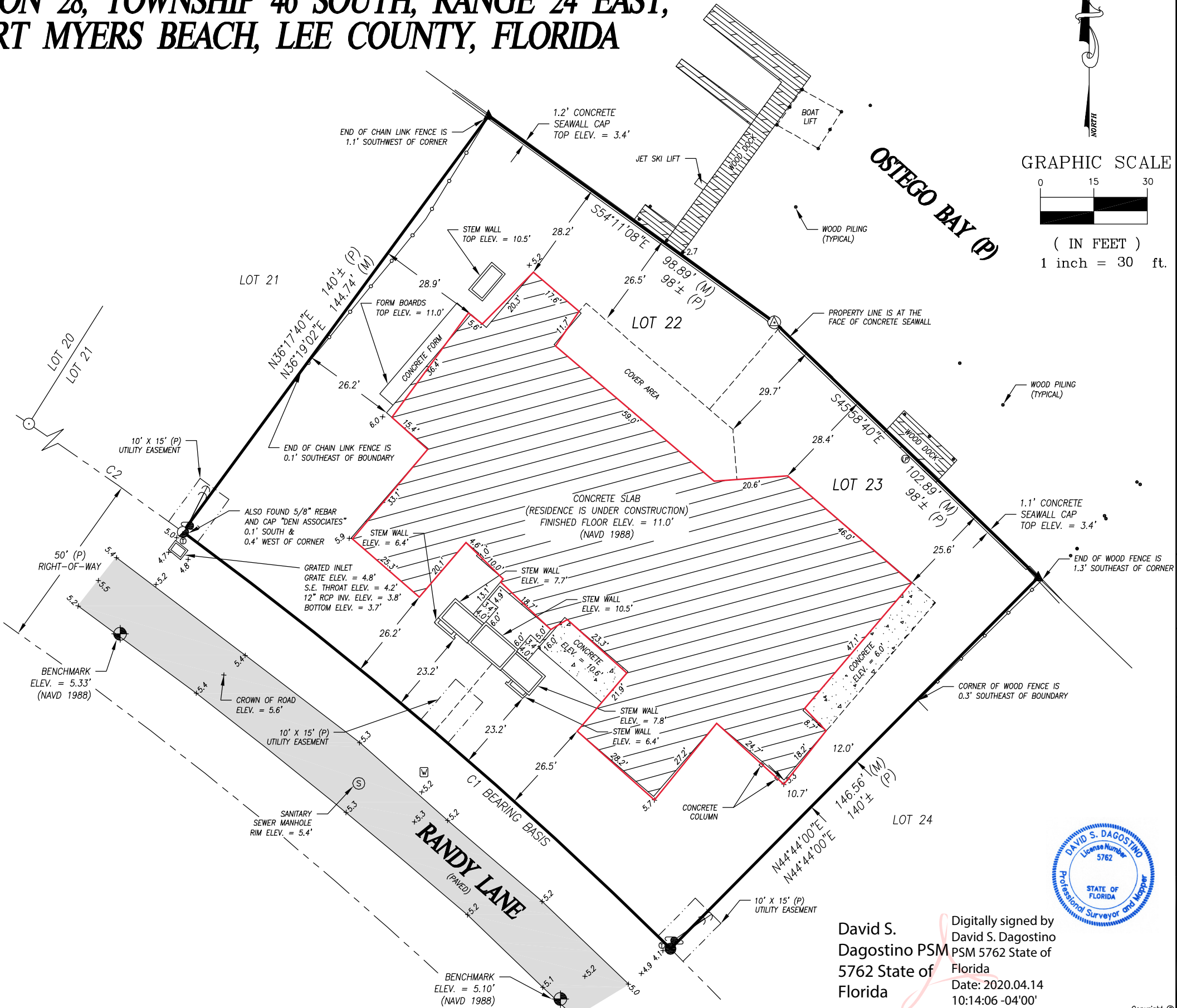
SURVEYOR'S NOTES

- BEARINGS SHOWN HEREON ARE BASED ON THE NORTHEAST RIGHT-OF-WAY OF RANDY LANE, HAVING A CHORD BEARING OF N49°29'10"W, AS CALCULATED FROM THE PLAT OF RECORD.
- NO UNDERGROUND IMPROVEMENTS OR FOUNDATIONS WERE LOCATED UNDER THE SCOPE OF THIS SURVEY.
- THIS PARCEL LIES IN FLOOD ZONE "AE" BASED ON FEMA FLOOD INSURANCE RATE MAP PANEL 12071C0566F, DATED AUGUST 28, 2008. THIS PARCEL HAS A BASE FLOOD ELEVATION OF 10.0' (NAVD 1988).
- BOUNDARY INFORMATION SHOWN HEREON IS BASED UPON THE RECORD PLAT AND LEGAL DESCRIPTION PROVIDED, NO SEARCH OF THE PUBLIC RECORD WAS PERFORMED BY THIS SURVEYOR. THERE MAY BE OTHER SETBACKS AND/OR EASEMENTS NOT KNOWN TO THIS SURVEYOR.
- THE STREET ADDRESS IS:
600 RANDY LANE
FORT MYERS BEACH, FLORIDA 33931
- ELEVATIONS SHOWN HEREON ARE REFERENCED TO THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD 1988). ELEVATIONS ARE BASED UPON TIES TO THE TRIMBLE REAL-TIME KINEMATIC (RTK) GLOBAL POSITIONING SYSTEM (GPS) CONTROL NETWORK.
- PARCEL SURVEYED CONTAINS 0.64 ACRES (28,010 SQ. FT.), MORE OR LESS.

LEGAL DESCRIPTION

LOTS 22 AND 23, GLENVIEW SUBDIVISION, ACCORDING TO THE PLAT THEREOF, RECORDED IN PLAT BOOK 10, PAGE(S) 25, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

MAP OF SLAB AS-BUILT SURVEY
LOTS 22 & 23, GLENVIEW SUBDIVISION
LYING IN SECTION 28, TOWNSHIP 46 SOUTH, RANGE 24 EAST,
CITY OF FORT MYERS BEACH, LEE COUNTY, FLORIDA

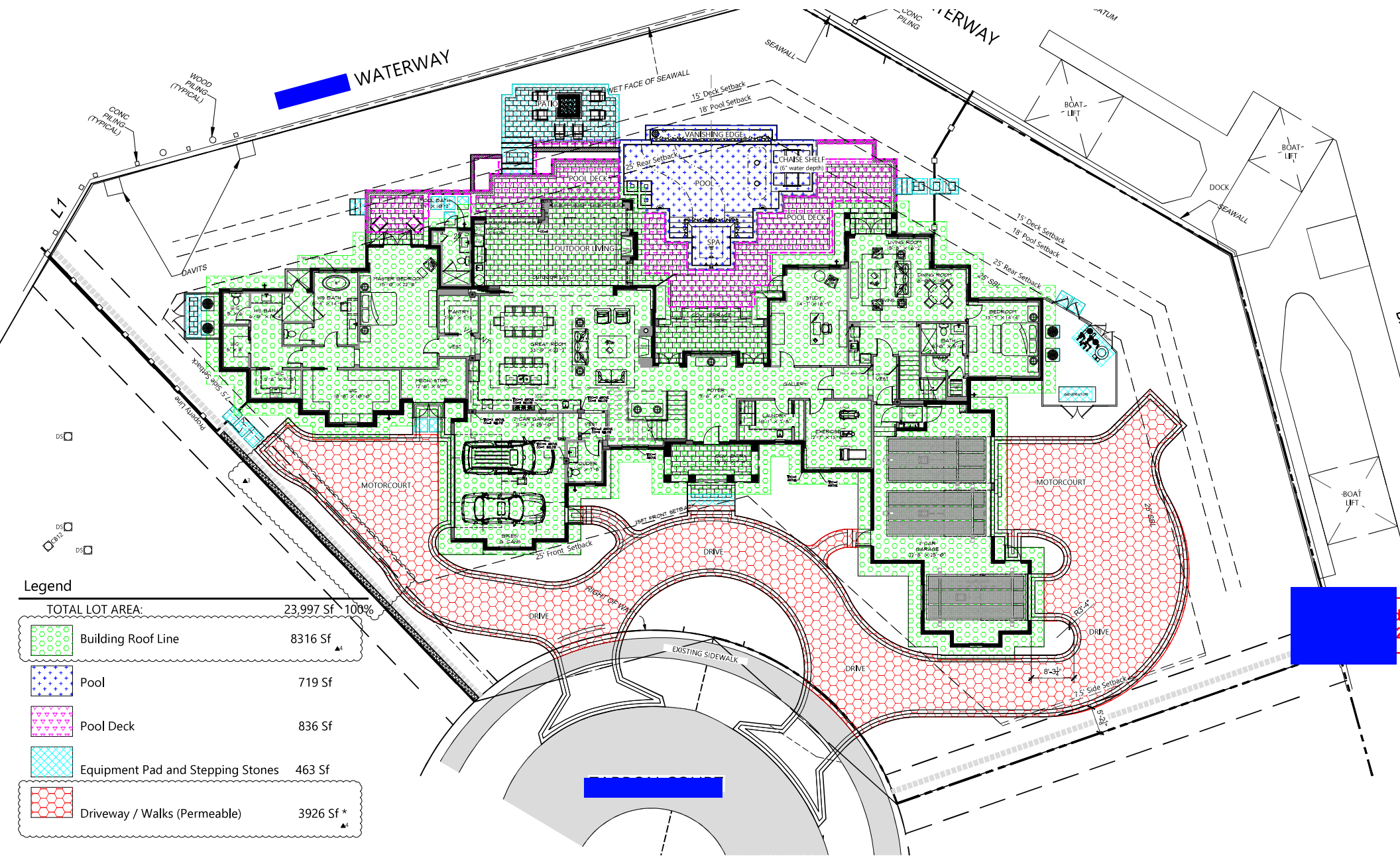


David S. Dagostino PSM 5762 State of Florida
Digitally signed by David S. Dagostino PSM 5762 State of Florida
Date: 2020.04.14 10:14:06 -04'00'





Exhibit C - Approximate 7,500 sf footprint



Total Lot Coverage Proposed 14,260 Sf 59.4%

Max Allowable (67% x 23,997) = 16,077 Sf 67%



From: [Kendra Rosa](#)
To: [Sarah Propst](#); [Jason Green](#); [Daphnie Bercher](#); [Jason Smalley](#)
Subject: RE: Ordinance for Residential Structure Footprint Size
Date: Monday, March 28, 2022 1:35:51 PM
Attachments: [image001.png](#)

Good morning,

On April 4th, the Ft. Myers Beach Town Council will hold a first hearing on a proposal to limit the footprint of single-family and two-family dwellings to 7,500 square feet. The proposed language, in strikethrough/underline format, is attached. If you have questions or input, please contact Sarah Propst at sarah.propst@fmbgov.com. You are also invited to attend the meeting, on April 4th at 9 a.m. in the Town Hall Council Chambers, to provide input.

Kendra Rosa

Zoning Coordinator/Planner I
Town of Fort Myers Beach
239-765-0202 –ext 1311

[Search for a Town of Fort Myers Beach Permit- Through IWORO](#)
[Steps to submit permits online/register for IWORO](#)
[Town of Fort Myers Beach –Land Development municode Code](#)
[Lee County Clerk of courts](#)
[Short Term Rental info](#)
[Lee County Property Appraisal](#)

*******ATTENTION*******

The Building Department is no longer accepting paper submissions. In order for applications to be processed, all documents must be submitted electronically to either the REQUEST PORTAL or through buildingpermits@fmbgov.com. For more information please go to Permitting/E-Servcies page on our website.

**The only document that will be processed in paper will be original Notices of Commencement to be recorded.*



FMBgov.com

1. Requested Motion:

Meeting Date: April 4, 2022

First Reading and Public Hearing for proposed Ordinance 22-09: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 27 "PERSONAL WATERCRAFT AND PARASAILING", SECTION 27-52 "PERSONAL WATERCRAFT VENDOR LICENSE AND PARASAILING ACTIVITY LICENSE APPLICATIONS AND REGULATORY FEES"; 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 A LIMITED EXEMPTION TO THE CAP ON THE NUMBER OF ANNUAL LICENSES; PROVIDING 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. Open the first public hearing and schedule for second reading and final adoption on April 18, 2022 at 9:00 AM

Why the action is necessary:

What the action accomplishes:

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Ordinance

4. Submitter of Information:

5. Background:

The proposed amendment addresses properties with approved uses granted at a public hearing, however a separate section of the code sets a maximum of Town authorized providers.

LPA Member Cereceda moved that the LPA recommend to Town Council that the LPA is not in agreement with the language currently in the proposed Ordinance for the following reasons: that there was no clarity or definition of the impact of open CPDs and that information needs to be delivered to the Town Council prior to their deliberations. Regarding the issue of license dormancy, it should be clarified and more clearly delineated. Seconded by LPA Member Safford. Motion approved 6-0 with LPA Member Vanasse excused.

Attachments:

1. 22-09, Ordinance 22-__ Amending Chapter 27 _Personal Watercraft Parasailing_ of the Town Code re PWVL PAL License Caps Renewals(131473245.3)-C

Financial Impact:

6. Alternative Action

7. Management Recommendations:

8. Recommended Approval:

Patty Prevost, Code Supervisor/STR Coordinator
John R Herin Jr, Town Attorney

Created/Initiated - 3/29/2022
Approved - 3/31/2022

Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Approved - 4/1/2022
Final Approval - 4/1/2022

ORDINANCE NO. 22-09

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 27 “PERSONAL WATERCRAFT AND PARASAILING”, SECTION 27-52 “PERSONAL WATERCRAFT VENDOR LICENSE AND PARASAILING ACTIVITY LICENSE APPLICATIONS AND REGULATORY FEES”; 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 A LIMITED EXEMPTION TO THE CAP ON THE NUMBER OF ANNUAL LICENSES; PROVIDING 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. 27-52. - PWVL and PAL applications; regulatory fees.

- (a) Application for a PWVL or PAL license shall be made to the town manager on a form provided by the town.
- (b) Information to be provided by the applicant shall include, at a minimum:
 - (1) Business location:
 - a. The STRAP number and street address from which the personal watercraft or parasailing activity business will operate;
 - b. If the applicant is not the owner of the property from which the business will be operated, the applicant shall submit a notarized letter of authorization from the owner of the property to the applicant.
 - (2) Ownership information:
 - a. Business owner's name, home address, local address, telephone number;
 - b. Manager's name, home address, local address, telephone number;

- c. Mailing address at which notice of any town information pertinent to any personal watercraft rental or parasailing activity business shall be considered received and binding upon the applicant or PWVL or PAL holder, on the fifth day after first-class mail is posted to said address;
 - d. State sales tax number.
- (3) Business equipment information:
 - a. The number of, and a description of, the vessels to be used by the business, including model, year, manufacturer, color, and Florida vessel registration number(s).
 - b. For PWVL applications only, a description of the chase vessel(s) to be kept at the place of business as well as the Florida vessel registration number(s).
- (4) Proof of insurance: Proof of required insurance.
- (5) Fire report:
 - a. For PWVL applications: Prior to annual license renewal, the fire marshal will submit evidence of a fire safety inspection to the town.
 - b. For PAL applications: Proof of compliance with fire regulations.
- (6) CPR certification: For PWVL applications only, proof of CPR certification of sufficient persons so that there will be one in attendance at all times of operation.
- (7) Annual fee: Pays an annual fee of:
 - a. Sixty dollars for town administrative processing costs; and

- b. Thirty dollars for the right to offer for business, as herein provided, the rental of personal watercraft or the right to operate a parasailing activity business; and
 - c. Eighty dollars for town enforcement costs.
 - d. The fees listed above (Sec. 27-52 (7) (a-c) may be amended from time to time by a resolution of Town Council.
- (c) Misrepresentation. Applicants who misrepresent information provided under this section shall not be issued a PWVL or PAL, or if issued, may suffer suspension or revocation of the PWVL or PAL.
- (d) Cap on number of licenses. PWVLs and PALs shall be issued on an annual basis coinciding with the town's fiscal year, October 1 through September 30.
 - (1) The town manager may issue no more than 11 PWVL licenses outstanding at any point of time; except that a holder of an unexpired CPD development order listing personal watercraft activity as a permitted use is exempt from the cap on PWVLs.
 - (2) The town manager may issue no more than seven PAL licenses outstanding at any point of time; except that a holder of an unexpired CPD development order listing parasailing activity as a permitted use is exempt from the cap on PALs.
 - (3) See § 27-55 of this chapter for regulations on transfers of existing PWVLs and PALs.

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.
- (4) The fee listed above (Sec. 27-53 (a) (3) may be amended from time to time by a resolution of Town Council.

(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 revert back to the Town and shall be available on a first come first serve basis in a manner determined by Town Council.

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:

Meeting Date: April 4, 2022

Authorize the Town Manager to execute a Piggyback contract with Royal Auction Group, Inc's for auctioneering services that was competitively procured by Pinellas County.

Why the action is necessary:

For the Town to use auctioneering services to dispose of surplus items whose repair costs or exhausted service life warrants replacement.

What the action accomplishes:

Provides the Town an auctioneering service to auction off surplus items.

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

Other

4. Submitter of Information:

Chelsea O'Riley, Public Works
Director

5. Background:

Attachments:

1. Fort Myers Beach - March 2022 - Signed by RAG
2. Pinellas County Services Agreement - Nov 2020 - Fully Executed

Financial Impact:

Royal Auction Group Inc. collects 10% premium from the buyer when the items are sold. There is no cost to the Town for these services.

6. Alternative Action

Do not approve piggyback which will require the expenditure of Town resources to solicit bids for these services.

7. Management Recommendations:

Approve the piggyback the contract from Pinellas County.

8. Recommended Approval:

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

Created/Initiated - 3/24/2022
Approved - 3/24/2022
Approved - 3/30/2022
Approved - 3/30/2022
Final Approval - 3/30/2022

**AGREEMENT TO PIGGYBACK A CONTRACT FOR GOODS AND SERVICES
COMPETITIVELY PROCURED BY ANOTHER GOVERNMENTAL ENTITY**

THIS AGREEMENT is made and entered into this ___ day of _____, 2022, by and between the Town of Fort Myers Beach, Florida ("Town"), a Florida municipal corporation whose principal place of business is 2525 Estero Blvd., Ft. Myers Beach, FL 33391 and Royal Auction Group, Inc. a Florida corporation, ("Contractor") whose principal place of business is 7061 Alico Road, Fort Myers, FL 33912 ("Contract"). Town and Contractor may also be referred collectively as the "Parties."

WHEREAS, Contractor and Pinellas County, Florida entered into a competitively procured contract known as Services Agreement, as amended ("County Contract"); and

WHEREAS, Town needs Auctioneering Services for surplus vehicles and equipment ("Auctioneer Services"); and

WHEREAS, the Town desires to have Royal Auction Group, Inc. provide Auctioneer Services; and

WHEREAS, under the Town Code, the purchase of goods and services under a contract awarded by another governmental entity is authorized provided the finance department director makes a written determination that time and expense factors make it financially advantageous for the Town to do so; and

WHEREAS, Contractor is willing to provide Auctioneer Services, subject to the terms and conditions of the County Contract, with the specific modifications set forth herein; and

WHEREAS, the Town's finance department director has determined that piggybacking on the County Contract is financially advantageous to the Town.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and covenants contained herein, the parties do mutually agree as follows:

1. **Incorporation of County Contract.** This Contract incorporates by reference, the County Contract, which is attached as Exhibit A.
2. **Scope of Service.** During the Term of this Contract, Contractor will provide Auctioneering Services to the Town.
3. **Pricing.** The Town will pay Contractor a sum not to exceed the prices set forth in Exhibit "B" of County Contract. This sum will be Contractor's sole compensation for the goods and services provided by Contractor under this Contract.
4. **Contract Term.** The Term of this Contract begins on the date set forth above and ends 68 Months thereafter.

5. Designated Representative. The Town's Public Works Director, or designee, shall be the Town's Designated Representative in matters arising under Contract.

Chelsea O'Riley/ Public Works Director
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL. 33931
(chelsea@fmbgov.com)

6. Modifications to County Contract. Notwithstanding the incorporation of the County Contract into this Contract as referenced, the Parties hereby agree to certain modifications to the County Contract, as follows:

- a. All references in the County Contract to terms such as "County" or "City" will be deemed to refer to the Town. In addition, all references within the County Contract to specific officers/departments/divisions, or to specific locations (such as for delivery of goods/services, receipt of Contractor invoicing, etc.), if not specifically addressed in this Contract, will be deemed to refer to the equivalent Town officers/departments/divisions, and Town locations, as hereafter designated by the Town's Designated Representative.
- b. Town's performance and obligation to pay under the Contract is contingent upon an annual appropriation by the Town Council.
- c. The Contractor (and its subcontractors) have an obligation to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system for all newly hired employees. By executing this Contract, the Contractor certifies that it is registered with, and uses, the E-Verify system for all newly hired employees. The Contractor must obtain an affidavit from its subcontractors in accordance with paragraph (2)(b) of §448.095, Fla. Stat., and maintain a copy of such affidavit for the duration of the Contract.
- d. This section serves as notice to the Contractor regarding the requirements of §448.095, Fla. Stat., specifically sub-paragraph (2)(c)l, and the Town's obligation to terminate the Contract if it has a good faith belief that the Contractor has knowingly violated §448.09(1), Fla. Stat. If terminated for such reason, the Contractor will not be eligible for award of a public contract for at least one year after the date of such termination. The Town reserves the right to order the immediate termination of any contract between the Contractor and a subcontractor performing work on its behalf should the Town develop a good faith belief that the subcontractor has knowingly violated §448.095(1), Fla. Stat.
- e. By execution of this Contract, in accordance with the requirements of §§287.135 and 215.473, Fla. Stat., Contractor certifies that Contractor is not participating in a boycott of Israel. Contractor further certifies that Contractor is not on the Scrutinized Companies that Boycott Israel list, not on the Scrutinized Companies with Activities in Sudan List, and not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has Contractor been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law, the Town will not contract for the provision of goods or services with any

scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of Contract. The Town shall provide notice, in writing, to Contractor of the Town's determination concerning the false certification. Contractor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active Contract term, Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If Contractor does not demonstrate that the Town's determination of false certification was made in error then the Town shall have the right to terminate the contract and seek civil remedies pursuant to §287.135, Fla. Stat., as amended from time to time.

- f. The following provisions are required by §119.0701, Fla. Stat., and may not be amended. Contractor shall keep and maintain public records required by the Town to perform the services required under this Contract. Upon request from Town's custodian of public records, Contractor shall provide Town with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. Contractor shall 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's term and following completion of the Contract if Contractor does not transfer the public records to Town. Upon completion of the Contract, Contractor may transfer, at no cost, to Town all public records in possession of Contractor or keep and maintain public records required by Town to perform the services required under the Contract. If Contractor transfers all public records to Town upon completion of the Contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the Contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Town, upon request from Town's custodian of public records, in a format that is compatible with Town's information technology systems. The failure of Contractor to comply with the provisions set forth in this Section shall constitute a Default and Breach of this Agreement, for which, the Town may terminate the Agreement.

IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (239) 765-0202, FMBPUBLICRECORDS@FMBGOV.COM , 2525 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as below.

TOWN OF FORT MYERS BEACH

CONTRACTOR

Roger T. Hernstadt, Town Manager

By:  _____
Its: GEORGE FRAZEE
C.O.O.

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

SERVICES AGREEMENT

THIS SERVICES AGREEMENT ("Agreement") is made as of this 17 day of November, 2020 ("Effective Date"), by and between Pinellas County, a political subdivision of the State of Florida ("County"), and Royal Auction Group, Inc. ("Contractor") (individually, "Party," collectively, "Parties").

WITNESSETH:

WHEREAS, the County requested proposals pursuant to 190-0537-R ("RFP") for Auctioneer Services, Vehicles and Related Equipment; and

WHEREAS, based upon the County's assessment of Contractor's proposal, the County selected the Contractor to provide the Services as defined herein; and

WHEREAS, Contractor represents that it has the experience and expertise to perform the Services as set forth in this Agreement.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants, agreements, terms and conditions herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree as follows:

1. Definitions.

A. "Agreement" means this Agreement, including all Exhibits, which are expressly incorporated herein by reference and any amendments thereto.

B. "Amounts Owed to County" means any amounts other than Net Sales Proceeds for which Contractor may become liable to County according to the terms of this Agreement, including all exhibits, and including, but not limited to, amounts owed due to lost, stolen, damaged, or destroyed County property.

C. "Contractor's Commission" means the amount resulting from applying the applicable commission percentage set out in Exhibit B, attached hereto and incorporated herein by reference, to an item's actual sale price, regardless of any established MAP.

D. "County Confidential Information" means any County information deemed confidential and/or exempt from Section 119.07, Florida Statutes, and Section 24(a), Article I of the Florida Constitution, or other applicable law, and any other information designated in writing by the County as County Confidential Information.

E. "Contractor Confidential Information" means any Contractor information that constitutes a trade secret pursuant to Chapter 688, Florida Statutes, and is designated in this Agreement or in writing as a trade secret by Contractor (unless otherwise determined to be a public record by applicable Florida law). Notwithstanding the foregoing, Contractor Confidential Information does not include information that: (i) becomes public other than as a result of a disclosure by the County in breach of the Agreement; (ii) becomes available to the County on a non-confidential basis from a source other than Contractor, which is not prohibited from disclosing such information by obligation to Contractor; (iii) is known by the County prior to its receipt from Contractor without any obligation or confidentiality with respect thereto; or (iv) is developed by the County independently of any disclosures made by Contractor.

F. "Contractor Personnel" means all employees of Contractor, and all employees of subcontractors of Contractor, who are providing the Services at any time during the project term.

G. "MAP" or "Minimum Acceptable Price" means an amount designated by the County in its discretion as the minimum amount the Contractor shall use as the gross sale price for the sale of a particular item, for the purposes of calculating payment due to the County.

H. "Net Sale Proceeds" means the amount due to the County for the sale of an item, which shall be calculated by subtracting the Contractor's Commission and any applicable Transportation costs from the Sale Price.

I. "Services" means the work, duties and obligations to be carried out and performed by Contractor under this Agreement, as described throughout this Agreement and as specifically described in Exhibit A ("Statement of Work") attached hereto and incorporated herein by reference. As used in this Agreement, Services shall include any component task, subtask, service, or function inherent, necessary, or a customary part of the Services, but not specifically described in this Agreement, and shall include the provision of all standard day-to-day administrative, overhead, and internal expenses, including labor, materials, equipment, products, office supplies, consumables, tools, postage, computer hardware/software, telephone charges, copier usage, fax charges, travel, lodging, and per diem and all other costs required to perform Services except as otherwise specifically provided in this Agreement.

J. "Sale Price" means either the actual sale price resulting from the auction of an item, or, in the event Contractor sells an item for less than the County-designated MAP without prior consent, the MAP.

K. "Transportation Costs" means Contractor's actual costs, evidenced by such documentation as the County requires, incurred by Contractor for transporting and delivering sale items to Contractor's auction site.

2. **Condition Precedent.** This Agreement, and the Parties' rights and obligations herein, are contingent upon and subject to the Contractor securing and/or providing the performance security, if required in Section 3, and the insurance coverage(s) required in Section 13, within ten (10) days of the Effective Date. No Services shall be performed by the Contractor and the County shall not incur any obligations of any type until Contractor satisfies these conditions. Unless waived in writing by the County, in the event the Contractor fails to satisfy the conditions precedent within the time required herein, the Agreement shall be deemed not to have been entered into and shall be null and void.

3. **Services.**

A. **Services.** The County retains Contractor, and Contractor agrees to provide the Services. All Services shall be performed to the satisfaction of the County and shall be subject to the provisions and terms contained herein and the Exhibits attached hereto.

B. **Services Requiring Prior Approval.** Contractor shall not commence work on any Services requiring prior written authorization in the Statement of Work without approval from Contract Administrator or designee.

C. **Additional Services.** From the Effective Date and for the duration of the project, the County may elect to have Contractor perform Services that are not specifically described in the Statement of Work attached hereto but are related to the Services ("Additional Services"), in which event Contractor shall perform such Additional Services for the compensation specified in the Statement of Work attached hereto. Contractor shall commence performing the applicable Additional Services promptly upon receipt of written approval as provided herein.

D. **De-scoping of Services.** The County reserves the right, in its sole discretion, to de-scope Services upon written notification to the Contractor by the County. Upon issuance and receipt of the notification, the Contractor and the County shall enter into a written amendment reducing the appropriate Services Fee for the impacted Services by a sum equal to the amount associated with the de-scoped Services as defined in the payment schedule in this Agreement, if applicable, or as determined by mutual written consent of both Parties based upon the scope of work performed prior to issuance of notification.

E. **Independent Contractor Status and Compliance with the Immigration Reform and Control Act.** Contractor is and shall remain an independent contractor and is neither agent, employee, partner, nor joint venturer of County. Contractor acknowledges that it is responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 located at 8 U.S.C. 1324, et seq, and regulations relating thereto, as either may be amended from time to time. Failure to comply with the above provisions shall be considered a material breach of the Agreement.

F. **Non-Exclusive Services.** This is a non-exclusive Agreement. During the term of this Agreement, and any extensions thereof, the County reserves the right to contract for another provider for similar services as it determines necessary in its sole discretion.

G. **Project Monitoring.** During the term of the Agreement, Contractor shall cooperate with the County, either directly or through its representatives, in monitoring Contractor's progress and performance of this Agreement.

H. **Provision for Other Agencies.** Contractor agrees to provide the Services described in this Agreement, at the same prices, and equivalent terms and conditions, to other Florida state or local government agencies upon the request of any such agency, and pursuant to an independent agreement executed between Contractor and the requesting agency.

4. Term of Agreement.

A. Initial Term. The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect for eighty-four (84) months, or until termination of the Agreement, whichever occurs first.

B. Term Extension.

The term of this Agreement may not be extended. All Services shall be completed by the expiration of the initial term as defined in 4.A.

5. Compensation and Method of Payment.

A. Basis of Compensation. As Contractor's compensation for Services completed in accordance with this Agreement, Contractor may retain from the Sale Price for each sale conducted the applicable Contractor's Commission, as set out in Exhibit B attached hereto and incorporated herein by reference, together with any applicable Transportation Costs ("Services Fee"). No other amounts may be retained, and the entire remaining balance of each Sale Price shall be paid to the County. It is acknowledged and agreed by Contractor that this compensation constitutes a limitation upon County's obligation to compensate Contractor for such Services required by this Agreement, but does not constitute a limitation upon Contractor's obligation to perform all of the Services required by this Agreement.

B. Method of Payment. Within 12 days of any auction, Contractor shall submit an electronic accounting report, as more fully described in Exhibit A, as well as all documentation required by the County for proof of Transportation Costs, which submittals shall be subject to County's review and approval in accordance with the Dispute Resolution process set out in Exhibit E. No later than 45 days from approval by the County of the electronic accounting report and Transportation Cost amounts, Contractor shall pay the total of all Net Sale Proceeds, by sending payment to County's Finance Department, at the address indicated in Exhibit D, attached hereto and incorporated herein by reference. All payments shall be in accordance with the applicable requirements of Section 218.70 et seq., Florida Statutes, "The Local Government Prompt Payment Act," as well as the County's Invoice Payments Dispute Resolution Process established in accordance with Section 218.76, Florida Statutes.

C. Amounts Owed By Contractor. The County shall invoice Contractor for any Amounts Owed to County, and Contractor shall remit auction proceeds, net of fees and expenses, within 45 days of auction close.

D. Travel Expenses.

The Services Fee includes all travel, lodging and per diem expenses incurred by Contractor in performing the Services.

E. Taxes. Contractor acknowledges that the County is not subject to any state or federal sales, use, transportation and certain excise taxes.

6. Personnel.

A. Qualified Personnel. Contractor agrees that each person performing Services in connection with this Agreement shall have the qualifications and shall fulfill the requirements set forth in this Agreement.

B. Approval and Replacement of Personnel. The County shall have the right to approve all Contractor Personnel assigned to provide the Services, which approval shall not be unreasonably withheld. Prior to commencing the Services, the Contractor shall provide at least ten (10) days written notice of the names and qualifications of the Contractor Personnel assigned to perform Services pursuant to the Agreement. Thereafter, during the term of this Agreement, the Contractor shall promptly and as required by the County provide written notice of the names and qualifications of any additional Contractor Personnel assigned to perform Services. The County, on a reasonable basis, shall have the right to require the removal and replacement of any of the Contractor Personnel performing Services, at any time during the term of the Agreement. The County will notify Contractor in writing in the event the County requires such action. Contractor shall accomplish any such removal within forty-eight (48) hours after receipt of notice from the County and shall promptly replace such person with another person, acceptable to the County, with sufficient knowledge and expertise to perform the Services assigned to such individual in accordance with this Agreement. In situations where individual Contractor Personnel are prohibited by applicable law from providing Services, removal and replacement of such Contractor Personnel shall be immediate and not subject to such forty-eight (48) hour replacement timeframe and the provisions of Section 7. A.1. shall apply if minimum required staffing is not maintained.

7. Termination.

A. Contractor Default Provisions and Remedies of County.

1. Events of Default. Any of the following shall constitute a "Contractor Event of Default" hereunder: (i) Contractor fails to maintain the staffing necessary to perform the Services as required in the Agreement, fails to perform the Services as specified in the Agreement, or fails to complete the Services within the completion dates as specified in the Agreement; (ii) Contractor breaches Section 9 (Confidential Information); (iii) Contractor fails to gain acceptance of a deliverable per Section 15, if applicable, for two (2) consecutive iterations; or (iv) Contractor fails to perform or observe any of the other material provisions of this Agreement.

2. Cure Provisions. Upon the occurrence of a Contractor Event of Default as set out above, the County shall provide written notice of such Contractor Event of Default to Contractor ("Notice to Cure"), and Contractor shall have thirty (30) calendar days after the date of a Notice to Cure to correct, cure, and/or remedy the Contractor Event of Default described in the written notice.

3. Termination for Cause by the County. In the event that Contractor fails to cure a Contractor Event of Default as authorized herein, or upon the occurrence of a Contractor Event of Default as specified in Section 7.A.1.(iii), the County may terminate this Agreement in whole or in part, effective upon receipt by Contractor of written notice of termination pursuant to this provision, and may pursue such remedies at law or in equity as may be available to the County.

B. County Default Provisions and Remedies of Contractor.

1. Events of Default. Any of the following shall constitute a "County Event of Default" hereunder: (i) the County fails to make timely undisputed payments as described in this Agreement; (ii) the County breaches Section 9 (Confidential Information); or (iii) the County fails to perform any of the other material provisions of this Agreement.

2. Cure Provisions. Upon the occurrence of a County Event of Default as set out above, Contractor shall provide written notice of such County Event of Default to the County ("Notice to Cure"), and the County shall have thirty (30) calendar days after the date of a Notice to Cure to correct, cure, and/or remedy the County Event of Default described in the written notice.

3. Termination for Cause by Contractor. In the event the County fails to cure a County Event of Default as authorized herein, Contractor may terminate this Agreement in whole or in part effective on receipt by the County of written notice of termination pursuant to this provision, and may pursue such remedies at law or in equity as may be available to the Contractor.

C. Termination for Convenience. Notwithstanding any other provision herein, the County may terminate this Agreement, without cause, by giving thirty (30) days advance written notice to the Contractor of its election to terminate this Agreement pursuant to this provision.

8. Time is of the Essence. Time is of the essence with respect to all provisions of this Agreement that specify a time for performance, including the Services as described in Exhibits attached hereto; provided, however, that the foregoing shall not be construed to limit a Party's cure period allowed in the Agreement.

9. Confidential Information and Public Records.

A. County Confidential Information. Contractor shall not disclose to any third party County Confidential Information that Contractor, through its Contractor Personnel, has access to or has received from the County pursuant to its performance of Services pursuant to the Agreement, unless approved in writing by the County Contract Manager. All such County Confidential Information will be held in trust and confidence from the date of disclosure by the County, and discussions involving such County Confidential Information shall be limited to Contractor Personnel as is necessary to complete the Services.

B. Contractor Confidential Information. All Contractor Confidential Information received by the County from Contractor will be held in trust and confidence from the date of disclosure by Contractor and discussions involving such Contractor Confidential Information shall be limited to the members of the County's staff and the County's subcontractors who require such information in the performance of this Agreement. The County acknowledges and agrees to respect the copyrights, registrations, trade secrets and other proprietary rights of Contractor in the Contractor Confidential Information during and after the term of the Agreement and shall at all times maintain the confidentiality of the Contractor Confidential Information provided to the County, subject to federal law and the laws of the State of Florida related to public records disclosure. Contractor shall be solely responsible for taking any and all action it deems necessary to protect its Contractor Confidential Information except as provided herein. Contractor acknowledges that the County is subject to public records legislation, including but not limited to Chapter 119, Florida Statutes, and the Florida Rules of Judicial Administration, and that any of the County's obligations under this Section may be superseded by its obligations under any requirements of said laws.

C. Public Records. Contractor acknowledges that information and data it manages as part of the services may be public records in accordance with Chapter 119, Florida Statutes and Pinellas County public records policies. Contractor agrees that prior to providing services it will implement policies and procedures to maintain, produce, secure, and retain public records in accordance with applicable laws, regulations, and County policies, including but not limited to the Section 119.0701, Florida Statutes. Notwithstanding any other provision of this Agreement relating to compensation, the Contractor agrees to charge the County, and/or any third parties requesting public records only such fees allowed by Section 119.07, Florida Statutes, and County policy for locating and producing public records during the term of this Agreement.

If the Contractor has questions regarding the application of Chapter 119, Florida Statutes, to the Contractor's duty to provide public records relating to this contract, contact the Pinellas County Board of County Commissioners, Purchasing and Risk Management Department, Operations Manager custodian of public records at 727-464-3311, purchase@pinellascountv.org, Pinellas County Government, Purchasing and Risk Management Department, Operations Manager, 400 S. Ft. Harrison Ave, 6th Floor, Clearwater, FL 33756.

10. Audit. Contractor shall retain all records relating to this Agreement for a period of at least three (3) years after final payment is made. All records shall be kept in such a way as will permit their inspection pursuant to Chapter 119, Florida Statutes. In addition, County reserves the right to examine and/or audit such records.

11. Compliance with Laws. Contractor shall comply with all applicable federal, state, county and local laws, ordinances, rules and regulations in the performance of its obligations under this Agreement, including the procurement of licenses, permits and certificates where required, and including, but not limited to, laws related to Workers' Compensation, Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Equal Employment Opportunity (EEO), Minority Business Enterprise (MBE), and OSHA, health and the environment, and privacy of medical records or information as applicable to this contract.

12. Public Entities Crimes

Contractor is directed to the Florida Public Entities Crime Act, Section 287.133, Florida Statutes, as well as Florida Statute 287.135 regarding Scrutinized Companies, and represents to County that Contractor is qualified to transact business with public entities in Florida, and to enter into and fully perform this Agreement subject to the provisions state therein. Failure to comply with any of the above provisions shall be considered a material breach of the Agreement.

13. Liability and Insurance.

A. Insurance. Contractor shall comply with the insurance requirements set out in Exhibit C, attached hereto and incorporated herein by reference.

B. Indemnification. Contractor agrees to indemnify, pay the cost of defense, including attorney's fees, and hold harmless the County, its officers, employees and agents from all damages, suits, actions or claims, including reasonable attorney's fees incurred by the County, of any character brought on account of any injuries or damages received or sustained by any person, persons, or property, or in any way relating to or arising from the Agreement; or on account of any act or omission, neglect or misconduct of Contractor; or by, or on account of, any claim or amounts recovered under the Workers' Compensation Law or of any other laws, regulations, ordinance, order or decree; or arising from or by reason of any actual or claimed trademark, patent or copyright infringement or litigation based thereon; except only such injury or damage as shall have been occasioned by the sole negligence of the County.

C. Liability. Neither the County nor Contractor shall make any express or implied agreements, guaranties or representations, or incur any debt, in the name of or on behalf of the other Party. Neither the County nor Contractor shall be obligated by or have any liability under any agreements or representations made by the other that are not expressly authorized hereunder. The County shall have no liability or obligation for any damages to any person or property directly or indirectly arising out of the operation by Contractor of its business, whether caused by Contractor's negligence or willful action or failure to act.

D. Contractor's Taxes. The County will have no liability for any sales, service, value added, use, excise, gross receipts, property, workers' compensation, unemployment compensation, withholding or other taxes, whether levied upon Contractor or Contractor's assets, or upon the County in connection with Services performed or business conducted by Contractor. Payment of all such taxes and liabilities shall be the responsibility of Contractor.

14. County's Funding. The Agreement is not a general obligation of the County. It is understood that neither this Agreement nor any representation by any County employee or officer creates any obligation to appropriate or make monies available for the purpose of the Agreement beyond the fiscal year in which this Agreement is executed. No liability shall be incurred by the County, or any department, beyond the monies budgeted and available for this purpose. If funds are not appropriated by the County for any or all of this Agreement, the County shall not be obligated to pay any sums provided pursuant to this Agreement beyond the portion for which funds are appropriated. The County agrees to promptly notify Contractor in writing of such failure of appropriation, and upon receipt of such notice, this Agreement, and all rights and obligations contained herein, shall terminate without liability or penalty to the County.

15. Acceptance of Services. For all Services deliverables that require County acceptance as provided in the Statement of Work, the County, through the Contract Administrator or designee, will have ten (10) calendar days to review the deliverable(s) after receipt or completion of same by Contractor, and either accept or reject the deliverable(s) by written notice to Royal Auction Group, Inc. If a deliverable is rejected, the written notice from the County will specify any required changes, deficiencies, and/or additions necessary. Contractor shall then have seven (7) calendar days to revise the deliverable(s) to resubmit and/or complete the deliverable(s) for review and approval by the County, who will then have seven (7) calendar days to review and approve, or reject the deliverable(s); provided however, that Contractor shall not be responsible for any delays in the overall project schedule that result from the County's failure to timely approve or reject deliverable(s) as provided herein. Upon final acceptance of the deliverable(s), the County will accept the deliverable(s) in writing.

16. Subcontracting/Assignment.

A. Subcontracting. Contractor is fully responsible for completion of the Services required by this Agreement and for completion of all subcontractor work, if authorized as provided herein. Contractor shall not subcontract any work under this Agreement to any subcontractor other than the subcontractors specified in the proposal and previously approved by the County, without the prior written consent of the County, which shall be determined by the County in its sole discretion.

B. Assignment.

This Agreement, and all rights or obligations hereunder, shall not be assigned, transferred, or delegated in whole or in part, including by acquisition of assets, merger, consolidation, dissolution, operation of law, change in effective control of the Contractor, or any other assignment, transfer, or delegation of rights or obligations, without the prior written consent of the County. The Contractor shall provide written notice to the County within fifteen (15) calendar days of any action or occurrence assigning the Agreement or any rights or obligations hereunder as described in this section. In the event the County does not consent to the assignment, as determined in its sole discretion, the purported assignment in violation of this section shall be null and void, and the County may elect to terminate this Agreement by providing written notice of its election to terminate pursuant to this provision upon fifteen (15) days' notice to Contractor.

17. Survival. The following provisions shall survive the expiration or termination of the Term of this Agreement: 7, 9, 10, 13 20, 23, and any others which by their nature would survive termination.

18. Notices. All notices, authorizations, and requests in connection with this Agreement shall be deemed given on the day they are: (1) deposited in the U.S. mail, postage prepaid, certified or registered, return receipt requested; or (2) sent by air express courier (e.g., Federal Express, Airborne, etc.), charges prepaid, return receipt requested; or (iii) sent via email and addressed as set forth below, which designated person(s) may be amended by either Party by giving written notice to the other Party:

For County:

Attn: Contract Administrator
Fleet Management Operations
9685 Ulmerton Road
Largo, FL 33778

For Contractor:

Attn: George Frazier
Royal Auction Group, Inc.
2738 Gall Boulevard
Zephyrhills, FL 33541

with a copy to:
Division Director
Pinellas County Purchasing and Risk Management Division
400 South Fort Harrison Avenue
Clearwater, FL 33756

19. Conflict of Interest.

A. The Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of the Services required hereunder, and that no person having any such interest shall be employed by Contractor during the agreement term and any extensions.

B. The Contractor shall promptly notify the County in writing of any business association, interest, or other circumstance which constitutes a conflict of interest as provided herein. If the Contractor is in doubt as to whether a prospective business association, interest, or other circumstance constitutes a conflict of interest, the Contractor may identify the prospective business association, interest or circumstance, the nature of work that the Contractor may undertake and request an opinion as to whether the business association, interest or circumstance constitutes a conflict of interest if entered into by the Contractor. The County agrees to notify the Contractor of its opinion within (10) calendar days of receipt of notification by the Contractor, which shall be binding on the Contractor.

20. Right to Ownership. All work created, originated and/or prepared by Contractor in performing Services pursuant to the Agreement, to the extent that such work, products, documentation, materials or information are described in or required by the Services (collectively, the "Work Product") shall be County's property when completed and accepted, if acceptance is required in this Agreement, and the County has made payment of the sums due therefore. The ideas, concepts, know-how or techniques developed during the course of this Agreement by the Contractor or jointly by Contractor and the County may be used by the County without obligation of notice or accounting to the Contractor. Any data, information or other materials furnished by the County for use by Contractor under this Agreement shall remain the sole property of the County.

21. Amendment. This Agreement may be amended by mutual written agreement of the Parties hereto.

22. Severability. The terms and conditions of this Agreement shall be deemed to be severable. Consequently, if any clause, term, or condition hereof shall be held to be illegal or void, such determination shall not affect the validity or legality of the remaining terms and conditions, and notwithstanding any such determination, this Agreement shall continue in full force and effect unless the particular clause, term, or condition held to be illegal or void renders the balance of the Agreement impossible to perform.

23. Applicable Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida (without regard to principles of conflicts of laws). The Parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law and a Party elects to file an action in federal court) courts located in or for Pinellas County, Florida. This choice of venue is intended by the Parties to be mandatory and not permissive in nature, and to preclude the possibility of litigation between the Parties with respect to, or arising out of, this Agreement in any jurisdiction other than that specified in this section. Each Party waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this section.

24. Waiver. No waiver by either Party of any breach or violation of any covenant, term, condition, or provision of this Agreement or of the provisions of any ordinance or law, shall be construed to waive any other term, covenant, condition, provisions, ordinance or law, or of any subsequent breach or violation of the same.

25. Due Authority. Each Party to this Agreement represents and warrants that: (i) it has the full right and authority and has obtained all necessary approvals to enter into this Agreement; (ii) each person executing this Agreement on behalf of the Party is authorized to do so; (iii) this Agreement constitutes a valid and legally binding obligation of the Party, enforceable in accordance with its terms.

26. No Third Party Beneficiaries. The Parties hereto acknowledge and agree that there are no third party beneficiaries to this Agreement. Persons or entities not a party to this Agreement may not claim any benefit from this Agreement or as third party beneficiaries hereto.

27. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties and supersedes all prior negotiations, representations or agreements either oral or written.

(Signature Page Follows)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first written.

PINELLAS COUNTY, FLORIDA

By and through its

Board of County Commissioners

Pat Gerard

By

Pat Gerard, Chair, Board of County Commissioners

Royal Auction Group, Inc.

Name of Firm

By: [Signature]

Signature

Brandon Fox
Print Name

ATTEST:

Ken Burke,

Clerk of the Circuit Court

By: [Signature]

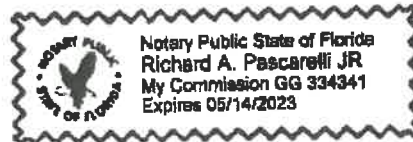
Deputy Clerk



President

Title

[Signature]



APPROVED AS TO FORM

Jacina Haston

JACINA HASTON

OFFICE OF THE COUNTY ATTORNEY

EXHIBIT A- SCOPE OF WORK

1. Minimum Acceptable Price (MAP)

- a. The Seller may, at any time, establish a MAP for any vehicle or related equipment on the inventory listing.
- b. Contractor shall make no sale below any set MAP limit without prior consent.
- c. In an event where an item has been sold below the established MAP limit Contractor, without prior consent, the Contractor shall reimburse the Seller for the difference between sale dollars and MAP.

2. Logistics

- a. The County or Participating Agency (Seller) will provide an inventory listing of vehicles and related equipment to be auctioned at least ten (10) days prior to the auction date.
 - b. The Seller may be required to add, modify or delete items from such list within an agreed upon amount of days prior to the auction day.
 - c. Contractor shall accommodate auctioneering services for all vehicles and related equipment within ten (10) days of notice.
 - d. Contractor shall be responsible for coordinating the transporting and delivery of inventory equipment to Contractor's auction site, including the payment of such.
 - i. Contractor shall then provide the Seller with invoices showing actual transportation costs, which will be deducted from the sales proceeds.
 - e. There shall be no mark up on transportation cost or any pass-through costs.
 - f. Upon receipt of equipment to be auctioned, Contractor shall provide the participating entity with a receipt.
 - g. Contractor shall immediately notify the Seller of any item(s) containing license plates, light bars, logos and seals, or other identification markings. Such items shall not be auctioned. Contractor will hold items until given direction from Pinellas County Fleet Management contract administrator.
 - h. Contractor shall be required to remove any decals and numberings from vehicles/equipment without damaging paint finish.
3. Contractor shall be responsible to provide all personnel, advertising and services necessary to conduct the auction.
4. Contractor shall have a website that includes current data and photos of equipment inventory for each scheduled auction and such website shall have the capability to allow bidders to enter proxy bid on specified items.
5. Contractor shall have the capability to conduct Internet-based auctions whereby all bidding may be conducted remotely to enable auction sales to continue in the event public gatherings are limited in number or prohibited altogether.
- ### 6. Disclaimer of Sales
- a. Contractor shall post or distribute to the audience and on website the terms and conditions, restrictions, and procedures whereby goods will be sold at the auction.
 - b. Contractor shall advise the bidder of known defective conditions of any vehicle and/or vehicle related equipment offered for sale before offering the vehicle and/or vehicle related equipment for auction.
 - c. All sales must be F.O.B place of sale, and are to be sold **AS IS**, and shall disclaim all warranties express or implied, including but not limited to warranty, fitness for a particular purpose, or merchantability. Such disclaimer shall be indicated on each advertisement or announcement. Contractor will be responsible for and will bear or reimburse the Seller for any expenses resulting from Contractor's failure to provide such disclaimer.
 - d. Each auction item shall include a notice of description with description of all relevant details of item, including MAP / Right of Refusal (ROR), year, make, and model, as applicable.

EXHIBIT A- SCOPE OF WORK

7. Contractor shall have electronic access to the department of Motor Vehicles (DMV) database to check registration, Vehicle Identification Number (VIN), etc.
8. Contractor must provide services necessary to register, license, and/or transfer title of vehicle and/or vehicle related equipment to buyer, including the submittal of all required paperwork to DMV within a period of thirty (30) days.
9. Contractor will be responsible for collecting, counting and recording all proceeds and documentation received during the auction, including certification of payment of Florida State Sales tax. Acceptance of bad checks or errors in computation of funds will be at the auctioneer's risk.
10. For verification purposes, all auctions sales must be electronically recorded.
11. Seller will be paid based on recorded sale value. No-shows will be deducted from the total sales; however, deposit paid by the no shows will be recorded as a sale.
12. Facility Requirements
 - a. All auctions shall be conducted at auctioneer's owned or leased facility.
 - b. Contractor's facility shall have the capability to accommodate approximately 100+ vehicles, including large trucks and oversized vehicles and related equipment.
 - c. Contractor's facility shall have the capability to safely store the same amount of additional equipment, at no extra cost to the participating entity, until equipment is sold and picked up by the buyer.
 - d. Contractor may not store vehicles and or related equipment at a location(s) other than the Contractor's owned or leased facility at which the auction takes place.
 - e. Seller shall be provided with access when requested to the secured storage facility as well as, the Contractor's auctions to monitor and record bid prices.
 - f. Contractor shall provide access to all prospective bidders to inspect equipment, at least five (5) business days prior to the auction date, including a two (2) hour inspection period the morning of the auction. The facility shall be open a minimum of eight (8) hours daily during public inspection periods.
13. Damaged or Lost Property
 - a. Contractor will be responsible for replacing or compensating the Seller at fair market value, for any property lost, stolen, damaged or destroyed by a third party or vandalism. The replacement or repair shall be within the time frame specified by the Seller. All replacements or repairs will require prior written approval.
 - b. A third party appraiser valuation shall be the final arbiter in the event of a dispute on replacements or repairs between the Seller and the Contractor. If the Contractor has failed to properly replace or repair damaged vehicles and/or vehicle related equipment, the County will invoice Contractor for all damages incurred.
 - c. The Contractor shall pay the Seller for the appraised value or 3rd party appraiser valuation of the loss/damaged related equipment and such payment shall be made within thirty (30) days of the loss.
14. At point of sale, Contractor shall provide successful bidder with a bill of sale and the related vehicle items.
15. Seller shall not pay any premiums associated with the sale of items at auctions.

EXHIBIT A- SCOPE OF WORK

16. Reports

a. Sold items

- i. After each auction, Contractor shall provide Seller an electronic accounting, in EXCEL format, within twelve (12) business days of the auction for all items sold at auction, including but not limited to:
 1. Date Auction Conducted
 2. Seller Name
 3. Seller established MAP price (as applicable) per item
 4. Description of Product Auctioned, including:
 - a. Year
 - b. Make and Model Number (as applicable);
 - c. Property Control Number, VIN, Serial Number (as applicable);
 5. Selling Price
 6. Transportation Fees
 7. Auctioneers Commission Dollar Amount
 8. Net Price Due to Seller
 9. Signature Attesting to Accuracy of the Gross and Net Pricing and Dated

b. Unsold Items

- i. Contractor shall furnish the Seller with the equipment listing of all unsold vehicles and equipment items within six (6) business days of close of each auction. This equipment listing shall include all submitted bid pricing, if any.

Unless otherwise stated by the Seller, such items shall be held by contractor in a safe and fully secured location until the next auction, at no expense to the Seller.

EXHIBIT B- CONTRACTOR'S COMMISSION

DESCRIPTION	COMMISSION FEE	BUYER'S FEE
Items with sale price less than \$5,000	<u>N/A</u>	<u>10 %</u>
Items with sale price between \$5,001 - \$15,000	<u>N/A</u>	<u>10 %</u>
Items with sale price over \$15,000	<u>N/A</u>	<u>10 %</u>
Cost for removal of decals and lettering: <u>\$0.00</u> /per vehicle		

EXHIBIT C- INSURANCE REQUIREMENTS

1. INSURANCE:

The recommended Proposer must provide a certificate of insurance and endorsement in accordance with the insurance requirements listed below, prior to award of contract. Failure to provide the required insurance within the requested timeframe may result in your submittal being deemed non-responsive.

The contracted Proposer shall obtain and maintain, and require any sub-contractors to obtain and maintain, at all times during its performance of the Agreement, insurance of the types and in the amounts set forth. For projects with a Completed Operations exposure, Contractor shall maintain coverage and provide evidence of insurance for two (2) years beyond final acceptance. All insurance policies shall be from responsible companies duly authorized to do business in the State of Florida and have an AM Best rating of A- VIII or better.

- a) Proposal submittals should include, the Proposer's current Certificate(s) of Insurance in accordance with the insurance requirements listed below. If Proposer does not currently meet insurance requirements, Proposer shall also include verification from their broker or agent that any required insurance not provided at that time of submittal will be in place prior to the award of contract.
- b) If certificate received with bid was a compliant certificate no further action may be necessary. The Certificate(s) of Insurance shall be signed by authorized representatives of the insurance companies shown on the Certificate(s). **A copy of the endorsement(s) referenced in paragraph d) for Additional Insured shall be attached to the certificate(s) referenced in this paragraph.** The certificate must name Pinellas County, a Political Subdivision of the State of Florida **400 S fort Harrison Avenue Clearwater, FL 33756**, as certificate holder. Certificate marked "Sample", or blank certificate holder information are not compliant.
- c) Approval by the County of any Certificate(s) of Insurance does not constitute verification by the County that the insurance requirements have been satisfied or that the insurance policy shown on the Certificate(s) of Insurance is in compliance with the requirements of the Agreement. County reserves the right to require a certified copy of the entire insurance policy, including endorsement(s), at any time during the RFP and/or contract period.
- d) All policies providing liability coverage(s), other than professional liability and workers compensation policies, obtained by the Proposer and any subcontractors to meet the requirements of the Agreement shall be endorsed to include **Pinellas County a Political subdivision of the State of Florida** as an Additional Insured.
- e) If any insurance provided pursuant to the Agreement expires or cancels prior to the completion of the Work, you will be notified by CTrax, the authorized vendor of Pinellas County. Upon notification, renewal Certificate(s) of Insurance and endorsement(s) shall be furnished to Pinellas County Risk Management at InsuranceCerts@pinellascounty.org and to CTrax c/o JDi Data at PinellasSupport@ididata.com by the Proposer or their agent prior to the expiration date.,
 - (1) Proposer shall also notify County within twenty-four (24) hours after receipt, of any notices of expiration, cancellation, nonrenewal or adverse material change in coverage received by said Proposer from its insurer. Notice shall be given by email to Pinellas County Risk Management at InsuranceCerts@pinellascounty.org. Nothing contained herein shall absolve Proposer of this requirement to provide notice.
 - (2) Should the Proposer, at any time, not maintain the insurance coverages required herein, the County may terminate the Agreement, or at its sole discretion may purchase such coverages necessary for the protection of the County and charge the Proposer for such purchase or offset the cost against amounts due to proposer for services completed. The County shall be under no obligation to purchase such insurance, nor shall it be responsible for the coverages purchased or the insurance company or companies used. The decision of the County to purchase such insurance shall in no way be construed to be a waiver of any of its rights under the Agreement.
- f) The County reserves the right, but not the duty, to review and request a copy of the Contractor's most recent annual report or audited financial statement when a self-insured retention (SIR) or deductible exceeds \$50,000.

- g) If subcontracting is allowed under this RFP, the Prime Proposer shall obtain and maintain, at all times during its performance of the Agreement, insurance of the types and in the amounts set forth; and require any subcontractors to obtain and maintain, at all times during its performance of the Agreement, insurance limits as it may apply to the portion of the Work performed by the subcontractor; *but in no event will the insurance limits be less than \$500,000 for Workers' Compensation/Employers' Liability, and \$1,000,000 for General Liability and Auto Liability if required below.*
- (1) All subcontracts between Proposer and its subcontractors shall be in writing and are subject to the County's prior written approval. Further, all subcontracts shall (1) require each subcontractor to be bound to Proposer to the same extent Proposer is bound to the County by the terms of the Contract Documents, as those terms may apply to the portion of the Work to be performed by the subcontractor; (2) provide for the assignment of the subcontracts from Proposer to the County at the election of Owner upon termination of the Contract; (3) provide that County will be an additional indemnified party of the subcontract; (4) provide that the County will be an additional insured on all insurance policies required to be provided by the subcontractor except workers compensation and professional liability; (5) provide waiver of subrogation in favor of the County and other insurance terms and/or conditions as outlined below; (6) assign all warranties directly to the County; and (7) identify the County as an intended third-party beneficiary of the subcontract. Proposer shall make available to each proposed subcontractor, prior to the execution of the subcontract, copies of the Contract Documents to which the subcontractor will be bound by this Section C and identify to the subcontractor any terms and conditions of the proposed subcontract which may be at variance with the Contract Documents.
- h) Each insurance policy and/or certificate shall include the following terms and/or conditions:
- (1) The Named Insured on the Certificate of Insurance and insurance policy must match the entity's name that responded to the solicitation and/or is signing the agreement with the County. If Proposer is a Joint Venture per Section A, titled Joint Venture of this RFP, Certificate of Insurance and Named Insured must show Joint Venture Legal Entity name and the Joint Venture must comply with the requirements of Section C with regard to limits, terms and conditions, including completed operations coverage.
- (2) Companies issuing the insurance policy, or policies, shall have no recourse against County for payment of premiums or assessments for any deductibles which all are at the sole responsibility and risk of Contractor.
- (3) The term "County" or "Pinellas County" shall include all Authorities, Boards, Bureaus, Commissions, Divisions, Departments and Constitutional offices of County and individual members, employees thereof in their official capacities, and/or while acting on behalf of Pinellas County.
- (4) The policy clause "Other Insurance" shall not apply to any insurance coverage currently held by County or any such future coverage, or to County's Self-Insured Retentions of whatever nature.
- (5) All policies shall be written on a primary, non-contributory basis.
- (6) Any Certificate(s) of Insurance evidencing coverage provided by a leasing company for either workers compensation or commercial general liability shall have a list of covered employees certified by the leasing company attached to the Certificate(s) of Insurance. The County shall have the right, but not the obligation to determine that the Proposer is only using employees named on such list to perform work for the County. Should employees not named be utilized by Proposer, the County, at its option may stop work without penalty to the County until proof of coverage or removal of the employee by the contractor occurs, or alternatively find the Proposer to be in default and take such other protective measures as necessary.
- (7) Insurance policies, other than Professional Liability, shall include waivers of subrogation in favor of Pinellas County from both the Proposer and subcontractor(s).
- i) The minimum insurance requirements and limits for this Agreement, which shall remain in effect throughout its duration and for two (2) years beyond final acceptance for projects with a Completed Operations exposure, are as follows:

(1) Workers' Compensation Insurance

Limit	Florida Statutory
Employers' Liability Limits	
Per Employee	\$ 500,000
Per Employee Disease	\$ 500,000
Policy Limit Disease	\$ 500,000

(2) Commercial General Liability Insurance including, but not limited to, Independent Contractor, Contractual Liability Premises/Operations, Products/Completed Operations, and Personal Injury.

Limits

Combined Single Limit Per Occurrence	\$ 1,000,000
Products/Completed Operations Aggregate	\$ 2,000,000
Personal Injury and Advertising Injury	\$ 1,000,000
General Aggregate	\$ 2,000,000

(3) Business Automobile or Trucker's/Garage Liability Insurance covering owned, hired, and non-owned vehicles. If the Proposer does not own any vehicles, then evidence of Hired and Non-owned coverage is sufficient. Coverage shall be on an "occurrence" basis, such insurance to include coverage for loading and unloading hazards, unless Proposer can show that this coverage exists under the Commercial General Liability policy. **Motor Carrier Act endorsement (MCS 90) shall be attached.**

Limit

Combined Single Limit Per Accident	\$ 1,000,000
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(4) Excess or Umbrella Liability Insurance excess of the primary coverage required, in paragraphs (1), (2), and (3) above:

Limits

Each Occurrence	\$ 1,000,000
General Aggregate	\$ 1,000,000

Property Insurance Proposer will be responsible for all damage to its own property, equipment and/or materials.

EXHIBIT D - PAYMENT/INVOICES:

PAYMENT/INVOICES:

SUPPLIER shall submit invoices for payment due as provided herein with such documentation as required by Pinellas County and all payments shall be made in accordance with the requirements of Section 218.70 *et. seq.* Florida Statutes, "The Local Government Prompt Payment Act." Invoices shall be submitted to the address below unless instructed otherwise on the purchase order, or if no purchase order, by the ordering department:

Finance Division Accounts Payable
Pinellas County Board of County Commissioners
P. O. Box 2438
Clearwater, FL 33757

Each invoice shall include, at a minimum, the Supplier's name, contact information and the standard purchase order number. In order to expedite payment, it is recommended the Supplier also include the information shown in below. The County may dispute any payments invoiced by SUPPLIER in accordance with the County's Dispute Resolution Process for Invoiced Payments, established in accordance with Section 218.76, Florida Statutes, and any such disputes shall be resolved in accordance with the County's Dispute Resolution Process.

INVOICE INFORMATION:

Supplier Information	Company name, mailing address, phone number, contact name and email address as provided on the PO
Remit To	Billing address to which you are requesting payment be sent
Invoice Date	Creation date of the invoice
Invoice Number	Company tracking number
Shipping Address	Address where goods and/or services were delivered
Ordering Department	Name of ordering department, including name and phone number of contact person
PO Number	Standard purchase order number
Ship Date	Date the goods/services were sent/provided
Quantity	Quantity of goods or services billed
Description	Description of services or goods delivered
Unit Price	Unit price for the quantity of goods/services delivered
Line Total	Amount due by line item
Invoice Total	Sum of all of the line totals for the invoice

Pinellas County offers a credit card payment process (ePayables) through Bank of America. Pinellas County does not charge vendors to participate in the program; however, there may be a charge by the company that processes your credit card transactions. For more information please visit Pinellas County purchasing website at www.pinellascounty.org/purchase.

**EXHIBIT E - DISPUTE RESOLUTION FOR PINELLAS COUNTY BOARD OF COUNTY COMMISSIONERS IN
MATTERS OF INVOICE PAYMENTS:**

Payment of invoices for work performed for Pinellas County Board of County Commissioners (County) is made, by standard, in arrears in accordance with Section 218.70, et. seq., Florida Statutes, the Local Government Prompt Payment Act.

If a dispute should arise as a result of non-payment of a payment request or invoice the following Dispute Resolution process shall apply:

- A. Pinellas County shall notify a vendor in writing within ten (10) days after receipt of an improper invoice, that the invoice is improper. The notice should indicate what steps the vendor should undertake to correct the invoice and resubmit a proper invoice to the County. The steps taken by the vendor shall be that of initially contacting the requesting department to validate their invoice and receive a sign off from that entity that would indicate that the invoice in question is in keeping with the terms and conditions of the agreement. Once sign off is obtained, the vendor should then resubmit the invoice as a "Corrected Invoice" to the requesting department which will initiate the payment timeline.
 - 1.) Requesting department for this purpose is defined as the County department for whom the work is performed.
 - 2.) Proper invoice for this purpose is defined as an invoice submitted for work performed that meets prior agreed upon terms or conditions to the satisfaction of Pinellas County.
- B. Should a dispute result between the vendor and the County about payment of a payment request or an invoice then the vendor should submit their dissatisfaction in writing to the Requesting Department. Each Requesting Department shall assign a representative who shall act as a "Dispute Manager" to resolve the issue at departmental level.
- C. The Dispute Manager shall first initiate procedures to investigate the dispute and document the steps taken to resolve the issue in accordance with section 218.76 Florida Statutes. Such procedures shall be commenced no later than forty-five (45) days after the date on which the payment request or invoice was received by Pinellas County, and shall not extend beyond sixty (60) days after the date on which the payment request or invoice was received by Pinellas County.
- D. The Dispute Manager should investigate and ascertain that the work, for which the payment request or invoice has been submitted, was performed to Pinellas County's satisfaction and duly accepted by the Proper Authority. Proper Authority for this purpose is defined as the Pinellas County representative who is designated as the approving authority for the work performed in the contractual document. The Dispute Manager shall perform the required investigation and arrive at a solution before or at the sixty (60) days timeframe for resolution of the dispute, per section 218.76, Florida Statutes. The County Administrator or his or her designee shall be the final arbiter in resolving the issue before it becomes a legal matter. The County Administrator or his or her designee will issue their decision in writing.
- E. Pinellas County Dispute Resolution Procedures shall not be subject to Chapter 120 of the Florida Statutes. The procedures shall also, per section 218.76, Florida Statutes, not be intended as an administrative proceeding which would prohibit a court from ruling again on any action resulting from the dispute.
- F. Should the dispute be resolved in the County's favor interest charges begin to accrue fifteen (15) days after the final decision made by the County. Should the dispute be resolved in the vendor's favor the County shall pay interest as of the original date the payment was due.
- G. For any legal action to recover any fees due because of the application of sections 218.70 et. seq., Florida Statutes, an award shall be made to cover court costs and reasonable attorney fees, including those fees incurred as a result of an appeal, to the prevailing party. If it is found that the non-prevailing party held back any payment that was the reason for the dispute without having any reasonable lawful basis or fact to dispute the prevailing party's claim to those amounts.

1. Requested Motion:

Meeting Date: April 4, 2022

Adopt Resolution 22-14 authorizing the Town Manager or designee to apply for and administer a grant from the Florida Department of Emergency Management Mitigation Bureau in the amount of \$536,513.25 for Residential Intrusion Prevention Drainage on Williams Dr.

Why the action is necessary:

To apply for and meet grant requirements.

What the action accomplishes:

Authorizes the Town Manager or his designee, to act as Project Manager, in order to apply for a grant from the Florida Division of Emergency Management Mitigation Bureau and administer the grant on behalf of the Town.

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

Resolution

4. Submitter of Information:

5. Background:

The Town of Fort Myers Beach has an opportunity to apply for grant funding from the Division of Emergency Management Mitigation Bureau for Residential Intrusion Prevention, Drainage, Phase 2.

Attachments:

1. 22-14 Grant Application REsidential Stormwater Intrusion Prevention Project Williams
2. 4337-196-A-Town of Fort Myers Beach-For Subreceptient Signature (3-21-22) (002)

Financial Impact:

6. Alternative Action

7. Management Recommendations:

Approve

8. Recommended Approval:

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

Created/Initiated - 3/28/2022
Approved - 3/28/2022
Approved - 3/30/2022
Approved - 3/30/2022
Final Approval - 3/30/2022

RESOLUTION NO. 22-14

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA AUTHORIZING THE TOWN MANAGER OR THE TOWN MANAGER'S DESIGNEE TO APPLY FOR AND ADMINISTER A GRANT FROM THE STATE OF FLORIDA DIVISION OF EMERGENCY MANAGEMENT MITIGATION BUREAU FOR FUNDS IN THE AMOUNT OF \$536,513.25 FOR RESIDENTIAL STORMWATER INTRUSION PREVENTION, DRAINAGE PHASE 1; AUTHORIZING THE TOWN MANAGER OR HIS DESIGNEE TO ACCEPT THE GRANTS FUNDING AND EXECUTE RELATED DOCUMENTS; 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 State of Florida Division of Emergency Management Mitigation Bureau for stormwater improvements; and

WHEREAS, the Town currently has plans to allocate funds for the drainage improvement of Residential Intrusion Prevention, Drainage Phase 1 Project ("Project"), and the Town desires to apply for a grant in the amount of \$536,513.25 to provide the Town with funds to complete the Project; and

WHEREAS, to apply for the grant, a resolution is required as part of the application that authorizes the Project Manager to apply for the grant, and if awarded, administer the grant on behalf of the Town; and

WHEREAS, the Town Council desires to authorize the Town Manager or designee to act as Project Manager, to apply to the State of Florida Division of Emergency Management Mitigation Bureau for grant funding, and if awarded, to administer the grant on behalf of the Town; and

WHEREAS, it is in the best interest of the business owners, residents, and visitors of the Town to secure grant funding for the Project.

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 designates the Town Manager or the Town Manager's designee as Project Manager, authorizes the Town Manager or designee to apply for grant funds in the amount of \$536,513.25 from the State of Florida Division of Emergency Management Mitigation Bureau for the Project, and if awarded, to administer the grant funds on behalf of the Town. The Town Manager or designee is authorized to execute any documents necessary to receive and administer the grant funds awarded for the Project.

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 4th day of April 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.

SUB-RECIPIENT AGREEMENT CHECKLIST

DIVISION OF EMERGENCY MANAGEMENT MITIGATION BUREAU

REQUEST FOR REVIEW AND APPROVAL	
SUB-RECIPIENT:	Town of Fort Myers Beach
PROJECT #:	4337-196-A
PROJECT TITLE:	Town of Fort Myers Beach, Residential Intrusion Prevention, Drainage, Phase II
CONTRACT #:	H0818
MODIFICATION #:	N/A

SUB-RECIPIENT REPRESENTATIVE (POINT OF CONTACT)	
	Christy Cory, Utilities Director 2525 Estero Blvd Fort Myers, Florida 33931

Enclosed is your copy of the proposed contract/modification between **Town of Fort Myers Beach** and the Florida Division of Emergency Management (FDEM).

	COMPLETE
☐	This form is required to be included with all Reviews, Approvals, and Submittal
☐	Signed electronic copy
☐	Reviewed and Approved
☐	Signed and Dated by Official Representative
☐	Copy of the organization's resolution or charter that specifically identifies the person or position that is authorized to sign, if not Chairman, Mayor, or Chief
☐	Attachment I - Federal Funding Accountability and Transparency Act (FFATA) - completed, signed, and dated
	☒ N/A for Modifications or State Funded Agreements
☐	Attachment K – Certification Regarding Lobbying - completed, signed, and dated
	☒ N/A for Modifications or State Funded Agreements
☐	Electronic Submittal to the Grant Specialist Cheyenne Young on

If you have any questions regarding this contract, or who is authorized to sign it, please contact your Project Manager at (850) 792-5269 or email me at Maria.Kimball@em.myflorida.com.

Agreement Number: H0818
Project Number: 4337-196-A

FEDERALLY-FUNDED SUBAWARD AND GRANT AGREEMENT

2 C.F.R. §200.1 states that a “subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.”

As defined by 2 C.F.R. §200.1, “pass-through entity” means “a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.”

As defined by 2 C.F.R. §200.1, “Sub-Recipient” means “an entity, usually but not limited to non-Federal entities that receives a subaward from a pass-through entity to carry out part of a Federal program.”

As defined by 2 C.F.R. §200.1, “Federal award” means “Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity.”

As defined by 2 C.F.R. §200.1, “subaward” means “an award provided by a pass-through entity to a Sub-Recipient for the Sub-Recipient to carry out part of a Federal award received by the pass-through entity.”

The following information is provided pursuant to 2 C.F.R. §200.332:

Sub-Recipient's name:	Town of Fort Myers Beach
Sub-Recipient's unique entity identifier (FEIN):	65-0632342
Federal Award Identification Number (FAIN):	FEMA-DR-4337-FL
Federal Award Date:	January 11, 2022
Subaward Period of Performance Start and End Date:	Upon execution through February 28, 2024
Amount of Federal Funds Obligated by this Agreement:	\$536,513.25
Total Amount of Federal Funds Obligated to the Sub-Recipient by the pass-through entity to include this Agreement:	\$563,338.50
Total Amount of the Federal Award committed to the Sub-Recipient by the pass-through entity	\$563,338.50
Federal award project description (see FFATA):	Drainage
Name of Federal awarding agency:	Federal Emergency Management Agency
Name of pass-through entity:	FL Division of Emergency Management
Contact information for the pass-through entity:	Maria.Kimball@em.myflorida.com
Catalog of Federal Domestic Assistance (CFDA) Number and Name:	97.039 Hazard Mitigation Grant Program
Whether the award is R&D:	N/A
Indirect cost rate for the Federal award:	N/A

THIS AGREEMENT is entered into by the State of Florida, Division of Emergency Management, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Division"), and Town of Fort Myers Beach , (hereinafter referred to as the "Sub-Recipient").

For the purposes of this Agreement, the Division serves as the pass-through entity for a Federal award, and the Sub-Recipient serves as the recipient of a subaward.

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

A. The Sub-Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein;

B. The State of Florida received these grant funds from the Federal government, and the Division has the authority to subgrant these funds to the Sub-Recipient upon the terms and conditions outlined below; and,

C. The Division has statutory authority to disburse the funds under this Agreement.

THEREFORE, the Division and the Sub-Recipient agree to the following:

(1) APPLICATION OF STATE LAW TO THIS AGREEMENT

2 C.F.R. §200.302(a) provides: "Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds." Therefore, section 215.971, Florida Statutes, entitled "Agreements funded with federal or state assistance", applies to this Agreement.

(2) LAWS, RULES, REGULATIONS AND POLICIES

a. The Sub-Recipient's performance under this Agreement is subject to 2 C.F.R. Part 200, entitled "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

b. As required by section 215.971(1), Florida Statutes, this Agreement includes:

i. A provision specifying a scope of work that clearly establishes the tasks that the Sub-Recipient is required to perform.

ii. A provision dividing the agreement into quantifiable units of deliverables that must be received and accepted in writing by the Division before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable.

iii. A provision specifying the financial consequences that apply if the Sub-Recipient fails to perform the minimum level of service required by the agreement.

iv. A provision specifying that the Sub-Recipient may expend funds only for allowable costs resulting from obligations incurred during the specified agreement period.

v. A provision specifying that any balance of unobligated funds which has been advanced or paid must be refunded to the Division.

vi. A provision specifying that any funds paid in excess of the amount to which the Sub-Recipient is entitled under the terms and conditions of the agreement must be refunded to the Division.

c. In addition to the foregoing, the Sub-Recipient and the Division shall be governed by all applicable State and Federal laws, rules and regulations, including those identified in Attachment B. Any express reference in this Agreement to a particular statute, rule, or regulation in no way implies that no other statute, rule, or regulation applies.

(3) CONTACT

a. In accordance with section 215.971(2), Florida Statutes, the Division's Grant Manager shall be responsible for enforcing performance of this Agreement's terms and conditions and shall serve as the Division's liaison with the Sub-Recipient. As part of his/her duties, the Grant Manager for the Division shall:

- i. Monitor and document Sub-Recipient performance; and,
- ii. Review and document all deliverables for which the Sub-Recipient requests payment.

b. The Division's Grant Manager for this Agreement is:

Maria Kimball, Project Manager
Project Manager
Bureau of Mitigation
Florida Division of Emergency Management
2702 Director's Row
Orlando, Florida 32809
Telephone: 850-792-5269
Email: Maria.Kimball@em.myflorida.com

The Division's Alternate Grant Manager for this Agreement is:

Kathleen Marshall
Community Program Manager
Bureau of Mitigation
Florida Division of Emergency Management
2555 Shumard Oak Boulevard
Tallahassee, FL 32399
Telephone: 850-815-4503
Email: Kathleen.Marshall@em.myflorida.com

1. The name and address of the Representative of the Sub-Recipient responsible for the administration of this Agreement is:

Christy Cory
Utilities Director
2525 Estero Blvd
Fort Myers, FL 33931
Telephone: 239-463-9914
Email: christy@fmbgov.com

2. In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the name, title and address of the new representative will be provided to the other party.

(4) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the parties.

(5) EXECUTION

This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

(6) MODIFICATION

Either party may request modification of the provisions of this Agreement. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.

(7) SCOPE OF WORK

The Sub-Recipient shall perform the work in accordance with the Budget and Scope of Work, Attachment A of this Agreement.

(8) PERIOD OF AGREEMENT

This Agreement shall begin upon execution by both parties and shall end on February 28, 2024, unless terminated earlier in accordance with the provisions of Paragraph (17) of this Agreement. Consistent with the definition of "period of performance" contained in 2 C.F.R. §200.77, the term "period of agreement" refers to the time during which the Sub-Recipient "may incur new obligations to carry out the work authorized under" this Agreement. In accordance with section 215.971(1)(d), Florida Statutes, the Sub-Recipient may expend funds authorized by this Agreement "only for allowable costs resulting from obligations incurred during" the period of agreement.

(9) FUNDING

- a. This is a cost-reimbursement Agreement, subject to the availability of funds.

b. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with either chapter 216, Florida Statutes, or the Florida Constitution.

c. The Division will reimburse the Sub-Recipient only for allowable costs incurred by the Sub-Recipient in the successful completion of each deliverable. The maximum reimbursement amount for each deliverable is outlined in Attachment A of this Agreement ("Budget and Scope of Work"). The maximum reimbursement amount for the entirety of this Agreement is **\$536,513.25**.

d. As required by 2 C.F.R. §200.415(a), any request for payment under this Agreement must include a certification, signed by an official who is authorized to legally bind the Sub-Recipient, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

e. The Division will review any request for reimbursement by comparing the documentation provided by the Sub-Recipient against a performance measure, outlined in Attachment A, that clearly delineates:

- i. The required minimum acceptable level of service to be performed; and,
- ii. The criteria for evaluating the successful completion of each deliverable.

f. The performance measure required by section 215.971(1)(b), Florida Statutes, remains consistent with the requirement for a "performance goal", which is defined in 2 C.F.R. §200.76 as "a target level of performance expressed as a tangible, measurable objective, against which actual achievement can be compared." It also remains consistent with the requirement, contained in 2 C.F.R. §200.329, that the Division and the Sub-Recipient "relate financial data to performance goals and objectives of the Federal award."

g. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for overtime expenses in accordance with 2 C.F.R. §200.430 ("Compensation—personal services") and 2 C.F.R. §200.431 ("Compensation—fringe benefits"). If the Sub-Recipient seeks reimbursement for overtime expenses for periods when no work is performed due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar cause (See 29 U.S.C. §207(e)(2)), then the Division will treat the expense as a fringe benefit. 2 C.F.R. §200.431(a) defines fringe benefits as "allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages." Fringe benefits are allowable under this Agreement as long as the benefits are reasonable and are required by law, Sub-Recipient-employee agreement, or an established policy of the Sub-Recipient. 2 C.F.R. §200.431(b) provides that the cost of fringe benefits in

the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

- i. They are provided under established written leave policies;
- ii. The costs are equitably allocated to all related activities, including Federal awards; and,

- iii. The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

h. If authorized by the Federal Awarding Agency, then the Division will reimburse the Sub-Recipient for travel expenses in accordance with 2 C.F.R. §200.474. As required by the Reference Guide for State Expenditures, reimbursement for travel must be in accordance with section 112.061, Florida Statutes, which includes submission of the claim on the approved state travel voucher. If the Sub-Recipient seeks reimbursement for travel costs that exceed the amounts stated in section 112.061(6)(b), Florida Statutes (\$6 for breakfast, \$11 for lunch, and \$19 for dinner), then the Sub-Recipient must provide documentation that:

- i. The costs are reasonable and do not exceed charges normally allowed by the Sub-Recipient in its regular operations as a result of the Sub-Recipient's written travel policy; and,

- ii. Participation of the individual in the travel is necessary to the Federal award.

i. The Division's grant manager, as required by section 215.971(2)(c), Florida Statutes, shall reconcile and verify all funds received against all funds expended during the grant agreement period and produce a final reconciliation report. The final report must identify any funds paid in excess of the expenditures incurred by the Sub-Recipient.

j. As defined by 2 C.F.R. §200.1, the term "improper payment" means or includes:

- i. Any payment that should not have been made or that was made in an incorrect amount (including overpayments and underpayments) under statutory, contractual, administrative, or other legally applicable requirements; and,

- ii. Any payment to an ineligible party, any payment for an ineligible good or service, any duplicate payment, any payment for a good or service not received (except for such payments where authorized by law), any payment that does not account for credit for applicable discounts, and any payment where insufficient or lack of documentation prevents a reviewer from discerning whether a payment was proper.

(10) RECORDS

a. As required by 2 C.F.R. §200.336, the Federal awarding agency, Inspectors General, the Comptroller General of the United States, and the Division, or any of their authorized representatives, shall enjoy the right of access to any documents, papers, or other records of the Sub-Recipient which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right

of access also includes timely and reasonable access to the Sub-Recipient's personnel for the purpose of interview and discussion related to such documents. Finally, the right of access is not limited to the required retention period but lasts as long as the records are retained.

b. As required by 2 C.F.R. §200.332(a)(5), the Division, the Chief Inspector General of the State of Florida, the Florida Auditor General, or any of their authorized representatives, shall enjoy the right of access to any documents, financial statements, papers, or other records of the Sub-Recipient which are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Sub-Recipient's personnel for the purpose of interview and discussion related to such documents.

c. As required by Florida Department of State's record retention requirements (Chapter 119, Florida Statutes) and by 2 C.F.R. §200.334, the Sub-Recipient shall retain sufficient records to show its compliance with the terms of this Agreement, as well as the compliance of all subcontractors or consultants paid from funds under this Agreement, for a period of five (5) years from the date of submission of the final expenditure report. The following are the only exceptions to the five (5) year requirement:

i. If any litigation, claim, or audit is started before the expiration of the 5-year period, then the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

ii. When the Division or the Sub-Recipient is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.

iii. Records for real property and equipment acquired with Federal funds must be retained for 5 years after final disposition.

iv. When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 5-year retention requirement is not applicable to the Sub-Recipient.

v. Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.

vi. Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

d. In accordance with 2 C.F.R. §200.335, the Federal awarding agency must request transfer of certain records to its custody from the Division or the Sub-Recipient when it determines that the records possess long-term retention value.

e. In accordance with 2 C.F.R. §200.336, the Division must always provide or accept paper versions of Agreement information to and from the Sub-Recipient upon request. If paper copies are submitted, then the Division must not require more than an original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

f. As required by 2 C.F.R. §200.303, the Sub-Recipient shall take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or the Division designates as sensitive or the Sub-Recipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

g. Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) provides the citizens of Florida with a right of access to governmental proceedings and mandates three, basic requirements: (1) meetings of public boards or commissions must be open to the public; (2) reasonable notice of such meetings must be given; and, (3) minutes of the meetings must be taken and promptly recorded. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the open government requirements. However, the Government in the Sunshine Law applies to private entities that provide services to governmental agencies and that act on behalf of those agencies in the agencies' performance of their public duties. If a public agency delegates the performance of its public purpose to a private entity, then, to the extent that private entity is performing that public purpose, the Government in the Sunshine Law applies. For example, if a volunteer fire department provides firefighting services to a governmental entity and uses facilities and equipment purchased with public funds, then the Government in the Sunshine Law applies to board of directors for that volunteer fire department. Thus, to the extent that the Government in the Sunshine Law applies to the Sub-Recipient based upon the funds provided under this Agreement, the meetings of the Sub-Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board may be subject to open government requirements. These meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with chapter 119, Florida Statutes.

h. Florida's Public Records Law provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. Unless specifically exempted from disclosure by the Legislature, all materials made or received by a governmental agency (or a private entity acting on behalf of such an agency) in conjunction with official business which are used to

perpetuate, communicate, or formalize knowledge qualify as public records subject to public inspection. The mere receipt of public funds by a private entity, standing alone, is insufficient to bring that entity within the ambit of the public record requirements. However, when a public entity delegates a public function to a private entity, the records generated by the private entity's performance of that duty become public records. Thus, the nature and scope of the services provided by a private entity determine whether that entity is acting on behalf of a public agency and is therefore subject to the requirements of Florida's Public Records Law.

i. The Sub-Recipient shall maintain all records for the Sub-Recipient and for all subcontractors or consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of the Budget and Scope of Work - Attachment A - and all other applicable laws and regulations.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (850) 815-7671 Records@em.myflorida.com, or 2555 Shumard Oak Boulevard, Tallahassee, FL 32399.

(11) AUDITS

a. The Sub-Recipient shall comply with the audit requirements contained in 2 C.F.R. Part 200, Subpart F.

b. In accounting for the receipt and expenditure of funds under this Agreement, the Sub-Recipient shall follow Generally Accepted Accounting Principles ("GAAP"). As defined by 2 C.F.R. §200.1, GAAP "has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB)."

c. When conducting an audit of the Sub-Recipient's performance under this Agreement, the Division shall use Generally Accepted Government Auditing Standards ("GAGAS"). As defined by 2 C.F.R. §200.1, GAGAS, "also known as the Yellow Book, means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits."

d. If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of this Agreement, the Sub-Recipient shall be held liable for reimbursement to the Division of all funds not spent in accordance with these applicable regulations and Agreement provisions within thirty (30) days after the Division has notified the Sub-Recipient of such non-compliance.

e. The Sub-Recipient shall have all audits completed by an independent auditor, which is defined in section 215.97(2)(i), Florida Statutes, as “an independent certified public accountant licensed under chapter 473.” The independent auditor shall state that the audit complied with the applicable provisions noted above. The audit must be received by the Division no later than nine months from the end of the Sub-Recipient’s fiscal year.

f. The Sub-Recipient shall send copies of reporting packages for audits conducted in accordance with 2 C.F.R. Part 200, by or on behalf of the Sub-Recipient, to the Division at the following address:

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

g. The Sub-Recipient shall send the Single Audit reporting package and Form SF-SAC to the Federal Audit Clearinghouse by submission online at:

<http://harvester.census.gov/fac/collect/ddeindex.html>

h. The Sub-Recipient shall send any management letter issued by the auditor to the Division at the following address:

DEMSingle_Audit@em.myflorida.com

OR

Office of the Inspector General
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

(12) REPORTS

a. Consistent with 2 C.F.R. §200.328, the Sub-Recipient shall provide the Division with quarterly reports and a close-out report. These reports shall include the current status and progress by the Sub-Recipient and all subcontractors in completing the work described in the Scope of Work and the expenditure of funds under this Agreement, in addition to any other information requested by the Division.

b. Quarterly reports are due to the Division no later than fifteen (15) days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30, and December 31.

c. The close-out report is due sixty (60) days after termination of this Agreement or sixty (60) days after completion of the activities contained in this Agreement, whichever first occurs.

d. If all required reports and copies are not sent to the Division or are not completed in a manner acceptable to the Division, then the Division may withhold further payments until they are completed or may take other action as stated in Paragraph (16) REMEDIES. "Acceptable to the Division" means that the work product was completed in accordance with the Budget and Scope of Work.

e. The Sub-Recipient shall provide additional program updates or information that may be required by the Division.

f. The Sub-Recipient shall provide additional reports and information identified in Attachment F.

(13) MONITORING

a. The Sub-Recipient shall monitor its performance under this Agreement, as well as that of its subcontractors and/or consultants who are paid from funds provided under this Agreement, to ensure that time schedules are being met, the Schedule of Deliverables and Scope of Work are being accomplished within the specified time periods, and other performance goals are being achieved. A review shall be done for each function or activity in Attachment A to this Agreement and reported in the quarterly report.

b. In addition to reviews of audits, monitoring procedures may include, but not be limited to, on-site visits by Division staff, limited scope audits, and/or other procedures. The Sub-Recipient agrees to comply and cooperate with any monitoring procedures/processes deemed appropriate by the Division. In the event that the Division determines that a limited scope audit of the Sub-Recipient is appropriate, the Sub-Recipient agrees to comply with any additional instructions provided by the Division to the Sub-Recipient regarding such audit. The Sub-Recipient further agrees to comply and cooperate with any inspections, reviews, investigations or audits deemed necessary by the Florida Chief Financial Officer or Auditor General. In addition, the Division will monitor the performance and financial management by the Sub-Recipient throughout the contract term to ensure timely completion of all tasks.

(14) LIABILITY

a. Unless Sub-Recipient is a State agency or subdivision, as defined in section 768.28(2), Florida Statutes, the Sub-Recipient is solely responsible to parties it deals with in carrying out the terms of this Agreement and, as authorized by section 768.28(19), Florida Statutes, Sub-Recipient shall hold the Division harmless against all claims of whatever nature by third parties arising from the work performance under this Agreement. For purposes of this Agreement, Sub-Recipient agrees that it is not an employee or agent of the Division, but is an independent contractor.

b. As required by section 768.28(19), Florida Statutes, any Sub-Recipient which is a state agency or subdivision, as defined in section 768.28(2), Florida Statutes, agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of

sovereign immunity by any Sub-Recipient to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of any contract.

(15) DEFAULT

If any of the following events occur ("Events of Default"), all obligations on the part of the Division to make further payment of funds shall terminate and the Division has the option to exercise any of its remedies set forth in Paragraph (16); however, the Division may make payments or partial payments after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment if:

- a. Any warranty or representation made by the Sub-Recipient in this Agreement or any previous agreement with the Division is or becomes false or misleading in any respect, or if the Sub-Recipient fails to keep or perform any of the obligations, terms or covenants in this Agreement or any previous agreement with the Division and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;
- b. Material adverse changes occur in the financial condition of the Sub-Recipient at any time during the term of this Agreement, and the Sub-Recipient fails to cure this adverse change within thirty (30) days from the date written notice is sent by the Division;
- c. Any reports required by this Agreement have not been submitted to the Division or have been submitted with incorrect, incomplete or insufficient information; or,
- d. The Sub-Recipient has failed to perform and complete on time any of its obligations under this Agreement.

(16) REMEDIES

If an Event of Default occurs, then the Division shall, after thirty (30) calendar days written notice to the Sub-Recipient and upon the Sub-Recipient's failure to cure within those thirty (30) days, exercise any one or more of the following remedies, either concurrently or consecutively:

- a. Terminate this Agreement, provided that the Sub-Recipient is given at least thirty (30) days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address in paragraph (3) herein;
- b. Begin an appropriate legal or equitable action to enforce performance of this Agreement;
- c. Withhold or suspend payment of all or any part of a request for payment;
- d. Require that the Sub-Recipient refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.
- e. Exercise any corrective or remedial actions, to include but not be limited to:

- i. Request additional information from the Sub-Recipient to determine the reasons for or the extent of non-compliance or lack of performance,
- ii. Issue a written warning to advise that more serious measures may be taken if the situation is not corrected,
- iii. Advise the Sub-Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or
- iv. Require the Sub-Recipient to reimburse the Division for the amount of costs incurred for any items determined to be ineligible;
- f. Exercise any other rights or remedies which may be available under law.

Pursuing any of the above remedies will not stop the Division from pursuing any other remedies in this Agreement or provided at law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Sub-Recipient, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Sub-Recipient.

(17) TERMINATION

- a. The Division may terminate this Agreement for cause after thirty (30) days written notice. Cause can include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform on time, and refusal by the Sub-Recipient to permit public access to any document, paper, letter, or other material subject to disclosure under chapter 119, Florida Statutes, as amended.
- b. The Division may terminate this Agreement for convenience or when it determines, in its sole discretion that continuing the Agreement would not produce beneficial results in line with the further expenditure of funds, by providing the Sub-Recipient with thirty (30) calendar day's prior written notice.
- c. The parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of the Agreement.
- d. In the event that this Agreement is terminated, the Sub-Recipient will not incur new obligations for the terminated portion of the Agreement after the Sub-Recipient has received the notification of termination. The Sub-Recipient will cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. The Sub-Recipient shall not be relieved of liability to the Division because of any breach of Agreement by the Sub-Recipient. The Division may, to the extent authorized by law, withhold payments to the Sub-Recipient for the purpose of set-off until the exact amount of damages due the Division from the Sub-Recipient is determined.

(18) PROCUREMENT

a. The Sub-Recipient shall ensure that any procurement involving funds authorized by the Agreement complies with all applicable federal and state laws and regulations, to include 2 C.F.R. §§200.318 through 200.327 as well as Appendix II to 2 C.F.R. Part 200 (entitled “Contract Provisions for Non-Federal Entity Contracts Under Federal Awards”).

b. As required by 2 C.F.R. §200.318(i), the Sub-Recipient shall “maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.”

c. As required by 2 C.F.R. §200.318(b), the Sub-Recipient shall “maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.” In order to demonstrate compliance with this requirement, the Sub-Recipient shall document, in its quarterly report to the Division, the progress of any and all subcontractors performing work under this Agreement.

d. The Sub-Recipient agrees to include in the subcontract that (i) the subcontractor is bound by the terms of this Agreement, (ii) the subcontractor is bound by all applicable state and federal laws and regulations, and (iii) the subcontractor shall hold the Division and Sub-Recipient harmless against all claims of whatever nature arising out of the subcontractor's performance of work under this Agreement, to the extent allowed and required by law.

e. As required by 2 C.F.R. §200.318(c)(1), the Sub-Recipient shall “maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts.”

f. As required by 2 C.F.R. §200.319(a), the Sub-Recipient shall conduct any procurement under this agreement “in a manner providing full and open competition.” Accordingly, the Sub-Recipient shall not:

- i. Place unreasonable requirements on firms in order for them to qualify to do business;
- ii. Require unnecessary experience or excessive bonding;
- iii. Use noncompetitive pricing practices between firms or between affiliated companies;
- iv. Execute noncompetitive contracts to consultants that are on retainer contracts;
- v. Authorize, condone, or ignore organizational conflicts of interest;
- vi. Specify only a brand name product without allowing vendors to offer an equivalent;

vii. Specify a brand name product instead of describing the performance, specifications, or other relevant requirements that pertain to the commodity or service solicited by the procurement;

viii. Engage in any arbitrary action during the procurement process; or,

ix. Allow a vendor to bid on a contract if that bidder was involved with developing or drafting the specifications, requirements, statement of work, invitation to bid, or request for proposals.

g. “[E]xcept in those cases where applicable Federal statutes expressly mandate or encourage” otherwise, the Sub-Recipient, as required by 2 C.F.R. §200.319(c), shall not use a geographic preference when procuring commodities or services under this Agreement.

h. The Sub-Recipient shall conduct any procurement involving invitations to bid (i.e. sealed bids) in accordance with 2 C.F.R. §200.320(d) as well as section 287.057(1)(a), Florida Statutes.

i. The Sub-Recipient shall conduct any procurement involving requests for proposals (i.e. competitive proposals) in accordance with 2 C.F.R. §200.320(2) as well as section 287.057(1)(b), Florida Statutes.

j. For each subcontract, the Sub-Recipient shall provide a written statement to the Division as to whether that subcontractor is a minority business enterprise, as defined in section 288.703, Florida Statutes. Additionally, the Sub-Recipient shall comply with the requirements of 2 C.F.R. §200.321 (“Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms”).

k. If the Sub-Recipient chooses to subcontract any of the work required under this Agreement, then the Sub-Recipient shall review its competitive solicitation and subsequent contract to be awarded for compliance with the procurement standards in 2 C.F.R. §§200.318 through 200.327 and required contract provisions in Appendix II to 2 C.F.R. Part 200. If the Sub-Recipient publishes a competitive solicitation or executes a contract that is not in compliance with the Federal procurement standards in 2 C.F.R. §§200.318 through 200.327 or the requirements of Appendix II to 2 C.F.R. Part 200, then the Sub-Recipient is on notice that the Division may:

i. Terminate this Agreement in accordance with the provisions outlined in paragraph (17) above; or,

ii. Refuse to reimburse the Sub-Recipient for any costs associated with that solicitation.

l. FEMA has developed helpful resources for subgrant recipients related to compliance with the Federal procurement standards in 2 C.F.R. §§200.318 through 200.327 and required contract provisions in Appendix II to 2 C.F.R. Part 200. These resources are generally available at <https://www.fema.gov/procurement-disaster-assistance-team>.

(19) ATTACHMENTS

- a. All attachments to this Agreement are incorporated as if set out fully.
- b. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.
- c. This Agreement has the following attachments:
 - i. Exhibit 1 - Funding Sources
 - ii. Attachment A – Budget and Scope of Work
 - iii. Attachment B – Program Statutes and Regulations
 - iv. Attachment C – Statement of Assurances
 - v. Attachment D – Request for Advance or Reimbursement
 - vi. Attachment E – Justification of Advance Payment
 - vii. Attachment F – Quarterly Report Form
 - viii. Attachment G – Warranties and Representations
 - ix. Attachment H – Certification Regarding Debarment
 - x. Attachment I – Federal Funding Accountability and Transparency Act
 - xi. Attachment J – Mandatory Contract Provisions
 - xii. Attachment K – Certification Regarding Lobbying

(20) PAYMENTS

- a. Any advance payment under this Agreement is subject to 2 C.F.R. §200.305 and, as applicable, section 216.181(16), Florida Statutes. All advances are required to be held in an interest-bearing account. If an advance payment is requested, the budget data on which the request is based and a justification statement shall be included in this Agreement as Attachment E. Attachment E will specify the amount of advance payment needed and provide an explanation of the necessity for and proposed use of these funds. No advance shall be accepted for processing if a reimbursement has been paid prior to the submittal of a request for advanced payment. After the initial advance, if any, payment shall be made on a reimbursement basis as needed.
- b. Invoices shall be submitted at least quarterly and shall include the supporting documentation for all costs of the project or services. The final invoice shall be submitted within sixty (60) days after the expiration date of the agreement. An explanation of any circumstances prohibiting the submittal of quarterly invoices shall be submitted to the Division grant manager as part of the Sub-Recipient's quarterly reporting as referenced in Paragraph (12) of this Agreement.
- c. If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the federal Office of Management and Budgeting, the State Chief Financial Officer or under subparagraph (9)b. of this Agreement, all obligations on the part of the Division

to make any further payment of funds shall terminate, and the Sub-Recipient shall submit its closeout report within thirty (30) days of receiving notice from the Division.

(21) REPAYMENTS

a. All refunds or repayments due to the Division under this Agreement are to be made payable to the order of "Division of Emergency Management", and mailed directly to the following address:

Division of Emergency Management

Cashier

2555 Shumard Oak Boulevard

Tallahassee FL 32399-2100

b. In accordance with section 215.34(2), Florida Statutes, if a check or other draft is returned to the Division for collection, Sub-Recipient shall pay the Division a service fee of \$15.00 or 5% of the face amount of the returned check or draft, whichever is greater.

(22) MANDATED CONDITIONS

a. The validity of this Agreement is subject to the truth and accuracy of all the information, representations, and materials submitted or provided by the Sub-Recipient in this Agreement, in any later submission or response to a Division request, or in any submission or response to fulfill the requirements of this Agreement. All of said information, representations, and materials are incorporated by reference. The inaccuracy of the submissions or any material changes shall, at the option of the Division and with thirty (30) days written notice to the Sub-Recipient, cause the termination of this Agreement and the release of the Division from all its obligations to the Sub-Recipient.

b. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of the conflict, and shall be severable, but shall not invalidate any other provision of this Agreement.

c. Any power of approval or disapproval granted to the Division under the terms of this Agreement shall survive the term of this Agreement.

d. The Sub-Recipient agrees to comply with the Americans With Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and local government services, and telecommunications.

e. Those who have been placed on the convicted vendor list following a conviction for a public entity crime or on the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to

a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with a public entity, and may not transact business with any public entity in excess of \$25,000.00 for a period of 36 months from the date of being placed on the convicted vendor list or on the discriminatory vendor list.

f. Any Sub-Recipient which is not a local government or state agency, and which receives funds under this Agreement from the federal government, certifies, to the best of its knowledge and belief, that it and its principals or affiliates:

i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded or disqualified from covered transactions by a federal department or agency;

ii. Have not, within a five-year period preceding this proposal been convicted of or had a civil judgment rendered against them for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

iii. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any offenses enumerated in paragraph (22) f. ii. of this certification; and,

iv. Have not within a five-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

g. **In addition, the Sub-Recipient shall send to the Division (by email or by facsimile transmission) the completed "Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion" (Attachment H) for each intended subcontractor which Sub-Recipient plans to fund under this Agreement. The form must be received by the Division before the Sub-Recipient enters into a contract with any subcontractor.**

h. The Division reserves the right to unilaterally cancel this Agreement if the Sub-Recipient refuses to allow public access to all documents, papers, letters or other material subject to the provisions of chapter 119, Florida Statutes, which the Sub-Recipient created or received under this Agreement.

i. If the Sub-Recipient is allowed to temporarily invest any advances of funds under this Agreement, any interest income shall either be returned to the Division or be applied against the Division's obligation to pay the contract amount.

j. The State of Florida will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized alien workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) [Section 274A(e) of the Immigration and Nationality Act ("INA")]. The Division shall consider the employment by any contractor of unauthorized aliens a violation

of Section 274A(e) of the INA. Such violation by the Sub-Recipient of the employment provisions contained in Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the Division.

k. Section 287.05805, Florida Statutes, requires that any state funds provided for the purchase of or improvements to real property are contingent upon the contractor or political subdivision granting to the state a security interest in the property at least to the amount of state funds provided for at least 5 years from the date of purchase or the completion of the improvements or as further required by law.

l. The Division may, at its option, terminate the Contract if the Contractor is found to have submitted a false certification as provided under section 287.135(5), Florida Statutes, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, or to have been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

(23) LOBBYING PROHIBITION

a. 2 C.F.R. §200.450 prohibits reimbursement for costs associated with certain lobbying activities.

b. Section 216.347, Florida Statutes, prohibits “any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.”

c. No funds or other resources received from the Division under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

d. The Sub-Recipient certifies, by its signature to this Agreement, that to the best of his or her knowledge and belief:

i. No Federal appropriated funds have been paid or will be paid, by or on behalf of the Sub-Recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

ii. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in

connection with this Federal contract, grant, loan or cooperative agreement, the Sub-Recipient shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities."

iii. The Sub-Recipient shall require that this certification be included in the award documents for all subawards (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Sub-Recipients shall certify and disclose.

iv. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(24) COPYRIGHT, PATENT AND TRADEMARK

EXCEPT AS PROVIDED BELOW, ANY AND ALL PATENT RIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY RESERVED TO THE STATE OF FLORIDA; AND, ANY AND ALL COPYRIGHTS ACCRUING UNDER OR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT ARE HEREBY TRANSFERRED BY THE SUB-RECIPIENT TO THE STATE OF FLORIDA.

a. If the Sub-Recipient has a pre-existing patent or copyright, the Sub-Recipient shall retain all rights and entitlements to that pre-existing patent or copyright unless the Agreement provides otherwise.

b. If any discovery or invention is developed in the course of or as a result of work or services performed under this Agreement, or in any way connected with it, the Sub-Recipient shall refer the discovery or invention to the Division for a determination whether the State of Florida will seek patent protection in its name. Any patent rights accruing under or in connection with the performance of this Agreement are reserved to the State of Florida. If any books, manuals, films, or other copyrightable material are produced, the Sub-Recipient shall notify the Division. Any copyrights accruing under or in connection with the performance under this Agreement are transferred by the Sub-Recipient to the State of Florida.

c. Within thirty (30) days of execution of this Agreement, the Sub-Recipient shall disclose all intellectual properties relating to the performance of this Agreement which he or she knows or should know could give rise to a patent or copyright. The Sub-Recipient shall retain all rights and entitlements to any pre-existing intellectual property which is disclosed. Failure to disclose will indicate that no such property exists. The Division shall then, under Paragraph (24) b., have the right to all patents and copyrights which accrue during performance of the Agreement.

d. If the Sub-Recipient qualifies as a state university under Florida law, then, pursuant to section 1004.23, Florida Statutes, any invention conceived exclusively by the employees of the Sub-Recipient shall become the sole property of the Sub-Recipient. In the case of joint inventions, that is

inventions made jointly by one or more employees of both parties hereto, each party shall have an equal, undivided interest in and to such joint inventions. The Division shall retain a perpetual, irrevocable, fully-paid, nonexclusive license, for its use and the use of its contractors of any resulting patented, copyrighted or trademarked work products, developed solely by the Sub-Recipient, under this Agreement, for Florida government purposes.

(25) LEGAL AUTHORIZATION

The Sub-Recipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Sub-Recipient also certifies that the undersigned person has the authority to legally execute and bind Sub-Recipient to the terms of this Agreement.

(26) EQUAL OPPORTUNITY EMPLOYMENT

a. In accordance with 41 C.F.R. §60-1.4(b), the Sub-Recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

i. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

ii. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

iii. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because

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

iv. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

v. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

vi. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

vii. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

viii. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of

such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

b. The Sub-Recipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

c. The Sub-Recipient agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

d. The Sub-Recipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the Sub-Recipient agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Sub-Recipient under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such Sub-Recipient; and refer the case to the Department of Justice for appropriate legal proceedings.

(27) COPELAND ANTI-KICKBACK ACT

The Sub-Recipient hereby agrees that, unless exempt under Federal law, it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, the following clause:

i. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

ii. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts.

The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

iii. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(28) CONTRACT WORK HOURS AND SAFETY STANDARDS

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$100,000 and involves the employment of mechanics or laborers, then any such contract must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor 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.

(29) CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract that exceeds \$150,000, then any such contract must include the following provision:

Contractor agrees to 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), and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA).

(30) SUSPENSION AND DEBARMENT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following provisions:

i. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

ii. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

iii. This certification is a material representation of fact relied upon by the Division. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Division, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

iv. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

(31) BYRD ANTI-LOBBYING AMENDMENT

If the Sub-Recipient, with the funds authorized by this Agreement, enters into a contract, then any such contract must include the following clause:

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended). Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

If this subgrant agreement amount is \$100,000 or more, the Sub-Recipient, and subcontractors as applicable, shall sign Attachment K – Certification Regarding Lobbying.

(32) CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

a. If the Sub-Recipient, with the funds authorized by this Agreement, seeks to procure goods or services, then, in accordance with 2 C.F.R. §200.321, the Sub-Recipient shall take the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible:

i. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

ii. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

iii. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

iv. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

v. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

vi. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs i. through v. of this subparagraph.

b. The requirement outlined in subparagraph a. above, sometimes referred to as "socioeconomic contracting," does not impose an obligation to set aside either the solicitation or award of a contract to these types of firms. Rather, the requirement only imposes an obligation to carry out and document the six affirmative steps identified above.

c. The "socioeconomic contracting" requirement outlines the affirmative steps that the Sub-Recipient must take; the requirements do not preclude the Sub-Recipient from undertaking additional steps to involve small and minority businesses and women's business enterprises.

d. The requirement to divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises, does not authorize the Sub-Recipient to break a single project down into smaller components in order to circumvent the micro-purchase or small purchase thresholds so as to utilize streamlined acquisition procedures (e.g. "project splitting").

(33) ASSURANCES

The Sub-Recipient shall comply with any Statement of Assurances incorporated as Attachment C.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

SUB-RECIPIENT: TOWN OF FORT MYERS BEACH

By: _____

Name and Title: _____

Date: _____

FEID#: _____

STATE OF FLORIDA

DIVISION OF EMERGENCY MANAGEMENT

By: _____

Name and Title: Kevin Guthrie, Director

Date: _____

EXHIBIT – 1

THE FOLLOWING FEDERAL RESOURCES ARE AWARDED TO THE SUB-RECIPIENT UNDER THIS AGREEMENT:

Federal Program

Federal agency: **Federal Emergency Management Agency: Hazard Mitigation Grant**

Catalog of Federal Domestic Assistance title and number: **97.039**

Award amount: **\$ 536,513.25**

THE FOLLOWING COMPLIANCE REQUIREMENTS APPLY TO THE FEDERAL RESOURCES AWARDED UNDER THIS AGREEMENT:

- 2 C.F.R. Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, 42 U.S.C. 5121 et seq., and Related Authorities
- Sections 1361(A) of the National Flood Insurance Act of 1968, 42 U.S.C. 4104c, as amended by the National Flood Insurance Reform Act of 1994, Public Law 103-325 and the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264
- 31 C.F.R. Part 205 Rules and Procedures for Funds Transfers

Federal Program:

1. Sub-Recipient is to use funding to perform the following eligible activities:
 - Localized Minor Drainage Improvement
2. Sub-Recipient is subject to all administrative and financial requirements as set forth in this Agreement, or will be in violation of the terms of the Agreement.

Attachment A
Budget and Scope of Work

STATEMENT OF PURPOSE:

The purpose of this Scope of Work is to improve drainage in Fort Myers Beach, Lee County, Florida, funded through the Hazard Mitigation Grant Program (HMGP) **DR-4337-196-A**, as approved by the Florida Division of Emergency Management (Division) and the Federal Emergency Management Agency (FEMA).

The Sub-Recipient, Town of Fort Myers Beach, agrees to administer and complete the project per sealed engineering designs and construction plans as submitted by the Sub-Recipient and subsequently approved by the Division and FEMA. The Sub-Recipient shall complete the work in accordance with all applicable Federal, State and Local Laws, Regulations and Codes.

PROJECT OVERVIEW:

As a Hazard Mitigation Grant Program project, the Sub-Recipient proposes to improve the drainage for the Glenview and Holiday Subdivisions, located in Fort Myers Beach, Florida, 33931.

The Phase II – Construction scope of work proposes drainage improvements to the stormwater drainage system of the area, specifically along Williams Drive to Glenview Manor Drive. The proposed project shall include the regrading and restoration of existing swales, installation of 15" and 24" storm drainpipe, inlets, manholes, baffle boxes, replacement of a section of a seawall, and installation of Duckbill backflow prevention valves at the outfalls. Additionally, the project shall include the necessary removal and replacement of driveways and road asphalt pavement and adjusting the manhole frames and covers. The improved stormwater system will accept the stormwater runoff to discharge it to the bay; backflow prevention devices will be installed to the outfall structures to except stormwater during storm surge or high tides; improvements will avoid repetitive flooding damage affecting 13 homes in the area.

The project shall provide protection against a 10-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

Project Locations:

ID#	Coordinates	
1)	Start	(26.435252, -81.917204)
2)	End	(26.434903, -81.912314)

TASKS & DELIVERABLES:

A) Tasks:

- 1) The Sub-Recipient shall procure the services of a qualified and licensed Florida contractor and execute a contract with the selected bidder to complete the scope of work as approved by the Division and FEMA. The Sub-Recipient shall select the qualified, licensed Florida contractor in accordance with the Sub-Recipient's procurement policy as well as all federal and state laws and regulations. All procurement activities shall contain sufficient source documentation and be in accordance with all applicable regulations.

The Sub-Recipient shall be responsible for furnishing or contracting all labor, materials, equipment, tools, transportation and supervision and for performing all work per sealed engineering designs and construction plans presented to the Division by the Sub-Recipient and subsequently approved by the Division and FEMA.

The Sub-Recipient and contractor shall be responsible for maintaining a safe and secure worksite for the duration of the work. The contractor shall maintain all work staging areas in a neat and presentable condition.

The Sub-Recipient shall ensure that no contractors or subcontractors are debarred or suspended from participating in federally funded projects.

The selected contractor shall have a current and valid occupational license/business tax receipt issued for the type of services being performed.

The Sub-Recipient shall provide documentation demonstrating the results of the procurement process. This shall include a rationale for the method of procurement and selection of contract type, contractor selection and/or rejection and bid tabulation and listing, and the basis of contract price.

The Sub-Recipient shall provide an executed "Debarment, Suspension, Ineligibility, Voluntary Exclusion Form" for each contractor and/or subcontractor performing services under this agreement.

Executed contracts with contractors and/or subcontractors shall be provided to the Division by the Sub-Recipient.

The Sub-Recipient shall provide copies of professional licenses for contractors selected to perform services. The Sub-Recipient shall provide a copy of a current and valid occupational license or business tax receipt issued for the type of services to be performed by the selected contractor.

- 2) The Sub-Recipient shall monitor and manage the installation to improve the drainage and provide flood protection.

The project shall be implemented in accordance with sealed engineering designs and construction plans previously presented to the Division by the Sub-Recipient and subsequently approved by the Division and FEMA. The Sub-Recipient shall ensure that all applicable state, local and federal laws and regulations are followed and documented, as appropriate.

The project consists of the general construction and furnishing of all materials, equipment, labor and fees to minimize recurring flooding and reduce repetitive flood loss to structures and roadways.

The Sub-Recipient shall fully perform the approved project, as described in the submitted documents, in accordance with the approved scope of work, budget line item, allocation of funds and applicable terms and conditions indicated herein. The Sub-Recipient shall not deviate from the approved project terms and conditions.

Construction activities shall be completed by a qualified and licensed Florida contractor. All construction activities shall be monitored by the professional of record. The Sub-Recipient shall complete the project in accordance with all required permits. All work shall be completed in accordance with applicable codes and standards.

Upon completion of the work, the Sub-Recipient shall schedule and participate in a final inspection of the completed project by the local municipal or county official, or other approving official, as applicable. The official shall inspect and certify that all installation was in accordance with the manufacturer's specifications. Any deficiencies found during this final inspection shall be corrected by the Sub-Recipient prior to Sub-Recipient's submittal of the final inspection request to the Division.

Upon completion of Task 2, the Sub-Recipient shall submit the following documents with sufficient supporting documentation, and provide a summary of all contract scope of work and scope of work changes, if any. Additional documentation for closeout shall include:

- a) Copy of permits(s), notice of commencement.
- b) Local Building Official Inspection Report and Final Approval.
- c) Signed and Sealed As-built project plans (drawings) by the Professional of Record, two hard copies and an electronic version (via email or CD).

- d) Letter of Completion:
 - 1. Affirming that the project was completed in conformance with the approved project drawings, specifications and scope; and
 - 2. Certifying Compliance with all applicable codes.
 - e) Letter verifying compliance with the National Historic Preservation Act, to include whether archaeological materials or human remains were encountered during project activities and, if so, how they were handled in accordance with Florida Statutes, Section 872.05.
 - f) Verification of compliance with United States Army Corps of Engineers (USACE) permit numbers SAJ-2018-00044 (NW-EPL) and SAJ-2019-01933 (NW-SJF) and associated guidance.
 - g) Verification of compliance with the Endangered Species Act (ESA) conditions listed in the United States Army Corps of Engineers and National Marine Fisheries Service (NMFS) JaxBO Project Design Criteria (PDC) for in Water Activities and Shoreline Stabilization, Sea Turtle and Smalltooth Construction Conditions, and Standard Manatee Conditions for In-Water Work.
 - h) Verification of compliance with the South Florida Water Management District (SFWMD) Environmental Resource Program (ERP) permit number: 36-102467-P.
 - i) Proof of compliance with Project Conditions and Requirements contained herein.
- 3) During the course of this agreement, the Sub-Recipient shall submit requests for reimbursement. Adequate and complete source documentation shall be submitted to support all costs (federal share and local share) related to the project. In some cases, all project activities may not be fully complete prior to requesting reimbursement of costs incurred in completion of this scope of work; however, a partial reimbursement may be requested.

The Sub-Recipient shall submit an Affidavit signed by the Sub-Recipient's project personnel with each reimbursement request attesting to the completion of the work, that disbursements or payments were made in accordance with all agreement and regulatory conditions, and that reimbursement is due and has not been previously requested.

The Sub-Recipient shall maintain accurate time records. The Sub-Recipient shall ensure invoices are accurate and any contracted services were rendered within the terms and timelines of this agreement. All supporting documentation shall agree with the requested billing period. All costs submitted for reimbursement shall contain adequate source documentation which may include but not be limited to cancelled checks, bank statements, Electronic Funds Transfer, paid bills and invoices, payrolls, time and attendance records, contract and subcontract award documents.

Construction Expense: The Sub-Recipient shall pre-audit bills, invoices, and/or charges submitted by the contractors and subcontractors and pay the contractors and subcontractors for approved bills, invoices, and/or charges. Sub-Recipient shall ensure that all contractor/subcontractor bills, invoices, and/or charges are legitimate and clearly identify the activities being performed and associated costs.

Project Management Expenses (only applies to disasters prior to August 1, 2017, all others adhere to FEMA Policy #104-11-1 for SRMC): The Sub-Recipient shall pre-audit source documentation such as payroll records, project time sheets, attendance logs, etc. Documentation shall be detailed information describing tasks performed, hours devoted to each task, and the hourly rate charged for each hour including enough information to calculate the hourly rates based on payroll records. Employee benefits shall be clearly shown.

The Division shall review all submitted requests for reimbursement for basic accuracy of information. Further, the Division shall ensure that no unauthorized work was completed prior to the approved project start date by verifying vendor and contractor invoices. The Division shall verify that reported costs were incurred in the performance of eligible work, that the approved work was completed, and that the mitigation measures are in compliance with the approved scope of work prior to processing any requests for reimbursement.

Review and approval of any third-party in-kind services, if applicable, shall be conducted by the Division in coordination with the Sub-Recipient. Quarterly reports shall be submitted by the Sub-Recipient and received by the Division at the times provided in this agreement prior to the processing of any reimbursement.

The Sub-Recipient shall submit to the Division requests for reimbursement of actual construction and managerial costs related to the project as identified in the project application, sealed engineering designs, and construction plans. The requests for reimbursement shall include:

- a) Contractor, subcontractor, and/or vendor invoices which clearly display dates of services performed, description of services performed, location of services performed, cost of services performed, name of service provider and any other pertinent information;
- b) Proof of payment from the Sub-Recipient to the contractor, subcontractor, and/or vendor for invoiced services;
- c) Clear identification of amount of costs being requested for reimbursement as well as costs being applied against the local match amount.

The Sub-Recipient's final request for reimbursement shall include the final construction project cost. Supporting documentation shall show that all contractors and subcontractors have been paid.

B) Deliverables:

Mitigation Activities consist of drainage improvements to the Glenview and Holiday Subdivisions in Fort Myers Beach, Florida, 33931 and shall provide protection to the stormwater drainage system of the area, specifically along Williams Drive to Glenview Manor Drive.

The completed project shall provide protection against a 10-year storm event.

Provided the Sub-Recipient performs in accordance with the Scope of Work outlined in this Agreement, the Division shall reimburse the Sub-Recipient based on the percentage of overall project completion.

PROJECT CONDITIONS AND REQUIREMENTS:

C) Engineering:

- 1) The Sub-Recipient shall submit to the Division an official letter stating that the project is 100% complete and ready for the Division's Final Inspection of the project.
- 2) The Sub-Recipient shall submit a signed and sealed final copy of the completed project's As-built drawings and all necessary supporting documentation and provide a summary of all contract scope of work changes, if any.
- 3) The Sub-Recipient shall provide a copy of the Notice of Commencement, and any local official Inspection Report and/or Final Approval, as applicable.
- 4) The Sub-Recipient shall submit a certified letter of completion from Engineer of Record. The Sub-Recipient's Engineer of Record shall provide a formal certificate or letter affirming that the project has been completed in conformance with the approved project drawings, specifications, scope, and applicable codes.
- 5) All installations shall be done in strict compliance with the Florida Building Code or any local codes and ordinances. All materials shall be certified to exceed the wind and impact standards of the current local codes.
- 6) The Sub-Recipient shall follow all applicable State, Local and Federal Laws, Regulations and requirements, and obtain (before starting project work) and comply with all required permits and approvals. Failure to obtain all appropriate Federal, State, and Local permits and clearances may jeopardize federal funding.

D) Environmental:

- 1) Sub-Recipient shall follow all applicable state, local and federal laws, regulations and requirements, and obtain (before starting project work) and comply with all required permits and approvals. Failure to obtain all appropriate federal, state, and local environmental permits and clearances may jeopardize federal funding. If project work is delayed for a year or more after the date of the categorical exclusion (CATEX), then coordination with and project review by regulatory agencies shall be redone.
- 2) Any change, addition or supplement to the approved Scope of Work that alters the project (including other work not funded by FEMA, but done substantially at the same time), regardless of the budget implications, shall require re-submission of the application to FEMA through the Division for National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act (NHPA) re-evaluation before starting project work.
- 3) The Sub-Recipient shall monitor ground disturbing activities during construction, and if any potential archeological resources are discovered, shall immediately cease construction in that area and notify the Division and FEMA.

If human remains or intact archaeological deposits are uncovered, work in the vicinity of the discovery shall stop immediately and all reasonable measures to avoid or minimize harm to the finds shall be taken. The Sub-Recipient shall ensure that archaeological discoveries are secured in place, that access to the sensitive area is restricted, and that all reasonable measures are taken to avoid further disturbance of the discoveries.

The Sub-Recipient's contractor shall provide immediate notice of such discoveries to the Sub-Recipient. The Sub-Recipient shall notify the Florida Division of Historic Resources, the Division's State Environmental Liaison Officer and FEMA within 24 hours of the discovery. Work in the vicinity of the discovery may not resume until FEMA and the Division have completed consultation with SHPO, Tribes, and other consulting parties as necessary.

In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately and the proper authorities notified in accordance with ***Florida Statutes, Section 872.05***.

- 4) The Sub-Recipient must comply with the conditions of the South Florida Water Management District (SFWMD) Environmental Resource Program (ERP) permit number: 36-102467-P. Failure to comply with this condition may jeopardize FEMA funding; verification of compliance shall be required at project closeout.
- 5) The proposed project must adhere to the attached ESA conditions listed in United States Army Corps of Engineers (USACE) permits number SAJ-2018-00044 (NW-EPL) and SAJ-2019-01933 (NW-SJF), including conditions from USACE and National Marine Fisheries Service (NMFS) JaxBO Project Design Criteria (PDC) for in Water Activities and Shoreline Stabilization, Sea Turtle and Smalltooth Sawfish Construction Conditions, and Standard Manatee Conditions for In-Water Work. Failure to comply with these conditions may jeopardize FEMA funding; verification of compliance shall be required at project closeout.
- 6) Sub-Recipient must comply with all conditions as required by the United States Army Corps of Engineers (USACE) permit numbers SAJ-2018-0044 (NW-EPL) and SAJ-2019-01933 (NW-SJF) and associated guidance. The Sub-Recipient must obtain permit modifications as necessary, Failure to comply with these conditions may jeopardize FEMA funding; verification of compliance required at project closeout.
- 7) Construction vehicles and equipment used for this project shall be maintained in good working order to minimize pollutant emissions.

E) Programmatic:

- 1) A change in the scope of work *must* be approved by the Division and FEMA in advance regardless of the budget implications.
- 2) The Sub-Recipient must notify the Division as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower costs or earlier completion.
- 3) The Sub-Recipient must “obtain prior written approval for any budget revision which would result in a need for additional funds” [44 CFR 13(c)], from the Division and FEMA.
- 4) Project is approved with the condition that the enclosed list of deliverables shall be submitted, 30 days prior to the Period of Performance date, for review and approval by the Division, for submittal to FEMA for closeout.
- 5) Any extension of the Period of Performance shall be submitted to FEMA 60 days prior to the expiration date. Therefore, any request for a Period of Performance Extension shall be in writing and submitted, along with substantiation of the new expiration date and a new schedule of work, to the Division a minimum of seventy (70) days prior to the expiration date, for Division processing.
- 6) A copy of the executed subcontract agreement must be forwarded to the Division within 10 days of execution.
- 7) The Sub-Recipient must avoid duplication of benefits between the HMGP and any other form of assistance, as required by Section 312 of the Stafford Act, and further clarification in 44 CFR 206.191.
- 8) If the Sub-Recipient is not the current title holder of the affected properties, the Sub-Recipient shall provide documentation confirming the property acquisition and easement rights were obtained voluntarily. If condemnation or eminent domain is used to obtain easement rights, FEMA shall not pay for any associated costs or payments to the property owner. Furthermore, FEMA shall not consider it an eligible contribution to the non-Federal cost share requirement and shall not financially participate in that component of a project if land or easements are obtained involuntarily.
- 9) CWA CONDITION: The subgrantee must comply with the terms and conditions of USACE Permits No. SAJ-2018-00044 (NW-EPL) and SAJ-2019-01933 (NW-SJF) and associated guidance. The subgrantee must obtain permit modifications as necessary. Failure to comply with these conditions may jeopardize FEMA funding; verification of compliance will be required at project closeout.
- 10) CZMA CONDITION: The subgrantee must comply with the conditions of the SFWMD ERP, #36-102467-P. Failure to comply with this condition may jeopardize FEMA funding; verification of compliance will be required at project closeout.
- 11) ESA CONDITION: The proposed project must adhere to the attached ESA conditions listed in USACE permits No. SAJ-2018-00044 (NW- EPL) and SAJ-2019-01933 (NWSJF), including conditions from USACE NMFS JAXBO Project Design Criteria (PDC) for in Water Activities and Shoreline Stabilization, Sea Turtle and Smalltooth Sawfish Construction Conditions, Standard Manatee Conditions for In-Water Work. Failure to comply with these conditions may jeopardize FEMA funding; verification of compliance will be required at project closeout.
- 12) NHPA CONDITION: Any changes to the approved scope of work will require submission to, and evaluation and approval by, the State and FEMA, prior to initiation of any work, for compliance with Section 106.
- 13) NHPA CONDITION: If human remains or intact archaeological features or deposits (e.g. arrowheads, pottery, glass, metal, etc.) are uncovered, work in the vicinity of the discovery will stop immediately and all reasonable measures to avoid or minimize harm to the finds will be taken. The applicant will ensure that archaeological discoveries are secured in place, that access to the sensitive area is restricted, and that all reasonable measures are taken to avoid further disturbance of the discoveries. The applicant's contractor will provide immediate notice of such discoveries to the applicant. The applicant shall contact the Florida Division of Historic Resources and FEMA within 24 hours of the discovery. Work in the vicinity of the discovery may not resume until FEMA has completed consultation with SHPO, Tribes,

and other consulting parties as necessary. In the event that unmarked human remains are encountered during permitted activities, all work shall stop immediately, and the proper authorities notified in accordance with Florida Statutes, Section 872.05.

- 14) Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.

This is FEMA project number **4337-196-R**, and shall be reported under **4337-196-A**. It is funded under HMGP, FEMA-4337-DR-FL and must adhere to all program guidelines established for the HMGP in accordance with the PAS Operational Agreement for Disaster 4337.

FEMA awarded this project on January 11, 2022; this Agreement shall begin upon execution by both parties, and the Period of Performance for this project shall end on **February 28, 2024**.

F) FINANCIAL CONSEQUENCES:

If the Sub-Recipient fails to comply with any term of the award, the Division shall take one or more of the following actions, as appropriate in the circumstances:

- 1) Temporarily withhold cash payments pending correction of the deficiency by the Sub-Recipient;
- 2) Disallow all or part of the cost of the activity or action not in compliance;
- 3) Wholly or partly suspend or terminate the current award for the Sub-Recipient's program;
- 4) Withhold further awards for the program; or
- 5) Take other remedies that may be legally available.

SCHEDULE OF WORK

Phase II–

State Contracting:	3	Months
Construction Plan/Technical Specifications:	2	Months
Bidding / Local Procurement:	2	Months
Construction / Installation:	10	Months
Local Inspections / Compliance:	3	Months
State Final Inspections / Compliance:	3	Months
Closeout Compliance:	2	Months
Total Period of Performance:	25	Months

BUDGET**Line Item Budget***

Phase II	Project Cost	Federal Cost	Non-Federal Cost
Materials:	\$639,351.00	\$479,513.25	\$159,837.75
Labor:	\$66,000.00	\$49,500.00	\$16,500.00
Fees:	\$10,000.00	\$7,500.00	\$2,500.00
Initial Agreement Amount:	\$715,351.00	\$536,513.25	\$178,837.75
***Contingency Funds:	\$35,767.00	\$26,825.25	\$8,941.75
Project Total:	\$751,118.00	\$563,338.50	\$187,779.50

**Any line item amount in this Budget may be increased or decreased 10% or less, with the Division's approval, without an amendment to this Agreement being required, so long as the overall amount of the funds obligated under this Agreement is not increased.*

***** This project has an estimated \$35,767.00 in contingency funds.** Per FEMA Hazard Mitigation Assistance Guidance Part VI, D.3.4 – Contingency funds are not automatically available for use. Prior to their release, contingency funds must be re-budgeted to another direct cost category and identified. Post-award changes to the budget require prior written approval from the Division (FDEM). The written request should demonstrate what unforeseen condition related to the project arose that required the use of contingency funds.

Project Management costs are included for this project in the amount of \$ 0.00

Funding Summary Totals

Federal Share:	\$563,338.50	(75.00%)
Non-Federal Share:	\$187,779.50	(25.00%)
Total Project Cost:	\$751,118.00	(100.00%)

Attachment B
Program Statutes and Regulations

The parties to this Agreement and the Hazard Mitigation Grant Program (HMGP) are generally governed by the following statutes and regulations:

- (1) The Robert T. Stafford Disaster Relief and Emergency Assistance Act;
- (2) 44 C.F.R. Parts 7, 9, 10, 13, 14, 17, 18, 25, 206, 220, and 221, and any other applicable FEMA policy memoranda and guidance documents;
- (3) State of Florida Administrative Plan for the Hazard Mitigation Grant Program;
- (4) Hazard Mitigation Assistance Guidance- February 27, 2015 Update; and
- (5) All applicable laws and regulations delineated in Attachment C of this Agreement.

In addition to the above statutes and regulations, the Sub-recipient must comply with the following:

The Sub-recipient shall fully perform the approved hazard mitigation project, as described in the Application and Attachment A (Budget and Scope of Work) attached to this Agreement, in accordance with approved scope of work indicated therein, the estimate of costs indicated therein, the allocation of funds indicated therein, and the terms and conditions of this Agreement. The Sub-recipient shall not deviate from the approved project and the terms and conditions of this Agreement. The Sub-recipient shall comply with any and all applicable codes and standards in performing work funded under this Agreement, and shall provide any appropriate maintenance and security for the project.

Any development permit issued by, or development activity undertaken by, the Sub-recipient and any land use permitted by or engaged in by the Sub-recipient, shall be consistent with the local comprehensive plan and land development regulations prepared and adopted pursuant to chapter 163, Part II, Florida Statutes. Funds shall be expended for, and development activities and land uses authorized for, only those uses which are permitted under the comprehensive plan and land development regulations. The Sub-recipient shall be responsible for ensuring that any development permit issued and any development activity or land use undertaken is, where applicable, also authorized by the Water Management District, the Florida Department of Environmental Protection, the Florida Department of Health, the Florida Game and Fish Commission, and any Federal, State, or local environmental or land use permitting authority, where required. The Sub-recipient agrees that any repair or construction shall be in accordance with applicable standards of safety, decency, and sanitation, and in conformity with applicable codes, specifications and standards.

The Sub-recipient will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the completed work conforms with the approved plans and specifications and will furnish progress reports and such other information to HMGP as may be required.

If the hazard mitigation project described in Attachment A includes an acquisition or relocation project, then the Sub-recipient shall ensure that, as a condition of funding under this Agreement, the owner of the affected real property shall record in the public records of the county where it is located the following covenants and restrictions, which shall run with and apply to any property acquired, accepted, or from which a structure will be removed pursuant to the project.

- (1) The property will be dedicated and maintained in perpetuity for a use that is compatible with open space, recreational, or wetlands management practices;
- (2) No new structure will be erected on property other than:
 - a. a public facility that is open on all sides and functionally related to a designed open space;
 - b. a restroom; or
- (3) A structure that the Director of the Federal Emergency Management Agency approves in writing before the commencement of the construction of the structure;
- (4) After the date of the acquisition or relocation no application for disaster assistance for any purpose will be made to any Federal entity and no disaster assistance will be provided for the property by any Federal source; and
- (5) If any of these covenants and restrictions is violated by the owner or by some third party with the knowledge of the owner, fee simple title to the Property described herein shall be conveyed to the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida without further notice to the owner, its successors and assigns, and the owner, its successors and assigns shall forfeit all right, title and interest in and to the property.

HMGP Contract Manager will evaluate requests for cost overruns and submit to the regional Director written determination of cost overrun eligibility. Cost overruns shall meet Federal regulations set forth in 44 C.F.R. §206.438(b).

The National Environmental Policy Act (NEPA) stipulates that additions or amendments to a HMGP Sub-Recipient Scope of Work (SOW) shall be reviewed by all State and Federal agencies participating in the NEPA process.

As a reminder, the Sub-recipient must obtain prior approval from the State, before implementing changes to the approved project Scope of Work (SOW). Per the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments:

- (1) For Construction projects, the grantee must “obtain prior written approval for any budget revision which result in a need for additional funds” (2 C.F.R. § 200.308);
- (2) A change in the Scope of Work must be approved by FEMA in advance regardless of the budget implications; and
- (3) The Sub-recipient must notify the State as soon as significant developments become known, such as delays or adverse conditions that might raise costs or delay completion, or favorable conditions allowing lower cost or earlier completion. Any extensions of the period of performance must be submitted to FEMA sixty (60) days prior to the project expiration date.

The Sub-recipient assures that it will comply with the following statutes and regulations to the extent applicable:

- (1) 53 Federal Register 8034
- (2) Federal Acquisition Regulations 31.2
- (3) Section 1352, Title 31, US Code
- (4) Chapter 473, Florida Statutes
- (5) Chapter 215, Florida Statutes
- (6) Section 768.28, Florida Statutes
- (7) Chapter 119, Florida Statutes
- (8) Section 216.181(6), Florida Statutes

- (9) Cash Management Improvement Act of 1990
- (10) American with Disabilities Act
- (11) Section 112.061, Florida Statutes
- (12) Immigration and Nationality Act
- (13) Section 286.011, Florida Statutes
- (14) 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- (15) Uniform Relocation Assistance and Real Property Acquisitions Act of 1970
- (16) Title I of the Omnibus Crime Control and Safe Streets Act of 1968
- (17) Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act
- (18) Omnibus Crime Control and Safe Streets Act of 1968, as amended
- (19) Victims of Crime Act (as appropriate)
- (20) Section 504 of the Rehabilitation Act of 1973, as amended
- (21) Subtitle A, Title II of the Americans with Disabilities Act (ADA) (1990)
- (22) Department of Justice regulations on disability discrimination, 28 C.F.R., Part 35 and Part 39
- (23) 42 U.S.C. 5154a

Attachment C

Statement of Assurances

To the extent the following provisions apply to this Agreement, the Sub-recipient certifies that:

- (a) It possesses legal authority to enter into this Agreement and to carry out the proposed program;
- (b) Its governing body has duly adopted or passed as an official act of resolution, motion or similar action authorizing the execution of the hazard mitigation agreement with the Division of Emergency Management (DEM), including all understandings and assurances contained in it, and directing and authorizing the Sub-recipient's chief administrative officer or designee to act in connection with the application and to provide such additional information as may be required;
- (c) No member of or delegate to the Congress of the United States, and no Resident Commissioner, shall receive any share or part of this Agreement or any benefit. No member, officer, or employee of the Sub-recipient or its designees or agents, no member of the governing body of the locality in which this program is situated, and no other public official of the locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year after, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds, for work to be performed in connection with the program assisted under this Agreement. The Sub-recipient shall incorporate, in all contracts or subcontracts a provision prohibiting any interest pursuant to the purpose stated above;
- (d) All Sub-recipient contracts for which the State Legislature is in any part a funding source, shall contain language to provide for termination with reasonable costs to be paid by the Sub-recipient for eligible contract work completed prior to the date the notice of suspension of funding was received by the Sub-recipient. Any cost incurred after a notice of suspension or termination is received by the Sub-recipient may not be funded with funds provided under this Agreement unless previously approved in writing by the Division. All Sub-recipient contracts shall contain provisions for termination for cause or convenience and shall provide for the method of payment in such event;
- (e) It will comply with:
 - (1) Contract Work Hours and Safety Standards Act of 1962, 40 U.S.C. 327 et seq., requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty hours in a work week; and
 - (2) Federal Fair Labor Standards Act, 29 U.S.C. Section 201 et seq., requiring that covered employees be paid at least minimum prescribed wage, and also that they be paid one and one-half times their basic wage rates for all hours worked in excess of the prescribed work-week.
- (f) It will comply with
 - (1) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), and the regulations issued pursuant thereto, which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Sub-recipient received Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Sub-

recipient, this assurance shall obligate the Sub-recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits;

- (2) Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107) which prohibits discrimination on the basis of age or with respect to otherwise qualifies handicapped individuals as provided in Section 504 of the Rehabilitation Act of 1973;
- (3) Executive Order 11246, as amended by Executive Orders 11375 and 12086, and the regulations issued pursuant thereto, which provide that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of federal or federally assisted construction contracts; affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff/termination, rates of pay or other forms of compensation; and election for training and apprenticeship;
- (g) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties pursuant to section 112.313 and section 112.3135, Florida Statutes;
- (h) It will comply with the Anti-Kickback Act of 1986, 41 U.S.C. Chapter 87 which outlaws and prescribes penalties for "kickbacks" of wages in federally financed or assisted construction activities;
- (i) It will comply with the provisions of 5 U.S.C. 7323 (further known as the Hatch Act) which limits the political activities of employees;
- (j) It will comply with the flood insurance purchase and other requirements of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 50, including requirements regarding the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance;

For sites located within Special Flood Hazard Areas (SFHA), the Sub-recipient must include a FEMA Model Acknowledgement of Conditions of Mitigation of Property in a Special Flood Hazard Area with FEMA Grant Funds executed by the title holder with the closeout request verifying that certain SFHA requirements were satisfied on each of the properties. The Model Acknowledgement can be found at www.fema.gov/government/grant/sfha_conditions.shtm

- (k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Agreement to comply with the "Uniform Federal Accessibility Standards," (AS) which is Appendix A to 41 C.F.R. Section 101-19.6 for general type buildings and Appendix A to 24 C.F.R., Part 40 for residential structures. The Sub-recipient will be responsible for conducting inspections to ensure compliance with these specifications by the contractor;
- (l) It will, in connection with its performance of environmental assessments under the National Environmental Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C.), Executive Order 11593, 36 C.F.R., Part 800, and the Preservation of Archaeological and Historical Data Act of 1966 (54 U.S.C. 3125) by:

- (1) Consulting with the State Historic Preservation Office to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 C.F.R., Section 800.8) by the proposed activity; and
- (2) Complying with all requirements established by the State to avoid or mitigate adverse effects upon such properties.
- (3) Abiding by the terms and conditions of the **“Programmatic Agreement Among the Federal Emergency Management Agency, the Florida State Historic Preservation Office, the Florida Division of Emergency Management and the Advisory Council on Historic Preservation, (PA)”** which addresses roles and responsibilities of Federal and State entities in implementing Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C., and implementing regulations in 36 C.F.R., Part 800.
- (4) When any of the Sub-recipient’s projects funded under this Agreement may affect a historic property, as defined in 36 C.F.R., Part 800.16 (I)(1), the Federal Emergency Management Agency (FEMA) may require the Sub-recipient to review the eligible scope of work in consultation with the State Historic Preservation Office (SHPO) and suggest methods of repair or construction that will conform with the recommended approaches set out in the **Secretary of Interior’s Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings 1992 (Standards)**, the **Secretary of the Interior’s Guidelines for Archeological Documentation (Guidelines)** (48 Federal Register 44734-37), or any other applicable Secretary of Interior standards. If FEMA determines that the eligible scope of work will not conform with the **Standards**, the Sub-recipient agrees to participate in consultations to develop, and after execution by all parties, to abide by, a written agreement that establishes mitigation and recondition measures, including but not limited to, impacts to archeological sites, and the salvage, storage, and reuse of any significant architectural features that may otherwise be demolished.
- (5) The Sub-recipient agrees to notify FEMA and the Division if any project funded under this Agreement will involve ground disturbing activities, including, but not limited to: subsurface disturbance; removal of trees; excavation of footings and foundations, and installation of utilities (such as water, sewer, storm drains, electrical, gas, leach lines and septic tanks) except where these activities are restricted solely to areas previously disturbed by the installation, replacement or maintenance of such utilities. FEMA will request the SHPO’s opinion on the potential that archeological properties may be present and be affected by such activities. The SHPO will advise the Sub-recipient on any feasible steps to be accomplished to avoid any National Register eligible archeological property or will make recommendations for the development of a treatment plan for the recovery or archeological data from the property.

If the Sub-recipient is unable to avoid the archeological property, develop, in consultation with SHPO, a treatment plan consistent with the **Guidelines** and take into account the Advisory Council on Historic Preservation (Council) publication “Treatment of Archeological Properties”. The Sub-recipient shall forward information regarding the treatment plan to FEMA, the SHPO and the Council for review. If the SHPO and the Council do not object within fifteen (15) calendar days of receipt of the treatment plan, FEMA may direct the Sub-recipient to implement the treatment plan. If either the Council or the SHPO object, Sub-recipient shall not proceed with the project until the objection is resolved.

- (6) The Sub-recipient shall notify the Division and FEMA as soon as practicable: (a) of any changes in the approved scope of work for a National Register eligible or listed property; (b) of all changes to a project that may result in a supplemental DSR or modify a HMGP project for a National Register eligible or listed property; (c) if it appears that a project funded under this Agreement will affect a previously unidentified property that may be

eligible for inclusion in the National Register or affect a known historic property in an unanticipated manner. The Sub-recipient acknowledges that FEMA may require the Sub-recipient to stop construction in the vicinity of the discovery of a previously unidentified property that may eligible for inclusion in the National Register or upon learning that construction may affect a known historic property in an unanticipated manner. The Sub-recipient further acknowledges that FEMA may require the Sub-recipient to take all reasonable measures to avoid or minimize harm to such property until FEMA concludes consultation with the SHPO. The Sub-recipient also acknowledges that FEMA will require, and the Sub-recipient shall comply with, modifications to the project scope of work necessary to implement recommendations to address the project and the property.

- (7) The Sub-recipient acknowledges that, unless FEMA specifically stipulates otherwise, it shall not receive funding for projects when, with intent to avoid the requirements of the PA or the NHPA, the Sub-recipient intentionally and significantly adversely affects a historic property, or having the legal power to prevent it, allowed such significant adverse effect to occur.
- (m) It will comply with applicable provisions of the following laws and policies prohibiting discrimination:
 - (1) Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination based on race, color, or national origin (including limited English proficiency).
 - (2) Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination based on disability.
 - (3) Title IX of the Education Amendments Act of 1972, as amended, which prohibits discrimination based on sex in education programs or activities.
 - (4) Age Discrimination Act of 1975, which prohibits discrimination based on age.
 - (5) U.S. Department of Homeland Security regulation 6 C.F.R. Part 19, which prohibits discrimination based on religion in social service programs.
- (n) It will comply with Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686) which prohibits discrimination on the basis of sex;
- (o) It will comply with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, (42 U.S.C. 4541-45-94) relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- (p) It will comply with 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- (q) It will comply with Lead-Based Paint Poison Prevention Act (42 U.S.C. 4821 et seq.) which prohibits the use of lead based paint in construction of rehabilitation or residential structures;
- (r) It will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422), and the provisions of the State Energy Conservation Plan adopted pursuant thereto;
- (s) It will comply with the Laboratory Animal Welfare Act of 1966, (7 U.S.C. 2131-2159), pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by an award of assistance under this Agreement;
- (t) It will comply with Title VIII of the Civil Rights Act of 1968, (42 U.S.C 2000c and 42 U.S.C. 3601-3619), as amended, relating to non-discrimination in the sale, rental, or financing of housing, and

Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin;

- (u) It will comply with the Clean Air Act of 1955, as amended, 42 U.S.C. 7401-7675;
- (v) It will comply with the Clean Water Act of 1977, as amended, 33 U.S.C. 1251-1388
- (w) It will comply with the endangered Species Act of 1973, 16 U.S.C. 1531-1544;
- (x) It will comply with the Intergovernmental Personnel Act of 1970, 42 U.S.C. 4701-4772;
- (y) It will assist the awarding agency in assuring compliance with the National Historic Preservation Act of 1966, as amended, 54 U.S.C.;
- (z) It will comply with environmental standards which may be prescribed pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347;
- (aa) It will assist the awarding agency in assuring compliance with the Preservation of Archeological and Historical Preservation Act of 1966, 16 U.S.C. 54 U.S.C. 3125
- (bb) It will comply with the Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794, regarding non-discrimination;
- (cc) It will comply with the environmental standards which may be prescribed pursuant to the Safe Drinking Water Act of 1974, 42 U.S.C. 300f-300j-27, regarding the protection of underground water sources;
- (dd) It will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Property Acquisition Policies Act of 1970, 42 U.S.C. 4621-4638, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs;
- (ee) It will comply with the Wild and Scenic Rivers Act of 1968, 16 U.S.C. 1271-1287, related to protecting components or potential components of the national wild and scenic rivers system;
- (ff) It will comply with the following Executive Orders: EO 11514 (NEPA); EO 11738 (violating facilities); EO 11988 (Floodplain Management); EO 11990 (Wetlands); and EO 12898 (Environmental Justice);
- (gg) It will comply with the Coastal Barrier Resources Act of 1977, 16 U.S.C. 3501-3510;
- (hh) It will assure project consistency with the approved State program developed under the Coastal Zone Management Act of 1972, 16 U.S.C. 1451-14674; and
- (ii) It will comply with the Fish and Wildlife Coordination Act of 1958, 16 U.S.C. 661-668.
- (jj) With respect to demolition activities, it will:
 - (1) Create and make available documentation sufficient to demonstrate that the Sub-recipient and its demolition contractor have sufficient manpower and equipment to comply with the obligations as outlined in this Agreement.
 - (2) Return the property to its natural state as though no improvements had ever been contained thereon.

- (3) Furnish documentation of all qualified personnel, licenses and all equipment necessary to inspect buildings located in the Sub-recipient's jurisdiction to detect the presence of asbestos and lead in accordance with requirements of the U.S. Environmental Protection Agency, the Florida Department of Environmental Protection and the County Health Department.
- (4) Provide documentation of the inspection results for each structure to indicate:
 - a. Safety Hazard Present
 - b. Health Hazards Present
 - c. Hazardous Materials Present
- (5) Provide supervision over contractors or employees employed by the Sub-recipient to remove asbestos and lead from demolished or otherwise applicable structures.
- (6) Leave the demolished site clean, level and free of debris.
- (7) Notify the Division promptly of any unusual existing condition which hampers the contractor's work.
- (8) Obtain all required permits.
- (9) Provide addresses and marked maps for each site where water wells and septic tanks are to be closed along with the number of wells and septic tanks located on each site. Provide documentation of closures.
- (10) Comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).
- (11) Comply with all applicable standards, orders, or requirements issued under Section 112 and 306 of the Clean Air Act (42 U.S.C. 1857), Section 508 of the Clean Water Act (33 U.S.C. 1251-1388), Executive Order 11738, and the U.S. Environmental Protection Agency regulations (40 C.F.R., Part 15 and 61). This clause shall be added to any subcontracts.
- (12) Provide documentation of public notices for demolition activities.

Attachment D

**REQUEST FOR ADVANCE OR REIMBURSEMENT
OF HAZARD MITIGATION ASSISTANCE PROGRAM FUNDS**

SUB-RECIPIENT: Town of Fort Myers Beach

REMIT ADDRESS: 2525 Estero Blvd

CITY: Fort Myers STATE: FL ZIP CODE: 33931

PROJECT TYPE: Drainage PROJECT #: 4337-196-A

PROGRAM: Hazard Mitigation Grant Program CONTRACT #: H0818

APPROVED BUDGET: _____ FEDERAL SHARE: _____ MATCH: _____

ADVANCED RECEIVED: _____ N/A _____ AMOUNT: _____ SETTLED? _____

Invoice Period: _____ through _____ Payment #: _____

Total of Previous Payments to Date: _____ (Federal)

Eligible Amount 100% (Current Request)	Obligated Federal Amount 75 %	Obligated Non- Federal 25 %	Division Use Only	
			Approved	Comments

TOTAL CURRENT REQUEST: \$ _____

By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812.

SUB-RECIPIENT SIGNATURE: _____

NAME: _____ TITLE: _____ DATE: _____

TO BE COMPLETED BY THE DIVISION	
APPROVED PROJECT TOTAL \$ _____	
APPROVED SRMC TOTAL: \$ _____	GOVERNOR'S AUTHORIZED REPRESENTATIVE _____
APPROVED FOR PAYMENT \$ _____	DATE _____

Attachment D (cont.)
SUMMARY OF DOCUMENTATION IN SUPPORT OF AMOUNT
CLAIMED FOR ELIGIBLE DISASTER WORK UNDER THE
HAZARD MITIGATION ASSISTANCE PROGRAM

SUB-RECIPIENT: Town of Fort Myers Beach PAYMENT #: _____
PROJECT TYPE: Drainage PROJECT #: 4337-196-A
PROGRAM: Hazard Mitigation Grant Program CONTRACT #: H0818

	REF NO ²	DATE ³	DOCUMENTATION ⁴	(Check) AMOUNT	ELIGIBLE COSTS (100%)
1					
2					
3					
4					
5					
6					
7					
8					
<i>This payment represents % completion of the project.</i>					TOTAL

² Recipient's internal reference number (e.g., Invoice, Receipt, Warrant, Voucher, Claim Check, or Schedule #)

³ Date of delivery of articles, completion of work or performance services. (per document)

⁴ List Documentation (Recipient's payroll, material out of recipient's stock, recipient owned equipment and name of vendor or contractor) by category (Materials, Labor, Fees) and line item in the approved project line item budget. Provide a brief description of the articles or services. List service dates per each invoice.

**Attachment E
JUSTIFICATION OF ADVANCE PAYMENT**

SUB-RECIPIENT: TOWN OF FORT MYERS BEACH

If you are requesting an advance, indicate same by checking the box below.

☐ ADVANCE REQUESTED Advance payment of \$ _____ is requested. Balance of payments will be made on a reimbursement basis. These funds are needed to pay staff, award benefits to clients, duplicate forms and purchase start-up supplies and equipment. We would not be able to operate the program without this advance.
--

If you are requesting an advance, complete the following chart and line item justification below.

PLEASE NOTE: Calculate your estimated expenses at 100% of your expected needs for ninety (90) days. Submit Attachment D with the cost share breakdown along with Attachment E and all supporting documentation.

ESTIMATED EXPENSES

BUDGET CATEGORY/LINE ITEMS (list applicable line items)	20__-20__ Anticipated Expenditures for First Three Months of Contract
<u>For example</u> ADMINISTRATIVE COSTS (Include Secondary Administration.)	
<u>For example</u> PROGRAM EXPENSES	
TOTAL EXPENSES	

LINE ITEM JUSTIFICATION (For each line item, provide a detailed justification explaining the need for the cash advance. The justification must include supporting documentation that clearly shows the advance will be expended within the first ninety (90) days of the contract term. Support documentation should include quotes for purchases, delivery timelines, salary and expense projections, etc. to provide the Division reasonable and necessary support that the advance will be expended within the first ninety (90) days of the contract term. Any advance funds not expended within the first ninety (90) days of the contract term as evidenced by copies of invoices and cancelled checks as required by the Budget and Scope of work showing 100% of expenditures for the 90 day period shall be returned to the Division Cashier, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399, within thirty (30) days of receipt, along with any interest earned on the advance.

Attachment F
QUARTERLY REPORT FORM

Instructions: Complete and submit this form to State Project Manager within 15-days after each quarter:

SUB-RECIPIENT: Town of Fort Myers Beach **PROJECT #:** 4337-196-A
PROJECT TYPE: Drainage **CONTRACT #:** H0818
PROGRAM: Hazard Mitigation Grant Program **QUARTER ENDING:** _____

Advance Payment Information:

Advance Received ☐ N/A ☐ Amount: \$ _____ Advance Settled? Yes ☐ No ☐

Financial Amount to Date:

Sub-Recipient Total Project Expenditures to date (federal & local): \$ _____

Target Dates (State Agreement):

Contract Execution Date: _____ Contract Expiration Date: _____
Date Deliverables Submitted: _____ Closeout Requested Date: _____

Describe **Milestones** achieved during this quarter:

Project Proceeding on **Schedule?** ☐ Yes ☐ No (If No, Describe under **Issues** below)

Percentage of Milestones completed to Date: _____%

Describe Activities - Milestones completed this quarter only:

Schedule of the Milestones-Activities:

<u>Milestone</u>	<u>Dates</u> (estimated)
<u>State Contracting</u>	
<u>Closeout Compliance</u>	
<u>Estimated Project Completion Date:</u>	

Issues or circumstances affecting completion date, milestones, scope of work, and/or cost:

Cost Status: ☐ Cost Unchanged ☐ Under Budget ☐ Over Budget

Cost / Financial **Comments:**

NOTE: Events may occur between quarterly reports, which have significant impact upon your project(s), such as anticipated overruns, changes in scope of work, extensions. Contact the Division as soon as these conditions are known, otherwise you could be non-compliant with your sub-grant award.

Sub-Recipient Contract Representative (POC): _____

Signature: _____ Phone: _____

~ To be completed by Florida Division of Emergency Management Project Manager ~

Project Manager Statement: ☐ No Action Required, OR

☐ Action Required: _____

PM Percentage of Activates competed per PM Review QR Milestones Spreadsheet: _____%

Date Reviewed: _____ Reviewer: _____ Project Manager

Attachment G
Warranties and Representations

Financial Management

The Sub-Recipient's financial management system must comply with 2 C.F.R. §200.302.

Procurements

Any procurement undertaken with funds authorized by this Agreement must comply with the requirements of 2 C.F.R. §200, Part D—Post Federal Award Requirements—Procurement Standards (2 C.F.R. §§200.317 through 200.327).

Business Hours

The Sub-Recipient shall have its offices open for business, with the entrance door open to the public, and at least one employee on site, from: **8:00 AM - 5:00 PM, Monday Thru Friday, as applicable.**

Licensing and Permitting

All subcontractors or employees hired by the Sub-Recipient shall have all current licenses and permits required for all of the particular work for which they are hired by the Sub-Recipient.

Attachment H

Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion

Subcontractor Covered Transactions

The prospective subcontractor, _____, of the Sub-Recipient certifies, by submission of this document, that neither it, its principals, nor affiliates are presently debarred, suspended, proposed for debarment, declared ineligible, voluntarily excluded, or disqualified from participation in this transaction by any Federal department or agency.

SUBCONTRACTOR

By: _____
Signature

Name and Title

Street Address

City, State, Zip

Date

Town of Fort Myers Beach
Sub-Recipient's Name

H0818
DEM Contract Number

4337-196-A
FEMA Project Number

Attachment I
Federal Funding Accountability and Transparency Act
Instructions and Worksheet

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 Sub-award Reporting System (FSRS) is the reporting tool the Florida Division of Emergency Management ("FDEM" or "Division") must use to capture and report sub-award and executive compensation data regarding first-tier sub-awards that obligate \$25,000 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 "Instructions and Worksheet" is meant to explain the requirements of the FFATA and give clarity to the FFATA Form distributed to sub-awardees for completion. All pertinent information below should be filled out, signed, and returned to the project manager.

ORGANIZATION AND PROJECT INFORMATION

The following information must be provided to the FDEM prior to the FDEM's issuance of a sub-award (Agreement) that obligates \$25,000 or more in federal funds as described above. Please provide the following information and return the signed form to the Division as requested.

PROJECT #: 4337-196-A

FUNDING AGENCY: Federal Emergency Management Agency

AWARD AMOUNT: \$ 536,513.25

OBLIGATION/ACTION DATE: January 11, 2022

SUBAWARD DATE (if applicable): _____

DUNS#: 809043685

DUNS# +4: _____

*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 web form (<http://fedgov.dnb.com/webform>). The process to request a DUNS number takes about ten minutes and is free of charge.

BUSINESS NAME: _____

DBA NAME (IF APPLICABLE): _____

PRINCIPAL PLACE OF BUSINESS ADDRESS: _____

ADDRESS LINE 1: _____

ADDRESS LINE 2: _____

ADDRESS LINE 3: _____

CITY _____ STATE _____ ZIP CODE+4** _____

PARENT COMPANY DUNS# (if applicable): _____

CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA#): _____

DESCRIPTION OF PROJECT (Up to 4000 Characters)

As a Hazard Mitigation Grant Program project, the Sub-Recipient proposes to improve the drainage for the Glenview and Holiday Subdivisions, located in Fort Myers Beach, Florida, 33931.

The Phase II – Construction scope of work proposes drainage improvements to the stormwater drainage system of the area, specifically along Williams Drive to Glenview Manor Drive. The proposed project shall include the regrading and restoration of existing swales, installation of 15" and 24" storm drainpipe, inlets, manholes, baffle boxes, replacement of a section of a seawall, and installation of Duckbill backflow prevention valves at the outfalls. Additionally, the project shall include the necessary removal and replacement of driveways and road asphalt pavement and adjusting the manhole frames and covers. The improved stormwater system will accept the stormwater runoff to discharge it to the bay; backflow prevention devices will be installed to the outfall structures to except stormwater during storm surge or high tides; improvements will avoid repetitive flooding damage affecting 13 homes in the area.

The project shall provide protection against a 10-year storm event. Activities shall be completed in strict compliance with Federal, State and Local applicable Rules and Regulations.

Project Locations:

ID#	Coordinates	
1)	Start	(26.435252, -81.917204)
2)	End	(26.434903, -81.912314)

Verify the approved project description above, if there is any discrepancy, please contact the project manager.

PRINCIPAL PLACE OF PROJECT PERFORMANCE (IF DIFFERENT THAN PRINCIPAL PLACE OF BUSINESS):

ADDRESS LINE 1: _____

ADDRESS LINE 2: _____

ADDRESS LINE 3: _____

CITY _____ STATE _____ ZIP CODE+4** _____

CONGRESSIONAL DISTRICT FOR PRINCIPAL PLACE OF PROJECT PERFORMANCE:

****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 C.F.R. 170.320; , (b) \$25,000,000 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. 78m(a), 78o(d)) 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 C.F.R. 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:

- i. Salary and bonus.
- ii. 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.
- iii. 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.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.

- vi. 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.

TOTAL COMPENSATION CHART FOR MOST RECENTLY COMPLETED FISCAL YEAR

(Date of Fiscal Year Completion _____)

Rank (Highest to Lowest)	Name (Last, First, MI)	Title	Total Compensation for Most Recently Completed Fiscal Year
1			
2			
3			
4			
5			

THE UNDERSIGNED CERTIFIES THAT ON THE DATE WRITTEN BELOW, THE INFORMATION PROVIDED HEREIN IS ACCURATE.

SIGNATURE: _____

NAME AND TITLE: _____

DATE: _____

Attachment J

Mandatory Contract Provisions

Provisions:

Any contract or subcontract funded by this Agreement must contain the applicable provisions outlined in Appendix II to 2 C.F.R. Part 200. It is the responsibility of the sub-recipient to include the required provisions. The following is a list of sample provisions from Appendix II to 2 C.F.R. Part 200 that may be required:¹

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 C.F.R. Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. Part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to 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 be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 C.F.R. 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 contractor or Sub-recipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or

¹ For example, the Davis-Bacon Act is not applicable to other FEMA grant and cooperative agreement programs, including the Public Assistance Program or Hazard Mitigation Grant Program; however, sub-recipient may include the provision in its subcontracts.

repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702 of the Act, each contractor 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.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2 (a) and the recipient or Sub-recipient 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 recipient or Sub-recipient must comply with the requirements of 37 C.F.R. Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to 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).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 C.F.R. 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(J) See 2 C.F.R. § 200.323 Procurement of recovered materials.

(K) See 2 C.F.R. §200.216 Prohibition on certain telecommunication and video surveillance services or equipment.

(L) See 2 C.F.R. §200.322 Domestic preferences for procurements

(Appendix II to Part 200, Revised Eff. 11/12/2020).

FEMA created the 2019 PDAT Contract Provisions Template to assist non-Federal entities. It is *available* at https://www.fema.gov/media-library-data/1569959119092-92358d63e00d17639d5db4de015184c9/PDAT_ContractProvisionsTemplate_9-30-19.pdf.

Please note that the sub-recipient alone is responsible for ensuring that all language included in its contracts meets the requirements of 2 C.F.R. § 200.327 and 2 C.F.R. Part 200, Appendix II.

Attachment K

Certification Regarding Lobbying

Check the appropriate box:

- ☐ This Certification Regarding Lobbying is required because the Contract, Grant, Loan, or Cooperative Agreement will exceed \$100,000 pursuant to 2 C.F.R. Part 200, Appendix II(I); 31 U.S.C. § 1352; and 44 C.F.R. Part 18.
- ☐ This Certification is not required because the Contract, Grant, Loan, or Cooperative Agreement will be less than \$100,000.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Sub-Recipient or subcontractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Sub-Recipient/subcontractor's Authorized Official

Name and Title of Sub-Recipient/subcontractor's Authorized Official

Date