



Fort Myers Beach Town Council

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

Agenda

Monday, April 18, 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. APPROVAL OF MINUTES**
 - A. April 4, 2022 Town Council
 - B. April 7, 2022 Management & Planning
- IX. PRESENTATIONS**
 - A. Presentation: Marcus Goodson, Executive Director, Lee County Housing Authority
 - B. Discussion of Roadway Safety Lighting
Town Lighting Engineers and Florida Power & Light will be available for questions.
- X. CONSENT AGENDA**
 - A. Resolution 22-13; Interlocal Agreement with Lee County regarding Hazardous Waste Enforcement
Adopt Resolution 22-13 approving an Interlocal Agreement with Lee County for Hazardous Waste Enforcement and authorizing the Town Manager to execute the ILA and expend budgeted funds on behalf of the Town.

XI. PUBLIC HEARINGS

A. Ordinance 22-06; Tuckaway Cafe 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 May 2, 2022 at 9:00 AM

B. Ordinance 22-05; Building Footprint Limits

Second 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 BEACH LAND DEVELOPMENT CODE; PROVIDING FOR CODIFICATION, CONFLICTS, SCRIVENER'S ERRORS, SEVERABILITY AND AN EFFECTIVE DATE.

C. Ordinance 22-09; PWVL/PAL's

Second Reading and Public Hearing for Proposed Ordinance 22-09 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 27 "PERSONAL WATERCRAFT AND PARASAILING", SECTION 27-45 "DEFINITIONS"; SECTION 27-49 "REGULATIONS AND LOCATIONS FOR PERSONAL WATERCRAFT RENTALS"; 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"; SECTION 27-55 "TRANSFERABILITY OF PWVL AND PAL LICENSES" OF THE CODE OF ORDINANCES, TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DEFINITIONS; AMENDING OPERATIONAL REQUIREMENTS AND LICENSE RENEWAL REQUIREMENTS; PROVIDING 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;

ESTABLISHING NEW REQUIREMENTS FOR THE SALE AND TRANSFER OF PWVL AND PAL LICENSES; PROVIDING FOR CODIFICATION; CONFLICTS; SCRIVENER'S ERRORS; SEVERABILITY AND AN EFFECTIVE DATE.

XII. ADMINISTRATIVE AGENDA

A. New Beach Access Naming

The naming of the new beach access, which could replace Canal St., was provided by TPI Hospitality as a condition of development approval.

B. Preliminary Audit Review

Review of Preliminary Audited Financials

C. Resolution 22-16; Exposhow, Inc. Agreement

Adopt Resolution 22-16, Approving a piggyback contract between the Town and Exposhow, Inc. to provide fireworks for the 4th of July and New Years Eve, in an amount not to exceed \$60,000, utilizing the City of Marco Island's fireworks contract #2022-007, authorizing the Town Manager to execute the Agreement, expend budgeted funds, and take all appropriate actions to conduct the fireworks displays, and providing for an effective date.

D. Approval of Bridge closure for 4th of July parade and fireworks.

Approve closing of Matanzas Pass Bridge on July 4, 2022, from 9:30am to 11:30am for the parade, and from 9pm to 11:30pm for traffic coming on the island.

E. Resolution 22-15, Updating Joint Local Mitigation Strategy

Adopt Resolution 22-15, Updating the Town's Joint Local Mitigation Strategy.

F. STA#12: Times Square LAP Project Administration

Approve Supplemental Task Authorization #12 with DRMP, Inc. for engineering services in the not to exceed amount of \$78,200 and approve the one-year renewal for DRMP and authorize the Town Manager to execute the contract documents.

G. Potable Water - South Tank Repairs

Authorize the Town Manager to spend an additional \$131,896.00 for the emergency repairs to the South Potable Water storage tank.

XIII. FINAL PUBLIC COMMENT

XIV. TOWN MANAGER'S ITEMS

XV. TOWN ATTORNEY'S ITEMS

A. Code Violations / Liens

XVI. COUNCILMEMBERS ITEMS AND REPORTS

XVII. ADJOURNMENT

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

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

	For special accommodations, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202		Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained from the Town Clerk's Office.
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In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings.



Fort Myers Beach Town Council

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

Minutes

Monday, April 4, 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

Town Manager Hernstadt stated that item B. would be continued due to a title change that required a re-advertisement.

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

Motion carried unanimously.

V. PUBLIC COMMENT

Patricia Rittinger, resident of Island Winds, displayed photos of their beach. She noted it was accreting, not eroding. She stated if the plan went forward, the beach would be more than halved. She requested that the town not change its classification.

Lisa Price, property manager and representative of Island Winds, stated that they had approximately 800 feet of beach and it was not eroding. She indicated the beach had been maintained for years with no cost to taxpayers. She requested that their beach not be classified as critically eroding.

Joseph Scheiner, resident of Island Winds, commented that they specifically purchased their property due to the beach. He noted that they intended to hire professionals for a second opinion. He added that the town's consultant stated that their section of the beach was not eroding.

Rick Sabina, resident of Island Winds, continued with Mr. Scheiner's comments and mentioned ponding. He noted it occurred about three months during the year and did not cause concern for anyone. He did not support vegetation being planted along the beach. He felt any change to the beach would have a negative impact. He encouraged Town Council to walk the beach to see the recreational activities. Dave Nusbaum, President of Island Winds condominium, commented that the reclassification was being done under an administrative loophole. He feared that the town would create dunes without the residents' permission. He stated that the beach was not eroding and did not need to be reengineered. He discussed destroying the ecosystem and removing access to recreational activities. He requested that the beach not be reclassified as critically eroding.

Tony DeChristoforo, resident of Ocean Harbor Condominiums, questioned the status of their permit to replace broken lights on their property from hurricane Irma. He stated poles and fixtures were purchased and sitting in the parking lot. He described the new lights and provided a photometric study. He requested that the town issue the permit.

John R. King, representing residents of Island Winds, commented on changing the sea turtle glass ordinance. He reviewed the ordinance and compared it to information on the FWC (Fish & Wildlife Conservation) website. He requested that the tint be changed to 45%.

George Repetti, resident of Island Winds, stated that Mayor Murphy knew the beach as well as anyone. He described improvements made over the years and noted the beach was not critically eroding. He remarked that they did not want more grass or trees on their beach and suggested that they speak to people who knew the area. He commented on the red lights under their building and indicated residents could not see at night.

Jennifer Rusk, resident, discussed the importance of communication and bringing facts to the conversation. She felt there was an overall lack of communication and suggested that Town Council resume discussions about lighting in Times Square and Bayside Park.

Jason Oben, President of Custom Homes, commented on the side setback changes and noted that many of his projects were already underway and under contract. He notified Community Development Director Jason Green concerning the changes. He was told to supply a list of project documentation and the projects would be evaluated on a case-by-case basis. The first project was rejected, and he was told he had to apply for a variance for the remaining projects. He followed up with an email to Council Members and the Mayor. He indicated that his company had been building homes for 38 years, but they were not one of the builders contacted about the changes. He described the harm to property owners and requested that the Town Council retroactively give notice three months from now to protect the property owners.

Mathew Pleskovic, President of Banana Boat Tours & Rides, commented on purchasing his licenses and requested that Chapter 27 not be opened up regarding proposed Ordinance 22-09.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS

Council Member Veach described his father who passed away over the weekend and thanked people who expressed their thoughts.

Council Member Atterholt described data collection from the TDC (Tourist Development Council) and noted that the Mound House was included in the top three attractions for the first time. He indicated that the Friends of the Mound House were having a fundraiser on Friday, April 8, 2022, at 8:00 at the Mound House and tickets were \$75.00.

Vice Mayor Hosafros thanked Ellen Vaughan and her crew for their work preparing for the fundraiser. She encouraged the community to attend.

Council Member Allers and Mayor Murphy echoed comments regarding the Mound House fundraiser.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

No reports.

VIII. PROCLAMATIONS

A. National Donate Life Month

Mayor Murphy read the proclamation.

IX. APPROVAL OF MINUTES

A. March 21, 2022 Town Council

Council Member Veach noted that on page 8, "4-1 by roll call vote with Council Member Allers dissenting" was added to the minutes in error.

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

Motion carried unanimously.

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.

Mayor Murphy read the title of the ordinance. Attorney Sanabria noted the hearing was properly advertised. Town Manager Hernstadt reviewed the reason for the request as stated on the blue sheet.

No public comment.

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

Attorney Sanabria noted the qualifying period began on June 13, 2022 and ended on June 17, 2022.

Motion carried unanimously by roll call vote.

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

Continued to April 18, 2022 at 9:00 a.m.

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**

Mayor Murphy read the title of the ordinance.

Community Development Planner Sarah Propst utilized PowerPoint for her presentation. She evaluated several communities' approaches to limiting house square footage and found that Gunnison County, CO made the most sense to her. She displayed slides with a proposed solution, Information Since the LPA Meeting and Questions & Answers about the Proposed Change.

Council Member Atterholt questioned how many properties would be impacted by the change. Planner Propst replied that it was a minimal number.

Council Member Allers brought up the setback changes mentioned by the home builder during public comment. Town Manager Hernstadt replied that Ordinance 22-05 had nothing to do with setback changes and explained the variance process. He indicated the threshold was when the trusses were ordered, engineered and designed. He commented that extenuating circumstances could be reviewed through a public process.

No public comment.

Vice Mayor Hosafros moved to schedule for second reading and final adoption of Ordinance 22-05 on April 18, 2022, at 9:00 a.m.; second by Council Member Veach.

Motion carried unanimously by roll call vote.

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

Mayor Murphy read the title of the ordinance. Town Manager Hernstadt noted that Town Attorney Herin, Jr. was attending via Zoom. Council Member Veach also provided language to discuss. Town Attorney Herin, Jr. described the proposed language to recognize developments with CPDs as being exempt from the existing cap, inactive status language and allowing Town Council to set license fees by resolution.

Council Member Veach stated that the language provided by Town Attorney Herin, Jr. was included in his document. He suggested that a land-based site be defined in the ordinance. He explained the term "legal operations" to mean the total number of operations by the original license and qualification by the CBD. To improve safety, he suggested that operators limit the movement of PWVLs launching equipment across the littoral zone (wet sand line). The license cap was the number of operations, not the number of licenses.

He refined the application process to require payment of outstanding fines or violations before licenses could be renewed. Council Member Veach addressed transferring licenses to curb proliferation.

Transferring licenses to a new owner would be allowed if the number of operations was below the cap and the applicant must have written approval from the property owner if they were going to use the license on their property.

Public comment:

Sharon Faircloth, owner of Holiday Water Sports, stated that an approval letter from the property was required on the application. She welcomed Tom Torgerson as a new vendor but did not think it was fair that he did not go through the same process as the rest of the operators. She did not support raising the cap for licenses.

Dave Nusbaum, resident, cautioned that the government should not choose winners and losers by imposing restrictions on transferring licenses.

Jennifer Rusk, resident, felt that many people were unaware of the various laws to protect the island. She stated they had to start with a healthy environment.

Chris Weber, Mid-Island Water Sports, questioned the language transferring licenses.

Public comment closed.

Council Member Allers questioned whether a new owner had to update the license application if the name of the business did not change. Community Services Administrator Daphnie Saunders replied that she had not received new applications to transfer licenses. Town Manager Hernstadt added that transfers should come before staff for review. Town Attorney Herin, Jr. noted that the ordinance could be modified to include repercussions for not updating applications when transferring licenses.

Vice Mayor Hosafros felt that they were trying to fix something that did not need fixing because Mr. Torgerson had more than one option open to him. She was against expanding the cap and questioned the total number of CPDs.

Council Member Atterholt discussed Tom Torgerson's CPD and noted the licensing piece was not addressed at the time, but a commitment was a commitment. He pointed out that this CPD was a unique situation and Council was trying to fix the challenge while minimizing external damage. He supported the language by the Town Attorney and amendments by Council Member Veach.

Vice Mayor Hosafros questioned whether Council Member Atterholt was interested in modifying the language to add one to the cap. Town Attorney Herin, Jr. explained how he drafted the ordinance to apply equally to all potential property owners. He indicated that two of the three CPDs he was aware of were not interested in self-operating. He added that staff might still be reviewing prior CPDs.

Council Member Allers felt they were going down the right path, but some changes needed more discussion.

Council Member Veach moved to move it to a second reading and public hearing on April 18, 2022, at 9:00 a.m.; second by Council Member Atterholt. Motion carried 4-1 by roll call vote with Vice Mayor Hosafros dissenting.

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.

Council Member Veach moved to authorize the Town Manager; second by Vice Mayor Hosafros.

Motion carried unanimously.

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.

Mayor Murphy read the title of the resolution.

Vice Mayor Hosafros moved to adopt Resolution 22-14; second by Council Member Veach.

Motion carried unanimously.

XII. FINAL PUBLIC COMMENT

Jason Oben clarified that his six to eight projects already started would be considered.

XIII. TOWN MANAGER'S ITEMS

Town Manager Hernstadt stated that staff would start hurricane planning and the budget process now that season was winding down.

Town Manager Hernstadt described the grants awarded to the town and provided an update concerning Times Square, Bayside Park and Bay Oaks.

XIV. TOWN ATTORNEY'S ITEMS

Town Attorney Herin, Jr. stated a court-ordered mediation was scheduled for later in the month regarding Mr. Rood's lawsuit.

Briefings in the Jamison case were completed. Town Attorney Herin, Jr. was waiting for a determination on whether oral arguments would be conducted or whether the court would rule on the proceedings.

Town Attorney Herin, Jr. indicated all but one of Mr. Persaud's claims were dismissed, but the court did allow him to file an amended complaint. Attorney Sanabria stated that title searches were complete and a memo would be presented at the M&P Session on Thursday.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Allers questioned when FP&L was scheduled. Town Clerk Baker replied they would be at the April 18, 2022, meeting.

Vice Mayor Hosafros questioned where they were with the tree ordinance. Town Manager Hernstadt replied that language was drafted.

Council Member Veach stated he noticed dozens of bicycles without lights at night. Town Manager Hernstadt responded that staff would contact bike rental companies. Council Member Veach noted that the dune planting was only 15 feet deep and raking the beach did not make it a natural beach. He indicated that motorized parasailing on the beach was illegal.

Mayor Murphy noted that Bay Beach was having a groundbreaking event on Tuesday at 3:00 p.m., the London Bay topping-off celebration was at noon on Thursday and the Mound House fundraiser was on Friday evening.

XVI. ADJOURNMENT

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

Meeting was adjourned at 11:45 a.m.



Fort Myers Beach Management & Planning Session

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

Minutes

Thursday, April 7, 2022

9:00 AM

ORDER OF BUSINESS

DRAFT

I. CALL TO ORDER

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

II. PLEDGE OF ALLEGIANCE

III. ITEMS FOR DISCUSSION

A. Beach Renourishment Update

Update on the beach renourishment project

Environmental Project Manager Chadd Chustz utilized PowerPoint for his presentation. Slides included: Erosion Control Line vs. Critically Eroded; Erosion Control Line or ECL; Critically Eroded Designation and Construction Budget by Reach. Discussion was held regarding the cost of the project.

Town Attorney Herin, Jr. addressed the requests from the Attorney representing Island Winds and noted the town had been seeking public input and there would be additional opportunities for public comments. The Association mentioned hiring an independent engineer to assess the town's shore protection project and JCP (Joint Coastal Permit) implications.

Town Attorney Herin, Jr. remarked that was standard practice and could take years to go through the state process. He stated there would be multiple opportunities for the public to have input into the JCP process. He indicated that the process to determine critically eroded beaches had already been done and did not affect the JCP. Mayor Murphy discussed educational opportunities for property owners and encouraged future input.

B. Structural Inspections

A discussion on multi-story/condominium structural inspections as requested by Town Council.

Town Manager Hernstadt noted that the state did not pass legislation regarding inspecting buildings. Mayor Murphy questioned whether the town was equipped to inspect buildings and whether the fire department could provide an opinion. Vice Mayor Hosafros did not think it would be difficult to require inspections after a building was a certain age. Town Attorney Herin, Jr. agreed that it did not have to be a complex process and noted that Miami-Dade and Broward counties created provisions for a 40-year recertification process. He offered to provide copies of the documents. Council Member Allers questioned whether condominiums inspected their buildings. Mayor Murphy felt the associations were waiting for a decision from the state or town. He supported obtaining copies from Miami-Dade and Broward for discussion at a future M&P. Consensus was reached to obtain documents and add the topic to an M&P.

C. Code Enforcement Philosophies

A discussion of the Code Enforcement Philosophies as requested by Town Council.

Council Member Veach indicated that most code enforcement was complaint-driven except for public safety and environmental issues. He shared his experience with trucks parked on sidewalks and bicycle lanes on Estero Blvd. for a couple of weeks during season. He noted that bicycles were blocked and had to enter the traffic lane. After he called code enforcement, the problem was taken care of within 15 minutes. He questioned finding a middle ground between a complaint-driven system and proactively driving around town issuing citations.

Mayor Murphy stated that there was a problem with landscapers using the center lane for parking their vehicles while servicing lawns. He agreed that staff should have more leeway with enforcing obvious code violations.

Vice Mayor Hosafros stated that it was up to the Sheriff's Department to address violators who parked in the center lane since Estero Blvd. was county-owned.

Council Member Allers indicated that public safety or environmental issues should be addressed by town staff immediately. He felt it was a common-sense issue. Town Manager Hernstadt commented that construction companies could obtain a permit from the town to park on town streets safely. Council Member Veach brought up enforcing short-term rental rules and noted it was difficult to get the evidence to make charges stick. He suggested requiring short-term rental registration numbers on signs and indicating whether they were weekly or monthly rentals. He brought up requiring owners to use a town calendar for reservations so they could be tracked for compliance. He noted that the town was not enforcing violations by jet ski vendors.

Council Member Allers reiterated that staff should be able to address common sense issues affecting public health or the environment without a complaint. He cited porta-potties on the sidewalks and parking in the center lane as common sense issues.

Vice Mayor Hosafros indicated that since the state no longer allowed anonymous complaints, some people would hesitate to call in complaints because of potential retribution. She suggested that code enforcement could call the Sheriff's Office to report issues like vehicles in the center lane of Estero Blvd.

Town Manager Hernstadt stated that code enforcement emphasized public and environmental safety and irrevocable violations. Council Member Atterholt brought up educating the community concerning ordinances and did not think the town should depend on fines as a source of revenue. He felt they needed to be more specific and provide more guidance and education. He agreed with a common sense approach unless public safety or environmental issues were involved. Council Member Veach agreed with education before issuing citations.

Mayor Murphy stated that fines were not a profit center but a deterrent for violators.

Town Manager Hernstadt discussed property owners who profited from violating codes. He stated that codes were put in place because they served a purpose. Mayor Murphy added that the codes and ordinances put in place had improved the quality of life on the beach.

Town Attorney Herin, Jr. explained the code enforcement timeline from a warning to a hearing with the Special Magistrate before entering a lien on properties. He stated that by the time a lien was ordered, the property owner generally had three to four months to bring the property into compliance.

Community Services Administrator Daphnie Saunders stated there were approximately 25 liens.

Town Attorney Herin, Jr. produced a list of liens with significant fines that continued to accrue. He identified all but two properties that were unencumbered by other liens so the town would have priority. He explained the foreclosure process and injunctive relief.

Consensus was reached to add the topic to the next regular Town Council meeting agenda.

IV. AGENDA MANAGEMENT

A. April 2022

Council Member Atterholt noted there was a conflict between their M&P session and the TDC meeting in December. Consensus was reached to change the date of the M&P meeting to Wednesday, December 7, 2022.

V. ADJOURNMENT

Mayor Murphy adjourned the meeting at 11:22 a.m.

1. **Requested Motion:**

Meeting Date: April 18, 2022

Town Lighting Engineers and Florida Power & Light will be available for questions.

Why the action is necessary:

Town Council requested Town Lighting and FPL be available to discuss roadway safety lighting and to have to discuss options provided through the Tariff Program.

What the action accomplishes:

Provides an update to Town Council as requested at the March 7th Town Council meeting.

2. **Agenda:**

PRESENTATIONS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Chelsea O'Riley, Public Works
Director

5. **Background:**

Town Council and the Public Safety Committee have been discussing roadway safety lighting concerns for several years.

Attachments:

1. Lighting Pre-Design Cost Estimate
2. Lighting Costs Follow-up
3. 03394 12.22.20
4. FPL LT-1 Tariff 2020
5. FPL LT-1 Tariff 2022
6. 20220411144901142
7. 20220412101355674

Financial Impact:

Varies depending on options.

6. **Alternative Action**

Allow Lee County to light Estero Blvd.

7. **Management Recommendations:**

Be cautious regarding increasing Town liability for Estero Blvd. by adding town-funded amenities.

8. **Recommended Approval:**

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

Created/Initiated - 3/18/2022
Approved - 3/22/2022
Approved - 3/30/2022
Approved - 4/8/2022
Final Approval - 4/12/2022



FPL Utility Program Lighting System Budget Cost Estimate For Estero Boulevard and Fort Myers Beach Sidestreets

1 Existing Lights

Location	Luminaire (Watts)	Type	Luminaires	How Many of These Are Turned Off During Nesting Season
North Estero Blvd. (Town Road)	200 W	HPS	22	8
Estero Blvd. (County Road)	100 W	HPS	2	
	150 W	HPS	4	1
	200 W	HPS	117	29
	250 W	HPS	1	
	400 W	HPS	3	1
	28 W	HPS	1	
Sidestreets ¹ (Town Roads)	C700601 28 W	LED	227	9
	C700603 44 W	LED	44	1

Streetlights per field audit. Private lights per FPL count.

2 Proposed Lights (Pre-Design Estimate)

Location	Luminaire (Watts)	Type	Luminaires ²	New Poles ³	System Budget Cost Estimate ⁴	
					Initial ⁵	Annual
North Estero Blvd. (Town Road)	Cree 141 W ⁶	Amber LED	80	37	\$635,000	\$14,400
Estero Blvd. (County Road)	Cree 141 W ⁶	Amber LED	476	217	\$3,800,000	\$85,680
Sidestreets ¹ (Town Roads)	Cree 141 W ⁶	Amber LED	1040 ⁷		0 ⁸	\$188,000

Cost estimates include enhanced lighting at crosswalks.



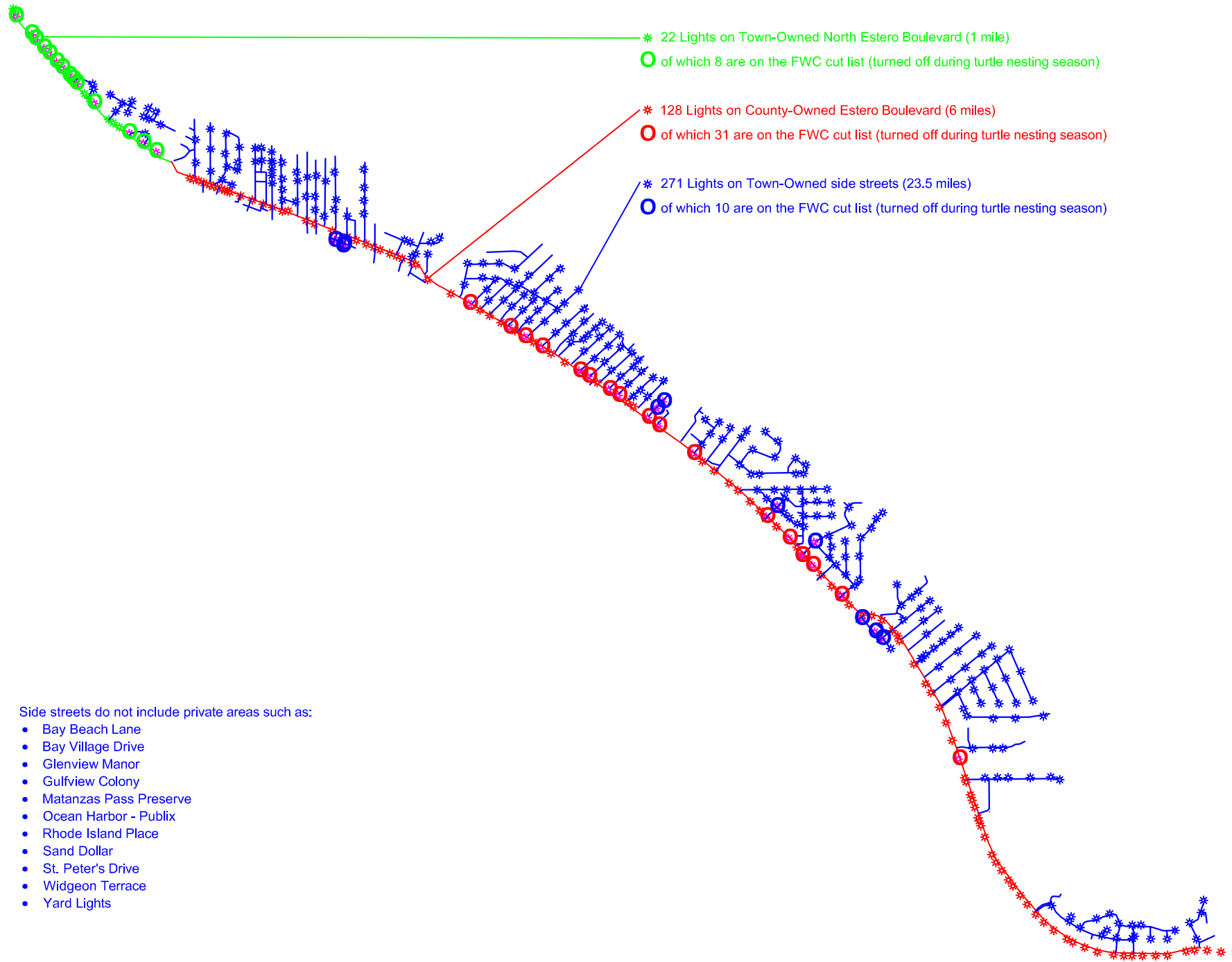
FPL Utility Program Lighting System Budget Cost Estimate For Estero Boulevard and Fort Myers Beach Sidestreets

Notes:

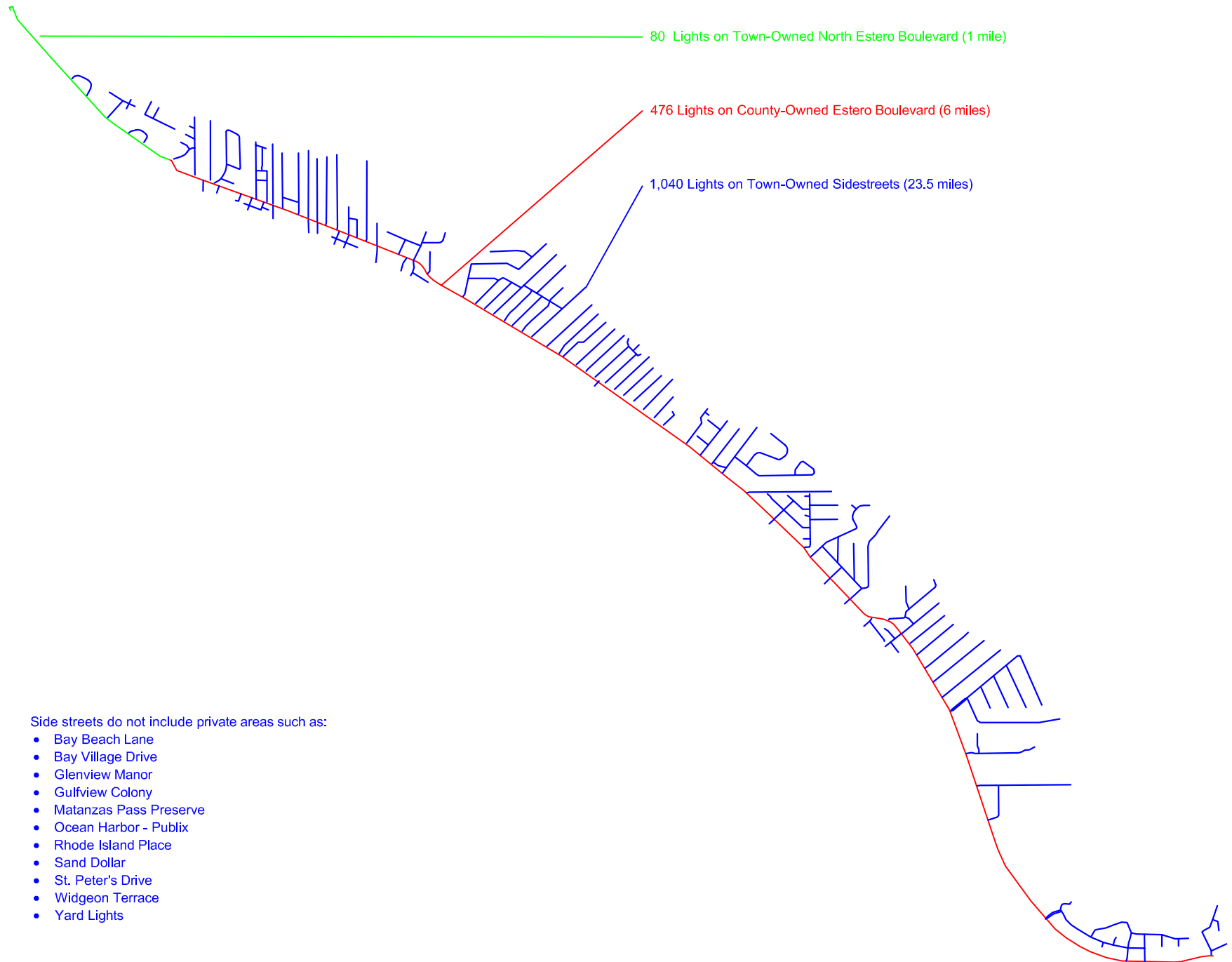
1. Side streets do not include private areas such as:
 - Bay Beach Lane
 - Bay Village Drive
 - Glenview Manor
 - Gulfview Colony
 - Matanzas Pass Preserve
 - Ocean Harbor - Publix
 - Rhode Island Place
 - Sand Dollar
 - St. Peter's Drive
 - Widgeon Terrace
2. New luminaires. All existing luminaires will be removed.
3. New poles are those anticipated in addition to existing poles.
4. Cost estimates include enhanced lighting at crosswalks.
5. Initial cost is based on an estimate of additional poles that may be needed to accomplish a design criteria-compliant design. A pole added within the distribution line costs about \$15,000 with significant additional costs associated with attaching distribution electric lines to the poles. Poles outside the distribution line are estimated to cost about \$4000 plus possible additional monthly rental fees for streetlight poles, conductors, and other appurtenances.

Annual costs are based on FPL tariffs.
6. The Cree 6100 Lumen unit is FPL's only currently available amber option that can meet lighting design criteria for Estero Boulevard and Town-owned sidestreets. For comparison purposes, the combined initial cost estimate for the rejected "white" (3000K or 4000K) alternative was \$1,800,000.
7. Sidestreet luminaire quantity is based on a typical 120' spacing to meet design criteria for local roads.
8. Additional pole counts were not estimated for sidestreets; however, any new sidestreet poles are anticipated to be "light only" type with no initial cost and a \$14/month lease per pole. There will also be additional LED-to-LED conversion costs for sidestreets.

EXISTING LIGHTING COUNTS



PROPOSED LIGHTING COUNTS





FPL Utility Program Lighting System Budget Cost Estimate For Estero Boulevard and Fort Myers Beach Sidestreets

1 Existing Lights

Location	Luminaire (Watts)	Type	Luminaires	How Many of These Are Turned Off During Nesting Season
North Estero Blvd. (Town Road)	200 W	HPS	22	8
Estero Blvd. (County Road)	100 W	HPS	2	
	150 W	HPS	4	1
	200 W	HPS	117	29
	250 W	HPS	1	
	400 W	HPS	3	1
	28 W	HPS	1	
Sidestreets ¹ (Town Roads)	C700601 28 W	LED	227	9
	C700603 44 W	LED	44	1

Streetlights per field audit. Private lights per FPL count.

2 Proposed Lights (Pre-Design Estimate)

Location	Luminaire (Watts)	Type	Luminaires ²	New Poles ³	System Budget Cost Estimate ⁴	
					Initial ⁵	Annual
North Estero Blvd. (Town Road)	Cree 141 W ⁶	Amber LED	80	37	\$635,000	\$21,700
Estero Blvd. (County Road)	Cree 141 W ⁶	Amber LED	476	217	\$3,800,000	\$130,000
Sidestreets ¹ (Town Roads)	Cree 141 W ⁶	Amber LED	1040 ⁷		0 ⁸	\$188,000

Cost estimates include enhanced lighting at crosswalks.



FPL Utility Program Lighting System Budget Cost Estimate For Estero Boulevard and Fort Myers Beach Sidestreets

Notes:

1. Side streets do not include private areas such as:
 - Bay Beach Lane
 - Bay Village Drive
 - Glenview Manor
 - Gulfview Colony
 - Matanzas Pass Preserve
 - Ocean Harbor - Publix
 - Rhode Island Place
 - Sand Dollar
 - St. Peter's Drive
 - Widgeon Terrace
2. New luminaires. All existing luminaires will be removed.
3. New poles are those anticipated in addition to existing poles.
4. Cost estimates include enhanced lighting at crosswalks.
5. Initial cost is based on an estimate of additional poles that may be needed to accomplish a design criteria-compliant design. A pole added within the distribution line costs about \$15,000 with significant additional costs associated with attaching distribution electric lines to the poles. Poles outside the distribution line are estimated to cost about \$4000 plus possible additional monthly rental fees for streetlight poles, conductors, and other appurtenances.

Annual costs are based on FPL tariffs.

6. The Cree 6100 Lumen unit is FPL's only currently available amber option that can meet lighting design criteria for Estero Boulevard and Town-owned sidestreets. For comparison purposes, the combined initial cost estimate for the rejected "white" (3000K or 4000K) alternative was \$1,800,000.
7. Sidestreet luminaire quantity is based on a typical 120' spacing to meet design criteria for local roads.

Additional pole counts were not estimated for sidestreets; however, any new sidestreet poles are anticipated to be "light only" type with no initial cost and a \$14/month lease per pole. See also removal costs under question G below.



FPL Utility Program Lighting System Budget Cost Estimate For Estero Boulevard and Fort Myers Beach Sidestreets

8. The following additional questions were asked by Council and answered by FPL and the Town's consultant:

Question	Answer
A. How did the Town come to pay for the existing lights on Estero Boulevard and its sidestreets?	The connection date for account #07755-03394 was 10/8/97. Eric & Zack (FPL) have requested a copy of the agreement from the Records Dept.
B. How much do we pay? Is it a part of a tariff program?	Please see supporting documents: The 2020 LT-1 Tariff, 2022 LT-1 Tariff, & the customer's FPL bill.
C. What do we pay for Maintenance and Electricity, etc.?	Please see attached FPL bill for the breakdown. The Town also pays for fixture and pole costs.
D. Given the estimated number of fixtures needed, how many of the additional fixtures can be located on existing poles and how many new poles?	150 existing luminaires on Estero Boulevard. 556 luminaires for new Estero design with Cree amber. Of the 556, 302 luminaires can go on existing poles (i.e., 152 more than are currently on existing poles), plus 254 luminaires that will probably need new poles. This is a preliminary design estimate.
E. Do new poles have to be distribution poles or can they be light-pole-only poles under the distribution lines?	There may be areas where light-pole only poles can be used. It may be possible to light from the east side in places or use an offset streetlight-only pole before using an inline pole. Detailed design needed to determine extent and locations.
F. What is the ballpark cost, both upfront and payment costs?	Up-front \$4,435,000 Roughly \$12,600/month including additional poles / fixtures (before taxes/fees, etc.)



FPL Utility Program Lighting System Budget Cost Estimate For Estero Boulevard and Fort Myers Beach Sidestreets

Question	Answer
G. Can the town swap out our newly installed white lights for amber in town streets and still maintain the tariff program?	According to the LT-1 Tariff, the customer would owe removal costs + remaining NBV (original cost minus depreciation) minus salvage costs minus 4 x EAR of new fixtures (if they have a higher wattage). Please see costs below: <u>NBV Calculation:</u> NBV = \$106,384.81 Removal cost = \$11,524.00 EAR (28W 3K RSW) = \$2,745.60 EAR (144W Amber RSW-XL) = \$19,219.20 Total removal cost = \$106,384.81 + \$11,524.00 - (\$19,219.20-\$2,745.60) = \$101,435.21
H. What is the cost for swapping?	See Above
I. Will the town get credit for the white lights since they can be repurposed to a location outside of the area of wildlife concern without mixing colors?	FPL does not offer a credit for existing LED lights after they have been used. Once FPL lights are un-installed, they are not resold/repurposed.
J. What is the cost for installing the luminaire fixtures at the crosswalks?	This needs to be calculated on a case-by-case basis. Cost is determined by many factors during the design process.
K. What other high output amber fixtures are being considered by FP&L?	Visionaire BLX-II-4-T3-128LC-5-TS-UNV-MA-GY-7PINPER-4, 12,900 lumens, 430 watts. 4-way external shielding. There is no date set for completion of testing. The Visionaire fixture is the only new product that FPL is currently intending to add. There are no plans at this time to test a white/amber switched solution.



/ 27

5317077550339458399540000

Please request changes on the back.
Notes on the front will not be detected.

A A 8

5317 5



#BWNDJNQ ***
#1611743LQ577645#
TOWN OF FORT MYERS BEACH
C/O FINANCE
2525 ESTERO BLVD
FT MYERS BCH FL 33931-3354

0011 450036

Make check payable to FPL in U.S. funds
and mail along with this coupon to:

FPL
GENERAL MAIL FACILITY
MIAMI FL 33188-0001

Account number	Total amount you owe	New charges due by	Amount enclosed
07755-03394	\$4,599.38	Jan 12 2021	\$ 4,599.38

Your electric statement

For: Nov 23 2020 to Dec 22 2020 (29 days)

Customer name: TOWN OF FORT MYERS BEACH

Service address: STREET LIGHTS # FT MYERS BCH

Account number: 07755-03394

Statement date:

Dec 22 2020

Next bill date:

Jan 25 2021

Amount of your last bill	Payments (-)	Additional activity (+ or -)	Balance before new charges (=)	New charges (+)	Total amount you owe (=)	New charges due by
4,599.38	4,599.38 CR	0.00	0.00	4,599.38	\$4,599.38	Jan 12 2021

Total kWh used

15900

Energy usage

	Last Year	This Year
kWh this month	15900	15900
Service days	31	29
kWh per day	513	548

**The electric service amount
includes the following charges:

Non-fuel energy charge:

\$0.031530 per kWh

Fuel charge:

\$0.021490 per kWh

Amount of your last bill

4,599.38

Payment received - Thank you

4,599.38 CR

Balance before new charges

\$0.00

New charges (Rate: SL-1 STREET LIGHTING SERVICE)

Electric service amount

4,578.26**

Gross receipts tax

21.12

Total new charges

\$4,599.38

Total amount you owe**\$4,599.38**

- Payment received after **March 16, 2021** is considered **LATE**; a late payment charge of **1%** will apply.

- Charges and energy usage are based on the facilities contracted. Facility, energy and fuel costs are available upon request.

- The number of days included in your bill can vary month to month. So even if you use the same amount of energy per day, your bill may be higher next month due to greater number of service days. Visit www.FPL.com for more information.

- The Florida Public Service Commission has approved annual adjustments to the fuel and non-fuel components of your bill that will take effect in January. To learn more about your energy bill, visit FPL.com/rates.

Town of Fort Myers Beach

DEC 28 2020

Received by: _____

Please have your account number ready when contacting FPL.

Customer service:

1-800-375-2434

Outside Florida:

1-800-226-3545

To report power outages:

1-800-4OUTAGE (468-8243)

Hearing/speech impaired: 711 (Relay Service)

Online at:

www.FPL.com

Page 25 of 373





0002 450036

Detail of Rate Schedule Charges for
Street Lights

5317 000036

#BWNDJNQ ***
 #41755RFMS458397#
 TOWN OF FORT MYERS BEACH
 C/O FINANCE
 2525 ESTERO BLVD
 FT MYERS BCH FL 33931-3354

Account Number: 07755-03394
 Service From: 11-23-2020
 Service To: 12-22-2020
 Service Days: 29
 KWH/Day: 548

Service Address: STREET LIGHTS # FT MYERS BCH, FORT MYERS BEACH FL 33931

COMPONENT CODE	WATTS	LUMENS	* OWNER/ MAINT	QUANTITY	RATE/ UNIT	KWH USED	AMOUNT
41 KWH Energy			E	2	1.260000	82	2.52
116 KWH Energy			E	1	3.550000	116	3.55
C700601 Energy	28	3300	F	227	.200000	2,043	45.40
Non-energy Fixtures					6.370000		1,445.99
Maintenance					1.290000		292.83
C700603 Energy	45	5000	F	44	.400000	660	17.60
Non-energy Fixtures					6.370000		280.28
Maintenance					1.290000		56.76
C861204	39	3292	F	2		26	

* F - FPL OWNS & MAINTAINS E - CUSTOMER OWNS & MAINTAINS R - CUSTOMER OWNS, FPL RELAMPS
 H - FPL OWNS & MAINTAINS FIXTURE, CUST OWNS OTHER

Print Date: December 22, 2020

Page 1
Page 26 of 373



0003 450036

Detail of Rate Schedule Charges for
Street Lights

5317 000036

#BWNDJNQ ***
#41755RFMS458397#
TOWN OF FORT MYERS BEACH
C/O FINANCE
2525 ESTERO BLVD
FT MYERS BCH FL 33931-3354

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Service To: 12-22-2020
Service Days: 29
KWH/Day: 548

Service Address: STREET LIGHTS # FT MYERS BCH, FORT MYERS BEACH FL 33931

COMPONENT CODE	WATTS	LUMENS	* OWNER/ MAINT	QUANTITY	RATE/ UNIT	KWH USED	AMOUNT
Energy					.400000		.80
Non-energy							
Fixtures					6.370000		12.74
Maintenance					1.290000		2.58
HPS0100	100	9500	F	1		41	
Energy					1.260000		1.26
Non-energy							
Fixtures					4.210000		4.21
Maintenance					1.990000		1.99
HPS0150	150	16000	F	5		300	
Energy					1.840000		9.20
Non-energy							
Fixtures					4.340000		21.70
Maintenance					2.020000		10.10
HPS0200	200	22000	F	122		10,736	
Energy					2.700000		329.40

* F - FPL OWNS & MAINTAINS E - CUSTOMER OWNS & MAINTAINS R - CUSTOMER OWNS, FPL RELAMPS
H - FPL OWNS & MAINTAINS FIXTURE, CUST OWNS OTHER



Print Date: December 22, 2020

Page 2
Page 27 of 373



0004 450036

Detail of Rate Schedule Charges for
Street Lights

5317 000036

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TOWN OF FORT MYERS BEACH
C/O FINANCE
2525 ESTERO BLVD
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Account Number: 07755-03394
Service From: 11-23-2020
Service To: 12-22-2020
Service Days: 29
KWH/Day: 548

Service Address: STREET LIGHTS # FT MYERS BCH, FORT MYERS BEACH FL 33931

COMPONENT CODE	WATTS	LUMENS	* OWNER/ MAINT	QUANTITY	RATE/ UNIT	KWH USED	AMOUNT
Non-energy Fixtures Maintenance					6.580000 2.570000		802.76 313.54
HPS0250 Energy Non-energy Fixtures Maintenance	250	27500	F	1	3.550000 6.990000 2.790000	116	3.55 6.99 2.79
HPS0400 Energy Non-energy Fixtures Maintenance	400	50000	F	3	5.150000 6.640000 2.580000	504	15.45 19.92 7.74
HPS0250 Energy Non-energy	250	27500	R	11	3.550000	1,276	39.05

* F - FPL OWNS & MAINTAINS E - CUSTOMER OWNS & MAINTAINS R - CUSTOMER OWNS, FPL RELAMPS
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Print Date: December 22, 2020

Page 3
Page 28 of 373



0005 450036

Detail of Rate Schedule Charges for
Street Lights

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 2525 ESTERO BLVD
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Account Number: 07755-03394
Service From: 11-23-2020
Service To: 12-22-2020
Service Days: 29
KWH/Day: 548

Service Address: STREET LIGHTS # FT MYERS BCH, FORT MYERS BEACH FL 33931

COMPONENT CODE	WATTS	LUMENS	* OWNER/ MAINT	QUANTITY	RATE/ UNIT	KWH USED	AMOUNT
Relamp					2.760000		30.36
PMC0001 Non-energy Fixtures				19	7.160000		136.04
PMF0001 Non-energy Fixtures				2	8.480000		16.96
PMW0001 Non-energy Fixtures				55	5.240000		288.20
Energy sub total							467.78
Non-energy sub total							3,754.48
Sub total						15,900	4,222.26
Energy conservation cost recovery							5.88
Capacity payment recovery charge							2.86
Environmental cost recovery charge							5.57
Fuel charge							341.69
Electric service amount							4,578.26
Gross receipts tax							21.12
Total						15,900	4,599.38

^ F - FPL OWNS & MAINTAINS E - CUSTOMER OWNS & MAINTAINS R - CUSTOMER OWNS, FPL RELAMPS
 H - FPL OWNS & MAINTAINS FIXTURE, CUST OWNS OTHER

Print Date: December 22, 2020

Page 4
Page 29 of 373

LED LIGHTINGRATE SCHEDULE: LT-1AVAILABLE:

In specific territories served, upon request of the entity that has jurisdiction over the area being lighted. Contact FPL for available installation territories.

APPLICATION:

For the purpose of lighting streets whether public or private, roadways, and common areas, other than individual residential locations. This includes but is not limited to parking lots, homeowners association common areas, or parks.

TYPE OF INSTALLATION:

FPL-owned fixtures normally will be mounted on poles of FPL's existing distribution system and served from overhead wires. On request of the Customer, FPL will provide special poles or underground wires at the charges specified below. FPL, at its discretion, may offer the customer the option of FPL-owned fixtures attached to poles owned by the customer.

SERVICE:

Service includes energy from dusk each day until dawn the following day and maintenance of FPL-owned Lighting Systems. Maintenance includes replacement or repair of any circuit component to assure the facilities are operational and safe.

LIMITATION OF SERVICE:

Stand-by or resale service is not permitted hereunder.

CUSTOMER CONTRIBUTIONS:

A Contribution-in-Aid-of-Construction (CIAC) will be required for:

- a) the differential cost between employing rapid construction techniques in trenching, backfilling and pole installation work where no obstructions exist, and the added cost to overcome obstructions such as sprinkler systems, paved surfaces (such as sidewalks, curbs, gutters, and roadways), landscaping, sodding and other obstructions encountered along the Lighting System installation route, including repair and replacement. If the Customer elects to perform work such as trenching and restoration, they will be reimbursed by FPL with a credit (not to exceed the total CIAC cost) for the value of this work as determined by FPL;
- b) the installation cost of any new overhead distribution facilities and/or the cost of alterations to existing distribution facilities which are required in order to serve the Lighting System less four (4) times the additional annual non-fuel energy revenue generated by the installation or alteration of the Lighting System, plus where underground facilities are installed, the differential installation cost between underground and overhead distribution facilities.

These costs shall be paid by the Customer prior to the initiation of any construction work by FPL. The Customer shall also pay any additional costs associated with design modifications requested after the original estimate has been made.

(Continued on Sheet No. 8.736)

(Continued from Sheet No. 8.735)

REMOVAL OF FACILITIES:

If FPL owned Lighting facilities are removed either by Customer request or termination or breach of the agreement, the customer will pay the fixture, pole, and conductor charges for the period remaining on the currently active term of service plus the cost to remove the facilities. **These charges do not apply to street light conversions from FPL owned facilities covered under SL-1 to FPL owned LED facilities under this tariff.** In all cases, should the Customer request termination of the agreement, such termination will require written notice 90 days prior to the date of termination.

Conversion of FPL Owned Streetlights (SL-1 facilities) to LED:

For customers converting Street Lights as per FPL's SL-1 Street Lighting Tariff paying the LED Conversion Recovery charge, there will be no charges for the fixtures being removed. Any other charges for relocation or replacement of FPL owned facilities would still apply.

CHANGE IN FIXTURE SIZE OR TYPE:

At the Customer's request, the Company will upgrade to a higher level of illumination when the changes are consistent with good engineering practices. The customer will pay the original installed cost of the removed fixtures, less any salvage value and depreciation, plus removal costs and will receive a credit for 4 years additional revenue generated by the larger fixtures. If changes are required to the distribution system to support the larger lights, standard CIAC charges as described on sheet 8.735 will also apply. The Customer will pay the Company the net costs incurred in making other fixture changes. Customers converting HPSV fixtures to LED and paying the LED Conversion Recovery Charge will not be charged for the fixtures being removed, as noted in the preceding paragraph. In all cases where luminaires are replaced, the Customer will sign a new service agreement. Billing on the rate for the new luminaire or lamp size will begin as of the next regular billing date. A luminaire may be relocated at the Customer's request upon payment by the Customer of the full cost of removal and reinstallation.

MONTHLY RATES for LED Fixtures*:

Energy Tier	Charge	Fixture Tier														
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
A	\$ -	1.50	4.50	7.50	10.50	13.50	16.50	19.50	22.50	25.50	28.50	31.50	34.50	37.50	40.50	43.50
B	\$ 0.20	1.70	4.70	7.70	10.70	13.70	16.70	19.70	22.70	25.70	28.70	31.70	34.70	37.70	40.70	43.70
C	\$ 0.40	1.90	4.90	7.90	10.90	13.90	16.90	19.90	22.90	25.90	28.90	31.90	34.90	37.90	40.90	43.90
D	\$ 0.60	2.10	5.10	8.10	11.10	14.10	17.10	20.10	23.10	26.10	29.10	32.10	35.10	38.10	41.10	44.10
E	\$ 0.80	2.30	5.30	8.30	11.30	14.30	17.30	20.30	23.30	26.30	29.30	32.30	35.30	38.30	41.30	44.30
F	\$ 1.00	2.50	5.50	8.50	11.50	14.50	17.50	20.50	23.50	26.50	29.50	32.50	35.50	38.50	41.50	44.50
G	\$ 1.20	2.70	5.70	8.70	11.70	14.70	17.70	20.70	23.70	26.70	29.70	32.70	35.70	38.70	41.70	44.70
H	\$ 1.40	2.90	5.90	8.90	11.90	14.90	17.90	20.90	23.90	26.90	29.90	32.90	35.90	38.90	41.90	44.90
I	\$ 1.60	3.10	6.10	9.10	12.10	15.10	18.10	21.10	24.10	27.10	30.10	33.10	36.10	39.10	42.10	45.10
J	\$ 1.80	3.30	6.30	9.30	12.30	15.30	18.30	21.30	24.30	27.30	30.30	33.30	36.30	39.30	42.30	45.30
K	\$ 2.00	3.50	6.50	9.50	12.50	15.50	18.50	21.50	24.50	27.50	30.50	33.50	36.50	39.50	42.50	45.50
L	\$ 2.20	3.70	6.70	9.70	12.70	15.70	18.70	21.70	24.70	27.70	30.70	33.70	36.70	39.70	42.70	45.70
M	\$ 2.40	3.90	6.90	9.90	12.90	15.90	18.90	21.90	24.90	27.90	30.90	33.90	36.90	39.90	42.90	45.90
N	\$ 2.60	4.10	7.10	10.10	13.10	16.10	19.10	22.10	25.10	28.10	31.10	34.10	37.10	40.10	43.10	46.10
O	\$ 2.80	4.30	7.30	10.30	13.30	16.30	19.30	22.30	25.30	28.30	31.30	34.30	37.30	40.30	43.30	46.30
P	\$ 3.00	4.50	7.50	10.50	13.50	16.50	19.50	22.50	25.50	28.50	31.50	34.50	37.50	40.50	43.50	46.50
Q	\$ 3.20	4.70	7.70	10.70	13.70	16.70	19.70	22.70	25.70	28.70	31.70	34.70	37.70	40.70	43.70	46.70
R	\$ 3.40	4.90	7.90	10.90	13.90	16.90	19.90	22.90	25.90	28.90	31.90	34.90	37.90	40.90	43.90	46.90
S	\$ 3.60	5.10	8.10	11.10	14.10	17.10	20.10	23.10	26.10	29.10	32.10	35.10	38.10	41.10	44.10	47.10
T	\$ 3.80	5.30	8.30	11.30	14.30	17.30	20.30	23.30	26.30	29.30	32.30	35.30	38.30	41.30	44.30	47.30
U	\$ 4.00	5.50	8.50	11.50	14.50	17.50	20.50	23.50	26.50	29.50	32.50	35.50	38.50	41.50	44.50	47.50
V	\$ 4.20	5.70	8.70	11.70	14.70	17.70	20.70	23.70	26.70	29.70	32.70	35.70	38.70	41.70	44.70	47.70
W	\$ 4.40	5.90	8.90	11.90	14.90	17.90	20.90	23.90	26.90	29.90	32.90	35.90	38.90	41.90	44.90	47.90
X	\$ 4.60	6.10	9.10	12.10	15.10	18.10	21.10	24.10	27.10	30.10	33.10	36.10	39.10	42.10	45.10	48.10
Y	\$ 4.80	6.30	9.30	12.30	15.30	18.30	21.30	24.30	27.30	30.30	33.30	36.30	39.30	42.30	45.30	48.30
Z	\$ 5.00	6.50	9.50	12.50	15.50	18.50	21.50	24.50	27.50	30.50	33.50	36.50	39.50	42.50	45.50	48.50
AA	\$ 5.20	6.70	9.70	12.70	15.70	18.70	21.70	24.70	27.70	30.70	33.70	36.70	39.70	42.70	45.70	48.70
BB	\$ 5.40	6.90	9.90	12.90	15.90	18.90	21.90	24.90	27.90	30.90	33.90	36.90	39.90	42.90	45.90	48.90
CC	\$ 5.60	7.10	10.10	13.10	16.10	19.10	22.10	25.10	28.10	31.10	34.10	37.10	40.10	43.10	46.10	49.10
DD	\$ 5.80	7.30	10.30	13.30	16.30	19.30	22.30	25.30	28.30	31.30	34.30	37.30	40.30	43.30	46.30	49.30
EE	\$ 6.00	7.50	10.50	13.50	16.50	19.50	22.50	25.50	28.50	31.50	34.50	37.50	40.50	43.50	46.50	49.50

* Catalog of available fixtures and the assigned billing tier for each can be viewed at www.FPL.com/partner/builders/lighting.html

(Continued on Sheet No. 8.737)

FLORIDA POWER & LIGHT COMPANY

Eighth Revised Sheet No. 8.737
Cancels Seventh Revised Sheet No. 8.737

(Continued from Sheet No. 8.736)

Maintenance per Fixture (FPL Owned Fixture and Pole)	\$1.29
Maintenance per Fixture for FPL Fixtures on Customer Pole	\$1.03
LED Conversion Recovery	\$1.87

Notes:

The non-fuel energy charge is 3.041¢ per kWh.
Bills rendered based on "Total" charge. Unbundling of charges is not permitted.

Charges for other FPL-owned facilities:

Wood pole used only for the street lighting system	\$5.20
Standard Concrete pole used only for the street lighting system	\$7.11
Round Fiberglass pole used only for the street lighting system	\$8.42
Decorative Tall Fiberglass pole used only for the street lighting system	\$17.76
Decorative Concrete pole used only for the street lighting system	\$14.42
Underground conductors	4.024 ¢ per foot

SPECIAL PROVISIONS:

Where the Company provides poles other than those listed above, the monthly charges, as applicable shall be computed as follows:

Facilities Charge: 1.63% of the Company's average installed cost of the pole.

BILLING

During the initial installation period:

- Facilities in service for 15 days or less will not be billed;
- Facilities in service for 16 days or more will be billed for a full month.

WILLFUL DAMAGE:

Upon the second occurrence of willful damage to any FPL-owned facilities, the Customer will be responsible for the cost incurred for repair or replacement. If the lighting fixture is damaged, based on prior written instructions from the Customer, FPL will:

- a) If a commercially available and FPL approved device exists, install a protective shield. The Customer shall pay \$280.00 for the shield plus all associated costs. However, if the Customer chooses to have the shield installed before the second occurrence, the Customer shall only pay the cost of the shield; or
- b) Replace with a like unshielded fixture. For this, and each subsequent occurrence, the Customer shall pay the estimated costs of the replacement fixture; or
- c) Terminate service to the fixture. In this case, the lighting facilities will be removed from the field and from billing; the customer will pay the lighting facilities charges for the remaining period of the currently active term of service plus the cost to remove the facilities.

Option selection shall be made by the Customer in writing and apply to all fixtures which FPL has installed on the Customer's behalf on the same account. Selection changes may be made by the Customer at any time and will become effective ninety (90) days after written notice is received.

(Continued on Sheet No. 8.738)

(Continued from Sheet No. 8.737)

OTHER CHARGES

Conservation Charge	See Sheet No. 8.030.1
Capacity Payment Charge	See Sheet No. 8.030.1
Environmental Charge	See Sheet No. 8.030.1
Fuel Charge	See Sheet No. 8.030.1
Storm Charge	See Sheet No. 8.040
Franchise Fee	See Sheet No. 8.031
Tax Clause	See Sheet No. 8.032

SPECIAL CONDITIONS:

Customers whose lights are turned off during sea turtle nesting season will receive a credit equal to the fuel charges associated with the fixtures that are turned off.

TERM OF SERVICE:

Initial term of ten (10) years with automatic, successive five (5) year extensions unless terminated in writing by either FPL or the Customer at least ninety (90) days prior to the current term's expiration. Term of service begins upon execution of the LED Lighting Agreement.

RULES AND REGULATIONS:

Service under this schedule is subject to orders of governmental bodies having jurisdiction and to the currently effective "General Rules and Regulations for Electric Service" on file with the Florida Public Service Commission. In case of conflict between any provision of this schedule and said "General Rules and Regulations for Electric Service", the provision of this schedule shall apply.

LIGHTINGRATE SCHEDULE: LT-1AVAILABLE:

In all areas served.

APPLICATION:

For the purpose of lighting streets and roadways, area lighting including parking lots and common areas, whether public or privately owned, and outdoor lighting.

TYPE OF INSTALLATION:

All new installations will be light emitting diodes (LED). Company-owned fixtures normally will be mounted on poles of the Company's existing distribution system and served from overhead wires. For roadway and area lighting, excluding outdoor lighting, the Company may provide special poles or underground wires at the charges specified below. In addition, the Company, at its discretion, may offer the Customer the option of Company-owned fixtures attached to poles owned by the Customer. For these installations, the customer owned poles require pre-approval by a Company representative.

Outdoor lights can only be mounted on accessible existing distribution poles facing the customer's property.

The location and the type of the facilities are, and will continue to be, easily and economically accessible to the Company equipment and personnel for both construction and maintenance.

SERVICE:

Service includes energy from dusk each day until dawn the following day and maintenance of Company -owned lighting systems. Maintenance includes replacement or repair of any circuit component to assure the facilities are operational and safe. The Company will maintain its facilities during regular daytime working hours as soon as practicable following notification by the Customer that such work is necessary. The Company shall be permitted to enter the Customer's premises at all reasonable times for the purpose of inspecting, maintaining, installing and removing any or all of its equipment and facilities.

The Company, while exercising reasonable diligence at all times to furnish service hereunder, does not guarantee continuous lighting and will not be liable for damages for any interruption, deficiency or failure of service, and reserves the right to interrupt service at any time for necessary repairs to lines or equipment.

LIMITATION OF SERVICE:

Installation shall be made only when, in the judgement of the Company, the location and the type of the facilities are, and will continue to be, easily and economically accessible to the Company equipment and personnel for both construction and maintenance. Overhead conductors will not be installed in any area designated as an underground distribution area, or any area, premises or location served from an underground source.

For outdoor lights, customer must have an active house or premise account associated with this service.

Stand-by or resale service is not permitted hereunder.

CUSTOMER CONTRIBUTIONS:

A Contribution-in-Aid-of-Construction (CIAC) will be required for:

- a) the differential cost between employing rapid construction techniques in trenching, backfilling and pole installation work where no obstructions exist, and the added cost to overcome obstructions such as sprinkler systems, paved surfaces (such as sidewalks, curbs, gutters, and roadways), landscaping, sodding and other obstructions encountered along the Lighting System installation route, including repair and replacement. If the Customer elects to perform work such as trenching and restoration, they will be reimbursed by the Company with a credit (not to exceed the total CIAC cost) for the value of this work as determined by the Company;
- b) the installation cost of any new overhead distribution facilities and/or the cost of alterations to existing distribution facilities which are required in order to serve the Lighting System less four (4) times the additional annual non-fuel energy revenue generated by the installation or alteration of the Lighting System, plus where underground facilities are installed, the differential installation cost between underground and overhead distribution facilities.

These costs shall be paid by the Customer prior to the initiation of any construction work by the Company. The Customer shall also pay any additional costs associated with design modifications requested after the original estimate has been made.

REMOVAL OR RELOCATION OF FACILITIES:

If Company owned lighting facilities are removed by Customer request, breach of the Agreement or non-payment, the Customer may be responsible to pay the net book value for the fixtures, poles, and additional lighting facility charges plus the cost to remove the facilities. These charges do not apply to conversions of Company owned non-LED to Company owned LED lights.

When the Company relocates or removes its facilities to comply with governmental requirements, either the Company or the Customer shall have the right, upon written notice, to discontinue service hereunder without obligation or liability.

Facility relocations are treated as removals of facilities from the old location and installation of the new facilities in the new location. Facilities will not be transferred and reused at a new location.

In all cases, should the Customer request termination of the Agreement, such termination will require written notice 90 days prior to the date of termination.

CONVERSION OF COMPANY OWNED NON-LED LIGHTS TO COMPANY OWNED LED LIGHTS:

For customers converting, Company owned non-LED to Company owned LED Lights, the LED Conversion Recovery Charge will apply and there will be no charge for the fixtures being removed. Any other charges for relocation or replacement of Company owned facilities would still apply.

CHANGE IN FIXTURE SIZE OR TYPE:

At the Customer's request, the Company will change to a lower or higher level of illumination when the changes are consistent with good engineering practices. A LED fixture will be the only modification from an LED or non-LED fixture request. The Customer will pay the net book value of the existing fixture, plus removal costs and will receive a credit for 4 years additional revenue generated by the larger fixtures, if applicable. If changes are required to the distribution system to support the larger lights, standard CIAC charges as described on sheet 8.736 will also apply. The Customer will pay the Company the net costs incurred in making other fixture changes.

(Continued from Sheet No.8.735.1)

MONTHLY RATES FOR MAINTENANCE AND CONVERSION:

Maintenance per Fixture (FPL Owned Fixture and Pole)	\$1.30
Maintenance per Fixture for FPL fixtures on Customer Pole	\$1.04
LED Conversion Recovery	\$1.87

MONTHLY RATES FOR POLES USED ONLY FOR LIGHTING SYSTEM:

Standard Wood pole	\$5.50
Standard Concrete pole	\$7.52
Standard Fiberglass pole	\$8.89
Decorative Concrete pole	\$15.99

MONTHLY RATES FOR LED FIXTURES*:

Energy Tier	Fixture Tier															
	Charge	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
A	\$ -	1.50	4.50	7.50	10.50	13.50	16.50	19.50	22.50	25.50	28.50	31.50	34.50	37.50	40.50	43.50
B	\$ 0.20	1.70	4.70	7.70	10.70	13.70	16.70	19.70	22.70	25.70	28.70	31.70	34.70	37.70	40.70	43.70
C	\$ 0.40	1.90	4.90	7.90	10.90	13.90	16.90	19.90	22.90	25.90	28.90	31.90	34.90	37.90	40.90	43.90
D	\$ 0.60	2.10	5.10	8.10	11.10	14.10	17.10	20.10	23.10	26.10	29.10	32.10	35.10	38.10	41.10	44.10
E	\$ 0.80	2.30	5.30	8.30	11.30	14.30	17.30	20.30	23.30	26.30	29.30	32.30	35.30	38.30	41.30	44.30
F	\$ 1.00	2.50	5.50	8.50	11.50	14.50	17.50	20.50	23.50	26.50	29.50	32.50	35.50	38.50	41.50	44.50
G	\$ 1.20	2.70	5.70	8.70	11.70	14.70	17.70	20.70	23.70	26.70	29.70	32.70	35.70	38.70	41.70	44.70
H	\$ 1.40	2.90	5.90	8.90	11.90	14.90	17.90	20.90	23.90	26.90	29.90	32.90	35.90	38.90	41.90	44.90
I	\$ 1.60	3.10	6.10	9.10	12.10	15.10	18.10	21.10	24.10	27.10	30.10	33.10	36.10	39.10	42.10	45.10
J	\$ 1.80	3.30	6.30	9.30	12.30	15.30	18.30	21.30	24.30	27.30	30.30	33.30	36.30	39.30	42.30	45.30
K	\$ 2.00	3.50	6.50	9.50	12.50	15.50	18.50	21.50	24.50	27.50	30.50	33.50	36.50	39.50	42.50	45.50
L	\$ 2.20	3.70	6.70	9.70	12.70	15.70	18.70	21.70	24.70	27.70	30.70	33.70	36.70	39.70	42.70	45.70
M	\$ 2.40	3.90	6.90	9.90	12.90	15.90	18.90	21.90	24.90	27.90	30.90	33.90	36.90	39.90	42.90	45.90
N	\$ 2.60	4.10	7.10	10.10	13.10	16.10	19.10	22.10	25.10	28.10	31.10	34.10	37.10	40.10	43.10	46.10
O	\$ 2.80	4.30	7.30	10.30	13.30	16.30	19.30	22.30	25.30	28.30	31.30	34.30	37.30	40.30	43.30	46.30
P	\$ 3.00	4.50	7.50	10.50	13.50	16.50	19.50	22.50	25.50	28.50	31.50	34.50	37.50	40.50	43.50	46.50
Q	\$ 3.20	4.70	7.70	10.70	13.70	16.70	19.70	22.70	25.70	28.70	31.70	34.70	37.70	40.70	43.70	46.70
R	\$ 3.40	4.90	7.90	10.90	13.90	16.90	19.90	22.90	25.90	28.90	31.90	34.90	37.90	40.90	43.90	46.90
S	\$ 3.60	5.10	8.10	11.10	14.10	17.10	20.10	23.10	26.10	29.10	32.10	35.10	38.10	41.10	44.10	47.10
T	\$ 3.80	5.30	8.30	11.30	14.30	17.30	20.30	23.30	26.30	29.30	32.30	35.30	38.30	41.30	44.30	47.30
U	\$ 4.00	5.50	8.50	11.50	14.50	17.50	20.50	23.50	26.50	29.50	32.50	35.50	38.50	41.50	44.50	47.50
V	\$ 4.20	5.70	8.70	11.70	14.70	17.70	20.70	23.70	26.70	29.70	32.70	35.70	38.70	41.70	44.70	47.70
W	\$ 4.40	5.90	8.90	11.90	14.90	17.90	20.90	23.90	26.90	29.90	32.90	35.90	38.90	41.90	44.90	47.90
X	\$ 4.60	6.10	9.10	12.10	15.10	18.10	21.10	24.10	27.10	30.10	33.10	36.10	39.10	42.10	45.10	48.10
Y	\$ 4.80	6.30	9.30	12.30	15.30	18.30	21.30	24.30	27.30	30.30	33.30	36.30	39.30	42.30	45.30	48.30
Z	\$ 5.00	6.50	9.50	12.50	15.50	18.50	21.50	24.50	27.50	30.50	33.50	36.50	39.50	42.50	45.50	48.50
AA	\$ 5.20	6.70	9.70	12.70	15.70	18.70	21.70	24.70	27.70	30.70	33.70	36.70	39.70	42.70	45.70	48.70
BB	\$ 5.40	6.90	9.90	12.90	15.90	18.90	21.90	24.90	27.90	30.90	33.90	36.90	39.90	42.90	45.90	48.90
CC	\$ 5.60	7.10	10.10	13.10	16.10	19.10	22.10	25.10	28.10	31.10	34.10	37.10	40.10	43.10	46.10	49.10
DD	\$ 5.80	7.30	10.30	13.30	16.30	19.30	22.30	25.30	28.30	31.30	34.30	37.30	40.30	43.30	46.30	49.30
EE	\$ 6.00	7.50	10.50	13.50	16.50	19.50	22.50	25.50	28.50	31.50	34.50	37.50	40.50	43.50	46.50	49.50

* Catalog of available fixtures and the assigned billing tier for each can be viewed at www.FPL.com/partner/builders/lighting.html

The non-fuel energy charge is 3.273¢ per kWh; where the kWh is calculated as (wattage x 353.3 hours per month) / 1000

SPECIAL PROVISIONS:

Where the Company provides fixtures or poles other than those referenced above, the monthly charges, as applicable shall be computed as follows:

Charge: 1.28% of the Company's average installed cost of the pole, light fixture, or both.

Standard maintenance fees to apply
Standard non-fuel Energy Charge to apply

ADDITIONAL LIGHTING CHARGE:

Any special or additional lighting charges, which are required by the Company, will be billed in addition to the above rates.

Charge: 1.28% of the Company's average installed cost of the additional lighting facilities.

As of January 1, 2022, the factor pertaining to Underground Conductor will be closed to new customers.
Underground Conductor 4.498¢ per foot

BILLING

During the initial installation period:

Facilities in service for 15 days or less will not be billed;
Facilities in service for 16 days or more will be billed for a full month.

For outdoor lights only, the Company has the right at any time to remove the light for non-payment and decline new request to customers with prior non-payment activity.

WILLFUL DAMAGE:

Upon the second occurrence of willful damage to any Company-owned facilities, the Customer will be responsible for the cost incurred for repair or replacement. If the lighting fixture is damaged, based on prior written instructions from the Customer, the Company will:

- a) If a commercially available and Company approved device exists, install a protective shield. The Customer shall pay \$280.00 for the shield plus all associated costs. However, if the Customer chooses to have the shield installed before the second occurrence, the Customer shall only pay the cost of the shield; or
- b) Replace with a like unshielded fixture. For this, and each subsequent occurrence, the Customer shall pay the estimated costs of the replacement fixture; or
- c) Terminate service to the fixture. In this case, the lighting facilities will be removed from the field and from billing; the Customer will pay the lighting facilities charges for the remaining period of the currently active term of service plus the cost to remove the facilities.

Option selection shall be made by the Customer in writing and apply to all fixtures which the Company has installed on the Customer's behalf on the same account. Selection changes may be made by the Customer at any time and will become effective ninety (90) days after written notice is received.

(Continued on Sheet No. 8.738)

(Continued from Sheet No. 8.737)

OTHER CHARGES

See Billing Adjustments section, Sheet No. 8.030, for additional applicable charges.

SPECIAL CONDITIONS:

Customers whose lights are turned off during sea turtle nesting season will receive a credit equal to the non-fuel charges associated with the fixtures that are turned off.

TERM OF SERVICE:

Service for outdoor lighting will be established for a minimum of one (1) year unless terminated by either the Company or the Customer.

All other services, besides outdoor lighting mentioned above, will require a Lighting Agreement.

Lighting agreements will have an initial term of ten (10) years with automatic, successive five (5) year extensions unless renegotiated or terminated in writing by either the Company or the Customer at least ninety (90) days prior to the current term's expiration. In the event of the sale of the real estate property upon which the facilities are installed, upon the written consent of the Company, the contract may be assigned by the Customer to the Purchaser. No assignment shall not relieve the Customer from its obligations hereunder until such obligations have been assumed by the assignee and agreed to by the Company.

Term of service begins upon execution of the Lighting Agreement.

All governmental or commercial / industrial customer contracts to be executed by property owner or governing body.

All existing contract terms prior to January 1, 2022 will be honored.

RULES AND REGULATIONS:

Service under this schedule is subject to orders of governmental bodies having jurisdiction and to the currently effective "General Rules and Regulations for Electric Service" on file with the Florida Public Service Commission. In case of conflict between any provision of this schedule and said, "General Rules and Regulations for Electric Service", the provision of this schedule shall apply.



FPL Account Number: **07755-03394**
FPL Work Order Number: **318140-581**

STREET LIGHTING AGREEMENT

3181-40-581

In accordance with the following terms and conditions, **TOWN OF FORT MYERS BEACH** (hereinafter called the Customer), requests on this **2nd** day of **JULY, 2003**, from **FLORIDA POWER & LIGHT COMPANY** (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following installation or modification of street lighting facilities at (general boundaries) **OLD SAN CARLOS BLVD**, located in **FORT MYERS BEACH, LEE**, Florida.
(city/county)

(a) Installation and/or removal of FPL-owned facilities described as follows:

Lights Installed		
Fixture Rating (in Lumens)	Fixture Type	# Installed

Lights Removed		
Fixture Rating (in Lumens)	Fixture Type	# Removed
50000	SCH	7

Poles Installed		Poles Removed	
Pole Type	# Installed	Pole Type	# Removed

Conductors Installed		Conductors Removed	
Feet not Under Paving		Feet not Under Paving	
Feet Under Paving		Feet Under Paving	

(b) Modification to existing facilities other than described above (explain fully): N/A

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

1. To install or modify the street lighting facilities described and identified above (hereinafter called the Street Lighting System), furnish to the Customer the electric energy necessary for the operation of the Street Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective street lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive street lighting rate schedule approved by the FPSC.

THE CUSTOMER AGREES:

2. To pay a contribution in the amount of **\$-0-** prior to FPL's initiating the requested installation or modification.
3. To purchase from FPL all of the electric energy used for the operation of the Street Lighting System.
4. To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective street lighting rate schedule on file at the FPSC or any successive street lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this agreement.
5. To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plats necessary for planning the design and completing the construction of FPL facilities associated with the Street Lighting System.
6. To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rights-of-way or easements required by FPL to accommodate the street lighting facilities.

IT IS MUTUALLY AGREED THAT:

7. Modifications to the facilities provided by FPL under this agreement, other than for maintenance, may only be made through the execution of an additional street lighting agreement delineating the modifications to be accomplished. Modification of FPL street lighting facilities is defined as the following:

- a. the addition of street lighting facilities;
- b. the removal of street lighting facilities; and
- c. the removal of street lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

Modifications will be subject to the costs identified in FPL's currently effective street lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

8. FPL will, at the request of the Customer, relocate the street lighting facilities covered by this agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer-requested relocation of FPL street lighting facilities. Payment shall be made by the Customer in advance of any relocation.
9. FPL may, at any time, substitute for any luminaire/lamp installed hereunder another luminaire/lamp which shall be of at least equal illuminating capacity and efficiency.
10. This Agreement shall be for a term of ten (10) years from the date of initiation of service, and, except as provided below, shall extend thereafter for further successive periods of five (5) years from the expiration of the initial ten (10) year term or from the expiration of any extension thereof. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. This Agreement shall be extended automatically beyond the initial the (10) year term or any extension thereof, unless either party shall have given written notice to the other of its desire to terminate this Agreement. The written notice shall be by certified mail and shall be given not less than ninety (90) days before the expiration of the initial ten (10) year term, or any extension thereof.
11. In the event street lighting facilities covered by this agreement are removed, either at the request of the Customer or through termination or breach of this Agreement, the Customer shall be responsible for paying to FPL an amount equal to the original installed cost of the facilities provided by FPL under this agreement less any salvage value and any depreciation (based on current depreciation rates as approved by the FPSC) plus removal cost.
12. Should the Customer fail to pay any bills due and rendered pursuant to this agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.
13. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.
14. This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.
15. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.
16. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

TOWN OF FORT MYERS BEACH
Customer (Print or type name of Organization)

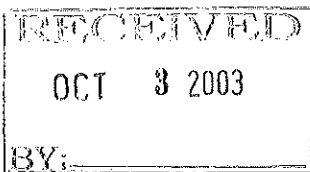
FLORIDA POWER & LIGHT COMPANY

By: X [Signature]
Signature (Authorized Representative)
X John Buccieri
(Print or type name)

Title: X Deputy Town Manager

By: [Signature]
(Signature)
JOHN W. HAHN
(Print or type name)

Title: SENIOR SYSTEM PROJECT MANAGER



FPL Account Number: **07755-03394**
FPL Work Order Number: **333-42-581**

STREET LIGHTING AGREEMENT

WR# 750 748

In accordance with the following terms and conditions, **TOWN OF FT MYERS BEACH** (hereinafter called the Customer), requests on this **1** day of **OCTOBER, 2003**, from **FLORIDA POWER & LIGHT COMPANY** (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following installation or modification of street lighting facilities at (general boundaries) **265 MANGO ST.**, located in **FT MYERS BEACH, LEE**, Florida.
(city/county)

(a) Installation and/or removal of FPL-owned facilities described as follows:

<u>Lights Installed</u>		# Installed
Fixture Rating (in Lumens)	Fixture Type	

<u>Lights Removed</u>		# Removed
Fixture Rating (in Lumens)	Fixture Type	
5800	OB	1

<u>Poles Installed</u>		<u>Poles Removed</u>	
Pole Type	# Installed	Pole Type	# Removed
		30'6	1

<u>Conductors Installed</u>	<u>Conductors Removed</u>
Feet not Under Paving	Feet not Under Paving
Feet Under Paving	Feet Under Paving

(b) Modification to existing facilities other than described above (explain fully): _____

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

1. To install or modify the street lighting facilities described and identified above (hereinafter called the Street Lighting System), furnish to the Customer the electric energy necessary for the operation of the Street Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective street lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive street lighting rate schedule approved by the FPSC.

THE CUSTOMER AGREES:

2. To pay a contribution in the amount of **\$0** prior to FPL's initiating the requested installation or modification.
3. To purchase from FPL all of the electric energy used for the operation of the Street Lighting System.
4. To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective street lighting rate schedule on file at the FPSC or any successive street lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this agreement.
5. To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plats necessary for planning the design and completing the construction of FPL facilities associated with the Street Lighting System.
6. To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rights-of-way or easements required by FPL to accommodate the street lighting facilities.

IT IS MUTUALLY AGREED THAT:

7. Modifications to the facilities provided by FPL under this agreement, other than for maintenance, may only be made through the execution of an additional street lighting agreement delineating the modifications to be accomplished. Modification of FPL street lighting facilities is defined as the following:

- a. the addition of street lighting facilities;
- b. the removal of street lighting facilities; and
- c. the removal of street lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

Modifications will be subject to the costs identified in FPL's currently effective street lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

8. FPL will, at the request of the Customer, relocate the street lighting facilities covered by this agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer-requested relocation of FPL street lighting facilities. Payment shall be made by the Customer in advance of any relocation.
9. FPL may, at any time, substitute for any luminaire/lamp installed hereunder another luminaire/lamp which shall be of at least equal illuminating capacity and efficiency.
10. This Agreement shall be for a term of ten (10) years from the date of initiation of service, and, except as provided below, shall extend thereafter for further successive periods of five (5) years from the expiration of the initial ten (10) year term or from the expiration of any extension thereof. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. This Agreement shall be extended automatically beyond the initial the (10) year term or any extension thereof, unless either party shall have given written notice to the other of its desire to terminate this Agreement. The written notice shall be by certified mail and shall be given not less than ninety (90) days before the expiration of the initial ten (10) year term, or any extension thereof.
11. In the event street lighting facilities covered by this agreement are removed, either at the request of the Customer or through termination or breach of this Agreement, the Customer shall be responsible for paying to FPL an amount equal to the original installed cost of the facilities provided by FPL under this agreement less any salvage value and any depreciation (based on current depreciation rates as approved by the FPSC) plus removal cost.
12. Should the Customer fail to pay any bills due and rendered pursuant to this agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.
13. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.
14. This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.
15. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.
16. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

TOWN OF FT MYERS BEACH
Customer (Print or type name of Organization)

FLORIDA POWER & LIGHT COMPANY

By: _____

Signature (Authorized Representative)

DeJohn Gucciardone

(Print or type name)

Deputy Town Manager

Title: _____

By: _____

(Signature)

WILLIAM MIDGETT

(Print or type name)

Title: Construction Services Representative



JUN 28 2005

JUL 13 2005

FPL Account Number: 07755-03394

FPL Work Order Number: 1122933

STREET LIGHTING AGREEMENT

In accordance with the following terms and conditions, **TOWN OF FORT MYERS BEACH** (hereinafter called the Customer), requests on this 20 day of July, 2004, from FLORIDA POWER & LIGHT COMPANY (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following installation or modification of street lighting facilities at (general boundaries) Remove 1-70w cobra at Lighthouse Resort on 4th street grid # 55204-9613, located in FORT MYERS BEACH / LEE, Florida.
(city/county)

(a) Installation and/or removal of FPL-owned facilities described as follows:

Lights Installed		
Fixture Rating (in Lumens)	Fixture Type	# Installed

Lights Removed		
Fixture Rating (in Lumens)	Fixture Type	# Removed
6300	CO	1

Poles Installed		Poles Removed	
Pole Type	# Installed	Pole Type	# Removed

Conductors	Installed	Conductors Removed
Feet not Under Paving		Feet not Under Paving
Feet Under Paving		Feet Under Paving

(b) Modification to existing facilities other than described above (explain fully): _____

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

1. To install or modify the street lighting facilities described and identified above (hereinafter called the Street Lighting System), furnish to the Customer the electric energy necessary for the operation of the Street Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective street lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive street lighting rate schedule approved by the FPSC.

THE CUSTOMER AGREES:

2. To pay a contribution in the amount of \$0 prior to FPL's initiating the requested installation or modification.
3. To purchase from FPL all of the electric energy used for the operation of the Street Lighting System.
4. To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective street lighting rate schedule on file at the FPSC or any successive street lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this agreement.
5. To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plats necessary for planning the design and completing the construction of FPL facilities associated with the Street Lighting System.
6. To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rights-of-way or easements required by FPL to accommodate the street lighting facilities.

IT IS MUTUALLY AGREED THAT:

7. Modifications to the facilities provided by FPL under this agreement, other than for maintenance, may only be made through the execution of an additional street lighting agreement delineating the modifications to be accomplished. Modification of FPL street lighting facilities is defined as the following:

- a. the addition of street lighting facilities;
- b. the removal of street lighting facilities; and
- c. the removal of street lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

Modifications will be subject to the costs identified in FPL's currently effective street lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

8. FPL will, at the request of the Customer, relocate the street lighting facilities covered by this agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer-requested relocation of FPL street lighting facilities. Payment shall be made by the Customer in advance of any relocation.
9. FPL may, at any time, substitute for any luminaire/lamp installed hereunder another luminaire/lamp which shall be of at least equal illuminating capacity and efficiency.
10. This Agreement shall be for a term of ten (10) years from the date of initiation of service, and, except as provided below, shall extend thereafter for further successive periods of five (5) years from the expiration of the initial ten (10) year term or from the expiration of any extension thereof. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. This Agreement shall be extended automatically beyond the initial the (10) year term or any extension thereof, unless either party shall have given written notice to the other of its desire to terminate this Agreement. The written notice shall be by certified mail and shall be given not less than ninety (90) days before the expiration of the initial ten (10) year term, or any extension thereof.
11. In the event street lighting facilities covered by this agreement are removed, either at the request of the Customer or through termination or breach of this Agreement, the Customer shall be responsible for paying to FPL an amount equal to the original installed cost of the facilities provided by FPL under this agreement less any salvage value and any depreciation (based on current depreciation rates as approved by the FPSC) plus removal cost.
12. Should the Customer fail to pay any bills due and rendered pursuant to this agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.
13. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.
14. This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.
15. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.
16. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

FLORIDA POWER & LIGHT COMPANY

____ Town of Fort Myers Beach
Customer (Print or type name of Organization)

By: [Signature]
Signature (Authorized Representative)
John A. ...
(Print or type name)

Title: Deputy Town Manager

By: [Signature]
(Signature)
Jane Gunter
(Print or type name)

Title: Construction Services Representative



POSTED TO WMS

RECEIVED

MAY 25 2006

FPL Account Number: 07755-03394

FPL Work Order Number: 2161609

STREET LIGHTING AGREEMENT

In accordance with the following terms and conditions, City of Fort Myers Beach (hereinafter called the Customer), requests on this 2 day of May, 2006, from FLORIDA POWER & LIGHT COMPANY (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following installation or modification of street lighting facilities at (general boundaries) Install 2-250W ON 8ft Brkt, located in Fort Myers Beach / Lee, Florida.
(city/county)

(a) Installation and/or removal of FPL-owned facilities described as follows:

Lights Installed		
Fixture Rating (in Lumens)	Fixture Type	# Installed
2200	CO	2

Lights Removed		
Fixture Rating (in Lumens)	Fixture Type	# Removed

Poles Installed		Poles Removed	
Pole Type	# Installed	Pole Type	# Removed

Conductors	Installed	Conductors Removed
Feet not Under Paving		Feet not Under Paving
Feet Under Paving		Feet Under Paving

(b) Modification to existing facilities other than described above (explain fully): _____

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

1. To install or modify the street lighting facilities described and identified above (hereinafter called the Street Lighting System), furnish to the Customer the electric energy necessary for the operation of the Street Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective street lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive street lighting rate schedule approved by the FPSC.

THE CUSTOMER AGREES:

2. To pay a contribution in the amount of \$0 prior to FPL's initiating the requested installation or modification.
3. To purchase from FPL all of the electric energy used for the operation of the Street Lighting System.
4. To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective street lighting rate schedule on file at the FPSC or any successive street lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this agreement.
5. To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plats necessary for planning the design and completing the construction of FPL facilities associated with the Street Lighting System.
6. To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rights-of-way or easements required by FPL to accommodate the street lighting facilities.

IT IS MUTUALLY AGREED THAT:

7. Modifications to the facilities provided by FPL under this agreement, other than for maintenance, may only be made through the execution of an additional street lighting agreement delineating the modifications to be accomplished. Modification of FPL street lighting facilities is defined as the following:

- a. the addition of street lighting facilities;
- b. the removal of street lighting facilities; and
- c. the removal of street lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

Modifications will be subject to the costs identified in FPL's currently effective street lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

8. FPL will, at the request of the Customer, relocate the street lighting facilities covered by this agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer-requested relocation of FPL street lighting facilities. Payment shall be made by the Customer in advance of any relocation.
9. FPL may, at any time, substitute for any luminaire/lamp installed hereunder another luminaire/lamp which shall be of at least equal illuminating capacity and efficiency.
10. This Agreement shall be for a term of ten (10) years from the date of initiation of service, and, except as provided below, shall extend thereafter for further successive periods of five (5) years from the expiration of the initial ten (10) year term or from the expiration of any extension thereof. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. This Agreement shall be extended automatically beyond the initial the (10) year term or any extension thereof, unless either party shall have given written notice to the other of its desire to terminate this Agreement. The written notice shall be by certified mail and shall be given not less than ninety (90) days before the expiration of the initial ten (10) year term, or any extension thereof.
11. In the event street lighting facilities covered by this agreement are removed, either at the request of the Customer or through termination or breach of this Agreement, the Customer shall be responsible for paying to FPL an amount equal to the original installed cost of the facilities provided by FPL under this agreement less any salvage value and any depreciation (based on current depreciation rates as approved by the FPSC) plus removal cost.
12. Should the Customer fail to pay any bills due and rendered pursuant to this agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.
13. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes; lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.
14. This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.
15. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.
16. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

FLORIDA POWER & LIGHT COMPANY

Town of Ft. Myers Beach
Customer (Print or type name of Organization)

By: Rachel Lambert
Signature (Authorized Representative)

Rachel Lambert
(Print or type name)

Title: Town Manager

By: Jane Gunter
(Signature)

Jane Gunter
(Print or type name)

Title: Construction Services Representative



FPL Account Number: 07755-03394
FPL Work Order Number: 8280-02-536

STREET LIGHTING AGREEMENT

In accordance with the following terms and conditions, Town of Fort Myers Beach (hereinafter called the Customer), requests on this 30th day of January, 2001, from FLORIDA POWER & LIGHT COMPANY (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following installation or modification of street lighting facilities at (general boundaries) install 2-9500L street lights and 1-pole on Palmetto Street, located in Fort Myers Beach/Lee, Florida.
(city/county)

(a) Installation and/or removal of FPL-owned facilities described as follows:

Lights Installed		
Fixture Rating (in Lumens)	Fixture Type	# Installed
9500L	OB	2

Lights Removed		
Fixture Rating (in Lumens)	Fixture Type	# Removed

Poles Installed		Poles Removed	
Pole Type	# Installed	Pole Type	# Removed
30/6W	1		

Conductors Installed		Conductors Removed	
Feet not Under Paving		Feet not Under Paving	
Feet Under Paving		Feet Under Paving	

(b) Modification to existing facilities other than described above (explain fully): _____

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

1. To install or modify the street lighting facilities described and identified above (hereinafter called the Street Lighting System), furnish to the Customer the electric energy necessary for the operation of the Street Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective street lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive street lighting rate schedule approved by the FPSC.

THE CUSTOMER AGREES:

2. To pay a contribution in the amount of \$0 prior to FPL's initiating the requested installation or modification.
3. To purchase from FPL all of the electric energy used for the operation of the Street Lighting System.
4. To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective street lighting rate schedule on file at the FPSC or any successive street lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this agreement.
5. To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plats necessary for planning the design and completing the construction of FPL facilities associated with the Street Lighting System.
6. To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rights-of-way or easements required by FPL to accommodate the street lighting facilities.

IT IS MUTUALLY AGREED THAT:

RECEIVED

FEB 20 2001

LSS / AON

7. Modifications to the facilities provided by FPL under this agreement, other than for maintenance, may only be made through the execution of an additional street lighting agreement delineating the modifications to be accomplished. Modification of FPL street lighting facilities is defined as the following:

- a. the addition of street lighting facilities;
- b. the removal of street lighting facilities; and
- c. the removal of street lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

Modifications will be subject to the costs identified in FPL's currently effective street lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

8. FPL will, at the request of the Customer, relocate the street lighting facilities covered by this agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer-requested relocation of FPL street lighting facilities. Payment shall be made by the Customer in advance of any relocation.
9. FPL may, at any time, substitute for any luminaire/lamp installed hereunder another luminaire/lamp which shall be of at least equal illuminating capacity and efficiency.
10. This Agreement shall be for a term of ten (10) years from the date of initiation of service, and, except as provided below, shall extend thereafter for further successive periods of five (5) years from the expiration of the initial ten (10) year term or from the expiration of any extension thereof. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. This Agreement shall be extended automatically beyond the initial ten (10) year term or any extension thereof, unless either party shall have given written notice to the other of its desire to terminate this Agreement. The written notice shall be by certified mail and shall be given not less than ninety (90) days before the expiration of the initial ten (10) year term, or any extension thereof.
11. In the event street lighting facilities covered by this agreement are removed, either at the request of the Customer or through termination or breach of this Agreement, the Customer shall be responsible for paying to FPL an amount equal to the original installed cost of the facilities provided by FPL under this agreement less any salvage value and any depreciation (based on current depreciation rates as approved by the FPSC) plus removal cost.
12. Should the Customer fail to pay any bills due and rendered pursuant to this agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.
13. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.
14. This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.
15. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.
16. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

FLORIDA POWER & LIGHT COMPANY

Town of Ft. Myers Beach
Customer (Print or type name of Organization)

By:

[Signature]
Signature (Authorized Representative)

John Gucciardo
(Print or type name)

Title:

Deputy Town Manager

By:

[Signature]
(Signature)

Jane Gunter

Title: Construction Services Representative

FPL Account Number: 07755-03394

STREET LIGHTING AGREEMENT

In accordance with the following terms and conditions, Town of Fort Myers Beach

(hereinafter called the Customer), requests on this 1 day of October, 1997, from FLORIDA POWER & LIGHT COMPANY (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following installation or modification of street lighting facilities at (general boundaries): within the Town of Fort Myers Beach

located in Lee County, Florida.
(city/county)

(a) Installation and/or removal of FPL-owned facilities described as follows:

Lights Installed			Lights Removed		
Fixture Rating (in Lumens)	Fixture Type	# Installed	Fixture Rating (in Lumens)	Fixture Type	# Removed
5800	HPS0070	231			
16000	HPS0150	103			
9500	HPS0100	34			
50000	HPS0400	13			

Poles Installed		Poles Removed		Conductors Installed	Conductors Removed
Pole Type	# Installed	Pole Type	# Removed		
PMC	18			Feet not Under Paving	Feet not Under Paving
PMW	50			Feet Under Paving	Feet Under Paving

(b) Modification to existing facilities other than described above (explain fully):

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

- To install or modify the street lighting facilities described and identified above (hereinafter called the Street Lighting System), furnish to the Customer the electric energy necessary for the operation of the Street Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective street lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive street lighting rate schedule approved by the FPSC.

(Continued on Sheet No. 9.101)

Issued by: S. E. Frank, President
Effective: July 9, 1992

(Continued from Sheet No. 9.100)

THE CUSTOMER AGREES:

2. To pay a contribution in the amount of \$ 0.00 prior to FPL's initiating the requested installation or modification.
3. To purchase from FPL all of the electric energy used for the operation of the Street Lighting System.
4. To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective street lighting rate schedule on file at the FPSC or any successive street lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this agreement.
5. To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plats necessary for planning the design and completing the construction of FPL facilities associated with the Street Lighting System.
6. To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rights-of-way or easements required by FPL to accommodate the street lighting facilities.

IT IS MUTUALLY AGREED THAT:

7. Modifications to the facilities provided by FPL under this agreement, other than for maintenance, may only be made through the execution of an additional street lighting agreement delineating the modifications to be accomplished. Modification of FPL street lighting facilities is defined as the following:
 - a. the addition of street lighting facilities;
 - b. the removal of street lighting facilities; and
 - c. the removal of street lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

Modifications will be subject to the costs identified in FPL's currently effective street lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

8. FPL will, at the request of the Customer, relocate the street lighting facilities covered by this agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer-requested relocation of FPL street lighting facilities. Payment shall be made by the Customer in advance of any relocation.
9. FPL may, at any time, substitute for any luminaire/lamp installed hereunder another luminaire/lamp which shall be of at least equal illuminating capacity and efficiency.
10. This Agreement shall be for a term of ten (10) years from the date of initiation of service, and, except as provided below, shall extend thereafter for further successive periods of five (5) years from the expiration of the initial ten (10) year term or from the expiration of any extension thereof. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. This Agreement shall be extended automatically beyond the initial ten (10) year term or any extension thereof, unless either party shall have given written notice to the other of its desire to terminate this Agreement. The written notice shall be by certified mail and shall be given not less than ninety (90) days before the expiration of the initial ten (10) year term, or any extension thereof.
11. In the event street lighting facilities covered by this agreement are removed, either at the request of the Customer or through termination or breach of this agreement, the Customer shall be responsible for paying to FPL an amount equal to the original installed cost of the facilities provided by FPL under this agreement less any salvage value and any depreciation (based on current depreciation rates as approved by the FPSC) plus removal cost.

(Continued on Sheet No. 9.102)

Issued by: S. E. Frank, President
Effective: July 9, 1992

(Continued from Sheet No. 9.101)

12. Should the Customer fail to pay any bills due and rendered pursuant to this agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.
13. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance, and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.
14. This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.
15. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.
16. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are now written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

Town of Fort Myers Beach
Customer (Print or type name of Organization)

FLORIDA POWER & LIGHT COMPANY

By: [Signature]
Signature (Authorized Representative)

By: [Signature]
(Signature)

Anita T. CELESTA
(Print or type name)

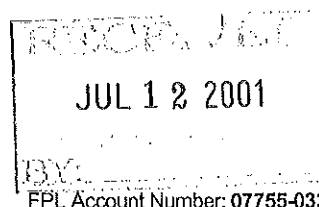
BILL CARLYLE
(Print or type name)

Title: Mayor

Title: LEAD MAJOR ACCOUNT MANAGER

signed 9-8-97 effective 10-1-97

Issued by: S. E. Frank, President
Effective: July 9, 1992



FPL Account Number: 07755-03394
FPL Work Order Number: 8316-02-536

STREET LIGHTING AGREEMENT

In accordance with the following terms and conditions, **Town of Fort Myers Beach** (hereinafter called the Customer), requests on this **9th day of July, 2001**, from **FLORIDA POWER & LIGHT COMPANY** (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following installation or modification of street lighting facilities at (general boundaries) **Upgrade 122 various style streetlights to 200W Cutoffs, Estero Blvd**, located in **Fort Myers Beach/Lee**, Florida.
(city/county)

(a) Installation and/or removal of FPL-owned facilities described as follows:

Lights Installed		
Fixture Rating (in Lumens)	Fixture Type	# Installed
22000L	CO	122

Lights Removed		
Fixture Rating (in Lumens)	Fixture Type	# Removed
6300L	OB	1
9500L	OB	19
16000L 16000L	OB	3
16000L 16000L	Cobra	92
16000L 16000L	CO	7

Poles Installed		Poles Removed	
Pole Type	# Installed	Pole Type	# Removed

Conductors Installed	Conductors Removed
Feet not Under Paving	Feet not Under Paving
Feet Under Paving	Feet Under Paving

(b) Modification to existing facilities other than described above (explain fully): _____

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

- To install or modify the street lighting facilities described and identified above (hereinafter called the Street Lighting System), furnish to the Customer the electric energy necessary for the operation of the Street Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective street lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive street lighting rate schedule approved by the FPSC.

THE CUSTOMER AGREES:

- To pay a contribution in the amount of \$500 prior to FPL's initiating the requested installation or modification.
- To purchase from FPL all of the electric energy used for the operation of the Street Lighting System.
- To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective street lighting rate schedule on file at the FPSC or any successive street lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this agreement.
- To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plats necessary for planning the design and completing the construction of FPL facilities associated with the Street Lighting System.
- To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and damage of rights-of-way or easements required by FPL to accommodate the street lighting facilities.

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OCT 30 2001
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IT IS MUTUALLY AGREED THAT:

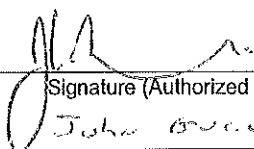
7. Modifications to the facilities provided by FPL under this agreement, other than for maintenance, may only be made through the execution of an additional street lighting agreement delineating the modifications to be accomplished. Modification of FPL street lighting facilities is defined as the following:
 - a. the addition of street lighting facilities;
 - b. the removal of street lighting facilities; and
 - c. the removal of street lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.Modifications will be subject to the costs identified in FPL's currently effective street lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.
8. FPL will, at the request of the Customer, relocate the street lighting facilities covered by this agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer-requested relocation of FPL street lighting facilities. Payment shall be made by the Customer in advance of any relocation.
9. FPL may, at any time, substitute for any luminaire/lamp installed hereunder another luminaire/lamp which shall be of at least equal illuminating capacity and efficiency.
10. This Agreement shall be for a term of ten (10) years from the date of initiation of service, and, except as provided below, shall extend thereafter for further successive periods of five (5) years from the expiration of the initial ten (10) year term or from the expiration of any extension thereof. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. This Agreement shall be extended automatically beyond the initial the (10) year term or any extension thereof, unless either party shall have given written notice to the other of its desire to terminate this Agreement. The written notice shall be by certified mail and shall be given not less than ninety (90) days before the expiration of the initial ten (10) year term, or any extension thereof.
11. In the event street lighting facilities covered by this agreement are removed, either at the request of the Customer or through termination or breach of this Agreement, the Customer shall be responsible for paying to FPL an amount equal to the original installed cost of the facilities provided by FPL under this agreement less any salvage value and any depreciation (based on current depreciation rates as approved by the FPSC) plus removal cost.
12. Should the Customer fail to pay any bills due and rendered pursuant to this agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.
13. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.
14. This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.
15. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.
16. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

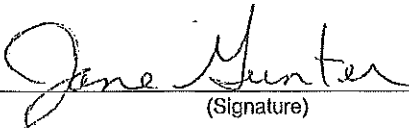
Charges and Terms Accepted:

FLORIDA POWER & LIGHT COMPANY

Town of Fort Myers Beach
Customer (Print or type name of Organization)

By: 
Signature (Authorized Representative)
John Brucato
(Print or type name)

Title: Deputy Town Manager

By: 
(Signature)
Jane Gunter
(Print or type name)

Title: Construction Services Representative



SEP 4 2001

FPL Account Number: **07755-03394**
FPL Work Order Number: **8339-02-536**

STREET LIGHTING AGREEMENT

In accordance with the following terms and conditions, **Town of Fort Myers Beach** (hereinafter called the Customer), requests on this **28th** day of **August, 2001**, from **FLORIDA POWER & LIGHT COMPANY** (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following installation or modification of street lighting facilities at (general boundaries) **Nature View Court, install 2 100 W Post Top Traditional on a Fiberglass Pole**, located in **Fort Myers Beach/ Lee, Florida**.
(city/county)

(a) Installation and/or removal of FPL-owned facilities described as follows:

Lights Installed		
Fixture Rating (in Lumens)	Fixture Type	# Installed
9500L	PTT	2

Lights Removed		
Fixture Rating (in Lumens)	Fixture Type	# Removed

Poles Installed		Poles Removed	
Pole Type	# Installed	Pole Type	# Removed
Fiberglass	2		

Conductors Installed	Conductors Removed
Feet not Under Paving	Feet not Under Paving
Feet Under Paving	Feet Under Paving

(b) Modification to existing facilities other than described above (explain fully): _____

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

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NOV 20 2001

FPL AGREES:

1. To install or modify the street lighting facilities described and identified above (hereinafter called the Street Lighting System), furnish to the Customer the electric energy necessary for the operation of the Street Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective street lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive street lighting rate schedule approved by the FPSC.

THE CUSTOMER AGREES:

2. To pay a contribution in the amount of \$0 prior to FPL's initiating the requested installation or modification.
3. To purchase from FPL all of the electric energy used for the operation of the Street Lighting System.
4. To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective street lighting rate schedule on file at the FPSC or any successive street lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this agreement.
5. To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plats necessary for planning the design and completing the construction of FPL facilities associated with the Street Lighting System.
6. To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rights-of-way or easements required by FPL to accommodate the street lighting facilities.

IT IS MUTUALLY AGREED THAT:

7. Modifications to the facilities provided by FPL under this agreement, other than for maintenance, may only be made through the execution of an additional street lighting agreement delineating the modifications to be accomplished. Modification of FPL street lighting facilities is defined as the following:

- a. the addition of street lighting facilities;
- b. the removal of street lighting facilities; and
- c. the removal of street lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

Modifications will be subject to the costs identified in FPL's currently effective street lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

8. FPL will, at the request of the Customer, relocate the street lighting facilities covered by this agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer-requested relocation of FPL street lighting facilities. Payment shall be made by the Customer in advance of any relocation.
9. FPL may, at any time, substitute for any luminaire/lamp installed hereunder another luminaire/lamp which shall be of at least equal illuminating capacity and efficiency.
10. This Agreement shall be for a term of ten (10) years from the date of initiation of service, and, except as provided below, shall extend thereafter for further successive periods of five (5) years from the expiration of the initial ten (10) year term or from the expiration of any extension thereof. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. This Agreement shall be extended automatically beyond the initial the (10) year term or any extension thereof, unless either party shall have given written notice to the other of its desire to terminate this Agreement. The written notice shall be by certified mail and shall be given not less than ninety (90) days before the expiration of the initial ten (10) year term, or any extension thereof.
11. In the event street lighting facilities covered by this agreement are removed, either at the request of the Customer or through termination or breach of this Agreement, the Customer shall be responsible for paying to FPL an amount equal to the original installed cost of the facilities provided by FPL under this agreement less any salvage value and any depreciation (based on current depreciation rates as approved by the FPSC) plus removal cost.
12. Should the Customer fail to pay any bills due and rendered pursuant to this agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.
13. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.
14. This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.
15. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.
16. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

FLORIDA POWER & LIGHT COMPANY

Town of Fort Myers Beach
Customer (Print or type name of Organization)

By: [Signature]
Signature (Authorized Representative)
John Gucciarda
(Print or type name)

Title: Mayor

By: [Signature]
(Signature)
Jane Gunter
(Print or type name)

Title: Construction Services Representative



FPL Account Number: 07755-03394
FPL Work Order Number: 8034-02-536

STREET LIGHTING AGREEMENT

In accordance with the following terms and conditions, **Town of Ft. Myers Beach** (hereinafter called the Customer), requests on this **21st** day of **May, 1999**, from **FLORIDA POWER & LIGHT COMPANY** (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following installation or modification of street lighting facilities at (general boundaries) **Install 2 16,000L Cobra streetlights on existing poles, Donora Blvd & Santos Rd**, located in **Ft. Myers Beach/Lee**, Florida.
(city/county)

(a) Installation and/or removal of FPL-owned facilities described as follows:

Lights Installed		
Fixture Rating (in Lumens)	Fixture Type	# Installed
16,000	Cobra	2

Lights Removed		
Fixture Rating (in Lumens)	Fixture Type	# Removed

Poles Installed		Poles Removed	
Pole Type	# Installed	Pole Type	# Removed

Conductors Installed	Conductors Removed
Feet not Under Paving	Feet not Under Paving
Feet Under Paving	Feet Under Paving

(b) Modification to existing facilities other than described above (explain fully): _____

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

- To install or modify the street lighting facilities described and identified above (hereinafter called the Street Lighting System), furnish to the Customer the electric energy necessary for the operation of the Street Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective street lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive street lighting rate schedule approved by the FPSC.

THE CUSTOMER AGREES:

- To pay a contribution in the amount of \$0 prior to FPL's initiating the requested installation or modification.
- To purchase from FPL all of the electric energy used for the operation of the Street Lighting System.
- To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective street lighting rate schedule on file at the FPSC or any successive street lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this agreement.
- To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plats necessary for planning the design and completing the construction of FPL facilities associated with the Street Lighting System.
- To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rights-of-way or easements required by FPL to accommodate the street lighting facilities.

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IT IS MUTUALLY AGREED THAT:

7. Modifications to the facilities provided by FPL under this agreement, other than for maintenance, may only be made through the execution of an additional street lighting agreement delineating the modifications to be accomplished. Modification of FPL street lighting facilities is defined as the following:

- a. the addition of street lighting facilities;
- b. the removal of street lighting facilities; and
- c. the removal of street lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

Modifications will be subject to the costs identified in FPL's currently effective street lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

8. FPL will, at the request of the Customer, relocate the street lighting facilities covered by this agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer-requested relocation of FPL street lighting facilities. Payment shall be made by the Customer in advance of any relocation.
9. FPL may, at any time, substitute for any luminaire/lamp installed hereunder another luminaire/lamp which shall be of at least equal illuminating capacity and efficiency.
10. This Agreement shall be for a term of ten (10) years from the date of initiation of service, and, except as provided below, shall extend thereafter for further successive periods of five (5) years from the expiration of the initial ten (10) year term or from the expiration of any extension thereof. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. This Agreement shall be extended automatically beyond the initial the (10) year term or any extension thereof, unless either party shall have given written notice to the other of its desire to terminate this Agreement. The written notice shall be by certified mail and shall be given not less than ninety (90) days before the expiration of the initial ten (10) year term, or any extension thereof.
11. In the event street lighting facilities covered by this agreement are removed, either at the request of the Customer or through termination or breach of this Agreement, the Customer shall be responsible for paying to FPL an amount equal to the original installed cost of the facilities provided by FPL under this agreement less any salvage value and any depreciation (based on current depreciation rates as approved by the FPSC) plus removal cost.
12. Should the Customer fail to pay any bills due and rendered pursuant to this agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.
13. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.
14. This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.
15. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.
16. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

FLORIDA POWER & LIGHT COMPANY

Town of Ft. Myers Beach
Customer (Print or type name of Organization)

By:

Signature (Authorized Representative)

John Gucciardo
(Print or type name)

Title:

Deputy Town Manager

By:

Signature

Jane Gunter

Title:

Construction Services Representative



FPL Account Number: **07755-03394**
FPL Work Order Number: **8315-02-536**

STREET LIGHTING AGREEMENT

In accordance with the following terms and conditions, **Town of Fort Myers Beach** (hereinafter called the Customer), requests on this **21** day of **May, 2001**, from FLORIDA POWER & LIGHT COMPANY (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following installation or modification of street lighting facilities at (general boundaries) **Curlew Street adding 2-9500L Cutoffs and upgrading 4 to 9500L Cutoffs**, located in **Fort Myers Beach/Lee**, Florida.
(city/county)

(a) Installation and/or removal of FPL-owned facilities described as follows:

Lights Installed		
Fixture Rating (in Lumens)	Fixture Type	# Installed
9500L	CO	6

Lights Removed		
Fixture Rating (in Lumens)	Fixture Type	# Removed
6300L	OB	42

Poles Installed		Poles Removed	
Pole Type	# Installed	Pole Type	# Removed

Conductors Installed		Conductors Removed	
Feet not Under Paving		Feet not Under Paving	
Feet Under Paving		Feet Under Paving	

- (b) Modification to existing facilities other than described above (explain fully): **Upgrading 4 street lights to 9500L and replacing OB with 6ft brackets to Cutoffs and 8 ft brackets** *2 6300 lumen lights removed from a Lee County account - See agreement for account 58645-33335 - Job # 8315102-536*

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

- To install or modify the street lighting facilities described and identified above (hereinafter called the Street Lighting System), furnish to the Customer the electric energy necessary for the operation of the Street Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective street lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive street lighting rate schedule approved by the FPSC.

THE CUSTOMER AGREES:

- To pay a contribution in the amount of \$0 prior to FPL's initiating the requested installation or modification.
- To purchase from FPL all of the electric energy used for the operation of the Street Lighting System.
- To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective street lighting rate schedule on file at the FPSC or any successive street lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this agreement.
- To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plats necessary for planning the design and completing the construction of FPL facilities associated with the Street Lighting System.
- To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rights-of-way or easements required by FPL to accommodate the street lighting facilities.

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LSS / AON

IT IS MUTUALLY AGREED THAT:

7. Modifications to the facilities provided by FPL under this agreement, other than for maintenance, may only be made through the execution of an additional street lighting agreement delineating the modifications to be accomplished. Modification of FPL street lighting facilities is defined as the following:

- a. the addition of street lighting facilities;
- b. the removal of street lighting facilities; and
- c. the removal of street lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

Modifications will be subject to the costs identified in FPL's currently effective street lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

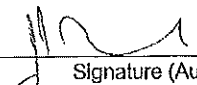
8. FPL will, at the request of the Customer, relocate the street lighting facilities covered by this agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer-requested relocation of FPL street lighting facilities. Payment shall be made by the Customer in advance of any relocation.
9. FPL may, at any time, substitute for any luminaire/lamp installed hereunder another luminaire/lamp which shall be of at least equal illuminating capacity and efficiency.
10. This Agreement shall be for a term of ten (10) years from the date of initiation of service, and, except as provided below, shall extend thereafter for further successive periods of five (5) years from the expiration of the initial ten (10) year term or from the expiration of any extension thereof. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. This Agreement shall be extended automatically beyond the initial the (10) year term or any extension thereof, unless either party shall have given written notice to the other of its desire to terminate this Agreement. The written notice shall be by certified mail and shall be given not less than ninety (90) days before the expiration of the initial ten (10) year term, or any extension thereof.
11. In the event street lighting facilities covered by this agreement are removed, either at the request of the Customer or through termination or breach of this Agreement, the Customer shall be responsible for paying to FPL an amount equal to the original installed cost of the facilities provided by FPL under this agreement less any salvage value and any depreciation (based on current depreciation rates as approved by the FPSC) plus removal cost.
12. Should the Customer fail to pay any bills due and rendered pursuant to this agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.
13. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.
14. This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.
15. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.
16. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

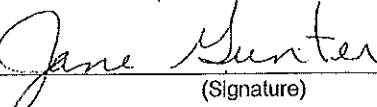
Charges and Terms Accepted:

FLORIDA POWER & LIGHT COMPANY

____ Town of Fort Myers Beach
Customer (Print or type name of Organization)

By: 
Signature (Authorized Representative)
____ John J. Gucciardo
(Print or type name)

Title: Deputy Town Manager

By: 
(Signature)
____ Jane Gunter

Title: Construction Services Representative



FPL Account Number: **07755-03394**
FPL Work Order Number: **8369-02-536**

STREET LIGHTING AGREEMENT

In accordance with the following terms and conditions, **Town of Ft Myers Beach** (hereinafter called the Customer), requests on this **23 day of January, 2002**, from **FLORIDA POWER & LIGHT COMPANY** (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following installation or modification of street lighting facilities at (general boundaries) **Install one span of 6 dpx and 30/6 pole with 70W open bottom street light**, located in **Fort Myers Beach/Lee**, Florida.
(city/county)

(a) Installation and/or removal of FPL-owned facilities described as follows:

Lights Installed			Lights Removed		
Fixture Rating (in Lumens)	Fixture Type	# Installed	Fixture Rating (in Lumens)	Fixture Type	# Removed
6300L	OB	1			

Poles Installed		Poles Removed		Conductors Installed		Conductors Removed	
Pole Type	# Installed	Pole Type	# Removed				
30/6W	1			Feet not Under Paving		Feet not Under Paving	
				Feet Under Paving		Feet Under Paving	

(b) Modification to existing facilities other than described above (explain fully): _____

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

1. To install or modify the street lighting facilities described and identified above (hereinafter called the Street Lighting System), furnish to the Customer the electric energy necessary for the operation of the Street Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective street lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive street lighting rate schedule approved by the FPSC.

THE CUSTOMER AGREES:

2. To pay a contribution in the amount of \$0 prior to FPL's initiating the requested installation or modification.
3. To purchase from FPL all of the electric energy used for the operation of the Street Lighting System.
4. To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective street lighting rate schedule on file at the FPSC or any successive street lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this agreement.
5. To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plats necessary for planning the design and completing the construction of FPL facilities associated with the Street Lighting System.
6. To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rights-of-way or easements required by FPL to accommodate the street lighting facilities.

RECEIVED

MAR 05 2002

LGS / AON

IT IS MUTUALLY AGREED THAT:

7. Modifications to the facilities provided by FPL under this agreement, other than for maintenance, may only be made through the execution of an additional street lighting agreement delineating the modifications to be accomplished. Modification of FPL street lighting facilities is defined as the following:

- a. the addition of street lighting facilities;
- b. the removal of street lighting facilities; and
- c. the removal of street lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

Modifications will be subject to the costs identified in FPL's currently effective street lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

8. FPL will, at the request of the Customer, relocate the street lighting facilities covered by this agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer-requested relocation of FPL street lighting facilities. Payment shall be made by the Customer in advance of any relocation.
9. FPL may, at any time, substitute for any luminaire/lamp installed hereunder another luminaire/lamp which shall be of at least equal illuminating capacity and efficiency.
10. This Agreement shall be for a term of ten (10) years from the date of initiation of service, and, except as provided below, shall extend thereafter for further successive periods of five (5) years from the expiration of the initial ten (10) year term or from the expiration of any extension thereof. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. This Agreement shall be extended automatically beyond the initial the (10) year term or any extension thereof, unless either party shall have given written notice to the other of its desire to terminate this Agreement. The written notice shall be by certified mail and shall be given not less than ninety (90) days before the expiration of the initial ten (10) year term, or any extension thereof.
11. In the event street lighting facilities covered by this agreement are removed, either at the request of the Customer or through termination or breach of this Agreement, the Customer shall be responsible for paying to FPL an amount equal to the original installed cost of the facilities provided by FPL under this agreement less any salvage value and any depreciation (based on current depreciation rates as approved by the FPSC) plus removal cost.
12. Should the Customer fail to pay any bills due and rendered pursuant to this agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.
13. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.
14. This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.
15. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.
16. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

FLORIDA POWER & LIGHT COMPANY

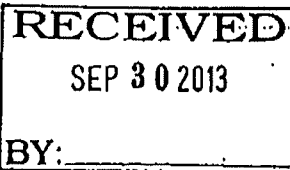
Town of Ft Myers Beach
Customer (Print or type name of Organization)

By: _____
Signature (Authorized Representative)
John J. Gucciardo
(Print or type name)

Title: Deputy Town Manager

By: _____
Signature
Jane Gunter
(Print or type name)

Title: Construction Services Representative



POSTED TO WMA5



FPL Account Number: 07766-03394
FPL Work Order Number: 5201298

STREET LIGHTING AGREEMENT

In accordance with the following terms and conditions, Town of Fort Myers Beach (hereinafter called the Customer), requests on this 10 day of September, 2013, from FLORIDA POWER & LIGHT COMPANY (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following installation or modification of street lighting facilities at (general boundaries) Cottara St & Chapel St located in Fort Myers Beach/Lee County, Florida.
(city/county)

(a) Installation and/or removal of FPL-owned facilities described as follows:

Lights Installed			Lights Removed		
Fixture Rating (in Lumens)	Fixture Type	# Installed	Fixture Rating (in Lumens)	Fixture Type	# Removed
8500	Cobra Head	1			

Poles Installed		Poles Removed		Conductors Installed		Conductors Removed	
Pole Type	# Installed	Pole Type	# Removed				
				Feet not Under Paving		Feet not Under Paving	
				Feet Under Paving		Feet Under Paving	

(b) Modification to existing facilities other than described above (explain fully): install turtle shield

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

1. To install or modify the street lighting facilities described and identified above (hereinafter called the Street Lighting System), furnish to the Customer the electric energy necessary for the operation of the Street Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective street lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive street lighting rate schedule approved by the FPSC.

THE CUSTOMER AGREES:

2. To pay a contribution in the amount of \$432.00 prior to FPL's initiating the requested installation or modification.
3. To purchase from FPL all of the electric energy used for the operation of the Street Lighting System.
4. To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective street lighting rate schedule on file at the FPSC or any successive street lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this agreement.
5. To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plats necessary for planning the design and completing the construction of FPL facilities associated with the Street Lighting System.
6. To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rights-of-way or easements required by FPL to accommodate the street lighting facilities.

IT IS MUTUALLY AGREED THAT:

7. Modifications to the facilities provided by FPL under this agreement, other than for maintenance, may only be made through the execution of an additional street lighting agreement delineating the modifications to be accomplished. Modification of FPL street lighting facilities is defined as the following:

- a. the addition of street lighting facilities;
- b. the removal of street lighting facilities; and
- c. the removal of street lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

Modifications will be subject to the costs identified in FPL's currently effective street lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

8. FPL will, at the request of the Customer, relocate the street lighting facilities covered by this agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer-requested relocation of FPL street lighting facilities. Payment shall be made by the Customer in advance of any relocation.
9. FPL may, at any time, substitute for any luminaire/lamp installed hereunder another luminaire/lamp which shall be of at least equal illuminating capacity and efficiency.
10. This Agreement shall be for a term of ten (10) years from the date of initiation of service, and, except as provided below, shall extend thereafter for further successive periods of five (5) years from the expiration of the initial ten (10) year term or from the expiration of any extension thereof. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. This Agreement shall be extended automatically beyond the initial ten (10) year term or any extension thereof, unless either party shall have given written notice to the other of its desire to terminate this Agreement. The written notice shall be by certified mail and shall be given not less than ninety (90) days before the expiration of the initial ten (10) year term, or any extension thereof.
11. In the event street lighting facilities covered by this agreement are removed, either at the request of the Customer or through termination or breach of this Agreement, the Customer shall be responsible for paying to FPL an amount equal to the original installed cost of the facilities provided by FPL under this agreement less any salvage value and any depreciation (based on current depreciation rates as approved by the FPSC) plus removal cost.
12. Should the Customer fail to pay any bills due and rendered pursuant to this agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.
13. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.
14. This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.
15. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.
16. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

Town of Fort Myers Beach
Customer (Print or type name of Organization)

FLORIDA POWER & LIGHT COMPANY

By: Cathie Lewis
Signature (Authorized Representative)

By: Timothy G Foden
(Signature)

Cathie Lewis
(Print or type name)

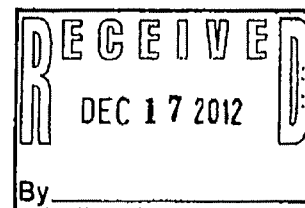
Timothy G Foden
(Print or type name)

Title: Lee County Public Resources Director
Public Works Director

Title: Construction Services Representative

NA

POSTED TO WMS



FPL Account Number: 07755-03384
FPL Work Order Number: 4768049

STREET LIGHTING AGREEMENT

In accordance with the following terms and conditions, Town of Fort Myers Beach (hereinafter called the Customer), requests on this 9th day of October, 2012, from FLORIDA POWER & LIGHT COMPANY (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following installation or modification of street lighting facilities at (general boundaries) Estero Blvd. located in Fort Myers/ Lee, Florida. (city/county)

(a) Installation and/or removal of FPL-owned facilities described as follows:

Lights Installed		# Installed	Lights Removed		# Removed
Fixture Rating (in Lumens)	Fixture Type		Fixture Rating (in Lumens)	Fixture Type	
22000	Cutoff Cobrahead	3			
(HIGH PRESSURE SODIUM VAPOR)					

Poles Installed		Poles Removed		Conductors Installed		Conductors Removed	
Pole Type	# Installed	Pole Type	# Removed				
				Feet not Under Paving		Feet not Under Paving	
				Feet Under Paving		Feet Under Paving	

(b) Modification to existing facilities other than described above (explain fully): Existing street light account

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

- To install or modify the street lighting facilities described and identified above (hereinafter called the Street Lighting System), furnish to the Customer the electric energy necessary for the operation of the Street Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective street lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive street lighting rate schedule approved by the FPSC.

THE CUSTOMER AGREES:

- To pay a contribution in the amount of \$6,088 prior to FPL's initiating the requested installation or modification.
- To purchase from FPL all of the electric energy used for the operation of the Street Lighting System.
- To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective street lighting rate schedule on file at the FPSC or any successive street lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this agreement.
- To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plats necessary for planning the design and completing the construction of FPL facilities associated with the Street Lighting System.
- To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rights-of-way or easements required by FPL to accommodate the street lighting facilities.

IT IS MUTUALLY AGREED THAT:

7. Modifications to the facilities provided by FPL under this agreement, other than for maintenance, may only be made through the execution of an additional street lighting agreement delineating the modifications to be accomplished. Modification of FPL street lighting facilities is defined as the following:

- the addition of street lighting facilities;
- the removal of street lighting facilities; and
- the removal of street lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

Modifications will be subject to the costs identified in FPL's currently effective street lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

- FPL will, at the request of the Customer, relocate the street lighting facilities covered by this agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer-requested relocation of FPL street lighting facilities. Payment shall be made by the Customer in advance of any relocation.
- FPL may, at any time, substitute for any luminaire/lamp installed hereunder another luminaire/lamp which shall be of at least equal illuminating capacity and efficiency.
- This Agreement shall be for a term of ten (10) years from the date of initiation of service, and, except as provided below, shall extend thereafter for further successive periods of five (5) years from the expiration of the initial ten (10) year term or from the expiration of any extension thereof. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. This Agreement shall be extended automatically beyond the initial ten (10) year term or any extension thereof, unless either party shall have given written notice to the other of its desire to terminate this Agreement. The written notice shall be by certified mail and shall be given not less than ninety (90) days before the expiration of the initial ten (10) year term, or any extension thereof.
- In the event street lighting facilities covered by this agreement are removed, either at the request of the Customer or through termination or breach of this Agreement, the Customer shall be responsible for paying to FPL an amount equal to the original installed cost of the facilities provided by FPL under this agreement less any salvage value and any depreciation (based on current depreciation rates as approved by the FPSC) plus removal cost.
- Should the Customer fail to pay any bills due and rendered pursuant to this agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.
- The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.
- This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.
- This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.
- This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

Town of Fort Myers Beach
Customer (Print or type name of Organization)

FLORIDA POWER & LIGHT COMPANY

By: Terrance Stewart
Signature (Authorized Representative)

By: Chris Robison
(Signature)

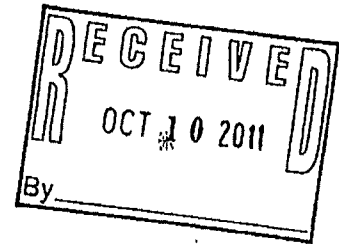
Terrance Stewart
(Print or type name)

Chris Robison
(Print or type name)

Title: Town Manager

Title: Construction Services Representative

NA



FPL Account Number: 07755-03384
FPL Work Order Number: 4233232

STREET LIGHTING AGREEMENT

In accordance with the following terms and conditions, TOWN OF FORT MYERS BEACH (hereinafter called the Customer), requests on this 22 day of SEPT. 2011, from FLORIDA POWER & LIGHT COMPANY (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following installation or modification of street lighting facilities at (general boundaries) 8 Fairview Blvd. located in FORT MYERS / LEE COUNTY, Florida.
(city/county)

(a) Installation and/or removal of FPL-owned facilities described as follows:

Fixture Rating (in Lumens)		<u>Lights Installed</u> Fixture Type	# Installed	Fixture Rating (in Lumens)		<u>Lights Removed</u> Fixture Type	# Removed
70		Open Bottom w/ 8' Arm	1				
(High Pressure Sodium Vapor)							

<u>Poles Installed</u> Pole Type		# Installed	<u>Poles Removed</u> Pole Type		# Removed

<u>Conductors Installed</u>		<u>Conductors Removed</u>	
Feet not Under Paving		Feet not Under Paving	
Feet Under Paving		Feet Under Paving	

(b) Modification to existing facilities other than described above (explain fully): N/A

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

- To install or modify the street lighting facilities described and identified above (hereinafter called the Street Lighting System), furnish to the Customer the electric energy necessary for the operation of the Street Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective street lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive street lighting rate schedule approved by the FPSC.

THE CUSTOMER AGREES:

- To pay a contribution in the amount of \$0.00 prior to FPL's installing the requested installation or modification.
- To purchase from FPL all of the electric energy used for the operation of the Street Lighting System.
- To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective street lighting rate schedule on file at the FPSC or any successive street lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this agreement.
- To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plans necessary for planning the design and completing the construction of FPL facilities associated with the Street Lighting System.
- To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rights-of-way or easements required by FPL to accommodate the street lighting facilities.

POSTED TO WMS

IT IS MUTUALLY AGREED THAT:

7. Modifications to the facilities provided by FPL under this agreement, other than for maintenance, may only be made through the execution of an additional street lighting agreement delineating the modifications to be accomplished. Modification of FPL street lighting facilities is defined as the following:

- a. the addition of street lighting facilities;
- b. the removal of street lighting facilities; and
- c. the removal of street lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

Modifications will be subject to the costs identified in FPL's currently effective street lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

- 8. FPL will, at the request of the Customer, relocate the street lighting facilities covered by this agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer-requested relocation of FPL street lighting facilities. Payment shall be made by the Customer in advance of any relocation.
- 9. FPL may, at any time, substitute for any luminaire/lamp installed hereunder another luminaire/lamp which shall be of at least equal illuminating capacity and efficiency.
- 10. This Agreement shall be for a term of ten (10) years from the date of initiation of service, and, except as provided below, shall extend thereafter for further successive periods of five (5) years from the expiration of the initial ten (10) year term or from the expiration of any extension thereof. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. This Agreement shall be extended automatically beyond the initial ten (10) year term or any extension thereof, unless either party shall have given written notice to the other of its desire to terminate this Agreement. The written notice shall be by certified mail and shall be given not less than ninety (90) days before the expiration of the initial ten (10) year term, or any extension thereof.
- 11. In the event street lighting facilities covered by this agreement are removed, either at the request of the Customer or through termination or breach of this Agreement, the Customer shall be responsible for paying to FPL an amount equal to the original installed cost of the facilities provided by FPL under this agreement less any salvage value and any depreciation (based on current depreciation rates as approved by the FPSC) plus removal cost.
- 12. Should the Customer fail to pay any bills due and rendered pursuant to this agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.
- 13. The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.
- 14. This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.
- 15. This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.
- 16. This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

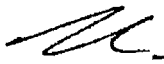
IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

TOWN OF FORT MYERS BEACH
Customer (Print or type name of Organization)

FLORIDA POWER & LIGHT COMPANY

By: 
Signature (Authorized Representative)

By: 
(Signature)

Terrance Stewart
(Print or type name)

Matthew Silver
(Print or type name)

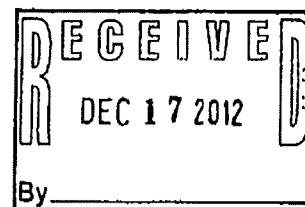
Title: Town Manager

Title: Construction Services Representative

Date: September 22, 2011

NA

POSTED TO WMS



FPL Account Number: 07755-03384
FPL Work Order Number: 4768049

STREET LIGHTING AGREEMENT

In accordance with the following terms and conditions, Town of Fort Myers Beach (hereinafter called the Customer), requests on this 9th day of October, 2012, from FLORIDA POWER & LIGHT COMPANY (hereinafter called FPL), a corporation organized and existing under the laws of the State of Florida, the following installation or modification of street lighting facilities at (general boundaries) Estero Blvd. located in Fort Myers/ Lee, Florida. (city/county)

(a) Installation and/or removal of FPL-owned facilities described as follows:

Lights Installed		# Installed	Lights Removed		# Removed
Fixture Rating (in Lumens)	Fixture Type		Fixture Rating (in Lumens)	Fixture Type	
22000	Cutoff Cobrahead	3			
(HIGH PRESSURE SODIUM VAPOR)					

Poles Installed		Poles Removed		Conductors Installed		Conductors Removed	
Pole Type	# Installed	Pole Type	# Removed				
				Feet not Under Paving		Feet not Under Paving	
				Feet Under Paving		Feet Under Paving	

(b) Modification to existing facilities other than described above (explain fully): Existing street light account

That, for and in consideration of the covenants set forth herein, the parties hereto covenant and agree as follows:

FPL AGREES:

- To install or modify the street lighting facilities described and identified above (hereinafter called the Street Lighting System), furnish to the Customer the electric energy necessary for the operation of the Street Lighting System, and furnish such other services as are specified in this Agreement, all in accordance with the terms of FPL's currently effective street lighting rate schedule on file at the Florida Public Service Commission (FPSC) or any successive street lighting rate schedule approved by the FPSC.

THE CUSTOMER AGREES:

- To pay a contribution in the amount of \$6,068 prior to FPL's initiating the requested installation or modification.
- To purchase from FPL all of the electric energy used for the operation of the Street Lighting System.
- To be responsible for paying, when due, all bills rendered by FPL pursuant to FPL's currently effective street lighting rate schedule on file at the FPSC or any successive street lighting rate schedule approved by the FPSC, for facilities and service provided in accordance with this agreement.
- To provide access, final grading and, when requested, good and sufficient easements, suitable construction drawings showing the location of existing and proposed structures, identification of all non-FPL underground facilities within or near pole or trench locations, and appropriate plans necessary for planning the design and completing the construction of FPL facilities associated with the Street Lighting System.
- To perform any clearing, compacting, removal of stumps or other obstructions that conflict with construction, and drainage of rights-of-way or easements required by FPL to accommodate the street lighting facilities.

IT IS MUTUALLY AGREED THAT:

7. Modifications to the facilities provided by FPL under this agreement, other than for maintenance, may only be made through the execution of an additional street lighting agreement delineating the modifications to be accomplished. Modification of FPL street lighting facilities is defined as the following:

- the addition of street lighting facilities;
- the removal of street lighting facilities; and
- the removal of street lighting facilities and the replacement of such facilities with new facilities and/or additional facilities.

Modifications will be subject to the costs identified in FPL's currently effective street lighting rate schedule on file at the FPSC, or any successive schedule approved by the FPSC.

- FPL will, at the request of the Customer, relocate the street lighting facilities covered by this agreement, if provided sufficient right-of-ways or easements to do so. The Customer shall be responsible for the payment of all costs associated with any such Customer-requested relocation of FPL street lighting facilities. Payment shall be made by the Customer in advance of any relocation.
- FPL may, at any time, substitute for any luminaire/lamp installed hereunder another luminaire/lamp which shall be of at least equal illuminating capacity and efficiency.
- This Agreement shall be for a term of ten (10) years from the date of initiation of service, and, except as provided below, shall extend thereafter for further successive periods of five (5) years from the expiration of the initial ten (10) year term or from the expiration of any extension thereof. The date of initiation of service shall be defined as the date the first lights are energized and billing begins, not the date of this Agreement. This Agreement shall be extended automatically beyond the initial ten (10) year term or any extension thereof, unless either party shall have given written notice to the other of its desire to terminate this Agreement. The written notice shall be by certified mail and shall be given not less than ninety (90) days before the expiration of the initial ten (10) year term, or any extension thereof.
- In the event street lighting facilities covered by this agreement are removed, either at the request of the Customer or through termination or breach of this Agreement, the Customer shall be responsible for paying to FPL an amount equal to the original installed cost of the facilities provided by FPL under this agreement less any salvage value and any depreciation (based on current depreciation rates as approved by the FPSC) plus removal cost.
- Should the Customer fail to pay any bills due and rendered pursuant to this agreement or otherwise fail to perform the obligations contained in this Agreement, said obligations being material and going to the essence of this Agreement, FPL may cease to supply electric energy or service until the Customer has paid the bills due and rendered or has fully cured such other breach of this Agreement. Any failure of FPL to exercise its rights hereunder shall not be a waiver of its rights. It is understood, however, that such discontinuance of the supplying of electric energy or service shall not constitute a breach of this Agreement by FPL, nor shall it relieve the Customer of the obligation to perform any of the terms and conditions of this Agreement.
- The obligation to furnish or purchase service shall be excused at any time that either party is prevented from complying with this Agreement by strikes, lockouts, fires, riots, acts of God, the public enemy, or by cause or causes not under the control of the party thus prevented from compliance and FPL shall not have the obligation to furnish service if it is prevented from complying with this Agreement by reason of any partial, temporary or entire shut-down of service which, in the sole opinion of FPL, is reasonably necessary for the purpose of repairing or making more efficient all or any part of its generating or other electrical equipment.
- This Agreement supersedes all previous Agreements or representations, either written, oral or otherwise between the Customer and FPL, with respect to the facilities referenced herein and constitutes the entire Agreement between the parties. This Agreement does not create any rights or provide any remedies to third parties or create any additional duty, obligation or undertakings by FPL to third parties.
- This Agreement shall inure to the benefit of, and be binding upon the successors and assigns of the Customer and FPL.
- This Agreement is subject to FPL's Electric Tariff, including, but not limited to, the General Rules and Regulations for Electric Service and the Rules of the FPSC, as they are written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the provisions of the FPL Electric Tariff or the FPSC Rules, the provisions of the Electric Tariff and FPSC Rules shall control, as they are now written, or as they may be hereafter revised, amended or supplemented.

IN WITNESS WHEREOF, the parties hereby caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted:

Town of Fort Myers Beach
Customer (Print or type name of Organization)

FLORIDA POWER & LIGHT COMPANY

By: Terrance Stewart
Signature (Authorized Representative)
Terrance Stewart
(Print or type name)

Title: Town Manager

By: Chris Robison
(Signature)

Chris Robison
(Print or type name)

Title: Construction Services Representative

1. Requested Motion:

Meeting Date: April 18, 2022

Adopt Resolution 22-13 approving an Interlocal Agreement with Lee County for Hazardous Waste Enforcement and authorizing the Town Manager to execute the ILA and expend budgeted funds on behalf of the Town.

Why the action is necessary:

To enter into an interlocal agreement with Lee County for the enforcement when warranted of entities that generate and transport hazardous waste.

What the action accomplishes:

Provides a program with Lee County to ensure that the increase in hazardous waste, universal waste and used oil is being properly managed in order to protect the environment.

2. Agenda:

CONSENT AGENDA

3. Requirement/Purpose:

Resolution

4. Submitter of Information:

Chelsea O'Riley, Public Works
Director

5. Background:

The ILA authorizes Lee County to regulate businesses that generate hazardous waste, used oils and other regulated waste in the Town.

Attachments:

1. 22-13, Hazardous Waste Enforcement
2. Interlocal for Waste Enforcement
3. 07-03 - Hazardous Waste Enforcement Lee County

Financial Impact:

There are no associated costs for the Town of Fort Myers Beach in signing this agreement. This program is funded through a part of the fees collected for the Lee County Business Tax License which each business is required to have to operate in Lee County each year.

6. Alternative Action

Do not approve the interlocal agreement.

7. Management Recommendations:

Approve the interlocal.

8. Recommended Approval:

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

Created/Initiated - 3/18/2022
Approved - 3/22/2022
Approved - 3/30/2022
Approved - 4/8/2022
Final Approval - 4/12/2022

RESOLUTION NUMBER 22-13

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE TOWN AND LEE COUNTY, FLORIDA AUTHORIZING LEE COUNTY TO ENFORCE PROPER HAZARDOUS WASTE DISPOSAL REQUIREMENTS AND BEST MANAGEMENT PRACTICES WITHIN THE TOWN'S JURISDICTIONAL LIMITS; AND PROVIDING FOR 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, on March 13, 2007, the Board of County Commissioners ("County") adopted Lee County Ordinance No. 07-03, the "Hazardous Waste Ordinance," pursuant to the provisions of Chapter 125 and 403, *Florida Statutes* and Florida Administrative Code, Rule 62-731; and

WHEREAS, the Hazardous Waste Ordinance grants the County the authority to administer, including enforcement or compliance assistance, proper waste management practices for generators of hazardous waste, including universal waste and used oil; and

WHEREAS, pursuant to Section 3 of the Hazardous Waste Ordinance, the Ordinance applies to unincorporated Lee County and those municipalities within Lee County that enter into an interlocal agreement with Lee County to implement the Ordinance within those incorporated/municipal areas; and

WHEREAS, the Town desires to enter into an Interlocal Agreement with the County that grants the County the authority to administer, including enforcement or compliance assistance, proper waste management practices for generators of hazardous waste, including universal waste and used oil at commercial businesses and industries within the Town; and

WHEREAS, it is in the best interest of the Town, its business owners, property owners, residents, and visitors to enter into the Interlocal Agreement with the County attached as Exhibit "A" to this Resolution.

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

128455213.1

129336406.1

132429668.1

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

Section 2. The Interlocal Agreement (“Agreement”) between the Town and the County attached as Exhibit “A” is approved and the Mayor is authorized to execute the Agreement on behalf of the Town and the Town Manager or designee is authorized to take all necessary actions and expend budgeted funds to implement this Resolution and the Agreement.

Section 3. If any section or portion of a section of this Resolution 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 Resolution.

Section 4. This Resolution shall become effective upon adoption by the Town Council.

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

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

128455213.1

129336406.1

132429668.1

**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

128455213.1

129336406.1

132429668.1

INTERLOCAL AGREEMENT FOR IMPLEMENTATION OF THE HAZARDOUS WASTE ORDINANCE

THIS INTERLOCAL AGREEMENT is by and between the Town of Fort Myers Beach, a municipal corporation of the State of Florida, hereinafter referred to as the **TOWN**, and Lee County, a political subdivision of the State of Florida, hereinafter referred to as the **COUNTY**.

Recitals

WHEREAS, both the County and Town are duly empowered pursuant to Florida Statutes, in particular, §163.01, Florida Statutes, as amended, to enter into Interlocal Agreements for the sharing of certain governmental powers and obligations; and

WHEREAS, the purpose of Interlocal cooperation is to address public needs that recognize political boundaries and to attain higher levels of efficiency; and

WHEREAS, the Town and the County hereinafter, "the Parties" desire to protect and promote the public health, safety and general welfare through educational assistance, compliance, and enforcement of regulations governing the proper management of hazardous waste; and

WHEREAS, the parties desire to maintain and assist in the management of regulated waste generation, management and disposal (or recycling) at commercial businesses and industries; and

WHEREAS, on March 13, 2007, the Board of County Commissioners adopted Lee County Ordinance No. 07-03, the "Hazardous Waste Ordinance," pursuant to the provisions of Chapter 125 and 403, Florida Statutes and Florida Administrative Code 62-731; and

WHEREAS, the Hazardous Waste Ordinance grants the County the authority to administer, including enforcement or compliance assistance, proper waste management practices for generators of hazardous waste, including universal waste and used oil; and

WHEREAS, pursuant to Section 3 of the Hazardous Waste Ordinance, the Ordinance applies to all of the unincorporated areas of Lee County and shall also apply to the areas of those municipalities within Lee County which enter into an interlocal agreement with Lee County to implement the Ordinance within those incorporated/municipal areas; and

WHEREAS, in accordance with Section 3 of the Hazardous Waste Ordinance, the parties agree to cooperate to effectively manage all commercial businesses and industries within the Town's boundaries; and

WHEREAS, the County and Town find that entering into this Interlocal Agreement serves a public purpose and is to the benefit of the public.

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the Parties mutually agree as follows:

SECTION ONE: PURPOSE

In accordance with Section 3 of the Hazardous Waste Ordinance, the purpose of this Agreement is to establish the responsibilities of the Parties to regulate the generation, management and disposal/recycling of regulated solid and hazardous wastes from commercial businesses and industries within the jurisdiction of the Town.

SECTION TWO: GENERAL RESPONSIBILITIES

The Parties recognize that each party is responsible for regulation and permitting of all commercial and industrial businesses from within its boundaries, including the generation, management and disposal of regulated wastes from those businesses and industries, so as to meet 40 CFR Parts 260-265 and Part 268 and all other regulated waste rules and regulations.

SECTION THREE: IMPLEMENTATION

Each party agrees to cooperate to allow the Lee County Pollution Prevention Program to educate, regulate and enforce regulated waste rules and regulations at commercial businesses and industries within the jurisdictional boundary of the Town.

A. Education.

The County will provide education to the commercial and industrial businesses within the Town for the generation, management and disposal/recycling of regulated wastes that may be generated at said businesses and industries.

B. Public Education and Outreach.

The County is available upon request to provide education and outreach to the public (schools, civic organizations, etc.), any business, industry or otherwise regulated facility within the Town.

C. Inspections.

The County will perform inspections at all commercial business and industrial entities within the Town. During the inspections, educational information and reference materials will be provided to assist each regulated entity in maintaining compliance with regulated waste rules and regulations.

D. Enforcement.

The primary enforcement of regulated waste rules and regulations at businesses and industries will be the responsibility of the County (Lee County Pollution Prevention Program). The County will also regulate releases and spills of regulated wastes in public areas (i.e. road right-of-way) within the Town.

E. Annual Reporting to Florida Department of Environmental Protection (FDEP) and Lee County Natural Resource Performance Dashboard.

The County will conduct annual reporting to FDEP on June 30 of each calendar year. The reporting period for each year will be from July 1st to June 30th and will include a total number for all educational assessments (inspections) conducted for the entire county, as well as, the total number of compliance (enforcement) cases conducted each year. This data will also be reported and posted on the Lee County Natural Resource Performance Dashboard.

SECTION FOUR: VENUE

This Agreement will be construed according to the laws of the State of Florida. Any action regarding this Agreement will be filed in the Twentieth Judicial Circuit in and for Lee County.

SECTION FIVE: SEVERABILITY

If any part of this Agreement or the application thereof is declared invalid by a court of law, then that part, section, subsection, or other portion, or the application thereof, will be severable. The remaining provisions will remain in effect.

SECTION SIX: NOTICES

All written notices to the Parties under this Agreement will be directed to the following addresses:

For the Town: Town Manager
 Town of Fort Myers Beach
 2525 Estero Boulevard
 Fort Myers Beach, FL 33931

For the County:

SECTION SEVEN: EFFECTIVE DATE; TERM

This Agreement will be effective on the date a fully executed copy is filed with the Clerk of the Court for Lee County. This Agreement will remain in full force and effect unless amended or terminated by the Parties. This Agreement may be terminated by either Party upon providing ninety (90) days written notice to the nonterminating Party.

This writing constitutes the entire Agreement between the Parties and has been entered into voluntarily and with independent advice and legal counsel. This Agreement has been executed by the authorized representative of each party on the date written below. Modifications or amendments to the provisions herein must be made in writing and signed by the Parties.

IN WITNESS WHEREOF, the lawful representatives of the Parties hereto have executed and affixed their official seals to this Agreement this ____ day of _____, 2022.

ATTEST:

LINDA DOGGETT, CLERK

By: _____

Deputy Clerk

BOARD OF COUNTY COMMISISONERS
OF LEE COUNTY, FLORIDA

By: _____

Chairman

APPROVED AS TO FORM

By: _____

Office of the County Attorney

ATTEST: AMY BAKER, CLERK

By: _____

Town Clerk

TOWN OF FORT MYERS BEACH

By: _____

Raymond P. Murphy

Mayor

Approved as to form:

Town Attorney

LEE COUNTY ORDINANCE NO. 07-03

AN ORDINANCE PROVIDING FOR THE AUTHORITY OF LEE COUNTY TO ADDRESS THE COMPLIANCE AND THE ENFORCEMENT OF THE FEDERAL AND STATE REGULATIONS FOR GENERATORS AND TRANSPORTERS OF HAZARDOUS WASTE, OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES, GENERATORS OF UNIVERSAL WASTE AND GENERATORS OF USED OIL; PROVIDING FOR CONFLICT OF LAW AND SEVERABILITY; PROVIDING FOR CODIFICATION AND SCRIVENER'S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Lee County's rapid growth and expanding commercial and industrial activities have resulted in the increase of hazardous waste, universal waste, and used oil; and

WHEREAS, the increased participation is needed by local governments in ensuring that the increase in hazardous waste, universal waste, and used oil is being properly managed in order to protect Lee County's environment; and

WHEREAS, the Lee County Board of County Commissioners finds it necessary to authorize County officials to assure compliance with and enforce the federal and state hazardous waste regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION ONE: SHORT TITLE

This Ordinance shall be known and may be cited as the "Hazardous Waste Ordinance".

SECTION TWO: AUTHORITY

The Board of County Commissioners has the authority to adopt this Ordinance pursuant to the provisions of Chapter 125 and Chapter 403, Florida Statutes, and Florida Administrative Code 62-731.

SECTION THREE: SCOPE

This Ordinance shall apply to all of the unincorporated area of Lee County. It shall also apply to the areas of those municipalities within Lee County which enter into an interlocal agreement with Lee County to implement this Ordinance.

SECTION FOUR: INTENT AND PURPOSE

The Hazardous Waste Ordinance grants the County the authority to administer, including enforcement or compliance assistance, proper waste management practices for generators of hazardous waste, including universal waste and used oil.

SECTION FIVE: RULES OF CONSTRUCTION

1. a) The provisions of this article shall be liberally construed so as to effectively carry out their purpose in the interest of the public health, safety and welfare.
- b) For the purposes of administration and enforcement of this article, unless otherwise stated, the following rules of construction shall apply to the text of this article:
 - (1) In case of any difference of meaning or implication between the text of this article and any caption or heading, the text shall control.
 - (2) The word "shall" is always mandatory and not discretionary; the word "may" is permissive.

- (3) Words used in the present tense shall include the future; the words in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.
- (4) The word "person" includes an individual, a corporation, a partnership, an incorporated association or any other similar entity.
- (5) Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions or events connected by the conjunction "and," "or," or "either . . . or," the conjunction shall be interpreted as follows:
 - a. "And" indicates that all the connected terms, conditions, provisions or events shall apply.
 - b. "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
 - c. "Either . . . or" indicates that the connected items, conditions, provisions or events shall apply singly, but not in combination.
- (6) The word "includes" shall not limit a term to the specific example, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

SECTION SIX: **ADOPTION BY REFERENCE: FLORIDA ADMINISTRATIVE CODE
RELATING TO HAZARDOUS WASTE, UNIVERSAL WASTE, AND
USED OIL**

The Board of County Commissioners hereby adopts by reference, as a part of this Ordinance, all applicable provisions of Chapters 62-710 and 62-730 of the Florida Administrative Code as adopted by the Florida Department of Environmental Protection (DEP). References to 40 CFR Part 261 shall mean rules adopted by DEP regarding identification of hazardous wastes, references 40 CFR Part 262 shall mean rules adopted by DEP regarding generators of hazardous wastes, references to 40 CFR Part 263 shall mean rules adopted by DEP regarding transporters of hazardous waste, references to 40 CFR Part 264 and 265 shall mean rules adopted by DEP regarding treaters, storers and disposers of hazardous wastes, references to 40 CFR Part 266 shall mean rules adopted by DEP regarding standards for the management of specific hazardous waste, references to 40 CFR Part 268 shall mean rules adopted by DEP regarding land disposal restrictions, references to 40 CFR Part 279 shall mean rules adopted by DEP regarding generators and handlers of used oil and references to 40 CFR Part 273 shall mean rules adopted by DEP regarding standards for universal waste management.

SECTION SEVEN: HAZARDOUS WASTE REQUIREMENTS

Persons who generate or transport hazardous waste or who own or operate a hazardous waste facility, shall comply with the applicable standards, requirements and procedures of this section.

I. CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS (CESQG) 40 CFR 261.5. CESQG's generate less than 100 kilograms of hazardous waste per month and less than 1 kilogram of acute hazardous waste per month. CESQG's shall comply with the following standards:

1. Perform hazardous waste determination in accordance with 40 CFR 262.11.
2. Never accumulate greater than 1000 kg at any time or greater than 100 kg per month.
3. Ensure delivery of hazardous waste to a proper recycling facility or Treatment, Storage and Disposal Facilities (TSDF).
4. Keep records documenting proper disposal in accordance with FAC 62-730.

II. SMALL QUANTITY GENERATORS (SQG) 40 CFR 262. SQG's generate 100 - 1000 kilograms of hazardous waste per month.

1. Obtain a Department of Environmental Protection/United States Environmental Protection Agency (DEP/EPA) ID Number (40 CFR 262.12).
2. Perform hazardous waste determination (40 CFR 262.11), including Land Disposal Restrictions (LDR) waste analyses (40 CFR 268.7).
3. Meet pre-transport requirements for packaging, labeling, marking, and placarding (40 CFR 262, Subpart C).
4. Meet satellite accumulation rules (40 CFR 262.34(c)). Close and label these containers.
5. Label containers and tanks with the words "Hazardous Waste" and label containers with accumulation start dates (40 CFR 262.34(a)).
6. Maintain and operate the facility in a clean, safe manner (40 CFR 265.31).
7. Emergency equipment (40 CFR 265.32).
 - a) Telephone or hand-held two-way radio;
 - b) Internal communication or alarm system;
 - c) Fire and spill control equipment (e.g. fire extinguishers, hoses, sprinklers, etc.);
 - d) Neutralizing agents, spill absorbents, overpack drums, standby 55-gallon drums, etc.;
 - e) Test and maintain the emergency equipment (40 CFR 265.33).

8. Maintain adequate aisle space for evacuation, inspecting drums, etc. (e.g. no less than three (3) feet) (40 CFR 265.35).
9. Attempt to make arrangements with local fire and police departments, hospitals, and emergency response contractors/equipment suppliers, with regards to emergency arrangements, hazards of materials handled, layout of facility, etc. (40 CFR 265.37).
10. Containers (e.g. drums, cans, etc.) must be kept closed and in good condition, inspected at least weekly, be compatible with hazardous waste stored, and separated from other incompatible wastes (e.g. keep cyanides away from acids) (40 CFR 265, Subpart I). Records must be kept of these inspections (FAC 62-730.160).
11. A Land Disposal Restrictions (LDR) Certification or Notification must accompany the initial manifest for a restricted waste. Generators who treat waste to meet land disposal restrictions must submit a waste analysis plan to DEP (40 CFR 268.7).
12. Use manifest system (unless there is a reclamation agreement pursuant to 40 CFR 262.20(e)), and ship only to a permitted facility (40 CFR 262, Subpart B).
13. Never exceed the 6000 kg accumulation/180 day storage time limit.
14. Emergency Planning:
 - a) Have at least one employee or a designee with authority as Emergency Coordinator (EC) on 24-hour call.
 - b) Next to the telephone, post:
 - (i) The EC name and phone number;
 - (ii) Fire department's number;
 - (iii) Location of the fire extinguishers; spill control equipment/material, and fire alarm (if any).
 - c) Follow emergency procedures in 40 CFR 262.34(d)(5), including taking necessary steps to address spills and fires, and notifying the National Response Center (24-hour number: 800/424-8802) and the State Warning Point (850/413-9911).

- d) Upon request, the DEP will provide contingency plan guidance if the facility wishes to develop a more comprehensive emergency plan than required of SQGs.
- 15. Training of personnel regarding proper hazardous waste handling and emergency response [40 CFR 262.34(d)(5)(iii)].
- 16. Keep records (40 CFR 262.44), including manifests, test results, etc., a minimum of three (3) years.
- 17. If tanks are used for management of hazardous waste, meet the tank requirements of 40 CFR 262.201. This includes daily and weekly inspections, required maintenance, spill response and closure standards.
- 18. If a SQG fails to meet applicable requirements, the full generator standards (and possibly TSDF standards) may apply.

III. LARGE QUANTITY GENERATORS (LQG) 40 CFR 262. *LQG's generate 1000 kilograms or more of hazardous waste per month or 1 kilogram or more of acute hazardous waste per month.*

- 1. Perform hazardous waste determination (40 CFR 262.11), including LDR waste analyses (40 CFR 268.7).
- 2. Obtain a DEP/EPA ID number (40 CFR 262.12).
- 3. Use manifest system and ship to a permitted facility (40 CFR 262, Subpart B). State rules require the generator to complete areas D, F, H, I K, O, Q, R, and T on the form in addition to the other requirements.
- 4. Meet pre-transport requirements for packaging, labeling, marking, and placarding (40 CFR 262, Subpart C).
- 5. Meet satellite accumulation rules (40 CFR 262.34(c)). Close and label these containers.
- 6. Label containers and tanks with the words "Hazardous Waste" and label containers with accumulation start dates (40 CFR 262.34(a)).
- 7. Do not store hazardous waste more than 90 days (40 CFR 262.34(b)).
- 8. Keep all records (40 CFR 262, Subpart D) for at least three (3) years (including manifests, test data, biennial reports, etc.).

9. File a biennial report for hazardous waste shipped off site or managed on site in non-exempt treatment systems (FAC 62-730.160).
10. File exception report for late or missing manifests from the designated facility (40 CFR 262.42).
11. Meet personnel training requirements, including documentation of training (40 CFR 265.16).
12. Maintain and operate the facility in a clean, safe manner (40 CFR 265.31).
13. Emergency equipment (40 CFR 265.32).
 - a) Telephone or hand-held two-way radio;
 - b) Internal communication or alarm system;
 - c) Fire and spill control equipment (e.g. fire extinguishers, hoses, sprinklers, etc.);
 - d) Neutralizing agents, spill absorbents, overpack drums, standby 55-gallon drums, etc.;
 - e) Test and maintain the emergency equipment (40 CFR 265.33).
14. Maintain adequate aisle space for evacuation, inspecting drums, etc. (e.g. no less than three (3) feet) (40 CFR 265.35).
15. Attempt to make arrangements with local fire and police departments, hospitals, and emergency response contractors/equipment suppliers, with regards to emergency arrangements, hazards of materials handled, layout of facility, etc. (40 CFR 265.37).
16. Have a contingency plan meeting the requirements of 40 CFR 265, Subpart D. Upon request, DEP will provide contingency plan guidance. Emergencies that require implementation of the contingency plan must be reported to DEP. Updated contingency plans must be distributed when facility conditions or emergency coordinators change.
17. Containers (e.g. drums, cans, etc.) must be kept closed and in good condition, inspected at least weekly, be compatible with hazardous waste stored, and separated from other incompatible wastes (e.g. keep cyanides away from acids) (40 CFR 265, Subpart I). Records must be kept of these inspections (FAC 62-730.160).
18. Ignitable or reactive hazardous waste must be stored at least fifty (50) feet from the facility's boundary line (40 CFR 265, Subpart I).

19. Tanks must meet the requirements of 40 CFR 265, Subpart J (structural integrity; containment and detection of releases; inspections; response to leaks or spills; operating requirements; closure and post-closure care; special requirements for ignitable, reactive and/or incompatible wastes; waste analysis and trial tests).
20. Special cautions (including "no smoking" signs) are required for ignitable or reactive wastes (40 CFR 265.17).
21. Security (e.g. a locked fence) and bermed containment areas (with roof and impermeable floor) for hazardous waste storage areas are strongly recommended.
22. A Land Disposal Restrictions (LDR) Certification or Notification must accompany the initial manifest for a restricted waste. Generators who treat waste to meet land disposal restrictions must submit a waste analysis plan to DEP (40 CFR 268.7).
23. Meet applicable air emission standards under 40 CFR 265 Subparts AA, BB, and CC.

IV. TRANSPORTERS (40 CFR 263) (FAC 62-730).

1. Obtain ID number (40 CFR 263.11).
2. Use manifest system (40 CFR 263, Subpart B).
3. Maintain the ability to clean up hazardous waste discharges during transportation-related incidents (40 CFR 263, Subpart C).
4. Provide annual documentation of financial responsibility (FAC 62-730.170).
5. Submit annual status update to DEP (FAC 62-730.170).
6. Transporters storing waste greater than 24 hours at a transfer facility must notify DEP and meet any Treatment, Storage and Disposal Facilities requirements (FAC 62-730.171), including containment, operating record, contingency plan, training, security, and closure.
7. All transfer facilities operated in the state must have a unique ID number (FAC 62-730.171).

8. Transfer facilities must submit closure plan and contingency plan to DEP (FAC 62-730.171).
9. Transfer facilities must maintain a written record of when all hazardous waste enters and leaves the facility (FAC 62-730.171).

V. TREATMENT, STORAGE AND DISPOSAL FACILITIES (TSDF) (40 CFR 264 OR 265).

1. Obtain a DEP/EPA ID number (40 CFR 264.11).
2. Obtain a hazardous waste permit unless exempt (e.g. wastewater treatment units, elementary neutralization, etc.) and comply with permit conditions. Facilities receiving hazardous waste from off-site (including some recycling facilities) may be subject to TSDF requirements.
3. Must meet applicable generator standards in Section III., above.
4. Comply with general facility standards, including waste analyses, security, inspections, and personnel training (40 CFR 264, Subpart B).
5. Maintain emergency equipment, adequate aisle space, and make arrangements with local authorities (40 CFR 264, Subpart C).
6. Have a contingency plan meeting the requirements of 40 CFR 264, Subpart D.
7. Use manifest system and comply with recordkeeping requirements (40 CFR 264, Subpart E).
8. Comply with groundwater monitoring requirements (40 CFR 264, Subpart F).
9. Comply with closure and post-closure requirements (40 CFR 264, Subpart G).
10. Maintain financial assurance for closure, post closure (if applicable) and liability (40 CFR 264, Subpart H).
11. Comply with container management standards (40 CFR 264, Subpart I).
12. Comply with tank management standards (40 CFR 264, Subpart J).

13. Comply with additional requirements for individual units such as surface impoundments, waste piles, containment buildings, incinerators, drip pads, etc. (40 CFR 264, Subpart K - 40 CFR 264, Subpart DD).
14. Make applicable air emission standards (40 CFR 264, Subpart AA, BB, and CC, Subpart CC effective December, 1996).
15. Meet applicable LDR requirements for treatment facilities, or as generators for wastes sent off site for further treatment (40 CFR 268).

SECTION EIGHT: USED OIL REQUIREMENTS

No person may collect, transport, store, use, recycle, or dispose of used oil, used oil filters or oily wastes except as authorized in FAC 62-710 and Chapter 403, Florida Statutes.

SECTION NINE: UNIVERSAL WASTE REQUIREMENTS

1. All handlers of universal waste shall comply with the requirements under 40 CFR 273 and FAC 62-737.
2. Universal waste means the following hazardous wastes that are subject to the standards of 40 CFR 273 and FAC 62-737.
 - a) Batteries as described in 40 CFR 273.2.
 - b) Pesticides as described in 40 CFR 273.3.
 - c) Thermostats as described in 40 CFR 273.4.
 - d) Lamps as described in 40 CFR 273.5.
 - e) Mercury-containing devices as described in FAC 62-737.200(9).

SECTION TEN: ENFORCEMENT

The provisions of this Ordinance shall be enforced by all duly authorized or designated law enforcement officers within Lee County.

SECTION ELEVEN: CIVIL REMEDIES

The Board of County Commissioners may institute in any Court or before any Administrative Board of competent jurisdiction action to prevent, restrain, correct or abate

any violation of this Ordinance or of any order or regulations made in connection with its administration or enforcement, and the Court or Administrative Board shall adjudge such relief by way of injunction, or any other remedy allowed by law, or otherwise, to include mandatory injunction as may be proper under all the facts and circumstances of the case in order to fully effectuate the regulations adopted hereunder, or any amendment thereto, and any orders and rulings made pursuant thereto.

SECTION TWELVE: PENALTIES

Any person, including but not limited to any firm, corporation, association, or other group or body, who violates the provisions of this Ordinance shall be subject to the civil and criminal penalties under Florida Statutes 403.727 and 403.758.

SECTION THIRTEEN: CONFLICT OF LAW

Any requirements or provisions of this Ordinance that are in conflict with the requirements or provisions of any other lawfully adopted Ordinance or Statute, the most restrictive requirements will apply.

SECTION FOURTEEN: SEVERABILITY

The provisions of this Ordinance are severable and it is the intention of the Board of County Commissioners of Lee County, Florida, to confer the whole or any part of the powers herein provided. If any of the provisions of this Ordinance shall be held unconstitutional by any court of competent jurisdiction, the decision of the court shall not affect or impair the remaining provisions of this Ordinance. It is hereby declared to be the legislative intent of the Board of County Commissioners that this Ordinance would have been adopted had such unconstitutional provision not been included therein.

SECTION FIFTEEN: CODIFICATION AND SCRIVENER'S ERRORS

It is the intention of the Board of County Commissioners that the provisions of this Ordinance will become and be made a part of the Lee County Code; and that sections of this Ordinance may be renumbered or re-lettered and that the word "Ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the Code is accomplished, sections of this Ordinance may be renumbered or re-lettered and typographical errors which do not affect the intent may be authorized by the County Manager, or the County Manager's designee, without need of public hearing, by filing a corrected or re-codified copy of same with the Clerk of Circuit Court.

SECTION SIXTEEN: EFFECTIVE DATE

This Ordinance shall become effective immediately upon receipt of official acknowledgment from the Office of the Secretary of State that the Ordinance has been filed.

Commissioner Judah made a motion to adopt the foregoing Ordinance, seconded by Commissioner Mann. The vote was as follows:

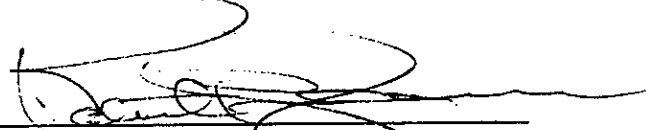
ROBERT P. JANES	<u>AYE</u>
BRIAN BIGELOW	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
TAMMARA HALL	<u>AYE</u>
FRANK MANN	<u>AYE</u>

DULY PASSED AND ADOPTED THIS 13th day of March, 2007.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

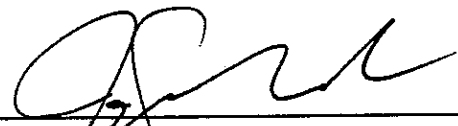
BY: 
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: 
Robert P. Jones, Chair



APPROVED AS TO FORM:

BY: 
Office of the County Attorney

1. Requested Motion:

Meeting Date: April 18, 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 May 2, 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. Ordinance 22-06
2. Staff Report Tuckaway CPD Amend
3. Exhibit B Master Concept Plan
4. Exhibit C - public hearing app
5. Exhibit D

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 - 4/11/2022
Approved - 4/12/2022
Approved - 4/12/2022
Approved - 4/12/2022
Approved - 4/13/2022
Final Approval - 4/13/2022

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 18, 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 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 May 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 May 2022.

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

Exhibits

Exhibit "A"

Exhibit "B" Master Concept Plan

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 and 11 deviations 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 4000 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 following conditions of approval 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.

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.

The following limits apply to the Property and its development

Council grants the following deviations:

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.



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 18, 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 6 am to 12 midnight. The indoor restaurant uses is open to the public from 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 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)~~(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.

Deviation #6

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

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 – Ordinance

B – Master Concept Plan

C – Complete Application

D – Letter to Adjacent Property Owners



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 Donora 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

Tre Gillette 435 Donora Blvd FMB	50%
Amy Gillette 435 Donora Blvd FMB	50%
_____	_____
_____	_____

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.

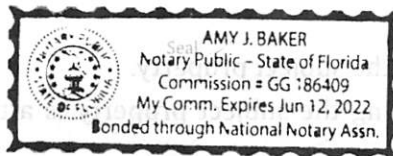


COMMUNITY DEVELOPMENT DEPARTMENT
APPLICATION for PUBLIC HEARING

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 |

Exhibit D – Notice to Adjacent Properties



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: APRIL 4, 2022+APRIL 18, 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 DAPHNIE@FMBGOV.COM

You may appear in person, through counsel, or through an authorized agent and provide testimony, legal argument, or other evidence. At this hearing the **Town Council** will review the application materials and hear testimony to make a decision. Complete records or transcripts of the proceedings are not provided by the Town.

Copies of the application and staff report are available via Public Records Request. 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 18, 2022

Second 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 BEACH LAND DEVELOPMENT CODE; PROVIDING FOR CODIFICATION, CONFLICTS, SCRIVENER'S ERRORS, SEVERABILITY AND AN EFFECTIVE DATE.

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. The first Town Council Hearing was held on April 4, 2022 and the second public hearing was scheduled.

Attachments:

1. Ordinance 22-05 re Amending Dimensional Regulations for Large SFRs(132444811.2)-C
2. TC Memo
3. Exhibit B Randy Lane
4. Exhibit C 7200 square foot first floor
5. 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 - 4/11/2022
Approved - 4/12/2022
Approved - 4/12/2022
Approved - 4/12/2022
Approved - 4/13/2022
Final Approval - 4/13/2022

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 BEACH 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.

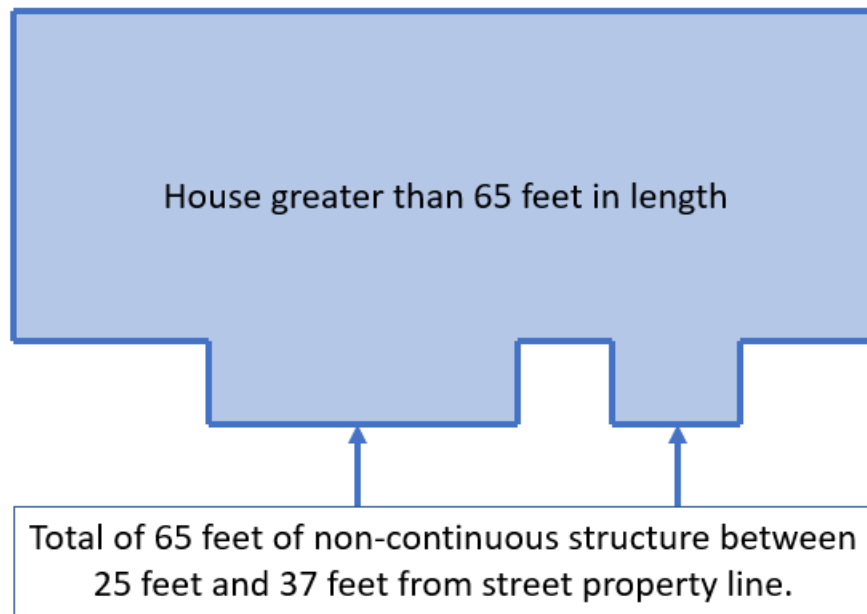


Figure 34-2

- 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 <u>two-family 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 18, 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.

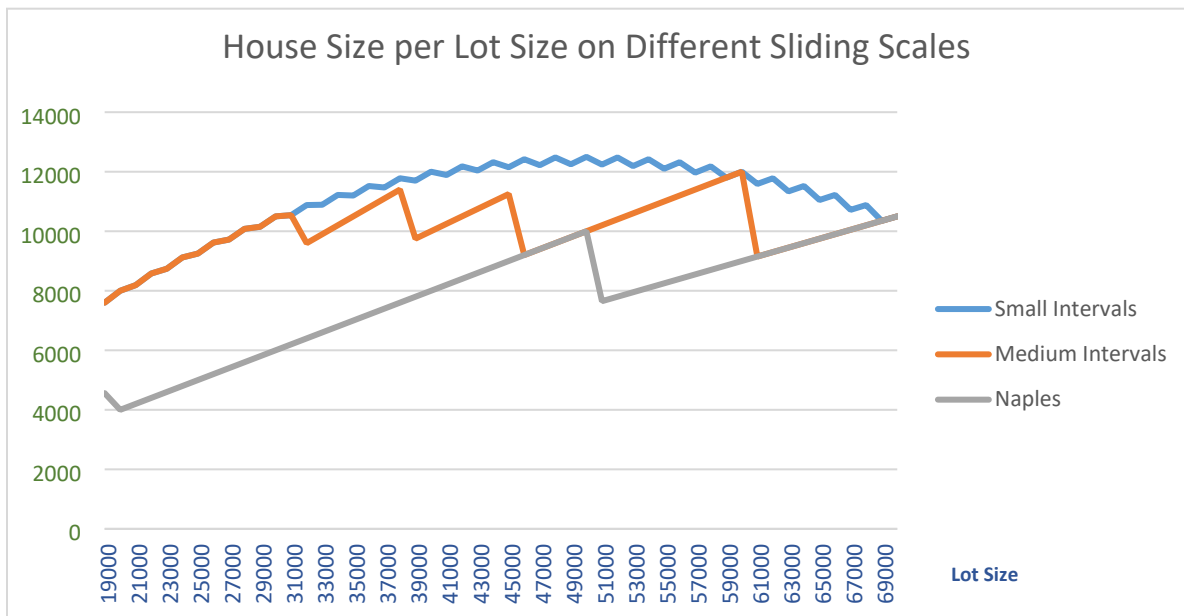
At the first Town Council hearing for the ordinance, on January 10, 2022, the Council requested that staff provide options on size limits for single family and two-family homes. This information was provided to Council at the second hearing. Because a change to the allowable house size could impact the 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.

At the first Town Council Hearing for Ordinance 22-05, the proposed language was discussed and the ordinance was scheduled for this second hearing.

Attachments

Exhibit A – Ordinance 22-05

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

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'

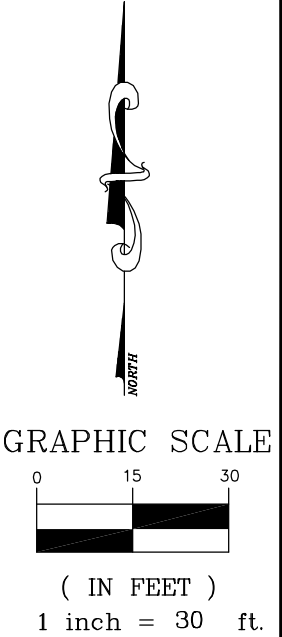
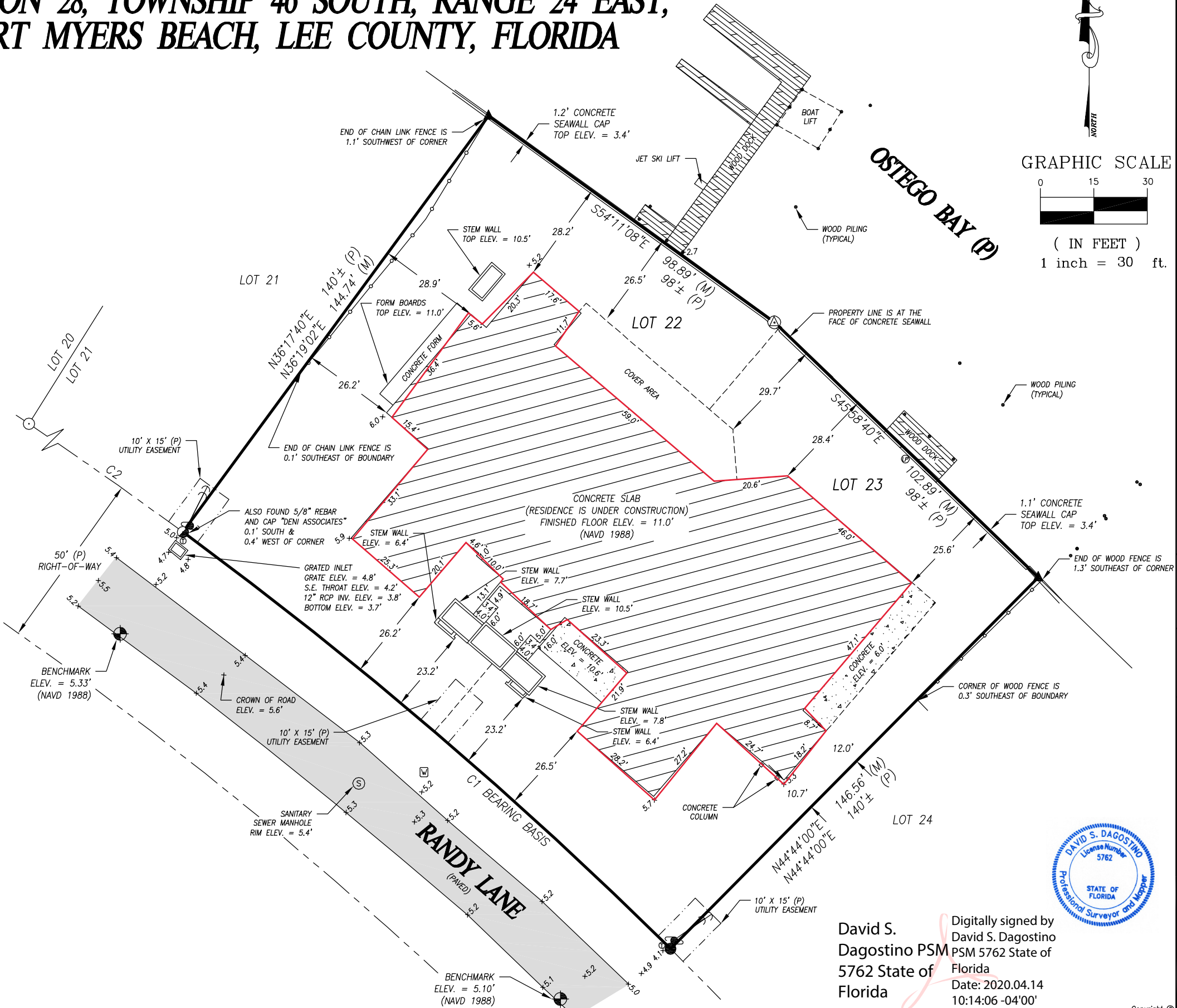
SURVEYOR'S NOTES

- 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'

Drawn by: IR
Checked by: TLR
Field Book: 111/24

D&W DAGOSTINO & WOOD, INC.
Professional Surveying & Mapping
10981 Bonita Beach Road SE Bonita Springs, FL 34135
Phone: (239) 352-6085 Website: www.dwsurveys.com

Computer File: 19389 SLAB
Survey Date: 04/08/2020
Signature Date: 04/14/2020

DAVID S. DAGOSTINO, PSM

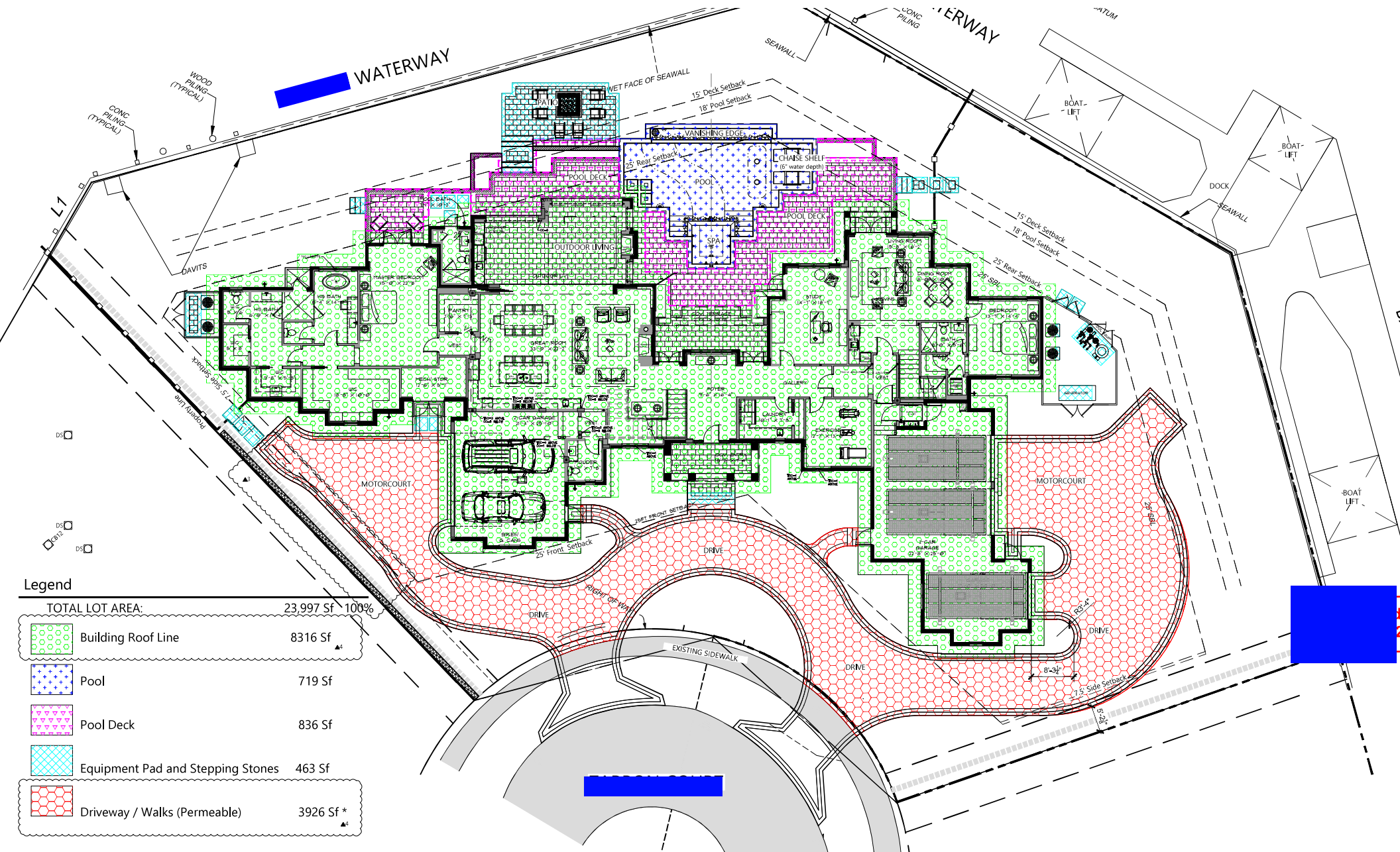
Professional Surveyor & Mapper Lic. License No. 5762

This map prepared by:
Certificate of Authorization No. LB 6896
Not valid without the signature and seal of a Florida Licensed Surveyor and Mapper





Exhibit C - Approximate 7,500 sf footprint



Page 143 of 373



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
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*******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.*



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1. **Requested Motion:**

Meeting Date: April 18, 2022

Second Reading and Public Hearing for Proposed Ordinance 22-09 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 27 "PERSONAL WATERCRAFT AND PARASAILING", SECTION 27-45 "DEFINITIONS"; SECTION 27-49 "REGULATIONS AND LOCATIONS FOR PERSONAL WATERCRAFT RENTALS"; 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"; SECTION 27-55 "TRANSFERABILITY OF PWVL AND PAL LICENSES" OF THE CODE OF ORDINANCES, TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DEFINITIONS; AMENDING OPERATIONAL REQUIREMENTS AND LICENSE RENEWAL REQUIREMENTS; PROVIDING 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; ESTABLISHING NEW REQUIREMENTS FOR THE SALE AND TRANSFER OF PWVL AND PAL LICENSES; PROVIDING FOR CODIFICATION; CONFLICTS; SCRIVENER'S ERRORS; SEVERABILITY AND AN EFFECTIVE DATE.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

5. **Background:**

Attachments:

1. Ordinance 22-09 Amending Chapter 27 _Personal Watercraft & Parasailing_ of the Town Code re PWVL & PAL License Caps & Renewals(131473245.6)-C
2. FW_ Requesting change to Chp. 27

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 4/12/2022
Approved - 4/13/2022
Approved - 4/13/2022
Final Approval - 4/13/2022

ORDINANCE NO. 22-09

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 27 “PERSONAL WATERCRAFT AND PARASAILING”, SECTION 27-45 “DEFINITIONS”; SECTION 27-49 “REGULATIONS AND LOCATIONS FOR PERSONAL WATERCRAFT RENTALS”; 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”; SECTION 27-55 “TRANSFERABILITY OF PWVL AND PAL LICENSES” OF THE CODE OF ORDINANCES, TOWN OF FORT MYERS BEACH, FLORIDA, AMENDING DEFINITIONS; AMENDING OPERATIONAL REQUIREMENTS AND LICENSE RENEWAL REQUIREMENTS; PROVIDING 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; ESTABLISHING NEW REQUIREMENTS FOR THE SALE AND TRANSFER OF PWVL AND PAL LICENSES; 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.

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

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

ARTICLE I. – DEFINITIONS AND ENFORCEMENT

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.

Land Based Site means a physical upland business office, location, or place other than a P.O. Box and not on the beach, that the owner of a parasailing or personal watercraft business operates from and at which the owner of the parasailing or personal watercraft business accepts mail, service of legal process or notices and is in, or part of, a permanent structure that has direct access to the beach.

Legal Operation means a parasailing or personal watercraft operation that complies with this Article and that holds a valid PAL or PWVL, unless exempt from the licensing requirement as provided herein.

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. 27-46. - Area of enforcement.

The area of enforcement of the provisions of this chapter shall be all public navigable waters, creeks, bayous, canals and channels, whether natural or manmade, located within the Town of Fort Myers Beach, including all public waters within the jurisdiction of the town in which the tide ebbs and flows. This chapter does not apply to the county-maintained or county-marked channels.

Sec. 27-47. - Means of enforcement.

The provisions of this chapter shall be enforced by designated town code enforcement officers or members of all duly authorized law enforcement agencies within the town and through any enforcement mechanisms established by this code or state law.

ARTICLE II. - PERSONAL WATERCRAFT

Sec. 27-48. - Regulations for operation of personal watercraft.

In addition to other regulations in this code, all personal watercraft shall also be operated in the following manner:

- (1) A person may not operate a personal watercraft unless each person riding on or being towed behind such vessel is wearing a type I, type II, type III or type V personal flotation device, other than an inflatable device, approved by the United States Coast Guard.
- (2) A person operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cutoff switch must attach such lanyard to his person, clothing, or personal flotation device as is appropriate for the specific vessel.
- (3) A person shall not operate a personal watercraft at any time between one-half hour before sunset and one-half hour after sunrise. However, agents or employees of law enforcement agencies or fire/emergency rescue services are exempt from this subsection while performing their official duties.
- (4) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers which unreasonably or unnecessarily endanger life, limb, or property, including, but not limited to, weaving through congested vessel traffic, jumping the wake of another vessel unreasonably or unnecessarily close to such other vessel or when visibility around such other vessel is obstructed, and swerving at the last possible moment to avoid collision shall constitute reckless operation of a vessel. Failure to operate a personal watercraft in such a careful and prudent manner shall constitute careless boating in violation of this chapter.

Sec. 27-49. - Regulations and locations for personal watercraft rentals.

Any business engaged in the rental, leasing, bailment for consideration, or otherwise providing transportation for remuneration, of personal watercraft for use by the public on any

waters of the Town of Fort Myers Beach, must meet the following requirements:

- (1) A business is required to obtain a business tax receipt which shall be issued to the personal watercraft operations office.
 - a. The operations office shall be located at a land-based site; and
 - b. The land-based site shall have direct access to the beach. Direct access shall not include public rights-of-way, county-owned or town-owned beach accesses, or any residentially zoned land that must be traversed to gain beach access. That direct access will be used for all necessary business-related beach access that is customary in the course and operation of the personal watercraft business at the particular licensed land-based site; and
 - c. All business transactions such as the exchange of consideration or remuneration for the rental, leasing, bailment, or any other type of transaction between the commercial rental operator and customer shall occur on the land-based site for which the business tax receipt is issued; and
 - d. The personal watercraft shall only be rented or operated on the littoral waters offshore of the land-based site for which the business tax receipt is issued until the personal watercraft travels beyond the 500 feet offshore slow speed limit; and
 - e. The business must provide the town with a list of those PAL vendors who are permitted to pick up customers at the PWVL location, provided, however, that such activity may take place only for customers who have made a prior reservation and appointment for such pick up; and
 - f. PAL and PWVL businesses are prohibited from soliciting customers at any location

other than the property boundaries of their land-based site.

- (2) A business must have and maintain a telephone and an operable marine radio at its land-based operations office.
- (3) A business may not knowingly lease, hire, or rent a personal watercraft to any person who is under 18 years of age (see also F.S. § 327.54). No person under the age of 14 may operate any personal watercraft.
- (4) During the sea turtle nesting season (May 1 through October 31), personal watercraft may not be moved across the beach unless:
 - a. Any state permits that may be required for this activity have been issued;
 - b. Such movement begins only after 9:00 a.m., or after completion of daily monitoring for turtle nesting activity by a FWCC-authorized marine turtle permit holder, whichever occurs first; and
 - c. The movement does not disturb any sea turtle or sea turtle nest (see also § 14-74(c) of this LDC).
- (5) Businesses may not allow their personal watercraft to be used above slow speed within 500 feet of swimmers, waders, or people floating in/on the water.
- (6) Personal watercraft rental businesses shall have a motorized chase vessel with an operational marine radio in good running condition that meets all United States Coast Guard safety requirements kept at the personal watercraft launching site during all hours of the business operation. The chase vessel may be a personal watercraft reserved for this purpose.
- (7) Each personal watercraft must be registered in the name of the business and have a Florida vessel registration number affixed thereon.

- (8) Identification markings shall be placed on each personal flotation device worn by operators of the personal watercraft which distinguishes the business from other businesses engaged in the rental of personal watercraft. Said marking shall also be located where the personal watercraft are launched. The identification marking, which will be assigned to the business by the town upon issuance of the PWVL, shall be not less than nine inches by five inches in size and of a contrasting color to the personal flotation device.
- (9) Personal watercraft may be moored in the water during the operating hours of the business, or on the beach during operating hours in accordance with the following: Personal watercraft must be set back 15 feet landward from the edge of wet sand. Between the hours of 9:00 p.m. and 7:00 a.m., all personal watercraft and associated equipment, including but not limited to mooring lines, must be removed from the beach and placed behind the dune line.
- a. If there is no dune line and the beach is wide, personal watercraft and associated equipment must be moved to a point that is at least 200 feet from the water line at all times.
 - b. If there is no dune line and the beach is less than 200 feet wide, personal watercraft and associated equipment must be moved to the adjacent permanent structure and landward of any seawall.

Where compliance with the foregoing provision would cause an undue hardship, the town manager may designate a different storage location after determining the minimum changes from the requirements of this subsection.

- (10) In order to adequately monitor the operation of the personal watercraft, one employee per five personal watercraft actually rented must be located so as to observe the operation of the vessel by the party renting the personal watercraft.

- (11) Fuel tanks may not be stored on the beach but may be stored at the business location provided all applicable federal, state and local fire, safety, and environmental regulations are met.
- (12) Fueling of personal watercraft on the beach or in the water shall require a spill-proof nozzle or other acceptable device designed for prevention of fuel overflow. Any spillage of fuel onto the beach or into the water is a violation of this code.
- (13) Except in locations which have permanent 500-foot markers, the personal watercraft vendor shall place temporary markers in the water not less than 500 feet seaward from the beach to which the personal watercraft are to be launched during each day of personal watercraft operations. All such markers shall be removed each day by the personal watercraft vendor no later than one-half hour after sunset. The personal watercraft vendor must instruct each personal watercraft operator:
 - a. To travel at slow speed until past said markers;
 - b. To maintain a distance of not less than 500 feet from the shoreline while operating the personal watercraft;
 - c. To travel at slow speed when returning to the shore; and
 - d. To not travel within environmentally sensitive areas (within the 1,000-foot territorial limits of the town) except with an eco-tour operator or guide associated with a business with a valid PWVL permit.
- (14) Each operator shall provide a buoy lane consisting of six buoys, with a minimum width of 15 feet and a maximum of 75 feet.
- (15) Each PWVL (jet ski) operator is limited to eight rentals per location plus one chase vehicle. When six or more rentals are in use, the chase vehicle must be manned and in the water. An operator may request a variance to allow additional rentals per location by

using the standards and procedures in ch. 34 of this LDC.

- (16) Safe handling instructions.
 - a. Each patron shall receive standardized rules provided by the operator translated in four languages. All owners, operators, PWVL license holders, and employees will obey the same standardized rules. Such rules are included in § 27-58 of this chapter.
 - b. If the FWCC adopts safe handling instructions in accordance with F.S. § 327.39(6)(b), operators must comply with those regulations, which shall be deemed as equivalent to complying with the previous subsection, provided the state instructions are translated into the same four languages.
- (17) Operators must also comply with all other applicable boating and personal watercraft provisions of state law such as those found in F.S. § 327.39.
- (18) No person shall offer for rent, lease, or bailment for consideration, a personal watercraft within the Town of Fort Myers Beach except from a personal watercraft rental business which fully complies with the regulations set forth in this code and this chapter.
- (19) No person shall conduct any personal watercraft rental business within the Town of Fort Myers Beach except from a business holding a valid PWVL and which fully conforms to the terms of this chapter.
- (20) No person shall offer for rent, lease, or bailment for consideration a personal watercraft which is not registered in the name of the business and which does not have a valid Florida vessel registration number affixed thereon.
- (21) No Personal Watercraft Vessel rental business shall obstruct the general public's right of parallel or perpendicular travel over that portion of the beach commonly used by the public. The use of Personal Watercraft Vessel launching equipment shall be

limited to the initial placement of the vessels in the morning and their retrieval at the end of the business day.

ARTICLE III. - PARASAILING

Sec. 27-50. - Regulations and locations for parasail activities.

Any person engaged in parasail activities for consideration or remuneration by the public on any waters of the Town of Fort Myers Beach, must meet the following requirements:

- (1) A person is required to obtain a business tax receipt which shall be issued to the parasailing activities operations office.
 - a. The operations office shall be located at a land-based site; and
 - b. The land-based site shall have direct access to the beach. Direct access shall not include public rights-of-way, county-owned or town-owned beach accesses, or any residentially zoned land that must be traversed to gain beach access; and
 - c. All business transactions such as the exchange of consideration or remuneration or any other type of transaction between the PAL and customer shall occur on the land-based site for which the business tax receipt is issued: and
 - d. A person must have and maintain a telephone and an operable marine radio at its land-based operations office.
- (2) No person shall offer a ride on a parasail within the Town of Fort Myers Beach except at a parasail activities site which fully complies with the regulations set forth in this code and this chapter.
- (3) No person shall have a parasailing operation within the Town of Fort Myers Beach except from a business holding a valid PAL and which fully conforms to the terms of this chapter.

- (4) No person shall use a vessel for parasailing activity which is not registered in the name of the business and which does not have a valid Florida vessel registration number affixed thereon.
- (5) Each parasailing vessel must be registered in the name of the business and have a Florida vessel registration number affixed thereon.
- (6) Parasail operations must have a primary location at a site in conformance with this code or which otherwise specifically permits parasail activity. Parasail operators may pick up and return customers at other sites provided that the parasail operator has obtained written permission on a form provided by the town from the landowner where a PWVL has been issued. Written permission shall be kept on file at the PALs primary location. In no event shall a parasail operator or his agents or employees solicit at the beach where they are picking up and returning customers.
- (7) Parasail operators will pick up and drop off customers at the beach location pursuant to subsection (1)b., above. This process will be accomplished through buoy lanes within the 500-foot zone consisting of six buoys, with a minimum width of 15 feet and a maximum of 75 feet. In a congested area, a parasail captain may avoid hazard by approaching to the right or left of the buoy lane.
- (8) Operators must be at least 1,000 feet from shore when they inflate the chute or deflate the chute and while flying.
- (9) Operators must limit the length of the line to 1,200 feet and may not fly the chute over or within 500 feet of the pier or within 1,000 feet of the beach. Further, all parasail and all operations must cease at sunset.
- (10) Operators must also comply with all applicable boating and parasailing provisions of state law such as those found in F.S. § 327.37.

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

Sec. 27-51. - Additional rules applying to both PWVL and PAL businesses.

- (a) Businesses holding a valid PWVL or PAL shall be situated together with their vessels where appropriate upon a site authorized by the remainder of this code plus the provisions of this chapter to have such business.
- (b) No PWVL or PAL business shall be located within 500 feet, as measured from the seaward property line, from any other PWVL or PAL business, except:
 - (1) for businesses which are co-located in accordance with § 27-51(d); or
 - (2) a PWVL may be located within 500 feet of a PAL provided that PWVL does not permit parasailing pick-up from a licensed PAL pursuant to § 27-50.
- (c) No PWVL or PAL business may be located on any beach or land north of or beyond an imaginary line extending from the Sanibel Lighthouse and Bowditch Point on Estero Island; or inland of the Big Carlos Pass Bridge.
- (d) Businesses holding both a valid PWVL and a valid PAL may rent personal watercraft and operate a parasailing activity business from a single location provided the location meets all requirements for both licenses.
- (e) Businesses holding a valid PWVL or PAL must meet the following requirements:
 - (1) Other boating regulations. All businesses and their vessels are required to comply with the town's vessel control and water safety regulations ~~ordinance (Ordinance 96-26 as amended)~~ and with F.S. ch. 327.
 - (2) Insurance. A business must have and maintain comprehensive third-party liability insurance in accordance with § 27-56.

- (3) Structures on the beach. During its regular business hours only, a business may place one freestanding structure on the beach at its land-based site to conduct business with the public.
 - a. This structure may be a table, podium, booth or storage box.
 - b. The total horizontal dimension of this structure may not exceed a horizontal dimension of four feet by six feet, except for any awning, umbrella, or integral roof whose sole purpose is to provide shade.
 - c. This structure must be portable and never be left on the beach before or after regular business hours.
 - d. No portion of any flag, sign, booth, or equipment may extend to or be located within 15 feet of the wet sand.
- (4) Signs on the beach. This structure may contain a maximum of three identification or promotional signs painted on or mounted flat against the structure, no one of which can exceed eight square feet as measured in accordance with § 30-91.
 - a. Any rate charts or state-mandated informational signs smaller than two square each shall not be counted as part of the signage limitation above.
 - b. No signs or other advertising for the business are permitted on the beach other than the signage permitted on a table, podium, booth or storage box.
- (5) Signs off the beach. A business may also have one portable sandwich-board sign displayed at its land-based site during regular business hours if such signs are otherwise

permitted by chapter 30 of this appendix at that site. However, any such sign:

- a. Must be placed indoors after business hours;
 - b. Must not be illuminated; and
 - c. Must not be placed on the beach at any time.
- (f) Licensed PWVL and PAL businesses may not rent paddleboards, kayaks and other non-motorized watercraft from their land-based location. Paddlecraft vendors at resorts are required to ensure that all renters of non-motorized watercraft adhere to all applicable water safety regulations.

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) Has no outstanding fines or code violations.
 - (5) 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 PALs or PWVLs Licenses which have not been renewed as provided herein of October 15 shall evert back to the Town and shall be made available on a first-come—first-serve—basis through a public procurement process if the number of PALs and PWVLs is less than the cap specified in §27-52.

Sec. 27-54. - Display of PWVL and PAL licenses.

Any business offering the rental of personal watercraft or parasailing activities shall display the PWVL or PAL in plain sight at the location from which the rental of personal watercraft is offered or at the parasail activities operation's office.

Sec. 27-55. - Transferability of PWVL and PAL licenses.

- (a) Transferability to a new owner. Provided that this chapter has been complied with, the PWVL or PAL is transferable to a new owner if:
 - (1) The location of the business complies with the minimum separation requirements of this chapter; and

- (2) The new business owner files an amended application with the town providing the information required in this chapter; and
 - (3) Transfer of a PAL to a new owner is only allowed when there are seven (7) or fewer PAL legal operations outstanding; and
 - (4) Transfer of a PWVL to a new owner is only allowed when there are eleven (11) or fewer PWVL legal operations outstanding; and
 - (5) The new owner presents written approval of the property owner where the parasailing and/or the personal watercraft business is located at.
- (b) Transferability to a new location. Provided that this chapter has been complied with, the PWVL or PAL is transferable to a new location if:
- (1) The new location of the business complies with the minimum separation requirements of this chapter; and
 - (2) The business owner files an amended application with the town providing the information required in this chapter; and
 - (3) Transfer of a PAL to a new conforming location is only allowed when there are seven (7) or fewer PAL legal operations outstanding; and
 - (4) Transfer of a PWVL to a new conforming location is only allowed when there are seven (7) or fewer PAL legal operations outstanding.
- (c) Nonconforming PWVLs. Personal watercraft vendors who established or commenced business at a location on or before December 2, 1996, that does not comply with the location requirements set forth in this chapter may continue to operate as a nonconforming use after December 2, 1996, unless terminated for failure to obtain a PWVL or renewal

as required by this chapter, voluntary discontinuation of business for a period of 30 days or more, or revocation of the PWVL.

- (d) Nonconforming PALs. Parasail operators who established or commenced business at a location on or before January 21, 1997, that does not comply with the location requirements set forth in this chapter, may continue to operate as a nonconforming use after January 21, 1997, unless terminated for failure to obtain a PAL or renewal as required by this chapter, voluntary discontinuation of business for a period of 30 days or more, or revocation of the PAL

Sec. 27-56. - Insurance.

- (a) No person shall operate a personal watercraft or parasailing activity business unless covered by a comprehensive general liability insurance policy insuring the public against bodily injury or property damage resulting from or incidental to the operation, use, or rental of personal watercraft or parasailing activity. At a minimum, the policy shall provide coverage of not less than \$500,000.00 per occurrence and \$1,000,000.00 per aggregate. The policy shall list the Town of Fort Myers Beach as an additional insured, and shall provide that coverage not be canceled or materially altered except after 30 days' written notice has been received by the town, and be written through insurers licensed and authorized to do business in the State of Florida. The town shall also require a copy of the declaration page of the operator's insurance policy with a listing of all insured watercraft by serial number.
- (b) Evidence of said coverage is subject to acceptance and approval by the town manager prior to issuance of PWVL or PAL.
- (c) Coverage shall remain in full force during the entire time that the PWVL or PAL is valid and outstanding. Failure to provide such proof shall render the PWVL or PAL null and void, and of no further use and effect. The holder's subsequent application for a new PWVL or PAL shall be subject to the regulations for

a new business and shall lose the nonconforming status afforded under this chapter.

Sec. 27-57. - Penalty.

Violation of the provisions of this chapter, or failure to comply with any of the requirements, shall constitute a civil infraction. Any person who violates this chapter or fails to comply with any provision shall upon conviction thereof be fined \$150.00 for the first violation; \$300.00 for the second and third violation; and the town shall consider license revocation for more than three violations of this chapter, and in addition the violator shall pay all costs and expenses involved in the case.

Sec. 27-58. - Standardized rules.

RULES

1. Operators must go slow speed until past all idle speed buoys. Operator must travel perpendicular to shore when entering or leaving the marked idle speed zone.
2. Operators must remain 200 feet from any watercraft and 500 feet from swimmers, waders or people floating in the water. Operator must yield right-of-way to all other vessels.
3. All renters must be at least 18 years of age.
4. Operator may not be under the influence of drugs or alcohol.
5. Operator must stay in the boundaries set by the rental vendor and in sight of rental location at all times.
6. No operator shall operate watercraft in a hazardous manner.
7. Operators must listen to and obey all verbal and written rules. If any rules are broken, operator's ride will be terminated. No refunds!

REGLAS

1. El operador tiene que ir a una velocidad despacia hasta que a pasado todas las marcas de velocidad. El

operator tiene que viajar perpendicular a la costa cuando entrando o saliendo la zona marcada para una velocidad ociosa.

2. El operator tiene que quedarse 200 pies de cualquier bote y 500 pies de los nadadores o personas flotando en la agua. Operadores tienen que ceder a todas los buques.
3. Todos operadores tienen que ser a lo menos 18 años de edad.
4. Operadores no queden estar en la influencia de drogas o alcohol.
5. Operadores tienen que quedarce siempre en el limite hecho por las personal de alquiler y en la vista del lugar de alquiler.
6. Operadores no deben conducir el equipo en una manera dañoso o peligroso.
7. Operadores tienen que poner atención a todas las regulaciones oral y escritas. Si alguna regulacion no es seguida el alquiler va a ser terminado. El dinero no va hacer devuelto!

Vorschriften zur Mietung eines Wasserfahrzeuges

- #1. Der Bediener muss mit langsamer Geschwindigkeit fahren, bis er alle weissen Bojen passiert hat. Beim ReinKommen oder VerLassen der markierten Geschwindigkeitszone muss er sich senkrecht zum strand bewegen.
- #2. Der Bediener muss 60 m von Wasserfahrzeugen und 152 m von Schwimmern, Watvögeln und anderen Leuten, die sich im Wasser befinden, Abstand halten. Er muss allen Booten, die von rechts Kommen, Vorfahrt gewahren.
- #3. Der Bediener muss mindestens 18 jahre alt sein.
- #4. Der Bediener darf nicht unter Einfluss von Drogen oder Alkohol stehen.

- #5. Der Bediener muss sich innerhalb der Grenze, die vom Vermieter gesetzt wird, und in der Sicht des Vermieters standes bleiben.
- #6. Der Bediener soll das Fahrzeug nicht ordnungswidrig fahren.
- #7. Der Bediener sollte alle mündlichen und schriftlichen regeln befolgen. Falls irgendeine Regel missbraucht wird, wird die Fahrt sofort beendet. Es erfolgt keine Kostenerstattung.

REGLES SANDART

Regle #1 • Vitesse

Chaque conducteur doit garder une vitesse ralentie jusqu'au niveau des bouées. La rentrée ou la sortie du jet ski doit être perpendiculaire à la plage et toujours effectuée au ralenti.

Regle #2 • Distance

Le conducteur doit se tenir à 60 mètres des autres véhicules, à 152 mètres des nageurs et des matelots pneumatiques, ou bien des gens qui flottent. Le jet ski doit laisser la priorité à droite.

Regle #3 • Age

Tous les conducteurs doivent avoir 18 ans ou plus, sans exception!

Regle #4 • Drogue & Alcohol

Tous les conducteurs doivent être sobres!

Regle #5 • Delimitation

Chaque conducteur doit rester à tout temps dans les limites du territoire imposées par la maison de location.

Regle #6 • Courtoisie

L'opérateur doit toujours conduire avec prudence.

Regle #7 • Regle d'Or

L'opérateur doit prêter attention et obéir à tout conseil et réglementation écrite. Si les règles ne sont pas suivies, le conducteur sera disqualifié(e), sans être remboursé(e)!

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	_____

[SIGNATURES ON FOLLOWING PAGE]

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.

From: [Chadd Chustz](#)
To: [Amy Baker](#)
Subject: FW: Requesting change to Chp. 27
Date: Tuesday, April 12, 2022 3:19:44 PM

Chadd Chustz
Environmental Project Manager
Town of Fort Myers Beach

From: Sharon Faircloth <skfaircl47@gmail.com>
Sent: Monday, April 11, 2022 4:36 PM
To: Chadd Chustz <Chadd@fmbgov.com>
Subject: Requesting change to Chp. 27

Hi Chadd. I hope you are doing well. I am going to request the town add the definition "Seward Line of Vegetation" to Chapter 27. It can be found in Sec. 14-1 currently. I am also going to request the town add the definition of "Beach Width" to Chp. 27. It can be found in Sec. 14-1 as well. I think these additions will be helpful. I am also going to ask for the town to add "concession trailer" as one of the "structures on the beach" for us to do business out of. It is the same idea I discussed with you and Roger at our last meeting. I think it will be much easier to remove from the beach (and we will still have to get a vehicle permit etc.) I just wanted to keep you in the loop!

Sharon Faircloth, Owner
Holiday Water Sports Fort Myers Beach, Inc. 239-765-4386
Holiday Adventure Tours and Boat Rental, Inc. 239-463-8661
Estero Island Parasail, Inc. 239-994-1399

Note: Florida has a very broad public records law. Most communication(s) to or from Fort Myers Beach officials regarding Town business are public records available to the public and media upon request. Your email communications and email address may be subject to public disclosure.

1. **Requested Motion:**

Meeting Date: April 18, 2022

The naming of the new beach access, which could replace Canal St., was provided by TPI Hospitality as a condition of development approval.

Why the action is necessary:

To select the name of the beach access that will be received from TPI.

What the action accomplishes:

Establishes the name of the new beach access.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Chelsea O'Riley, Public Works
Director

5. **Background:**

Canal Street beach access and Court Street were vacated as part of the Margaritaville/TPI project. As part of the approval for the project, there will be a new beach access with parking just south of the former Canal Street access. The naming of the new beach access is up for consideration prior to reverting "naturally" to Canal Street. Court Street was the parallel ROW along the beachside before the right-of-way vacation.

Attached is the resolution with a blank for the name.

Attachments:

1. 22-17; Canal St name change
2. 21-62, Ratification of Court St to Flamingo Court name change

Financial Impact:

6. **Alternative Action**

Do nothing.

7. **Management Recommendations:**

8. **Recommended Approval:**

Chelsea O'Riley, Public Works Director
Chelsea O'Riley, Public Works Director
Jason Freeman, Contracts Manager/Deputy Town Clerk
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 4/11/2022
Approved - 4/12/2022
Approved - 4/12/2022
Approved - 4/12/2022
Approved - 4/13/2022
Final Approval - 4/13/2022

RESOLUTION NUMBER 22-17

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RENAMING CANAL STREET BEACH ACCESS NUMBER 36; 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, Canal Street is within the jurisdictional limits of the Town of Fort Myers Beach; and

WHEREAS, a condition of the approval for the TPI Hospitality project was to provide a new beach access with parking in the general area of the Canal Street beach access number 36; and

WHEREAS, the Town Council desires to change the name of the beach access.

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

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

Section 2. The Town Council renames the Canal Street beach access number 36 to _____.

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

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

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

ADOPTED this 18th 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 Resolution was filed in the Office of the Town Clerk on this _____ day _____ 2022.

RESOLUTION NUMBER 21-62

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, SUPPORTING THE RESIDENTS OF COURT STREET REQUEST TO CHANGE THE STREET NAME TO FLAMINGO COURT; 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, Court Street is within the jurisdictional limits of the Town of Fort Myers Beach; and

WHEREAS, the residents of Court Street have made know to the Town their desire to change the name of their street to Flamingo Court and asked the Town Council to support their efforts to change the name of their street; and

WHEREAS, the Town Council supports the efforts of the residents of Court Street to apply to the proper agencies and pursue changing the name of their street to Flamingo Court.

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

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

Section 2. This Resolution memorializes the discussion at the November 1, 2021 Regular Town Council meeting, wherein the Town Council expressed its support of the efforts of the residents of Court Street to pursue legally changing the name of the street to Flamingo Court.

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

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Allers and seconded by Vice Mayor Hosafros, and upon being put to a vote, the result was as follows:

Raymond P. Murphy, Mayor	aye
Rexann Hosafros, Vice Mayor	aye

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Allers and seconded by Vice Mayor Hosafros, and upon being put to a vote, the result was as follows:

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

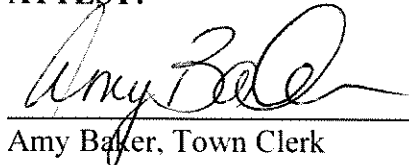
ADOPTED this 15th day of November 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



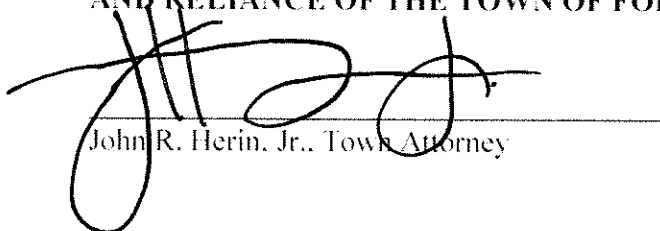
Raymond P. Murphy, Mayor

ATTEST:



Amy Baker, Town Clerk

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



John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 15 day Nov, 2021.

1. Requested Motion:

Meeting Date: April 18, 2022

Review of Preliminary Audited Financials

Why the action is necessary:

The Town's annual audit was performed by Mauldin & Jenkins. A preliminary DRAFT copy of the audited financial statements were provided to the Audit Committee on Monday, April 11, 2021. Wade Sansbury from Mauldin & Jenkins will participate in the meeting via video conferencing in order to answer any questions council members may have. Mauldin & Jenkins anticipates the final audit report will be completed by the end of April.

What the action accomplishes:

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

Other

4. Submitter of Information:

Cheri Russ, Accounting
Manager

5. Background:

The annual audit was performed for the fiscal year ended September 30, 2021. Our new financial management was hired in May and July and shortly thereafter began audit preparation.

At the Audit Advisory Committee meeting, Mr. Sansbury made the following comments which deserve clarification:

Eighteen of the 47 adjusting entries were provided by the Finance Department staff. In the four years the audit company has held the contract for the audit, they did not require adjustments to correct account line structure until this year.

For the past two years the auditor has handled the fixed assets for the town. This year he told department staff he did not want to do them and it should be done by us. The auditor was advised well in advance that the fixed assets were not ready to be reviewed on their scheduled inspection date.

The current staff has implemented all policies and procedures including monthly reconciliations of accounts and monthly statements of revenues and expenses for review as recommended by the auditor and contracted CPA. However, obviously unannounced process changes by the auditor required adaptability.

Attachments:

1. DRAFT - Audited Financials

Financial Impact:

None.

6. Alternative Action

7. Management Recommendations:

Review audited financials.

8. Recommended Approval:

Randy Paniagua, Administrative Officer
Cheri Russ, Accounting Manager
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 4/11/2022
Approved - 4/12/2022
Approved - 4/12/2022
Approved - 4/13/2022
Final Approval - 4/13/2022

TOWN OF FORT MYERS BEACH, FLORIDA

STATEMENT OF NET POSITION
SEPTEMBER 30, 2021

	Governmental Activities	Business-type Activities	Total
Assets			
Cash and cash equivalents	\$ 11,333,634	\$ 5,444,308	\$ 16,777,942
Investments	2,005,784	-	2,005,784
Internal balances	90,487	(90,487)	-
Due from other governments	520,666	418,160	938,826
Accounts receivable, net	-	1,297,520	1,297,520
Prepaid expenses	19,076	127,392	146,468
Restricted cash	-	317,091	317,091
Capital assets			
Nondepreciable	11,289,027	15,041,028	26,330,055
Depreciable	12,984,352	42,374,351	55,358,703
Total assets	38,243,026	64,929,363	103,172,389
Deferred outflows of resources			
Deferred outflows - OPEB	39,117	7,107	46,224
Liabilities			
Accounts payable and other accrued liabilities	569,459	1,958,225	2,527,684
Accrued interest payable	-	93,320	93,320
Unearned revenue	1,776,528	-	1,776,528
Payable from restricted assets			
Customer deposits	-	317,091	317,091
Noncurrent liabilities			
Due within one year	861,228	1,461,596	2,322,824
Due in more than one year	353,126	33,322,003	33,675,129
Total liabilities	3,560,341	37,152,235	40,712,576
Deferred inflows of resources			
Deferred inflows - OPEB	89,448	16,251	105,699
Net position			
Net investment in capital assets	23,534,673	22,695,116	46,229,789
Restricted for			
Parks and recreation	242,431	-	242,431
Transportation	2,213,438	-	2,213,438
Unrestricted	8,641,812	5,072,868	13,714,680
Total net position	\$ 34,632,354	\$ 27,767,984	\$ 62,400,338

The accompanying notes to financial statements are an integral part of this statement.

Draft - Subject to Change, Not to be Reproduced

TOWN OF FORT MYERS BEACH, FLORIDA

STATEMENT OF ACTIVITIES FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2021

		Program Revenues			Net (Expense) Revenue and Changes in Net Position		
		Charges for	Operating	Capital	Governmental	Business-type	Total
	Expenses	Services	Grants and Contributions	Grants and Contributions	Activities	Activities	
Functions/programs							
Governmental activities							
General government	\$ 3,753,674	\$ 1,618,194	\$ 12,000	\$ -	\$ (2,123,480)	\$ -	\$ (2,123,480)
Public safety	459,555	-	750	41,161	(417,644)	-	(417,644)
Transportation	1,840,712	-	119,390	1,352,075	(369,247)	-	(369,247)
Culture/recreation	3,156,915	2,454,880	909,599	247,082	454,646	-	454,646
Interest on long-term debt	12,598	-	-	-	(12,598)	-	(12,598)
Total governmental activities	9,420,289	4,073,074	1,041,739	1,640,318	(2,665,158)	-	(2,665,158)
Business-type activities							
Water and sewer	3,976,287	6,048,550	-	-	-	2,072,263	2,072,263
Stormwater	598,028	1,159,194	-	-	-	561,166	561,166
Total business-type activities	4,574,315	7,207,744	-	-	-	2,633,429	2,633,429
Total primary government	\$ 13,994,604	\$ 11,280,818	\$ 1,041,739	\$ 1,640,318	(2,665,158)	2,633,429	(31,729)
General revenues							
Property taxes, levied for general purposes					3,404,467	-	3,404,467
Communication services tax					536,426	-	536,426
Gas taxes					369,879	-	369,879
Franchise fees					1,093,483	-	1,093,483
Business taxes					4,159	-	4,159
Intergovernmental revenues, unrestricted					904,098	-	904,098
Investment earnings					9,828	10,573	20,401
Total general revenues and transfers					6,322,340	10,573	6,332,913
Change in net position					3,657,182	2,644,002	6,301,184
Net position, beginning of year					30,975,172	25,123,982	56,099,154
Net position, end of year					\$ 34,632,354	\$ 27,767,984	\$ 62,400,338

The accompanying notes to financial statements are an integral part of this statement.

Draft - Subject to Change, Not to be Reproduced

**TOWN OF FORT MYERS BEACH, FLORIDA
BALANCE SHEET
GOVERNMENTAL FUNDS
SEPTEMBER 30, 2021**

	General	Gas Tax	Building	Beach Access	Capital Projects	American Rescue	Nonmajor Governmental Funds	Total Governmental Funds
Assets								
Cash and cash equivalents	\$ 5,056,269	\$ 369,511	\$ 416,198	\$ -	\$ 2,033,052	\$ 1,776,528	\$ 1,682,076	\$ 11,333,634
Investments	1,612,516	393,268	-	-	-	-	-	2,005,784
Prepaid items	18,382	694	-	-	-	-	-	19,076
Due from other funds	365,055	-	-	-	-	-	90,487	455,542
Due from other governments	182,600	30,767	-	307,299	-	-	-	520,666
Total assets	<u>\$ 7,234,822</u>	<u>\$ 794,240</u>	<u>\$ 416,198</u>	<u>\$ 307,299</u>	<u>\$ 2,033,052</u>	<u>\$ 1,776,528</u>	<u>\$ 1,772,563</u>	<u>\$ 14,334,702</u>
Liabilities, deferred inflows of resources and fund balances								
Liabilities								
Accounts payable and accrued liabilities	\$ 290,926	\$ 19,753	\$ 11,993	\$ 28,628	\$ 127,672	\$ -	\$ 90,487	\$ 569,459
Due to other funds	-	-	-	365,055	-	-	-	365,055
Unearned revenue	-	-	-	-	-	1,776,528	-	1,776,528
Total liabilities	<u>290,926</u>	<u>19,753</u>	<u>11,993</u>	<u>393,683</u>	<u>127,672</u>	<u>1,776,528</u>	<u>90,487</u>	<u>2,711,042</u>
Deferred inflows of resources								
Unavailable revenue	-	-	-	196,020	-	-	-	196,020
Fund balances (deficits)								
Nonspendable								
Prepaid items	18,382	694	-	-	-	-	-	19,076
Advances to other funds	-	-	-	-	-	-	-	-
Restricted								
Parks and recreation	-	-	-	-	-	-	242,431	242,431
Transportation	-	773,793	-	-	-	-	1,439,645	2,213,438
Committed								
Beach renourishment	100,000	-	-	-	-	-	-	100,000
Capital Projects	-	-	-	-	1,905,380	-	-	1,905,380
Other committed reserves	969,440	-	-	-	-	-	-	969,440
Compensated absences	111,000	-	-	-	-	-	-	111,000
Assigned								
Legal, general liability, and grant matching	215,000	-	-	-	-	-	-	215,000
Emergency	500,000	-	-	-	-	-	-	500,000
Operating reserve	1,330,000	-	-	-	-	-	-	1,330,000
Unassigned	3,700,074	-	404,205	(282,404)	-	-	-	3,821,875
Total fund balances (deficits)	<u>6,943,896</u>	<u>774,487</u>	<u>404,205</u>	<u>(282,404)</u>	<u>1,905,380</u>	<u>-</u>	<u>1,682,076</u>	<u>11,427,640</u>
Total liabilities, deferred inflows of resources and fund balances	<u>\$ 7,234,822</u>	<u>\$ 794,240</u>	<u>\$ 416,198</u>	<u>\$ 307,299</u>	<u>\$ 2,033,052</u>	<u>\$ 1,776,528</u>	<u>\$ 1,772,563</u>	<u>\$ 14,334,702</u>

The accompanying notes to financial statements are an integral part of this statement.

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TOWN OF FORT MYERS BEACH, FLORIDA RECONCILIATION OF THE BALANCE SHEET- GOVERNMENTAL FUNDS TO THE STATEMENT OF NET POSITION SEPTEMBER 30, 2021

Fund Balances, Total Governmental Funds		\$ 11,427,640
Amounts reported for governmental activities in the statement of net position are different because:		
Capital assets used in governmental activities are not financial resources and therefore, are not reported in the funds.		
Governmental nondepreciable capital assets	\$ 11,289,027	
Governmental depreciable capital assets, net	<u>12,984,352</u>	24,273,379
Deferred outflows, deferred inflows, and the total OPEB liability related to the Town's other post-employment benefits plan are not expected to be liquidated with expendable available financial resources and, therefore are not reported in the funds.		
Deferred outflows - OPEB	39,117	
Deferred intflows - OPEB	(89,448)	
Total OPEB liability	<u>(147,009)</u>	(197,340)
Certain deferred inflows of resources are not available to pay for current period expenditures and, therefore, are reported as unavailable revenue in the funds.		
		196,020
Long-term liabilities, including capital leases and compensated absences are not due and payable in the current period and therefore, are not reported in the funds.		
Compensated absences	(328,639)	
Capital leases payable	<u>(738,706)</u>	<u>(1,067,345)</u>
Net Position of Governmental Activities		<u>\$ 34,632,354</u>

The accompanying notes to financial statements are an integral part of this statement.

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TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND BALANCES-
GOVERNMENTAL FUNDS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2021

	General	Gas Tax	Building	Beach Access	Capital Projects	American Rescue	Nonmajor Governmental Funds	Total Governmental Funds
Revenues								
Taxes								
Property	\$ 3,404,467	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,404,467
Gas	-	369,879	-	-	-	-	-	369,879
Franchise	1,093,483	-	-	-	-	-	-	1,093,483
Communication services	536,426	-	-	-	-	-	-	536,426
Local business	4,159	-	-	-	-	-	-	4,159
Licenses and permits	193,870	-	1,219,114	-	-	-	-	1,412,984
Intergovernmental	1,810,282	7,106	-	1,019,453	119,390	-	-	2,956,231
Charges for services	2,454,880	-	-	-	-	-	-	2,454,880
Fines and forfeitures	10,436	-	-	-	-	-	-	10,436
Special assessments/impact fees	-	-	-	-	-	-	727,778	727,778
Investment income	6,590	-	-	-	836	-	2,402	9,828
Miscellaneous	186,774	8,000	-	-	12,000	-	-	206,774
Total revenues	9,701,367	384,985	1,219,114	1,019,453	132,226	-	730,180	13,187,325
Expenditures								
Current								
General government	2,551,609	-	549,015	-	-	-	-	3,100,624
Public safety	452,747	-	-	-	-	-	-	452,747
Transportation	1,676,447	148,608	-	-	-	-	-	1,825,055
Culture and recreation	1,932,022	-	-	831,741	-	-	-	2,763,763
Capital outlay	-	56,219	-	170,518	1,256,838	-	-	1,483,575
Debt service:								
Principal	-	-	-	-	9,346	-	-	9,346
Interest	56	3,060	-	-	9,482	-	-	12,598
Total expenditures	6,612,881	207,887	549,015	1,002,259	1,275,666	-	-	9,647,708
Excess (deficiency) of revenues over (under) expenditures	3,088,486	177,098	670,099	17,194	(1,143,440)	-	730,180	3,539,617
Other financing sources (uses)								
Proceeds from the sale of capital assets	-	-	-	-	-	-	-	-
Loan proceeds	-	-	-	-	708,090	-	-	708,090
Transfers in	-	-	-	-	1,363,245	-	-	1,363,245
Transfers out	(1,363,245)	-	-	-	-	-	-	(1,363,245)
Total other financing sources (uses)	(1,363,245)	-	-	-	2,071,335	-	-	708,090
Change in fund balances	1,725,241	177,098	670,099	17,194	927,895	-	730,180	4,247,707
Fund balances (deficits), beginning of year	5,218,655	597,389	(265,894)	(299,598)	977,485	-	951,896	7,179,933
Fund balances (deficits), end of year	\$ 6,943,896	\$ 774,487	\$ 404,205	\$ (282,404)	\$ 1,905,380	\$ -	\$ 1,682,076	\$ 11,427,640

The accompanying notes to financial statements are an integral part of this statement.

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TOWN OF FORT MYERS BEACH, FLORIDA
RECONCILIATION OF THE STATEMENT OF REVENUES, EXPENDITURES AND
CHANGES IN FUND BALANCES OF GOVERNMENTAL FUNDS TO THE
STATEMENT OF ACTIVITIES
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2021

Net Change in Fund Balances, Total Governmental Funds **\$ 4,247,707**

Amounts reported for governmental activities in the statement of net position are different because:

Governmental funds report capital outlays as expenditures. However, in the statement of activities, the cost of these assets is depreciated over their estimated useful lives.

Capital outlay	\$ 1,358,814	
Less current year depreciation	<u>(1,102,181)</u>	256,633

Revenues in the statement of activities that do not provide current financial resources are not reported as revenues in the funds. (109,854)

The issuance of long-term debt provides current financial resources to governmental funds, while the repayment of principal of long-term debt consumes the current financial resources of governmental funds. Neither transaction, however has any effect on net position. This amount is the net effect of these differences in the treatment of long-term liabilities.

Issuance of long term debt	(708,090)	
Principal repayment of long-term debt	<u>9,346</u>	(698,744)

In the governmental funds, current year expenditures related to OPEB are comprised solely of amounts contributed to the plan for the current year. However, in the statement of activities, expenses related to OPEB include amounts that do not require the use of current financial resources. This amount represents the difference in the required accounting treatment of OPEB and related items. (23,317)

Some expenses reported in the statement of activities do not require the use of current financial resources and therefore, are not reported as expenditures in governmental funds.

Change in compensated absences		<u>(15,243)</u>
--------------------------------	--	-----------------

Change in Net Position of Governmental Activities **\$ 3,657,182**

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TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND
BALANCES—BUDGET AND ACTUAL—GENERAL FUND
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2021

	Budgeted Amounts		Actual	Variance With Final Budget— Positive (Negative)
	Original	Final		
Revenues				
Taxes				
Property	\$ 3,389,680	\$ 3,389,680	\$ 3,404,467	\$ 14,787
Franchise	943,500	943,500	1,093,483	149,983
Communications services	540,000	540,000	536,426	(3,574)
Local business	4,000	4,000	4,159	159
Licenses and permits	255,990	255,990	193,870	(62,120)
Intergovernmental	822,000	822,000	1,810,282	988,282
Charges for services	2,049,400	2,049,400	2,454,880	405,480
Fines and forfeitures	50,000	50,000	10,436	(39,564)
Investment income	90,000	90,000	6,590	(83,410)
Miscellaneous	44,500	44,500	186,774	142,274
Total revenues	<u>8,189,070</u>	<u>8,189,070</u>	<u>9,701,367</u>	<u>1,512,297</u>
Expenditures				
Current				
General government	2,763,140	2,763,140	2,551,609	211,531
Public safety	532,900	532,900	452,747	80,153
Transportation	1,695,190	1,695,190	1,676,447	18,743
Culture and recreation	2,348,090	2,348,090	1,932,022	416,068
Debt service:				
Interest	-	-	56	(56)
Total expenditures	<u>7,339,320</u>	<u>7,339,320</u>	<u>6,612,881</u>	<u>726,439</u>
Excess of revenues over expenditures	<u>849,750</u>	<u>849,750</u>	<u>3,088,486</u>	<u>2,238,736</u>
Other financing uses				
Transfers out	(1,363,245)	(1,363,245)	(1,363,245)	-
Total other financing uses	<u>(1,363,245)</u>	<u>(1,363,245)</u>	<u>(1,363,245)</u>	<u>-</u>
Change in fund balance	(513,495)	(513,495)	1,725,241	2,238,736
Fund balance, beginning of year	<u>5,218,655</u>	<u>5,218,655</u>	<u>5,218,655</u>	<u>-</u>
Fund balance, end of year	<u>\$ 4,705,160</u>	<u>\$ 4,705,160</u>	<u>\$ 6,943,896</u>	<u>\$ 2,238,736</u>

The accompanying notes to financial statements are an integral part of this statement.

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TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND
BALANCES—BUDGET AND ACTUAL—GAS TAX FUND
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2021

	Budgeted Amounts		Actual	Variance With Final Budget— Positive (Negative)
	Original	Final		
Revenues				
Taxes				
Gas taxes	\$ 347,865	\$ 347,865	\$ 369,879	\$ 22,014
Intergovernmental	41,000	41,000	7,106	(33,894)
Miscellaneous	-	-	8,000	8,000
Total revenues	<u>388,865</u>	<u>388,865</u>	<u>384,985</u>	<u>(3,880)</u>
Expenditures				
Current				
Transportation	263,865	263,865	148,608	115,257
Capital outlay	125,000	125,000	56,219	68,781
Debt service:				
Interest	-	-	3,060	(3,060)
Total expenditures	<u>388,865</u>	<u>388,865</u>	<u>207,887</u>	<u>180,978</u>
Change in fund balance	-	-	177,098	177,098
Fund balance, beginning of year	<u>597,389</u>	<u>597,389</u>	<u>597,389</u>	<u>-</u>
Fund balance, end of year	<u>\$ 597,389</u>	<u>\$ 597,389</u>	<u>\$ 774,487</u>	<u>\$ 177,098</u>

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TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND
BALANCES-BUDGET AND ACTUAL-BUILDING FUND
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2021

	Budgeted Amounts			Variance With Final Budget- Positive (Negative)
	Original	Final	Actual	
Revenues				
Licenses and permits	\$ 752,215	\$ 752,215	\$ 1,219,114	\$ 466,899
Total revenues	<u>752,215</u>	<u>752,215</u>	<u>1,219,114</u>	<u>466,899</u>
Expenditures				
Current				
General government	752,215	752,215	549,015	203,200
Total expenditures	<u>752,215</u>	<u>752,215</u>	<u>549,015</u>	<u>203,200</u>
Change in fund balance	-	-	670,099	670,099
Fund balance (deficit), beginning of year	<u>(265,894)</u>	<u>(265,894)</u>	<u>(265,894)</u>	<u>-</u>
Fund balance, end of year	<u>\$ (265,894)</u>	<u>\$ (265,894)</u>	<u>\$ 404,205</u>	<u>\$ 670,099</u>

The accompanying notes to financial statements are an integral part of this statement.

TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN FUND
BALANCES-BUDGET AND ACTUAL-BEACH ACCESS FUND
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2021

	Budgeted Amounts			Variance With Final Budget- Positive (Negative)
	Original	Final	Actual	
Revenues				
Intergovernmental	\$ 978,070	\$ 978,070	\$ 1,019,453	\$ 41,383
Total revenues	<u>978,070</u>	<u>978,070</u>	<u>1,019,453</u>	<u>41,383</u>
Expenditures				
Current				
Culture and recreation	951,665	951,665	831,741	119,924
Capital outlay	26,405	26,405	170,518	(144,113)
Total expenditures	<u>978,070</u>	<u>978,070</u>	<u>1,002,259</u>	<u>(24,189)</u>
Change in fund balance	-	-	17,194	17,194
Fund balance (deficit), beginning of year	<u>(299,598)</u>	<u>(299,598)</u>	<u>(299,598)</u>	-
Fund balance (deficit), end of year	<u>\$ (299,598)</u>	<u>\$ (299,598)</u>	<u>\$ (282,404)</u>	<u>\$ 17,194</u>

The accompanying notes to financial statements are an integral part of this statement.

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TOWN OF FORT MYERS BEACH, FLORIDA STATEMENT OF NET POSITION PROPRIETARY FUNDS SEPTEMBER 30, 2021

	Water Fund	Stormwater Fund	Total
Assets			
Current assets			
Cash	\$ 3,016,008	\$ 2,428,300	\$ 5,444,308
Accounts receivable, net	1,114,019	183,501	1,297,520
Due from other funds	-	14,235	14,235
Due from other governments	418,160	-	418,160
Prepaid items	127,392	-	127,392
Total current assets	4,675,579	2,626,036	7,301,615
Noncurrent assets			
Restricted cash	317,091	-	317,091
Capital assets, nondepreciable	12,289,106	2,751,922	15,041,028
Capital assets, depreciable, net	27,814,871	14,559,480	42,374,351
Total noncurrent assets	40,421,068	17,311,402	57,732,470
Total assets	45,096,647	19,937,438	65,034,085
Deferred outflows of resources			
Deferred outflow - OPEB	5,824	1,283	7,107
Liabilities			
Current liabilities			
Payable from current assets			
Accounts payable	1,520,911	437,314	1,958,225
Due to other funds	14,235	90,487	104,722
Accrued interest payable	58,387	34,933	93,320
Compensated absences	18,671	-	18,671
Notes payable, due within one year	963,566	479,359	1,442,925
Payable from restricted assets			
Customer deposits	317,091	-	317,091
Total current liabilities	2,892,861	1,042,093	3,934,954
Long-term liabilities			
Compensated absences	17,956	-	17,956
Notes payable	24,385,074	8,892,264	33,277,338
Total OPEB liability	21,888	4,821	26,709
Total long-term liabilities	24,424,918	8,897,085	33,322,003
Total liabilities	27,317,779	9,939,178	37,256,957
Deferred inflows of resources			
Deferred Inflows - OPEB	13,318	2,933	16,251
Net position			
Net investment in capital assets	14,755,337	7,939,779	22,695,116
Unrestricted	3,016,037	2,056,831	5,072,868
Total net position	\$ 17,771,374	\$ 9,996,610	\$ 27,767,984

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TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
PROPRIETARY FUNDS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2021

	Water Fund	Stormwater Fund	Total
Operating revenues			
Charges for services	\$ 6,048,550	\$ 1,156,907	\$ 7,205,457
Miscellaneous	-	2,287	2,287
Total operating revenues	<u>6,048,550</u>	<u>1,159,194</u>	<u>7,207,744</u>
Operating expenses			
Bulk water	1,709,176	-	1,709,176
Depreciation expense	440,203	115,898	556,101
Repairs and maintenance	330,997	220,241	551,238
Salaries and benefits	574,641	84,998	659,639
Insurance	72,900	-	72,900
Power	49,170	-	49,170
Professional services	30,886	-	30,886
Other operating supplies and expenses	615,676	105,405	721,081
Miscellaneous expenses	188	-	188
Total operating expenses	<u>3,823,837</u>	<u>526,542</u>	<u>4,350,379</u>
Operating income	<u>2,224,713</u>	<u>632,652</u>	<u>2,857,365</u>
Nonoperating revenues (expenses)			
Interest income	2,383	8,190	10,573
Interest expense	(152,450)	(71,486)	(223,936)
Total nonoperating revenues (expenses)	<u>(150,067)</u>	<u>(63,296)</u>	<u>(213,363)</u>
Change in net position	2,074,646	569,356	2,644,002
Net position, beginning of year	<u>15,696,728</u>	<u>9,427,254</u>	<u>25,123,982</u>
Net position, end of year	<u><u>\$ 17,771,374</u></u>	<u><u>\$ 9,996,610</u></u>	<u><u>\$ 27,767,984</u></u>

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TOWN OF FORT MYERS BEACH, FLORIDA
STATEMENT OF CASH FLOWS
PROPRIETARY FUNDS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2021

	Water Fund	Stormwater Fund	Total
Cash flows from operating activities			
Cash received from customers	\$ 6,144,747	\$ 1,301,889	\$ 7,446,636
Cash paid to suppliers	(3,333,554)	(556,979)	(3,890,533)
Cash paid to employees	(574,021)	(82,275)	(656,296)
Net cash provided by operating activities	<u>2,237,172</u>	<u>662,635</u>	<u>2,899,807</u>
Cash flows from capital and related financing activities			
Principal payment on notes payable and bonds	(1,020,078)	(339,414)	(1,359,492)
Proceeds from loan	3,118,142	1,479,357	4,597,499
Interest paid	(198,576)	(36,553)	(235,129)
Acquisition and construction of capital assets	(3,837,140)	(2,870,516)	(6,707,656)
Net cash provided by capital and related financing activities	<u>(1,937,652)</u>	<u>(1,767,126)</u>	<u>(3,704,778)</u>
Cash flows from investing activities			
Interest received	<u>2,383</u>	<u>8,190</u>	<u>10,573</u>
Net change in cash and cash equivalents	301,903	(1,096,301)	(794,398)
Cash and cash equivalents, beginning of year	<u>3,031,196</u>	<u>3,524,601</u>	<u>6,555,797</u>
Cash and cash equivalents, end of year	<u><u>\$ 3,333,099</u></u>	<u><u>\$ 2,428,300</u></u>	<u><u>\$ 5,761,399</u></u>
Reconciliation of cash and cash equivalents to statement of net position			
Cash and cash equivalents	\$ 3,016,008	\$ 2,428,300	\$ 5,444,308
Restricted cash	317,091	-	317,091
Total cash and cash equivalents	<u><u>\$ 3,333,099</u></u>	<u><u>\$ 2,428,300</u></u>	<u><u>\$ 5,761,399</u></u>
Reconciliation of operating income to net cash provided by operating activities			
Operating income	\$ 2,224,713	\$ 632,652	\$ 2,857,365
Adjustment to reconcile operating income to net cash provided by operating activities			
Depreciation expense	440,203	115,898	556,101
Decrease (increase) in assets			
Accounts receivable	81,962	66,443	148,405
Prepaid items	25,257	967	26,224
Due from other funds	-	(14,235)	(14,235)
Deferred outflow - OPEB	(601)	(663)	(1,264)
Increase (decrease) in liabilities			
Accounts payable	(567,094)	(232,300)	(799,394)
Due to other funds	14,235	90,487	104,722
Customer deposits	17,276	-	17,276
Compensated absences	2,815	-	2,815
Deferred inflow - OPEB	(2,006)	1,114	(892)
Total OPEB liability	412	2,272	2,684
Net cash provided by operating activities	<u><u>\$ 2,237,172</u></u>	<u><u>\$ 662,635</u></u>	<u><u>\$ 2,899,807</u></u>

The accompanying notes to financial statements are an integral part of this statement.

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TOWN OF FORT MYERS BEACH, FLORIDA COMBINING BALANCE SHEET NONMAJOR GOVERNMENTAL FUNDS SEPTEMBER 30, 2021

	Special Revenue Funds		Nonmajor
	Park	Road	Governmental
	Impact	Impact	Funds
Assets			
Cash	\$ 242,431	\$ 1,439,645	\$ 1,682,076
Due from other funds	-	90,487	90,487
Total assets	<u>242,431</u>	<u>1,530,132</u>	<u>1,772,563</u>
Liabilities and Fund Balances			
Liabilities			
Accounts payable and accrued liabilities	\$ -	\$ 90,487	\$ 90,487
Total liabilities	<u>-</u>	<u>90,487</u>	<u>90,487</u>
Fund balances			
Restricted			
Parks and recreation	242,431	-	242,431
Transportation	-	1,439,645	1,439,645
Total fund balances	<u>242,431</u>	<u>1,439,645</u>	<u>1,682,076</u>
Total liabilities and fund balances	<u>\$ 242,431</u>	<u>\$ 1,530,132</u>	<u>\$ 1,772,563</u>

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TOWN OF FORT MYERS BEACH, FLORIDA
COMBINING STATEMENT OF REVENUES, EXPENDITURES AND CHANGES IN
FUND BALANCES – NONMAJOR GOVERNMENTAL FUNDS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2021

	Special Revenue Funds		Nonmajor
	Park	Road	Governmental
	Impact	Impact	Funds
Revenues			
Impact fees	\$ 195,703	\$ 532,075	\$ 727,778
Investment income	-	2,402	2,402
Total revenues	<u>195,703</u>	<u>534,477</u>	<u>730,180</u>
Expenditures			
Capital outlay	-	-	-
Total expenditures	<u>-</u>	<u>-</u>	<u>-</u>
Change in fund balances	195,703	534,477	730,180
Fund balances, beginning of year	<u>46,728</u>	<u>905,168</u>	<u>951,896</u>
Fund balances, end of year	<u><u>\$ 242,431</u></u>	<u><u>\$ 1,439,645</u></u>	<u><u>\$ 1,682,076</u></u>

1. **Requested Motion:**

Meeting Date: April 18, 2022

Adopt Resolution 22-16, Approving a piggyback contract between the Town and Exposhow, Inc. to provide fireworks for the 4th of July and New Years Eve, in an amount not to exceed \$60,000, utilizing the City of Marco Island's fireworks contract #2022-007, authorizing the Town Manager to execute the Agreement, expend budgeted funds, and take all appropriate actions to conduct the fireworks displays, and providing for an effective date.

Why the action is necessary:

Authorizes staff to move forward with securing a vendor for firework shows for 4th of July and New Year's Eve and closure of Matanzas Pass Bridge.

What the action accomplishes:

Authorizes staff to move forward with selecting a vendor for the 4th of July and New Years Eve fireworks displays.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Approval of Resolution 220-16

4. **Submitter of Information:**

5. **Background:**

Town Council approval is necessary for a piggyback contract and for purchases over \$30,000.

Attachments:

1. 22-16 - July 4th Fireworks piggyback
2. Piggyback Contract re Exposhow, Inc. for Fireworks Shows(133046795.1)-C
3. 2022 Town of Fort Myers Beach July 4th Fireworks Proposal - Exposhow
4. COI Town of Fort Myers Beach 2022-2023 - Exposhow, Inc.
5. Commercial Trans Endorsement MCS90- Exposhow.pdf 2021-2022
6. Endorsed Contract 2022-007 4th of July fireworks_4.4.22
7. SCIF Policy Office of the State Fire Marshal

Financial Impact:

6. **Alternative Action**

Do not approve

7. **Management Recommendations:**

To approve

8. **Recommended Approval:**

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

Created/Initiated - 4/11/2022
Approved - 4/11/2022
Approved - 4/12/2022
Approved - 4/13/2022
Final Approval - 4/13/2022

RESOLUTION NUMBER 22-16

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A PIGGYBACK CONTRACT BETWEEN THE TOWN AND EXPOSHOWS, INC., TO PROVIDE FIREWORKS FOR 4TH OF JULY AND NEW YEAR'S EVE IN AN AMOUNT NOT TO EXCEED \$60,000.00, UTILIZING THE CITY OF MARCO ISLAND'S FIREWORKS CONTRACT #2022-007, AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT, EXPEND BUDGETED FUNDS, AND TAKE ALL APPROPRIATE ACTIONS TO CONDUCT THE FIREWORKS SHOWS; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, the Town wishes to provide a firework show for the 4th of July and New Year's Eve; and

WHEREAS, under the Town Code, the purchase of goods 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, City of Marco Island and Exposhow, Inc., ("Exposhow") have entered into a competitively procured contract to provide a firework show to the City of Marco Island, and the Town's Finance Director has determined that piggybacking on this contract is financially advantageous to the Town; and

WHEREAS, the Town believes it is in the best interest of the Town's business owners, residents and visitors to enter into a piggyback contract with Exposhow for fireworks shows on the 4th of July and New Years Eve.

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 are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. The piggyback contract between the Town and Exposhow, attached as Exhibit "A", is approved, the Town Manager is authorized to execute the contract and expend budgeted funds on behalf of the Town, and take all appropriate actions to conduct the fireworks shows.

Section 3. If any section or portion of a section of this Resolution 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 Resolution.

Section 4. 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:

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

ADOPTED this 18th 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 Resolution was filed in the Office of the Town Clerk on this ____ day of April 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 April 2021, 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 Exposhow, Inc., a Florida foreign corporation, (“Contractor”) whose principal place of business is 2455 190th St., Suite G, Redondo Beach, CA 90278 (“Contract”). Town and Contractor may also be referred collectively as the “Parties.”

WHEREAS, Contractor and City of Marco Island, Florida entered into a competitively procured contract known as the Marco Island 4th of July Fireworks Show Contract (“Marco Island Contract”); and

WHEREAS, the Town desires to have Exposhow, Inc. provide a 20-minute 4th of July and New Year’s Eve fireworks shows (“Fireworks Shows”); 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 the Fireworks Shows, subject to the terms and conditions of the Marco Island Contract, with the specific modifications set forth herein; and

WHEREAS, the Town’s finance department director has determined that piggybacking on the Collier 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 Marco Island Contract. This Contract incorporates by reference, the Marco Island Contract, which is attached as Exhibit A.
2. Scope of Service. As set forth in the Proposal the Contractor submitted to the Town that this Contract incorporates by reference, and which is attached as Exhibit B.
3. Pricing. The Town will pay Contractor a sum not to exceed \$30,000 for the Fireworks Shows. 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 January 2, 2023. The Town has the option to renew this Contract as provided for in the Marco Island Contract.

5. Designated Representative. Alison Giesen or designee shall be the Town's Designated Representative in matters arising under this Contract.

Alison Giesen Director Culture, Parks, and Recreation
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL. 33931
alison@fmbgov.com

6. Modifications to Marco Island Contract. Notwithstanding the incorporation of the Marco Island Contract into this Contract as referenced, the Parties hereby agree to certain modifications to the Collier Contract, as follows:
- a. All references in the Marco Island Contract to terms such as "County" or "City" will be deemed to refer to the Town. In addition, all references within the Marco Island 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.

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: _____

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



28 February 2022
Exposhow Inc.

Proposal for

City of Marco Island
2022 4th of July Fireworks
ITB # 2022-007



David MacCormick
VP Sales
310-864-9616
dm@exposhow.net

Index / Table of Contents

Letter of Transmittal.....	3
Bid Submittal Forms V1-V9.....	4-13
Experience / References.....	14-20
Company Profile and Background.....	14-15
Project Management Team and Key Contacts.....	16-17
Safety Record and Staffing.....	18
References.....	19-20
Project Approach and Scope of Work.....	21-35
Project Management Methodology.....	21
Project Summary.....	22
Work Plan and Scope of Work.....	23-27
Proposed Marine Subcontractor.....	27
Industry Best Practices and the Environment.....	28
Display Elements, Shell Count and Pricing.....	30
Plot Maps, Marine Transport and Firing Site.....	31-34
Effects Descriptions.....	35
Additional Disclosures	

Exposhows Inc.

2455 190th Street Ste G
Redondo Beach, CA 90278
Tel (424) 322-8747 Fax (310) 451-7994

28 February 2022

City of Marco Island
Lina Upham
Purchasing & Risk Management
50 Bald Eagle Drive
Marco Island, FL 34145

Dear Lina,

Greetings! We are excited about an opportunity to work with the City again to produce your July 4th Fireworks Display and other events. A safe, best ever action-packed show that engages the spectators is as important to us as it is to the city and the community.

Exposhows is a professional fireworks display company staffed by licensed pyrotechnic operators with decades of aerial display experience, including hundreds of municipal public displays and large marine barge shows. Exposhows is willing to enter into a contract agreement under terms and conditions prescribed by the City. No exceptions are taken.

Annual marine and transportation cost increases remain the elephants in the room. A shrinking fireworks budget reduces our fireworks spend in these inflationary times. The display is weighted towards higher visibility big caliber shells and top shelf unique custom effects. All shells have different color rising tails to facilitate aerial shell tracking. Total display runtime is 25 minutes featuring a two and a half minute finale that incorporates 500 chained & support shells. The main display lifts 23 shells per minute of continuous firing.

A second option does not meet budget, factoring in cost increases of the past 24 months. It increases shell count by 300 shells to a robust 34 shells per minute and 27 minute display runtime. It is detailed in our bid response that follows the required City Bid Submittal forms.

Well seasoned with audio and live broadcast show choreography, music will be choreographed to the show at no additional charge if desired. No incidents involving any injury or death, property damage or safety violations have ever occurred with our company. Safety and best practices remain our number one non-negotiable priority.

Project management team credentials and experience are summarized in the attached proposal details. Our endorsements reinforce why Exposhows is the best match to continue bringing the safest, biggest, most exciting show to Marco Island. Our value-added services will ensure your expectations are exceeded. Thank you for your consideration.

Sincerely,



David MacCormick CMP
VP Sales
Exposhows Inc.

The below forms V-1 through V-9 is your bid submittal

**PART V
STANDARD FORMS**

EXHIBIT V-1
CONTRACT BID PROPOSAL

Full Name of Bidder Exposhow Inc
Main Business Address 2455 190th Street Suite G Redondo Beach CA 90278
Place of Business 17698 Beeline Highway, Jupiter FL 33478
Telephone No. (424) 322-8747 Fax No. 310-451-7994
Email: dm@exposhow.net

To: CITY MANAGER, CITY OF MARCO ISLAND, FLORIDA
(hereinafter called the Owner)

The undersigned as Bidder declares that the only person or parties interested in this Proposal as principals are those named herein; that this Proposal is made without collusion and fraud with any other person, firm or corporation; and that it has carefully examined the location of the proposed work, the proposed forms of Agreement, the Statement of Work and the Contract Drawings (if applicable) and Specifications. Further, the Bidder acknowledges receipt of Addenda as follows:

Addendum #	Date Issued	Contractor's Initials
<u>None as of 3/1/2022</u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>

Bidder proposes, and agrees if this Proposal is accepted, to contract with the Owner to furnish work in full, in complete accordance with the attached specifications according to the prices outlined in the Exhibit V-2

Signed: 

Date: 2 / 28 / 2022

David MacCormick

Print Name

VP Sales

Title

**EXHIBIT V-2
BID PRICING**

	Shell Size	Total Number of Shells	
1	3" or smaller	324 (3" Minimum)	
2	4"	288	
3	5"	207	
4	6"	162	
5	7"		
6	8" or larger	20	
		Subtotal of items 1 through 6 (lump sum)	\$ 12,389
7	Barge and tug service with all associate costs	\$ 31,980	
		Subtotal of item 7	\$ 31,980
8	Other Costs. List Below	(See Attached Line Item Costs)	
	a)	\$	
	b)	\$	
	c)	\$	
	d)	\$	
		Subtotal of item(s) 8	\$ 20,631
Length of the show (minimum 25 minutes):		<u>25</u> minutes	
GRAND TOTAL			\$ <u>65,000</u>

Total bid price in words:

Sixty Five Thousand Dollars

INCLUDE ALL ASSOCIATED COSTS FOR CANCELLATION AND POSTPONEMENT:

Show is canceled and fireworks are not used	Before 7/1/22 \$32,500	\$ 52,000 after 7/1/22
Show is postponed until the next evening		\$ 9,000

Signed: David MacCormickDate 2 / 28 / 2022Company Name: Exposhow IncName and Title: David MacCormick VP Sales

City of Marco Island July 4 Fireworks Display Line Item Cost Breakdown 25 Minute Show

1. Total number of shells to be fired (#) 1001 X \$12.38 (avg) total \$12,389
2. Pyro staff labor (#/hours) 156 X \$ 25.00 Operator \$2,450 total \$ 6,350
3. Musical Sound Track CD (2 copies) 2 x \$0.50 each total \$1
4. Transportation. Show Truck Rental/Fuel/HazMat Driver total \$ 2,540
5. City of Marco Island FD Permit Filing Fee July 4th Show total \$ 309
6. ODO (Other Direct Operating)
 - Gen Liab \$5,000,000 / USL&H Workers Comp / Trans/DOT \$6,054
 - Electronic Ignitors/ Expendables / Zip /Match /Sand / Tarps \$2,462
 - Admin / Software Lic / Production / Fed & State Lic. \$825
 - Fire Extinguishers 3@ \$30 \$90
 - Firing System/Show Equipment Mortars/Racks \$2,000
7. SubTotal **\$33,020** (Total costs for items 1 through 6)
8. SubTotal \$31,980 (Barge/Marine Pass Through Cost)
9. Tax \$0 (include at .07% for applicable line items)
10. Total Display Price **\$65,000**

Shell mix breakdown: Itemized Shell Cost includes Product Cost, Shipping, Customs Broker & Port Fees, Import Taxes, Shell Sorting and Facility Explosive Magazine Storage Costs.

324 (3" Shells) X	\$5.07	total	\$1642.68
288 (4" Shells) X	\$7.86	total	\$2,263.68
207 (5" Shells) X	\$13.97	total	\$2,891.79
162 (6" Shells) X	\$22.30	total	\$3,612.60
16 (8" Shells) X	\$86.46	total	\$1,383.36
4 (10" Shells) X	\$148.72	total	\$594.88
1001	Total Shell Count	Total	\$12,388.99

Exposhow uses US Manufacturers when possible. We purchase only the highest quality fireworks available on the open market. Manufacturers include Flower King, T-Sky, and Custom effects not found in inexpensive product. All shells include color tails to facilitate aerial break tracking

EXHIBIT V-3
REFERENCES

A list of five (5) client references within the last five years. Include name, address, telephone number, and contact person, with email address.

1. City of Orlando 400 South Orange Ave Orlando FL 32801 Stephanie Kobrin - Events 407-246-2378 Stephanie.Kobrin@cityoforlando.net	2. County of Los Angeles 4701 Admiralty Way Marina del Rey CA 90272 Senior Analyst Catrina Love 424-526-7874 Clove@bh.lacounty.gov
3. City of Redondo Beach 415 Diamond Street Redondo Beach CA 90277 Community Services Director John LaRock 310-618-2937 jlarock@torranceca.gov	4. City of Beverly Hills 455 North Rexford Drive Beverly Hills CA 90210 Magdalena Davis - Special Events (310) 295-1098 mdavis@beverlyhills.org
5. City of Marco Island 1361 Andalusia Terrace Marco Island FL 34145 Parks Manager Samantha Malloy 239-389-3917 smalloy@cityofmarcoisland.com <i>*Additional reference details in ITB Response</i>	2022 Los Angeles Rams Superbowl Fireworks LA Coliseum 700 Exposition Park Los Angeles CA 90037 Event Coordinator Rosemary Jiminez 213-744-7461 rosemary.jiminez@expositionpark.co.gov

EXHIBIT V-4
E-VERIFY

The City of Marco Island will not intentionally award publicly-funded contracts to any contractor who knowingly employs unauthorized workers, constituting a violation of the employment provisions contained in 8 U.S.C. Section 1324a(e) (Section 2274A(e) of the Immigration and Nationality Act ("INA")). The City shall consider the employment by any contractor of unauthorized aliens a violation of Section 274A(e) of the INA shall be grounds for unilateral cancellation of this Agreement by the City.

Vendor/Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system, in accordance with the terms governing use of the system, to confirm the employment eligibility of:

1. all persons employed by the Vendor/Contractor during the term of the Contract to perform employment duties within Florida; and
2. all persons, including subcontractors, assigned by the Vendor/Contractor to perform work pursuant to the contract with the Agency.

You may also sign-up for free webinars on E-Verify which are offered by the U.S. Department of Homeland Security. To see the schedule of webinars and register, click on the following link, which will take you to the US Department of Homeland Security's website: E-Verify Webinars

The Website for E-Verify is: <http://www.uscis.gov/e-verify>



(Contractor/ Architect/Engineer's Signature)

2/28/2022

Date

David McCormick VP Sales

Name and Title of Authorized Signee

Exposhow Inc.

Name of Corporation, Partnership, Trust, Etc.

EXHIBIT V-5
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY
AND VOLUNTARY EXCLUSION

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension (34 CFR, part 85, Section 85.510, Participant's Responsibilities).

"The Bidder certifies that, neither the firm nor any person associated therewith in the capacity of owner, partner, director, officer, principal, investigator, project director, manager, auditor, and/or position involving the administration of federal funds:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions, as defined in 49 CFR s29.110(a), by any federal department or agency;

(b) has within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government transaction or public contract; violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) is presently indicted for or otherwise criminally or civilly charged by a federal, state, or local governmental entity with commission of any of the offenses enumerated in paragraph 9(b) of this certification; and

(d) has within a three-year period preceding this certification had one or more federal, state, or local government public transactions terminated for cause or default.

The Bidder certifies that it shall not knowingly enter into any transaction with any subcontractor, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this project by any federal agency unless authorized by the Florida Department of Transportation."



Date 2/28/2022

Contractor's Signature

David MacCormick VP Sales

Name and Title of Authorized Signee

Exposhow Inc.

Name of Corporation, Partnership, Trust, Etc.

(SEAL)

EXHIBIT V-6
NON-COLLUSION CERTIFICATION

The undersigned hereby certifies, to the best of his or her knowledge and belief, that on behalf of the person, firm, association, or corporation submitting the bid certifying that such person, firm, association, or corporation has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise take any action, in restraint of free competitive bidding in connection with the submitted bid. Failure to submit the executed statement as part of the bidding documents will make the bid non-responsive and not eligible for award consideration.

(Proposer's Signature)



Date 2/28/2022

David MacCormick VP Sales

Name and Title of Authorized Signee

Exposhow Inc.

Name of Corporation, Partnership, Trust, Etc.

(SEAL)

EXHIBIT V-7
SWORN STATEMENT UNDER SECTION 287.133 (3)(a),
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted with Bid, Proposal or Contract No. 2022-007
For City of Marco Island July 4th Fireworks
2. This sworn statement is submitted by Exposhow Inc
(name of entity submitting sworn statement)
whose business address is: 2455 190th Street Suite G Redondo Beach CA 90278
- and its Federal Employer Identification Number (FEIN) is 80-0764509
(If the entity has no FEIN, include the Social Security Number of the individual signing this sworn statement:
_____.)
3. My name is David MacCormick and my relationship to the entity named
(please print name of individual signing) above is
Managing Partner.
4. I understand that a "public entity crime" as defined in Paragraph 287.133(1)(g), **Florida Statutes**, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision or any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
5. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), **Florida Statutes**, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
6. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), **Florida Statutes**, means:
 - a. A predecessor or successor of a person convicted of a public entity crime; or
 - b. An entity under the control any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliated" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
 - c. I understand that a "person" as defined in Paragraph 287.133(1)(e), **Florida Statutes**, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into binding contract and which bids or applies to bid on contracts for the provision of goods or

services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

d. Based on information and belief the statement that I have marked below is true in relation to the entity submitting this sworn statement. **(indicate which statement applies.)**

X Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, nor any affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one of the officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

_____ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting the sworn statement on the convicted vendor list. **(attach a copy of the final order)**

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPHS 1-3 (ONE THRU THREE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT HIS FORM IS VALID THOROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

David MacCormick

Signed on 2022/03/02 16:36:28 -500

(Signature)

03/02/2022

(Date)

STATE OF

Florida

COUNTY OF

Martin

David MacCormick

PERSONALLY APPEARED BEFORE ME, the undersigned authority, _____ who, after first being sworn by me, affixed his/her signature in the space _____ is 03/02/2022 day of _____, 20____.



NOTARY PUBLIC

Commission number: _____

Commission expires: _____

Lynnette D Navarro
Commission # HH 62068
Notary Public - State of Florida
My Commission Expires Mar 05, 2025

Notary Stamp 2022/03/02 17:36:28 PST

03/02/2022

EXHIBIT V-8
BUSINESS LICENSES

BUSINESS LICENSES

Attach copies of business licenses to this form.

City of Marco Island Business License TBA on Contract Award

EXHIBIT V-9
CHECKLIST

IMPORTANT: Sign in the spaces indicated and submit with your bid.

Bidder should check off each of the following items as the necessary action is completed:

1. The ITB has been signed.
2. Any required forms, qualification statements, etc. have been included.
3. Any addendums (if any) have been acknowledged.
4. Bid schedule is included

Exposhow Inc.

Company Name



Signature & Title

Date: 2/28/2022

Company Profile

Exposhow is a professional public fireworks display company, established in 2009 by pyrotechnic professionals to provide city and municipal agencies a company specializing in outdoor aerial firework shows for the general public. Our staff has been involved in the production and operation of large outdoor public displays for State, County and City government, theme parks, and stadium operators for thirty years. Our expertise and experience in marine based firework displays is unmatched.

Explosives and Equipment Storage facilities are located in Jupiter, FL, Palm City, FL, Mojave, CA and Santa Clarita, CA. In 2016, Exposhow expanded to operate multistate public display productions. Acquisition of a industry competitor allowed an increase in market share on a regional and local level which including Florida.

Our Admin HQ is in Redondo Beach, CA with an operations base in Stuart and Sanibel, FL. All storage sites are registered and inspected by the BATFE and County Fire Marshal(s). Company personnel and show staffing includes over 25 licensed operators and over 80 qualified and experienced public display pyrotechnicians.

Our large scale marine and barge show experience and similar engagements run deep, including over a dozen big gun offshore and marine barge displays for multiyear sponsors in the last 3 years. US Navy Fleet Week, Battleship USS Iowa, Cities of Los Angeles Redondo Beach, Marina del Rey, Catalina Island, Santa Monica, Los Angeles County & Newport Beach. Recently, barge shows for The City of Marco Island, Catalina Island and Orlando FL in 2021

Exposhow is a Federally licensed Explosives licensee authorized to store, transport and use display fireworks by the ATF. As a Hazardous Materials Shipper with USDOT Interstate operating authority, Exposhow is permitted to transport Explosives and Hazardous Materials on public roadways throughout the United States.

Exposhow has never been disqualified from a project and has never been a party to any litigation arising from one of our displays. No incidents involving any injury to any spectators or property damage has ever occurred with Exposhow or with any of our experienced operators and team members.

Safety is always the first priority and non-negotiable with any public event. Spectator audience and staff member safety will never be compromised under any circumstances. Our general liability, workers comp and transportation insurance loss runs have no losses since inception.

Close coordination with Event Staff and municipal public safety departments with clear timely communication are hallmarks that distinguish Exposhow; a detail-oriented display company with logistical expertise and demonstrated leadership qualities that result in production excellence.

Company Background

Exposhow's incorporated in 2011. Our staff has operated hundreds of outdoor public and proximate theatrical displays throughout the United States. Sponsors and locations of current public displays include Florida, California and Montana. Most sponsors are multiple year clients. Our sincerest wish is to continue working with the City of Marco Island

Past event and venue highlights of our current and former operating staff include experience with hundreds of public displays. Fireworks, Olympics, MLB, Times Square New Year's Eve, performing artists, arena shows and more, including The 2016 Grand Display at the Western Pyrotechnic Association Conference, as well as US Navy Fleet Weeks 2016-present.

Marine based Barge Firework Displays present a unique opportunity for fireworks display companies to exhibit unrestricted artistic expression, unbound from constrained shell size of urban landside shows. Use of digital electronic firing systems and display software enable us to use the entire sky from horizon to horizon with a smaller firing field footprint.

Exposhow's expanded rapidly in marine displays to operate 17 barge shows over the last 3 years. In 2020, All seven of our large scale barge shows were cancelled. Exposhow's took a significant hit, operating just two of our thirty-four scheduled July 4th outdoor public firework displays and three barge shows in 2021

Experience with production companies have been an additional avenue of growth. With over a decade of proximate, theatrical and special effects displays for Six Flags theme parks and motion picture studios, Exposhow's has gained technical pyrotechnic expertise in a diverse skill set. As such, the most qualified candidate to operate the City of Marco Island Fireworks Show.

In addition to using only the highest quality fireworks and freshest products available, Exposhow's works directly with different US manufacturers of pyrotechnic product. Our shell cost is higher but allows us to select the newest and best product from different sources for your show. If we find a way to add more as a value-added feature, we will make sure to do so to ensure that your expectations are exceeded.

As the live event industry regains more traction in 2022, Exposhow's is positioned to increase market share. Active membership in FPAG, the Florida Pyrotechnic Arts Guild has enabled Exposhow's to fully utilize local and State resources to accommodate our growth.

Project Management Team

David MacCormick- Logistics Project Manager. Federal & Multistate Licensed Fireworks Operator. 30 years of experience. Licensed ATF Explosives Importer. DOT Commercial HazMat Driver with Interstate Explosives Transport experience. Show Producer 1200 hours and 100 public fireworks displays without incident. Marine Fireworks Show Producer. US Navy Fleet Week. Malibu. City of Redondo Beach. Safety Training Director. Fabrication Team. US Army NTC Explosives Training Team. Armed Services Veteran **BS Chemistry -California State University**

Larry Ochsner – Transportation & Training Project Manager and Show Producer OSFM Licensed and Multistate Pyrotechnic Operator. Barge Show Operator. 35 years of experience. DOT Commercial HazMat Driver with Interstate Explosives Transport experience. Over 1000 hours and 60 public display fireworks. Primary HazMat Driver Trainer. Safety Board Member. US Army NTC Explosives Training Team. Armed Services Veteran. **BS Industrial Technology - Southern Illinois University**

Paul Newland - Operations. Project Manager and Show Producer. OSFM Cal Fire Licensed and Multistate Pyrotechnic Operator. 15 years of experience. DOT Commercial HazMat Driver with Interstate Explosives transport experience. Over 1000 hours and 50 Public Displays without incident. Marine & Barge Fireworks Show Producer. Primary Staff Trainer, Safety Board Member. Safety Seminar Trainer. Fabrication Team. **MS Clinical Health - California State University.**

Franklin Ponce – IT & Systems Project Manager and Show Producer. OSFM Licensed Pyrotechnic Operator with multistate experience in aerial fireworks and public displays without incident. IT and Systems Manager. Electronic equipment systems fabrication, procurement and maintenance. Special Effects equipment fabrication. R&D. Staff Trainer. Pyrotechnic Team Leader for US Navy Fleet Week, Six Flags & City of Beverly Hills **BS Business Administration - California State University**

Daniel Douglass – Facilities OSFM Licensed Pyrotechnic Operator. 30 years of experience-Commercial Driver. Over 1000 hours and 70 public firework displays Barge Show Producer. Avalon, Catalina. Marina del Rey. Facilities and Explosive Site Manager. Safety Board Member. Primary staff trainer. Show Producer. US Army NTC Explosives Training Team.

David LaVoie– Digital Engineering Fireworks Firing Systems. 30 years of experience. Display operator. Over 1000 hours and hundreds of public displays. New York Times Square. City of Boston. Montreal Intl Fireworks Competition.

Richard Morrison – Audio Engineer 35 years of experience. Show Producer and Music Choreography. Multi Emmy award winner. Digital soundtrack mastering. Existing Event Management Vendor (Event 360) for National Park Service. Washington DC **BS Audio Engineering Chico State University**

Key Contacts, Facilities and Staffing

Exposhow's Mailing Address: PO Box 6233, Jensen Beach FL 34957

Corporate Offices: 2455 190th Street Redondo Beach CA 90278

Florida Facilities: 17698 Beeline Highway Jupiter, FL 33478

California Facilities: 12701 United Street Mojave, CA 93501

Tel (424) 322-8747 Fax (310) 451-7994 www.exposhow's.net

US DOT # 2053003 BATFE FEL#9-CA-037-51-6L-01569 Exp 11/22

Tax ID: 80-0764509 DUNS 071103110 CA Corp: C3397606 Est: 2009

*David MacCormick Sales & Logistics	310-864-9616	dm@exposhow's.net
*Paul Newland Operations	661-713-6140	paul@exposhow's.net
*Larry Ochner Training & Hazmat	661-202-9120	larsox@exposhow's.net
*Franklin Ponce IT Systems	661-542-1985	franklin@exposhow's.net
*Dan Douglass Facilities/Storage	818-219-0376	dan@exposhow's.net
*Mike Rickheim Florida Operations	603-731-7935	mricks@exposhow's.net
Richard Morrison Audio Engineering	661-713-1852	

**Key Contacts are current Federal & State Licensed Pyrotechnic Operators*

The City of Marco Island July 4th Fireworks Displays will be produced by our project management team. On-Site team will be headed by a project management team member, licensed pyrotechnic operator and a minimum of four additional qualified pyrotechnic team members experienced in marine and firework barge operations.

Exposhow's personnel assigned to set up, operate the Display consists of only experienced staff members and licensed operator(s) for each display. All aspects of the Fireworks Display are conducted by Exposhow's staff and are never subcontracted to another agency or any third parties. Barge Operators are hired to supply marine platforms for barge displays.

All assigned licensed display operators and pyrotechnicians have multiple outdoor show display experience. Federal law requires that pyrotechnicians be US Citizens with no felony convictions. All Exposhow's pyrotechnicians are BATFE Employee Possessors that have completed Federal Background Checks and have received Notices of Clearance from FELC/DOJ.

All staff members are qualified and authorized to work as employee possessors under Exposhow's Inc's Federal Explosives License as required by Federal Law. With over 80 qualified pyrotechnicians and 25 licensed operators, all staff have multi-show outdoor experience and receive mandatory annual safety and pyrotechnic training.

Safety and Staff Training

Exposhow Inc, is dedicated to safe practices and the advancement of best practices in the fireworks industry. Author of several reports and publications that address best practices with respect to Fireworks Safety, Marine Discharge of Fireworks and Environmental Impact Reports, Exposhow continues to lead the way to make the industry safer and reduce the ecological impact of aerial display fireworks.

Primary focus at Exposhow is always the safety of audience and staff members and will never be compromised under any circumstances. No incidents involving any injury or death to any spectators have ever occurred with an Exposhow production or our experienced operators and team members. No incidents involving any property damage or resulting in an emergency response have ever occurred at any of our shows.

Exposhow equipment exceeds the highest standards of construction and materials. Only HDPE or steel are used to our mortar fabrication, no fiberglass or materials that present a possibility of fragmentation. Mortar rack fabrication exceeds minimum specifications set forth by regulatory agencies. Equipment is inspected before every show to ensure integrity mortar racks, solid wood mortar base plugs and mortar walls.

Firing site equipment configuration is designed to eliminate any loss of mortar or rack framing integrity in the event of a in-gun detonation or catastrophic event, ensuring safety for any person(s) proximate to the launch site. Always observing safe distances are another key cornerstone to our best practices.

Pre Display Site safety briefings for the on-site team are conducted daily prior to work with again prior to the start of the display

Only trained and experienced pyrotechnicians are assigned to Exposhow Fireworks Displays. Exposhow licensed operators and pyrotechnicians receive mandatory annual explosives and fireworks safety training. Course materials include OSHA High Hazard Injury & Illness training, First Aid and instruction on Industry Safety Protocols

Sponsor Duties

Any landside professional grade sound system including all necessary equipment, installation of such equipment and trained audio engineers for operation of audio and communication is provided by the sponsor or designated media partner

Provision of a marine safety zone, in accordance with applicable standards and meeting all requirements having jurisdiction including the US Coast Guard and/or City of Marco Island Public Safety Marine Unit throughout the entire time that the pyrotechnics (fireworks barge) arrives on station on the date of the production to keep unauthorized vessels from entering the safety zone.

Any on site labor cost, if any, not provided or performed by Expo personnel, including but not limited to, local union requirements, all proximate landside security, Police and Fire Dept standby personnel, stagehands, electricians, audio and fire control monitors, carpenters and plumbers

Coordination and cost of any non-pyrotechnical permitting with the local, state or federal government that may hold authority within the production

References and Endorsements

Bold indicates multiyear or recent Barge Display Sponsor (2018-2021) or Fire Authority

City of Marco Island, FL- Parks & Rec Manager Samantha Malloy (239) 389-3917

Los Angeles County Beaches & Harbors - Marina del Rey - Catrina Love (424) 526-7874

City of Redondo Beach, CA- Community Services Director John LaRock (310) 618-2937

City of Orlando, FL – Communication and Events Stephanie Kobrin (407)246-2378

Catalina Island, CA - Event Director Leslie Boutillier (310) 510-4249

US Navy Fleet Week Los Angeles -LA City Fire Inspector John Williams (213) 978-3650

Battleship USS Iowa Director Jonathan Williams (877) 446-9261

Los Angeles County Fire Dept - Barge Display Fire Inspector Gary Black (310) 510-0424

City of Lancaster, CA - Jason Caudle City Manager (661) 723-6000

City of Beverly Hills - Special Events Director Magdalena Davis (310) 285-1098

City of Lynwood - Recreation Services Director Rozie Carrillo (310) 603-0220 x-225

El Caballero, Encino CA - General Manager Phil Lopez (818) 654-3000

City of Truckee, CA Fire Protection District - Fire Marshal Kevin McKechnie (530) 582-7855

Six Flags Magic Mountain - Entertainment Director Pam Bugbee (661) 255-4810

Crazy Mountain Ranch, Montana - Manager Jon Delaurier (406) 686-9099

State of Montana – Deputy State Fire Marshal Sally McKenna (406) 896-4388

Santa Monica Beach Club - Event Director Jeannie Mai (310) 395-3254

Riverside County Fire Marshal - Deputy Marshal Sonia Cooley (760) 863-8886

City of Downey Fire Inspector Lee Kirby (562) 904-7348

Orange County Fire Authority - Fire Inspector Darren Johnson (714) 402-3103

City of Murrieta Recreation Services Event Director – Laura Frasso (951) 461-6110

City of Fountain Valley Fire Department – Deputy Fire Marshal Adria Smith (714) 397-1734

City of Newport Beach Fire Department - Fire Inspector Steve Michael (949) 644-3110

Selected Shows - Reference Details

Company Name: City of Lancaster
Address: 44933 Fern Ave Lancaster CA 93534
Contact Person: Ephraim Carrera – Director Community Services
Business Phone: 661-723-5825 E-Mail: ecarrera@cityoflancasterca.org
Project: July 4th & Holiday show(s) 2021 Contract \$65,000 Total Spend \$115,000
Start/Completion Date: 2020-Current Project Description: Public Aerial Display Fireworks
Choreographed to music. 30 Minutes 1420 shells. 3" – 6" shells. 20,000+ Spectators
Project Manager : Paul Newland Staff of 6 Pyrotechnicians

Company Name: Two Harbors, Catalina Island
Address: 150 Metropole Ave. Avalon CA 90704
Contact Person: Leslie Boutillier - Event Director
Business Phone: 310-510-4249 E-Mail: lboutillier@scico.com
Project: **Barge Show** 2021 Fireworks Cost: \$34,800 Total Spend \$107,500
Start/Completion Date: 2017-Current Project Description: Public Aerial Display Fireworks
Choreographed to music. 15 Minutes 795 shells. 3" – 10" shells.
Project Manager: Natalia Hervia Staff of 5 Pyrotechnicians

Company Name: County of Los Angeles - Beaches & Harbors Dept.
Address: 4701 Admiralty Way, Marina del Rey, CA 90272
Contact Person: Catrina Love – Senior Analyst
Business Phone: 424-526-7874 E-Mail: Clove@bh.lacounty.gov
Project: **Barge Show** Cost: \$260,000+ Start/Completion Date: 2016-2019
Description of project or work completed: Large Public Aerial Display Fireworks
Choreographed to music. 21 Minutes 1160 shells. 3"– 6"shells. 30,000+ Spectators

Company Name: City of Redondo Beach
Address: 415 Diamond Street, Redondo Beach CA 90277
Contact Person: John LaRock – Director Community Services
Business Phone: 310-318-0160 E-Mail: jlarock@torranceca.gov
Project: Cost: \$350,000+ Start/Completion Date: 2009-Current Description of project
or work completed: Large public Aerial Display Fireworks Outdoor Show.
Choreographed to music. 21 Minutes 1180 shells. 3" – 8" shells.
2019 Contract \$85,000 20,000+ Spectators (2020/21 was COVID cancelled)
Project Manager : Dan Douglass Staff of 5 Pyrotechnicians

Company Name: City of Orlando FL
Address: 400 South Orange Ave. Orlando FL 32801
Contact Person: Emily Bonvini Bailey - City of Orlando Communications & Events Business
Phone: 407-246-2728 E-Mail: emily.bonvini@cityoforlando.net
Project: 2021 July 4 City of Orlando Fireworks (**Inland Barge**) Start/Completion Date: 2021-25
Description of project or work completed: Large public Aerial Display Fireworks Outdoor Show.
Choreographed to music. 21 Minutes 1260 shells. 3" – 5" shells.
Project Manager - Larry Ochsner Staff of 4 Pyrotechnicians

Project Methodology

IMPLEMENTATION

Successful delivery of an exceptional public display fireworks production requires a structured approach within a clearly defined framework. The project manager and team must utilize every tool and resource to optimize the outcome. The process is built on experience and extensively documented success. It ensures all specific criteria that define the scope and success of the project are met

PROGRAM CONTENT

We are only limited by the extent of our imagination. Proposed show design, program changes, music and display choreography are offered as a starting framework or endpoint. State, stakeholder, sponsor and public input is encouraged in the interest of achieving the same vision. Shared vision leads to a collaborative effort, the best change control option we have in any client vendor relationship.

PROJECT MANAGEMENT STRATEGIES

Use only the very best, most reliable display fireworks available in the world. Fabricate the safest firing equipment possible for the viewing audience and employees. Always keep safety the primary non-negotiable priority. Hire responsible staff and trained, experienced industry veterans. Design the display with new effects and the widest variety and appropriate shell size selection. Design audio and show choreography that excites and engages the viewers and spectators and those who may view it remotely via different media sources.

PROJECT RISK IDENTIFICATION

Identification as well as managing and mitigating the project risks that will occur are central to project success. Equipment, product, transportation, safety, security, logistics, staffing and weather are significant areas of anticipated risk. Contingencies, risk owners and assigned responsibilities are Risk Register items. e.g. (Two operators assigned to the display in the event a sole operator became unavailable due to unforeseen circumstances).

PERFORMANCE

Coordination of people and activities, constant auditing and review are controls that keep Exposhow's projects on-track, on-time and within budget. Timelines for completion risks coupled with project strategy have always led to successful product delivery.

Supplier performance measurement, ultimately project health and status are constantly monitored by using Earned Value metrics. Evaluating Trend analysis of Cost and Schedule Performance Index ratios enable dynamic adjustment and change well ahead of the event horizon.

Work Plan and Technical Proposal

Project Summary

The City of Marco Island July 4th Fireworks Display continues a City tradition. The one day Independence Celebration is free and open to the public. The fireworks display is fired from a barge located in the Gulf adjacent and proximate to 130 S. Collier Blvd. Firing site and barge staging locations are detailed on Page 20

The fireworks barge shell drop and wiring site is Marco Island, FL. under authority of City of Marco Island Fire Dept. Alternate fireworks shell drop site is Orick Marine in Naples. GNFD is the AWJ for that site. Barge arrives in East Marco Bay in an area adjacent to Collier Blvd. on July 2nd. Explosives will arrive and be loaded following any required inspections.

Barge will be moved on station at the firing site on July 4th at approximately 6 p.m. Runtime of the fireworks program is 25 minutes and the fallout safety zone is 800' feet to safely accommodate maximum aerial breaking shell sizes of 10" The pyrotechnic production may be choreographed and broadcast to synchronize to an approved digital audio track. Showtime is 9:30 p.m. Fallout and safety zone perimeter during the display is a circular zone that extends in all directions from the fireworks barge.

The display incorporate aerial single shot shells, specialty shells, chained aerial shells and when appropriate, multishot devices. Our effects library includes custom shells from the world's top manufacturers including T-Sky and Flower King in addition to US, Spanish, Japanese and Italian style aerial shells manufacturers, Exposhows uses only the best and newest product available from domestic sources and overseas.

Exposhows uses Pyromate and Cobra, state of the art digital, wireless firing systems to launch choreographed displays with precise pinpoint timing. The soundtrack is mastered specifically for the event by City staff or can be produced by our our multi-E Emmy award winning audio engineer at no additional charge. Following any approvals, digital distribution and coordination with the City's media partner(s) will be completed.

All Federal, State and local licenses, permits and filings in accordance with all laws, regulations and requirements governing fireworks and City Risk Management will be provided by Exposhows. All staff including the project manager, licensed Public Display operator in charge and on-site pyrotechnicians are experienced in marine displays and authorized Federal BATFE Employee Possessors with current explosives safety training.

Equipment strike will be conducted following the conclusion of the event following return of the Barge to Naples. A post show site inspection will be conducted after clean up in conjunction with a barge representative authorized to inspect and sign off on any needed clean up and release vendor liability.

All Display elements, shell counts, plot maps and project timeline are detailed in the following technical proposal.

Project Design and Scope of Work

The Marco Island July 4th Celebration is an audiovisual celebration of the freedom of America and contemporary Florida. It showcases Marco Island as a premier beach, parks and recreation destination and our United States in form and function as universal symbols of connectivity, stability, growth and innovation. A celebration of Americas' cultural and social diversity and a salute to local veterans.

The Fireworks Finale display brings the sky to life. It celebrates July 4th and our history from the beginning to the present. The dynamic synergy of our United States is portrayed through a menagerie of light and music symbolizing greater reliance, sustainability and independence of America.

Safety and Security Plan

All Exposhow employees undergo mandatory annual Safety seminar Certification and have recent show experience. All State licensed operator(s) and pyrotechnicians are registered Federal BATFE Employee Possessors and cleared by the DOJ to handle explosives. Additional training and compliance with OSHA High Hazard Employer Workplace Injury and Illness Prevention Plan is administered to all employees.

Daily safety meetings and pre load-in safety briefings are given on-site. All Exposhow HME (HazMat Endorsed) commercial drivers participate in DOT mandated random drug testing, background checks and clearance by the TSA. Drivers are carried as additional insured on Exposhow Commercial Transportation Liability policies.

Access to the Fireworks barge is restricted. The barge will be staged in Naples, FL for equipment setup. Explosives will be delivered to the barge once the barge has been mobilized to a location in East Marco Bay in and under the authority of City of Marco Island Fire Dept. If that site is unavailable as it was in 2021, an alternate site will be at the Naples Boatyard will be utilized. An Exposhow staff member remains on-site from load-in of explosives until all unfired explosives material is secured following demobilization of the barge.

Fireworks Barge access proper on-site and on-station in the Gulf is restricted to pyrotechnic team members, barge operator staff and City of Marco Island Public Safety. In addition, access is permitted to designated City Event staff. Any and all visitors must be cleared by City Public Safety or City of Marco Island Beach Events and escorted by licensed Operator before boarding barge. Only City Public Safety or Licensed Operator has authority to permit access at their discretion.

Permit, Sponsor and Public Safety Coordination

All permits filings, fees and filings required by Federal agencies; DHS, USCG and FAA, City of Marco Island in accordance with U.S., State and local laws will be submitted by Exposhow after contract endorsement and approval. City of Marco Island, its elected officials, officers, employees, volunteers, guests, agents and public safety agencies will be listed as additional insured on Exposhow's general liability and Workers Comp policies.

Music for Fireworks Show

If desired, an audio track will be submitted to Exposhow or provided to the City for review and approval by event staff. Approved audio track may include pre-show and/or post show narration at the direction of the event director. Exposhow will coordinate the digital distribution of the audio program to the City's media partner

Pre-Event Meetings

Any pre-event firework meeting(s) or walk-through with the sponsor or public safety dept. will be attended by the project manager or one of the assigned operators for the display.

Itemized List and Delivery of Display Equipment

Equipment will be delivered to Naples Boatyard on July 1st. Equipment list includes HDPE 3" - 8" mortars and racks and 10" Steel mortars. Guns and racks are constructed in accordance with and exceeding minimum safety standards and approved rack stabilization methods. 8" and 10" mortars will be stabilized in sand filled barrels and placed remotely to the main display. Fireworks barge will be configured on July 2nd & 3rd and transported to a location in East Marco Bay on July 2nd.

Use of a digital firing system with built in safeguards consistent with safe operation and best practices. All applicable modules, cables, connectors related to the firing system. E-match, quick match and 22-2 low voltage zip wire used to connect fireworks to firing modules. Fire suppression equipment, foil and Visqueen (polyethylene plastic) and a large 50' x 50' tarp for display protection during barge transit and in the event of inclement weather conditions.

Equipment Delivery / Marine Load In

Fireworks will be delivered via secured Hazmat licensed truck to the Marco Island Fireworks Barge staging site on July 3rd or Naples Boatyard on July 1st. Hazmat Transportation Permit documents include travel route of the truck. Authority with Jurisdiction will be advised of the ETA of the truck and again when truck on-site.

Product remains secured inside the truck until such a time licensed operator in charge determines display is ready for product unloading and following any required inspection by City of Marco Island Fire Dept and/or authority with Jurisdiction. Large mortars shells will be dropped and wired on July 3rd. Explosives will be attended at all times.

Following completion of shell drop and wiring of all main display and finale chain shells, on July 4th field modules will be connected by and the field will be cleared by the Operator in Charge to prepare for system continuity checks. A loud verbal "Clear Field" announcement confirming a secure safety perimeter is made every time the firing panel is energized.

Continuity test(s) will be conducted until the display is at 100% and the entire display will be prepared and protected prior to barge departure and transit. Signal testing with the sound booth or media partner will occur when barge arrives on station by 7 p.m. An additional final continuity test will be conducted prior to 8 p.m.

Entire duration of the display from the opening shot to the final finale cue will be fired electronically and choreographed to the pre-approved audio soundtrack.

Display Description

Display contains a variety of several dozen different types of aerial breaking shell effects from different manufacturers bursting from the launch site. The display opens with a variety of show effects in all colors visible to the human eye and includes front line single shell titanium salutes and color display and effect shells.

The main body display consists of single shot and multi shot aerial shells and effect shells. Shells may be fired in tandem to a faux finale, building again in intensity for a finale that will engage multiple chained shells and single shot support shells. A breakdown of shell effect types is detailed following Display Elements.

Sky pictures are used in main body, rapidly fired choreographed sequences that create visual panoramas that represent gold waterfalls with pink stars, sunset rainbows and provide an outstanding, multi-layered horizon to horizon experience.

Display Operations

Entire duration of the display from the opening shot to the final finale cue will be fired electronically. Any preshow test shots will also be electronically fired.

After arrival of the barge to the on-station location proximate to the firing site, display will be uncovered and signal testing will be conducted with the media partner. A safety perimeter established by the Fire Marshal or Fire Safety Officer and Public Safety Marine Vessel(s) will be enforced. Any entry into the safety perimeter zone by vessels not authorized by Public Safety will immediately be challenged.

Fireworks barge will remain in final on-station position 30 minutes before the opening shot of the display and remain there until the conclusion of the show.

Display operator and pyrotechnic team will be in protective gear prior to arming firing system for continuity test(s) and the display. Protective gear includes long 100% cotton long sleeve and long pants, hard hats, eye and ear protection. Sponsor and Fire Safety Officer will be advised when continuity testing is complete.

All event staff other than barge staff, production pyrotechnicians and Fire Safety Officer must be clear of designated safety perimeter 30 minutes before display start. After the safety perimeter is clear, an all-clear signal is given by Operator and on-site Fire Safety Officer to ensure public safety.

Following a pre-show safety briefing, staff with fire suppression units will be deployed to the tugboat for the duration of the display.

Sponsor will be notified that firing system is armed and hot approximately 15 minutes before the scheduled start of the displays. Start of the display is ultimately under the control of the sound booth or media partner at the discretion of the sponsor.

All members of the public and event staff must be clear of the safety perimeter 30 minutes before display start. After the safety perimeter is clear of all persons, an all-clear is given. Firing system will be armed and hot approximately 15 minutes before the scheduled start of the display. Start of the display is ultimately under the control of the sound booth or media partner at the discretion of the pyrotechnic operator and Fire Safety Officer who makes final safety decisions.

Firing Systems in use by Exposhow contain a deadman switch that enables an immediate cease fire in the event an unsafe condition exists that may jeopardize public safety. No aerial shells are chained or ganged in the main display which prevents any additional breaking aerial shells from firing in the event of a cease fire. The display may then be resumed at the discretion of the Operator and the Fire Safety Officer.

Post Display Safety

Due to heat generated by shell lifting chages, the barge will not be inspected for 30 minutes following the conclusion of the show. It is not uncommon for unfired shells to launch following a display due to the intense heat following a finale barrage.

A post display proximate field sweep will be conducted during cool down. Team members will attempt to isolate and secure any duds or aerial shells that may have been observed to malfunction for containment. The tugboat or public safety vessels will be utilized for this procedure.

If all shells are accounted for by spotters and burst counts match, an all clear within 10 minutes of the conclusion of the display is anticipated. Following a firing field cool down, all guns will be inspected for unfired shells by the licensed Operator in Charge and an assistant.

Any unexploded ordinance will be removed, secured and stored in a safe manner before any equipment or site tear down is initiated. Removal of all explosives from the barge will be conducted following the display cool down and after return to a proximate berth or to the Naples home Port but before any equipment strike and load out.

A Post Display Report will be provided to the City of Marco Island Fire Marshal or the Fire Prevention Office within 72 hours of the conclusion of the show.

Display Equipment Strike, Clean Up

After return of the Fireworks Barge to Naples, equipment strike removes all guns, racks and associated firing equipment from the barge. Display debris and expendables will be disposed in a manner consistent with best practices.

Substrates and surfaces used to stage all equipment and pyrotechnics will be returned to their original condition following completion of the display. All debris and byproduct materials will be removed and discarded in a manner consistent with best practices and responsible project management. Weather or unforeseen conditions withstanding, Exposhow's will supply all materials and staff necessary to complete load-out and cleanup in accordance with required completion dates.

Barge representative will be required to make a final walk through inspection the barge or firing area with the lead operator to ensure compliance with contract terms and to certify any substrate has been returned to its original condition without damage.

Subcontractors

Marine Services are contracted out to Greg Orick Marine Construction of Naples FL. This is a pass through cost to the City. Marine Services invoice be found in the Fee Proposal Breakdown. Kelly Bros Marine Services may be utilized as a secondary backup subcontractor but their barge pricing starts at \$38,000.

Industry Leading Best Practices

Safety is always the first priority and non-negotiable with any public event. Our Safety Compliance operates within the scope of Fireworks Best Practices, always maintaining safe distances, using the best equipment, trained staff and vigilant in observing safe pyrotechnic operating protocols and methodology.

Advances in digital, wireless fire control systems and an increase in equipment construction minimum standards have made the pyrotechnic display industry safer for pyrotechnicians and audience members over the past two decades.

Contingency planning is always a hallmark of successful project management. Failure to plan can result in a display cancellation and compromise safety. Exposhow's plans for occurrences such as inclement weather with standby polyethylene protection for loaded fireworks batteries in the event of a cloudburst or precipitation. Use of 6mm Visqueen allows the display to be fired even during rainstorms or conditions of high humidity.

The condensed footprint of our firing site configuration allows for an additional coverings to be deployed over the entire display that allows staff the ability to continue wiring the display under cover during any constant prolonged downpour of rain.

Exposhow's maintains a Best Practices Blueprint that can be forwarded to the Evaluation Committee for review on request. It is several pages and beyond the scope of this RFP with regard to content.

Environmental Responsibilities

Aerial Fireworks used for the City of Marco Island July 4th Fireworks are comprised of biodegradable cardboard, craft paper, string, tape, glue, black powder, metal salts, (colorants) dextrin and rice. Debris is collected and disposed of after the display prior to barge movement back to home port. Of primary environmental concern is copper electronic ignition wire. Used with every shell, it is secured to each mortar via strain relief, it stays with the mortar upon launch to eliminate any environmental impact or discharge into the marine environment. All debris is collected after the display before barge returns to its home Port, an integral keystone of our Best Practices.

Any proximate theatrical and stage fireworks used are low smoke, eco-friendly, self-consuming devices with no fallout and use cardboard, nitrocellulose and colorants. Our vendor, Ultratec is the world leader in ecofriendly proximate pyrotechnics supplying the Olympics and professional sport venues

MSDS

MSDS are required by DOT in accordance with regulations governing Hazardous Materials Transportation on public roadways in the United States. MSDS for all fireworks that will be on-site are included in the transportation permit package.

Hazardous Materials Transportation

Exposhow's is a Federally licensed Hazardous Materials Shipper and has Interstate operating authority to transport Explosives and Hazardous Materials on public roadways throughout the United States.

Exposhow's USDOT #2053003 maintains all current required permits that include FMCSA Hazardous Materials Interstate Transportation Permit, FMCSA Satisfactory Rating & PHMSA Registration. Exposhow's carries a \$5,000,000 Commercial Transportation Policy, required by law to conduct Interstate Transport of Hazardous Materials.

Transportation of Hazardous Materials (Explosives and Fireworks) are done in house by Exposhow's employees who are also licensed operator(s) for the Fireworks Display. As Commercial Drivers with HazMat endorsements, they are subject to the requirements and regulations of 49 CFR that include random drug testing, physicals and DHS background checks.

Explosives Storage

In accordance with BATFE 27 CFR and DOT 49 CFR regulations that govern explosives transport and storage, no overnight explosives storage is required in the City of Marco Island as on-site explosives will be attended at all times by on-duty Exposhow's staff.

Cancellation & Acceptance of Terms and Conditions

In the unlikely event of a "show hold" due to inclement weather, high wind or unsafe conditions, Exposhow's will do all it can to operate the discharge of fireworks on the next evening but barge fees will continue to accrue. Exposhow's will minimize our additional costs to avoid sticking it to the City. We request that if there is an extended show hold until the following evening, the City accommodate a change order for additional marine services expenses and Exposhow's staff time to the contracted display price to cover any itemized 24 Hour "show hold" or late cancellation costs.

A 24 hour show hold will result in \$10,000 in additional charges. A 24 hour overtime barge charge is a pass through cost to the City of \$7,995. (see Line Item Cost Detail - Marine Services). Exposhow's waives additional charges but will accrue per diem expenses for the licensed operator and pyrotechnic crew as well as an additional day for the show strike, load out and truck lease, an estimated cost of less than \$2000.

It's extremely difficult to fix actual amount of damages from an event cancellation. Barge costs are still payable in full. All of Exposhow's labor, production and equipment costs are up front. A reasonable estimate of late cancellation fees would be 50% of the contracted price prior to July 1st barge mobilization, 80% of contract price or if the show is not fired. We'll try and negotiate a more favorable late cancellation policy with the marine operator.

Exposhow's is willing to enter into a contract agreement under the terms and conditions prescribed by City of Marco Island. It is our intention to streamline the production process by utilizing feedback to shape the show with the synergy of a shared vision.

Display Elements and Pricing

Shell count and device totals are listed and will be sent with permit filings for review and approval by City of Marco Island Fire Marshal.

Specialty custom shells used to enhance the audience experience are made in the United States. Exposhow's is proud to support American manufacturers whenever possible.

Shell Size / Effect / Device	Shell Count	
	BID COUNT	OPTION B
Opening Barrage & Main Display		
3" Main Display Shells	144	144
4" Main Display Shells	144	200
5" Main Display Shells	126	200
6" Main Display Shells	126	200
8" Main Display Shells	8	6
10" Main Display Shells	8	10
Aerial Grand Finale		
3" Shells (Chain Finale)	180	240
4" Shells (Chain Finale)	144	180
5" Display Shells	81	90
6" Display Shells	36	36
8" Display Shells	2	2
10" Display Shells	2	4
Total Shell Count / Run Time / Price		
Breaking Shell Total*	1001*	1302*
Main Display Shells (Lift Rate Average)	23/ min	34/min
Finale Run Time	2 ½ min	2 ½ min
Total Show Run Time	25 min	27 min
Display Price Subtotal	\$33,020	\$38,800
Marine Services (Barge Costs)	\$31,980	\$31,980
Total Price	\$65,000	\$70,780

*As an operating standard and value added feature, Exposhow's displays and permit filings have additional product above listed total count to ensure compliance with contracted minimum shell count.

Plot Maps / Firing Site Location / Barge Transit

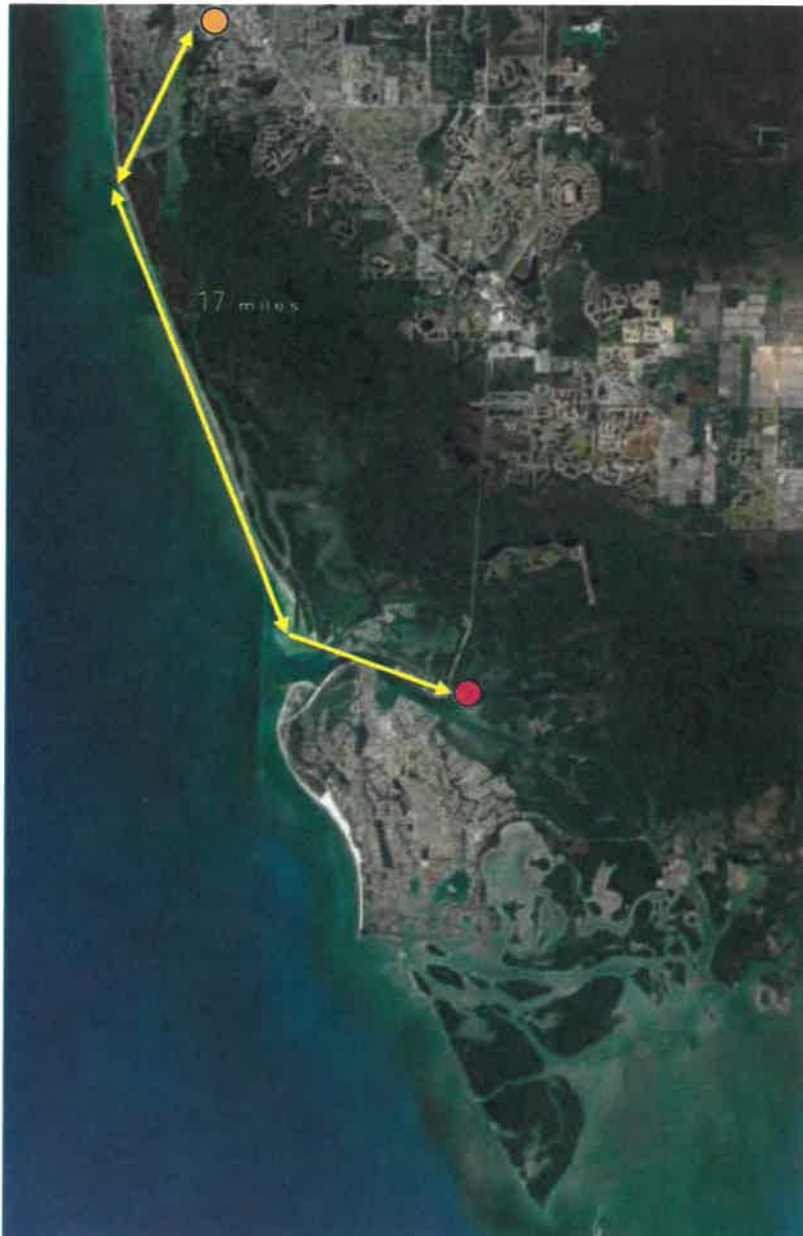
130 S. Collier Blvd Adjacent or TBA, Marco Island, FL 34145



Plot Map I ● 25° 55' 54.89" North 81° 44' 11.17" West Long Elevation 0'
10" Aerial Shell Safety Perimeter Zone – 1000'

Fireworks Barge Transit / Staging

July 2, 2022 Naples to East Marco Bay Staging Site



Plot Map II Barge Transit -Naples to Marco Island (17 miles)

● Naples Barge Co. Greg Orick Marine Construction

● Barge Staging Location East Marco Bay - Proximate to Firing Site

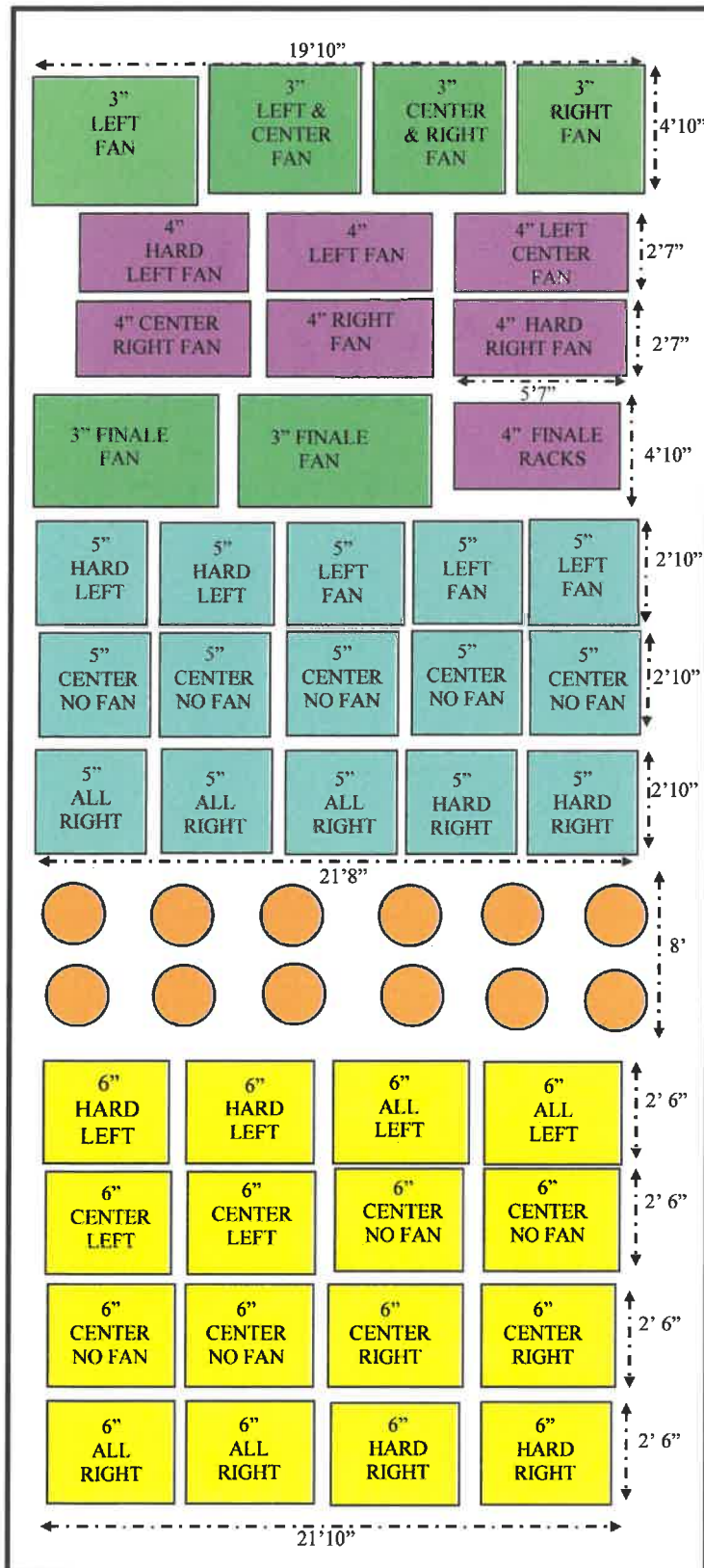
Fireworks Barge Transit / Staging to Firing Site



Plot Map III July 4th Barge Transit – Staging Site to Firing Site (2.5 miles)

- East Marco Bay – Barge Staging and Explosives Load In Site
- Firing Site

SPECTATORS ON SHORE



BARGE 60' X 24' RACK AND GUN CONFIGURATION

10 RACK PODS - LEFT L/C & R/C & 8 RACK RIGHT
4 PODS OF 8 RACKS (320 3" GUNS)

6 RACK PODS 24 RACKS LEFT 24 CENTER & 24 RACKS RIGHT
10 PODS OF 6 RACKS (240 4" GUNS)

10 RACK FINALE FANS (3 INCH) 12 RACKS 4" FINALE
(200 3 INCH GUNS & 48 4" GUNS)

5 RACK PODS 25 RACKS LEFT 25 CENTER 25 RIGHT
(207 5" GUNS)

12 55 GALLON DRUM BARRELS (2' DIAMETER
(EACH BARREL CONTAINS 1 8' AND 1 10" MORTAR)
(8 8" GUNS AND 12 10" GUNS)

6 RACK PODS 36 RACKS LEFT 36 CENTER 36 RIGHT
(162 6' GUNS)

TOTAL SHELLS 10011 3" 324 4" 288 5" 207 6" 162 8" 10" 12

2022 City of Marco Island July 4th Fireworks Displays – Effect Inventory

Most Effect Categories below contain dozen of different effects with similar performance characteristics. Standard and custom special effects within a category have been detailed for reference. Each effect in a category is further defined by color or color(s)

Exposhow uses a balance of shells in all categories and all colors of the visible light spectrum for a specific Display Mix. Various Reds, Orange, Yellows, Greens, Blues, Indigo, Violet, Lime, Lemon, Aqua, Pink, Whites, Silvers and Golds are all employed for every show. All shells have rising tails in different colors to facilitate visual shell tracking by the spectators.

..... (Main Display and Finale Support Shells)

- 3" - 6" Floral Pattern Shells Peony/Gamboge/Cyas / Dahlia / Diadem / Chrysanthemum
- 3" - 8" Specialty Floral Pattern Effects with 2 Color Changing Pistil Core Effect Shells
- 3" - 8" Duration/Lingering Effects Strobes/Willow/Stars/Falling Leaves/Spiders
- 3" - 10" Multi-Break / Multi Break Dragons Egg / 1000 Flowers Color Effect Shells
- 3" - 10" Scattering Bees / Flying Dragon /Crossette / Shooting stars /Spining Flowers
- 3" - 10" Pattern Shells Hearts/ Saturn/ Happy Face/ Ring / Bowtie /Multi Rings
- 3" - 10" Specialty Effects 3 Color Changing with Palm or Strobe Core Effect Shells
- 3" - 10" Palm, Dahlia, Diadem & Color Changing Chrysanthemum Multi-Effect Shells
- 3" - 10" Single, Two & Three Color Waves. Color Changing Waves w/ Brocade Crown
- 3" - 10" Brocade Crown. Coconut, Cascade, Crown & Willow Shell Effects
- 3" - 10" Kamuro / Super Brocade / Gamboge Effect Shells
- 5" - 10" Super Pattern Stained Glass / Kaleidoscope / Rainbow Effects
- 5" - 10" Super Custom Octopus / Jellyfish /Ghost Effect Shells
- 3" - 4" Super Crackling / Whistles / Super Peony Titanium Salute Report Shells
- 4" - 6" Lampare, Dragons Eggs / Fish & Serpent Effect Shells
- 5" - 8" New Pattern Cat Face /Alien / Snail / Windmill / Stars in Stars / Jupiter
- 5" - 8" Falling Duration Lantern / Windbell / Waterfall / Horse Tail Effect Shells
- 3" - 6" Comet / Tiger Tail / Palm Tree / Coconut Tree Shell Effects
- 3" - 6" Sicilian Sky Picure Panorama Gold Waterfall with Pink Stars (40 Shell Effect)

FINALE CHAIN EFFECTS

- 3"-6" Finale Chain Red, White & Blue Color Display Shells
- 3"-4" Finale Chain Color Shells with Titanium Salutes
- 3"-6" Finale Chain Gold Brocade
- 3"-6" Finale Chain Gold Kamuro
- 3"-6" Finale Chain Niagara Falls with Blue Pistil
- 3"-4" Finale Chain Multi Color Peony with Report
- 3" Finale Chain Titanium Salute



Welcome
David MacCormick

≡ MENU

Company Information

Company Name
Exposhow Inc.

Company ID Number
1527520

Doing Business As (DBA) Name
Exposhow Inc.

DUNS Number
071103110

Physical Location

Address 1
2455 190th Street

Address 2
Suite G

City
Redondo Beach

State
CA

Zip Code
90278

County
LOS ANGELES

Mailing Address

Address 1
PO Box 5590

Address 2
--

City
Santa Monica

State
CA

Zip Code

Statement of Non-Discrimination

Exposhow Inc. is an equal opportunity employer and does not discriminate in employment on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, political affiliation, sexual orientation, marital status, disability, genetic information, age, membership in an employee organization, retaliation, parental status, military service, or other non-merit factor.”

Request for Taxpayer Identification Number and Certification

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Give Form to the
requester. Do not
send to the IRS.

Print or type.
See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. Exposhows Inc.	
2 Business name/disregarded entity name, if different from above	
3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. ☐ Individual/sole proprietor or single-member LLC ☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. ☐ Other (see instructions) ►	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>
5 Address (number, street, and apt. or suite no.) See instructions. 2455 100th Street Suite G	Requester's name and address (optional) City of Marco Island 52 South Eagle Drive Marco Island FL 34145
6 City, state, and ZIP code Redondo Beach CA 90278	
7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number								
			-				-	
OR								
Employer identification number								
8	0	-	0	7	6	4	5	0
								9

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign
Here

Signature of
U.S. person ► **[Signature]**

Date ► **4/18/2021**

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Search by Entity Name](#) /

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exposhows

No Events No Name History

Detail by Entity Name

Foreign Profit Corporation

EXPOSHOWS INC.

Filing Information

Document Number F20000005257

FEI/EIN Number 80-0764509

Date Filed 11/19/2020

State CA

Status ACTIVE

Principal Address

2455 190TH ST, STE. G
REDONDO BEACH, CA 90278

Mailing Address

P.O. BOX 5590
SANTA MONICA, CA 90409

In accordance with the provisions of Title XI, Organized Crime Control Act of 1970, and the regulations issued thereunder (27 CFR Part 555), you may engage in the activity specified in this license or permit within the limitations of Chapter 40, Title 18, United States Code and the regulations issued thereunder, until the expiration date shown. **THIS LICENSE IS NOT TRANSFERABLE UNDER 27 CFR 555.53.** See "WARNINGS" and "NOTICES" on reverse.

Direct ATF
Correspondence To
ATF - Chief, FELC
244 Needy Road
Martinsburg, WV 25405-9431

License/Permit
Number

9-CA-037-51-2L-01569

Chief, Federal Explosives Licensing Center (FELC)

Expiration
Date

November 1, 2022

Name
EXPOSHOWS

Premises Address (Changes? Notify the FELC at least 10 days before the move.)

2455 190TH STREET SUITE G
REDONDO BEACH, CA 90278-

Type of License or Permit

51-IMPORTER OF EXPLOSIVES

Purchasing Certification Statement

The licensee or permittee named above shall use a copy of this license or permit to assist a transferor of explosives to verify the identity and the licensed status of the licensee or permittee as provided by 27 CFR Part 555. The signature on each copy must be an original signature. A faxed, scanned or e-mailed copy of the license or permit with a signature intended to be an original signature is acceptable. The signature must be that of the Federal Explosives Licensee (FEL) or a responsible person of the FEL. I certify that this is a true copy of a license or permit issued to the licensee or permittee named above to engage in the business or operations specified above under "Type of License or Permit."

Mailing Address (Changes? Notify the FELC of any changes.)

EXPOSHOWS
PO BOX 5590
SANTA MONICA, CA 90409-

Licensee Permittee Responsible Person Signature

Position Title

Printed Name

Date

Previous Edition is Obsolete

EXPOSHOWS 2455 190TH STREET SUITE G 90278-9-CA-037-51-2L-01569 November 1, 2022 51-IMPORTER OF EXPLOSIVES

ATF Form 5400.14-5400.15 Part I
Revised October 2011



U.S. Department of Transportation
Federal Motor Carrier Safety Administration

1200 New Jersey Ave., S.E. Washington, DC 20590

April 13, 2020

In reply refer to:
USDOT Number: 2053003

DAVID MACCORMICK
PRESIDENT
EXPOSHOVS INC
PO BOX 5590
SANTA MONICA, CA 90409

Dear DAVID MACCORMICK:

HAZARDOUS MATERIALS SAFETY PERMIT
HM Safety Permit ID: US-2053003-CA-HMSP
Effective Date: April 13, 2020

The Hazardous Materials Safety Permit (HMSP) is verification of the motor carrier's permission to engage in the transportation of hazardous materials listed in 49 CFR 385.403 by motor vehicle in interstate, intrastate, or foreign commerce.

This HMSP will be effective beginning April 13, 2020 and remain effective through March 31, 2022 if your company maintains compliance with the requirements pertaining to the safe and secure movement of hazardous materials for the protection of the public (49 CFR 385 and other applicable Federal Motor Carrier Safety Regulations and Hazardous Material Regulations). Failure to maintain compliance will constitute sufficient grounds for suspension or revocation of this authority.

Willful and persistent noncompliance with applicable safety fitness regulations as evidenced by a Department of Transportation safety fitness rating less than "Satisfactory" or by other indicators, could result in a proceeding requiring the holder of this permit to show cause as to why this authority should not be suspended or revoked.

For questions regarding this document you may contact the FMCSA Hazardous Materials Division at 202-366-6121.

Sincerely,

Joseph P. DeLorenzo
Director, Office of Enforcement and Compliance



**HAZARDOUS MATERIALS
CERTIFICATE OF REGISTRATION
FOR REGISTRATION YEAR(S) 2020-2021**

Registrant: EXPOSHOWS INC.
ATTN: David MacCormick
PO BOX 5590
SANTA MONICA, CA 90409

This certifies that the registrant is registered with the U.S. Department of Transportation as required by 49 CFR Part 107, Subpart G.

This certificate is issued under the authority of 49 U.S.C. 5108. It is unlawful to alter or falsify this document.

Reg. No: 081120550034C Effective: July 1, 2021 Expires: June 30, 2022

HM Company ID: 169109

Record Keeping Requirements for the Registration Program

The following must be maintained at the principal place of business for a period of three years from the date of issuance of this Certificate of Registration:

- (1) A copy of the registration statement filed with PHMSA; and
- (2) This Certificate of Registration

Each person subject to the registration requirement must furnish that person's Certificate of Registration (or a copy) and all other records and information pertaining to the information contained in the registration statement to an authorized representative or special agent of the U. S. Department of Transportation upon request.

Each motor carrier (private or for-hire) and each vessel operator subject to the registration requirement must keep a copy of the current Certificate of Registration or another document bearing the registration number identified as the "U.S. DOT Hazmat Reg. No." in each truck and truck tractor or vessel (trailers and semi-trailers not included) used to transport hazardous materials subject to the registration requirement. The Certificate of Registration or document bearing the registration number must be made available, upon request, to enforcement personnel.

For information, contact the Hazardous Materials Registration Manager, PHH-52, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590, telephone (202) 366-4109.

30 March 2022
Exposhow Inc.

Proposal for

Town of Fort Myers Beach, Florida
2022 Independence Fireworks Display
July 4th



David MacCormick VP Sales
Tel: 310-864-9616
dm@exposhow.net

Index / Table of Contents

Letter of Transmittal.....	3
Experience and Ability.....	4-9
Company Profile.....	4
Company Background.....	5
Project Management Team and Key Contacts.....	6-7
Safety and Staff Training.....	8
Best Practices & Environmental Responsibilities.....	9
Project Management Methodology.....	10
Technical Proposal	11-19
Project Summary.....	11
Safety and Security Plan.....	12
Scope of Work.....	13-16
Risk Management, Storage and Transportation.....	17
Display Elements & Pricing	18-21
Firing Site Plot Map(s) / Configuration.....	18-19
Shell Count /Display Summary and Pricing	20
List of Effect Descriptions.....	21
References.....	22-23

Exposhow Inc.

2455 190th Street Ste G
Redondo Beach, CA 90278
Tel (424) 322-8747 Fax (310) 451-7994

March 30, 2022

Alison Giesen
Director Culture, Parks & Recreation
Town of Fort Myers Beach
2731 Oak Street
Fort Myers Beach, FL 33931

Dear Alison,

Hope all's well. We are excited about the opportunity to be selected as the vendor to operate the Town of Fort Myers Beach Independence Fireworks Display. A safe, best ever action-packed show is as important to us as it is to the town and the community. Our proposal outlines your Display for Monday, July 4th.

Exposhow is a professional fireworks display company well seasoned in operating public displays. Staffed by veteran professionals with decades of aerial display experience, past events include hundreds of large municipal public displays. No incidents involving any injury or death, property damage or safety violations have ever occurred with our company. Safety remains our number one non-negotiable priority.

Exposhow puts more breaking aerial shells and effects in the air than competitors with breathtaking choreography and precision. Over 1,100 breaking aerial shells for your display. A 400 shell plus 2 minute finale follows an 19 minute main display lifting over 37 shells per minute. Display Element breakdown and pricing is located on Page 20.

Project management team credentials and experience are detailed in our proposal. Our Statement of Qualifications and endorsements reinforce why Exposhow is the best match to to bring the safest, biggest, most exciting show ever to the Town.

Sincerely,



David MacCormick CMP
VP Sales
Exposhow Inc.

Company Profile

Exposhow is a professional public fireworks display company, established in 2009 by pyrotechnic professionals to provide city and municipal agencies a company specializing in outdoor aerial firework shows for the general public. Our staff has been involved in the production and operation of large outdoor public displays for State, County and City government, theme parks, and stadium operators for thirty years. Our expertise and experience in marine based firework displays is unmatched.

Explosives and Equipment Storage facilities are located in Jupiter, FL, Palm City, FL, Mojave, CA and Santa Clarita, CA. In 2016, Exposhow expanded to operate multistate public display productions. Acquisition of a industry competitor allowed an increase in market share on a regional and local level which including Florida.

Our Admin HQ is in Redondo Beach, CA with an operations base in Stuart and Sanibel, FL. All storage sites are registered and inspected by the BATFE and County Fire Marshal(s). Company personnel and show staffing includes over 25 licensed operators and over 80 qualified and experienced public display pyrotechnicians.

Our large scale and marine show experience and similar engagements run deep, including over a dozen big gun and marine barge displays for multiyear sponsors in the last 3 years. Recently, in 2021 barge shows for City of Marco Island, Catalina Island and Orlando FL. In addition, US Navy Fleet Week, Cities of Los Angeles, Redondo Beach, Marina del Rey, Catalina Island, Santa Monica, & Newport Beach. In February, Exposhow operated the 2022 NFL Superbowl Fireworks at multiple Los Angeles City locations.

Exposhow is a Federally licensed Explosives licensee authorized to store, transport and use display fireworks by the ATF. As a Hazardous Materials Shipper with USDOT Interstate operating authority, Exposhow is permitted to transport Explosives and Hazardous Materials on public roadways throughout the United States.

Exposhow has never been a party to any litigation arising from one of our displays. No incidents involving any injury to any spectators or property damage has ever occurred with Exposhow or with any of our experienced operators and team members.

Safety is always the first priority and non-negotiable with any public event. Spectator audience and staff member safety will never be compromised under any circumstances. Our general liability, workers comp and transportation insurance loss runs have no losses since inception.

Close coordination with Event Staff and municipal public safety departments with clear timely communication are hallmarks that distinguish Exposhow; a detail-oriented display company with logistical expertise and demonstrated leadership qualities that result in production excellence.

Company Background

Exposhow's incorporated in 2011. Our staff has operated hundreds of outdoor public and proximate theatrical displays throughout the United States. Sponsors and locations of current public displays include Florida, California and Montana. Most sponsors are multiple year clients. Our sincerest wish is to work with the Town of Fort Myers Beach.

Past event and venue highlights of our current and former operating staff include experience with hundreds of public displays. The 2022 Superbowl Fireworks, Olympics, MLB, Times Square New Year's Eve, performing artists, arena shows and more, including The 2016 Grand Display at the Western Pyrotechnic Association Conference, as well as US Navy Fleet Weeks 2016-present.

Marine and Beach Firework Displays present a unique opportunity for fireworks display companies to exhibit unrestricted artistic expression. Use of digital electronic firing systems and display software enable us to use the entire sky from horizon to horizon with a smaller firing field footprint.

Exposhow's expanded rapidly in marine displays to operate 17 barge shows over the last 3 years. In 2020, All seven of our large scale barge shows were cancelled. Exposhow's took a significant hit, operating just two of our thirty-four scheduled July 4th outdoor public firework displays and three barge shows in 2021

Experience with production companies have been an additional avenue of growth. With over a decade of proximate, theatrical and special effects displays for Six Flags theme parks and motion picture studios, Exposhow's has gained technical pyrotechnic expertise in a diverse skill set. As such, the most qualified candidate to operate the Town of Fort Myers Beach Firework Shows.

In addition to using only the highest quality fireworks and freshest products available, Exposhow's works directly with different US manufacturers of pyrotechnic product. Our shell cost is higher but allows us to select the newest and best product from different sources for your show. If we find a way to add more as a value-added feature, we will make sure to do so to ensure that your expectations are exceeded.

As the live event industry regains more traction in 2022, Exposhow's is positioned to increase market share. Active membership in FPAG, the Florida Pyrotechnic Arts Guild has enabled Exposhow's to fully utilize local and State resources to accomodate our growth.

Project Management Team

David MacCormick- Logistics Project Manager. Federal & Multistate Licensed Fireworks Operator. 30 years of experience. Licensed ATF Explosives Importer. DOT Commercial HazMat Driver with Interstate Explosives Transport experience. Show Producer 1200 hours and 100 public fireworks displays without incident. Marine Fireworks Show Producer. US Navy Fleet Week. Malibu. City of Redondo Beach. Safety Training Director. Fabrication Team. US Army NTC Explosives Training Team. Armed Services Veteran **BS Chemistry -California State University**

Michael Rickheim – FL Operations Project Manager and Show Producer Multistate Licensed Pyrotechnic Show Operator. 15 years of experience. DOT Commercial HazMat Driver with Interstate Explosives Transport experience. Over 1000 hours and 70 public display fireworks. Primary HazMat Driver Trainer. Safety Board Member.

Larry Ochsner – Transportation & Training Project Manager and Show Producer OSFM Licensed and Multistate Pyrotechnic Operator. Barge Show Operator. 35 years of experience. DOT Commercial HazMat Driver with Interstate Explosives Transport experience. Over 1000 hours and 60 public display fireworks. Primary HazMat Driver Trainer. Safety Board Member. US Army NTC Explosives Training Team. Armed Services Veteran. **BS Industrial Technology - Southern Illinois University**

Paul Newland - Operations. Project Manager and Show Producer. Licensed and Multistate Pyrotechnic Operator. 15 years of experience. DOT Commercial HazMat Driver with Interstate Explosives transport experience. Over 1000 hours and 50 Public Displays without incident. Marine & Barge Fireworks Show Producer. Primary Staff Trainer, Safety Board Member. **MS Clinical Health - California State University.**

Franklin Ponce – IT & Systems Project Manager and Show Producer. OSFM Licensed Pyrotechnic Operator with multistate experience in aerial fireworks and public displays without incident. IT and Systems Manager. Electronic equipment systems fabrication, procurement and maintenance. Special Effects equipment fabrication. R&D. Staff Trainer. Pyrotechnic Team Leader for US Navy Fleet Week, Six Flags & City of Beverly Hills **BS Business Administration - California State University**

Daniel Douglass – Facilities OSFM Licensed Pyrotechnic Operator. 30 years of experience-Commercial Driver. Over 1000 hours and 70 public firework displays Barge Show Producer. Avalon, Catalina. Marina del Rey. Facilities and Explosive Site Manager. Safety Board Member. Primary staff trainer. Show Producer. US Army NTC Explosives Training Team.

Richard Morrison – Audio Engineer 35 years of experience. Show Producer and Music Choreography. Multi Emmy award winner. Digital soundtrack mastering. Existing Event Management Vendor (Event 360) for National Park Service. Washington DC **BS Audio Engineering Chico State University**

Key Contacts, Facilities and Staffing

Exposhow's Mailing Address: PO Box 6233, Jensen Beach FL 34957

Corporate Offices: 2455 190th Street Redondo Beach CA 90278

Florida Facilities: 17698 Beeline Highway Jupiter, FL 33478

California Facilities: 12701 United Street Mojave, CA 93501

Tel (424) 322-8747 Fax (310) 451-7994 www.exposhow's.net

US DOT # 2053003 BATFE FEL#9-CA-037-51-6L-01569 Exp 11/22

Tax ID: 80-0764509 DUNS 071103110 CA Corp: C3397606 Est: 2009

*David MacCormick	Sales & Logistics	310-864-9616	dm@exposhow's.net
*Paul Newland	Operations	661-713-6140	paul@exposhow's.net
*Larry Ochner	Training & Hazmat	661-202-9120	larsox@exposhow's.net
*Franklin Ponce	IT Systems	661-542-1985	franklin@exposhow's.net
*Dan Douglass	Facilities/Storage	818-219-0376	dan@exposhow's.net
*Mike Rickheim	Florida Operations	603-731-7935	mricks@exposhow's.net
Richard Morrison	Audio Engineering	661-713-1852	

**Key Contacts are current Federal & State Licensed Pyrotechnic Operators*

The Town of Fort Myers Beach July 4th Fireworks Display will be produced by our project management team. On-Site team will be headed by a project management team member, licensed pyrotechnic operator and a minimum of four additional qualified pyrotechnic team members experienced in marine and firework barge operations.

Exposhow's personnel assigned to set up, operate the Display consists of only experienced staff members and licensed operator(s) for each display. All aspects of the Fireworks Display are conducted by Exposhow's staff and are never subcontracted to another agency or any third parties.

All assigned licensed display operators and pyrotechnicians have multiple outdoor show display experience. Federal law requires that pyrotechnicians be US Citizens with no felony convictions. All Exposhow's pyrotechnicians are BATFE Employee Possessors that have completed Federal Background Checks and have received Notices of Clearance from FELC/DOJ.

All staff members are qualified and authorized to work as employee possessors under Exposhow's Inc's Federal Explosives License as required by Federal Law. With over 80 qualified pyrotechnicians and 25 licensed operators, all staff have multi-show outdoor experience and receive mandatory annual safety and pyrotechnic training.

Safety and Staff Training

Exposhow Inc, is dedicated to safe practices and the advancement of best practices in the fireworks industry. Author of several reports and publications that address best practices with respect to Fireworks Safety, Marine Discharge of Fireworks and Environmental Impact Reports, Exposhow continues to lead the way to make the industry safer and reduce the ecological impact of aerial display fireworks.

Primary focus at Exposhow is always the safety of audience and staff members and will never be compromised under any circumstances. No incidents involving any injury or death to any spectators have ever occurred with an Exposhow production or our experienced operators and team members. No incidents involving any property damage or resulting in an emergency response have ever occurred at any of our shows.

Exposhow equipment exceeds the highest standards of construction and materials. Only HDPE or steel are used to our mortar fabrication, no fiberglass or materials that present a possibility of fragmentation. Mortar rack fabrication exceeds minimum specifications set forth by regulatory agencies. Equipment is inspected before every show to ensure integrity mortar racks, solid wood mortar base plugs and mortar walls.

Firing site equipment configuration is designed to eliminate any loss of mortar or rack framing integrity in the event of a in-gun detonation or catastrophic event, ensuring safety for any person(s) proximate to the launch site. Always observing safe distances are another key cornerstone to our best practices.

Pre Display Site safety briefings for the on-site team are conducted daily prior to work with again prior to the start of the display

Only trained and experienced pyrotechnicians are assigned to Exposhow Fireworks Displays. Exposhow licensed operators and pyrotechnicians receive mandatory annual explosives and fireworks safety training. Course materials include OSHA High Hazard Injury & Illness training, First Aid and instruction on Industry Safety Protocols

Sponsor Duties

Any landside professional grade sound system including all necessary equipment, installation of such equipment and trained audio engineers for operation of audio and communication is provided by the sponsor or designated media partner.

Provision of a safety zone, in accordance with applicable standards and meeting all requirements having jurisdiction including the Town of Fort Myers Beach and Public Safety throughout the entire time that the pyrotechnics arrives on site until load out and departure.

Any on site labor cost, if any, not provided or performed by Expo personnel, including but not limited to, local union requirements, all proximate landside security, Police and Fire Dept standby personnel, stagehands, electricians, audio and fire control monitors, carpenters and plumbers

Coordination and cost of any non-pyrotechnical permitting with the local, state or federal government that may hold authority within the production

Industry Leading Best Practices

Safety is always the first priority and non-negotiable with any public event. Our Safety Compliance operates within the scope of Fireworks Best Practices, always maintaining safe distances, using the best equipment, trained staff and vigilant in observing safe pyrotechnic operating protocols and methodology.

Advances in digital, wireless fire control systems and an increase in equipment construction minimum standards have made the pyrotechnic display industry safer for pyrotechnicians and audience members over the past two decades.

Contingency planning is always a hallmark of successful project management. Failure to plan can result in a display cancellation and compromise safety. Exposhow's plans for occurrences such as inclement weather with standby polyethylene protection for loaded fireworks batteries in the event of a cloudburst or precipitation. Use of 6mm Visqueen allows the display to be fired even during rainstorms or conditions of high humidity.

The condensed footprint of our firing site configuration allows for additional coverings to be deployed over the entire display that allows staff the ability to continue wiring the display under cover during any constant prolonged downpour of rain.

Exposhow's maintains a Best Practices Blueprint that can be forwarded to the Evaluation Committee for review on request. It is several pages and beyond the scope of this RFP with regard to content.

Environmental Responsibilities

Aerial Fireworks used for the Town of Fort Myers Beach July 4th Display are comprised of biodegradable cardboard, craft paper, string, tape, glue, black powder, metal salts, (colorants) dextrin and rice. Debris is collected and disposed of in a responsible manner after the display prior to staff departure. Of primary environmental concern is copper electronic ignition wire. Used with every shell, it is secured to each mortar via strain relief. In this manner, e-match stays with the mortar upon launch of the shell to eliminate any environmental impact or discharge of coated copper wire into a marine or park environment. It's collected after the display, an keystone of our Best Practices.

Any proximate theatrical and stage fireworks used are low smoke, eco-friendly, self-consuming devices with no fallout and use cardboard, nitrocellulose and colorants. Our vendor, Ultratec is the world leader in ecofriendly proximate pyrotechnics supplying the Olympics and professional sport venues

MSDS

MSDS are required by DOT in accordance with regulations governing hazardous Materials Transportation on public roadways in the United States. MSDS for all fireworks that will be on-site are included in the transportation permit package.

Project Management Methodology

IMPLEMENTATION

Successful delivery of an exceptional public display fireworks production requires a structured approach within a clearly defined framework. The project manager and team must utilize every tool and resource to optimize the outcome. The process is built on experience and extensively documented success. It ensures all specific criteria that define the scope and success of the project are met.

PROGRAM CONTENT

We are only limited by the extent of our imagination. Proposed show design, program changes, music and display choreography are offered as a starting framework or endpoint. State, stakeholder, sponsor and public input is encouraged in the interest of achieving the same vision. Shared vision leads to a collaborative effort, the best change control option we have in any client vendor relationship.

PROJECT MANAGEMENT STRATEGIES

Use only the very best, most reliable display fireworks available in the world. Fabricate the safest firing equipment possible for the viewing audience and employees. Always keep safety the primary non-negotiable priority. Hire responsible staff and trained, experienced industry veterans. Design the display with new effects and the widest variety and appropriate shell size selection. Design audio and show choreography that excites and engages the viewers and spectators and those who may view it remotely via different media sources.

PROJECT RISK IDENTIFICATION

Identification as well as managing and mitigating the project risks that will occur are central to project success. Equipment, product, transportation, safety, security, logistics, staffing and weather are significant areas of anticipated risk. Contingencies, risk owners and assigned responsibilities are Risk Register items. e.g. (Two operators assigned to the display in the event a sole operator became unavailable due to unforeseen circumstances).

PERFORMANCE

Coordination of people and activities, constant auditing and review are controls that keep Exposhow projects on-track, on-time and within budget. Timelines for completion risks coupled with project strategy have always led to successful product delivery.

Supplier performance measurement, ultimately project health and status are constantly monitored by using Earned value metrics. Evaluating Trend analysis of Cost and Schedule Performance Index ratios enable dynamic adjustment and change well ahead of the event horizon.

Technical Proposal

Project Summary

The Town of Fort Myers Beach July 4th Fireworks Display continues a Town tradition, the one day Independence Celebration is free and open to the public. The fireworks display is fired from the Fishing Pier proximate to 950 Estero Blvd, Fort Myers Beach, FL

Runtime of the fireworks program is 21 minutes and showtime is 9 p.m. or TBA. The action packed display lifts 37 shells per minute of continuous firing with a 440 shell grand finale. Fallout and safety zone perimeter during setup and the display is a circular zone that extends in all directions from the launch site with a minimum 350 foot radius.

The fallout safety zone is a diameter of 740' feet to safely accommodate maximum aerial breaking shell sizes of 5". If desired, the pyrotechnic production is choreographed and broadcast to synchronize to an approved digital audio track at no additional charge.

The displays incorporate aerial single shot shells, specialty shells, chained aerial shells and when appropriate, multishot devices. Our effects library includes shells from the world's top manufacturers including T-Sky and Flower King in addition to US, Spanish, Japanese and Italian style aerial shells manufacturers, Exposhows uses only the best and freshest product available from domestic sources and overseas.

Exposhows uses Pyromate and Cobra, state of the art digital, wireless firing systems to launch choreographed displays with precise pinpoint timing. Audio soundtracks, mastered specifically for the City by our multi-Emmy award winning Audio Engineer will be submitted to the event staff for review and approval. Following approval, digital distribution and coordination with the City's media partner for the event.

All Federal, State and local licenses, permits and filings in accordance with all laws, regulations and requirements governing fireworks as well as Risk Management Certificates will be provided by Exposhows. All staff including the licensed Public Display operator in charge and on-site pyrotechnicians are experienced in public displays and authorized Federal BATFE Employee Possessors with current explosives safety training.

Equipment strike will be conducted following the conclusion of the event. A post show site inspection will be conducted after clean up in conjunction with a Parks or Town representative authorized to inspect and sign off on clean up and release vendor liability.

Project Design and Scope of Work

The Town of Fort Myers Beach 4th of July Celebration is an audiovisual celebration of the history and freedom of America and contemporary Florida. It showcases the Town as a premier beach, water sports, recreation and dining destination for residents and tourists alike and the United States in form and function as universal symbols of connectivity, stability, growth and innovation. A celebration of Americas' diversity and a salute to local veterans.

The Fireworks Finale display brings the sky to life. It celebrates July 4th and our history from the beginning to the present representing the dynamic synergy of our United States, portrayed through a menagerie of light and music symbolizing ever greater self-reliance, sustainability and the independence of America.

Safety and Security Plan

All Exposhow employees undergo mandatory annual Safety seminar Certification and have recent show experience. All State licensed operator(s) and pyrotechnicians are registered Federal BATFE Employee Possessors and cleared by the DOJ to handle explosives. Additional training and compliance with OSHA High Hazard Employer Workplace Injury and Illness Prevention Plan is administered to all employees.

Daily safety meetings and pre load-in safety briefings are given on-site. All Exposhow HME (HazMat Endorsed) commercial drivers participate in DOT mandated random drug testing, background checks and clearance by the TSA. Drivers are carried as additional insured on Exposhow Commercial Transportation Liability policies.

Access to the firing site is restricted. Exposnow staff remains on site from load-in of explosives until all unfired explosives material is secured and show truck has left the show site following strike of the display.

Fireworks site access proper is restricted to pyrotechnic team members, Town of Fort Myers Beach Public Safety, any on-site security and event staff. Any and all visitors must be cleared by Town Public Safety or Parks and Recreation. All visitors are escorted by licensed Operator. Only City of Fort Myers Beach Public Safety or Licensed Operator has authority to permit access at their discretion.

Permit, Sponsor and Public Safety Coordination

All permits filings and notifications required by Federal agencies, (FAA), Lee County, Town of Fort Myers Beach and AWJ (Fort Myers Beach Fire Control District) in accordance with all U.S., State and local laws will be submitted by Exposhow after contract endorsement and approval. Town of Fort Myers Beach, its elected officials, officers, employees, volunteers, guests, agents and public safety agencies will be listed as additional insured on Exposhow's general liability and Workers Comp policies.

Music for Fireworks Show

If desired, Exposhow will submit a proposed audio track for review and approval by event staff. Approved audio track may be modified to include pre-show and/or post show narration at the direction of the event director. Following approval, coordination and digital distribution of the audio program to the Town's media partner or simulcast with a local radio station will be completed.

Pre-Event Meetings

Any pre-event firework meeting(s) or walk-through with the sponsor or public safety dept. will be attended by the project manager or assigned licensed operator.

Itemized List and Delivery of Display Equipment

Equipment Load-In onto the Pier and firing site will be July 3rd and Product delivery on the morning of July 4th. Equipment list includes HDPE 2" - 5" mortars and racks constructed in accordance with and exceeding minimum safe standards and approved rack stabilization methods.

Use of a digital firing system with built in safeguards consistent with safe operation and best practices. All applicable modules, cables, connectors related to the electronic firing system. E-match, quick match and 22-2 low voltage zip wire used to connect fireworks to firing modules. Fire suppression equipment, foil, Visqueen (polyethylene plastic) and oversize tarp for display protection in the event of inclement weather conditions.

Equipment Delivery / Explosives Load In

Fireworks will be delivered via secured Hazmat licensed truck to the firing site at 950 Estero Blvd. on Monday, July 4th at 7 a.m. Hazmat Transportation Permit documents include travel route of the truck. Authority with Jurisdiction, (AWJ) Ft. Myers Beach Fire Control District will be advised the ETA of the truck and contacted when truck arrives on-site.

Product remains secured inside the truck until such a time licensed operator in charge determines safety perimeter is established and display is ready for product loading. Shell load in, shell drop and loading follows a Safety Briefing and any required inspection by the AWJ.

On completion of shell drop and wiring of all main display and finale chain shells at approximately 4 p.m., field modules will be connected and the field will be cleared by the Operator in Charge to prepare for system continuity checks. A loud verbal "Clear Field" announcement confirming a secure safety perimeter is made every time the firing panel is energized.

Continuity test(s) will be conducted until the display is at 100%. Any signal testing with sound booth or media partner will occur prior to the display. An additional final continuity test will be conducted prior to 8 p.m.

Entire duration of the display from opening shot to the final finale cue will be fired electronically and if desired choreographed to any pre-approved audio soundtrack.

Display Description

Display contains a variety of several dozen different types of aerial breaking shell effects from different manufacturers fired from the launch site. The display opens with a variety of show effects in all colors visible to the human eye and includes front line single shell titanium salutes and color display and effect shells.

The main body display consists of single shot and multi shot aerial shells and effect shells. Shells may be fired in tandem to a faux finale, building again in intensity for a finale that will engage multiple chained shells and single shot support shells. A breakdown of shell effect types is detailed following Display Elements.

Sky pictures are used in main body, rapidly fired choreographed sequences that create visual panoramas that represent gold waterfalls with pink stars, sunset rainbows and provide an outstanding, multi-layered horizon to horizon experience.

Display Operations

Entire duration of the display from the opening shot to the final finale cue will be fired electronically. Any preshow test shots will also be electronically fired.

Display operator and pyrotechnic team will be in protective gear prior to arming firing system for continuity test(s) and the display. Protective gear includes long 100% cotton long sleeve and long pants, hard hats, eye and ear protection. Sponsor and Fire Safety Officer will be advised when continuity testing is complete.

All event staff other than production pyrotechnicians and Fire Safety Officer must be clear of designated safety perimeter 30 minutes before display start. After the safety perimeter is clear, an all-clear signal is given by Operator and on-site Fire Safety Officer to ensure public safety.

Following a pre-show safety briefing, pyrotechnic staff with fire suppression units are deployed to the fallout perimeter locations for the duration of the display.

Sponsor will be notified that firing system is armed and hot approximately 15 minutes before the scheduled start of the display.

All members of the public and event staff must be clear of the safety perimeter 30 minutes before display start. After the safety perimeter is clear of all persons, an all-clear is given. Firing system will be armed and hot approximately 15 minutes before the scheduled start of the display. Start of the display is ultimately under the control of the sound booth or media partner at the discretion of the licensed pyrotechnic operator in charge and Fire Safety Officer who makes final safety decisions.

Firing Systems in use by Exposhow contain a deadman switch that enables an immediate cease fire in the event an unsafe condition exists that may jeopardize public safety. No more than 4 aerial shells are chained or ganged in the main display which prevents any more than 3 additional breaking aerial shells from firing in the event of a cease fire. The display may then be resumed at the discretion of the Licensed Operator and the Fire Safety Officer.

Post Display Safety

Due to heat generated by shell lifting charges, the firing field will not be approached for 30 minutes following the conclusion of the show. It is not uncommon for unfired shells to launch following a display due to the intense heat following a finale barrage.

A post display proximate field sweep will be conducted immediately following the display during cool down. Team members will isolate and secure any duds or aerial shells that were observed to malfunction for containment.

If all shells are accounted for by spotters and burst counts match, an all clear within 30 minutes of the conclusion of the display is anticipated. Following the firing field cool down, all guns will be inspected for unfired shells by the licensed Operator in Charge and an assistant.

Any unexploded ordinance will be removed, secured and stored in the show truck in a safe manner before any equipment or site tear down is initiated. Removal of all explosives from the site will be conducted after return to the Port and during equipment strike and load out.

A detailed Post Display Report will be provided to the AWJ within 72 hours of the conclusion of the show.

Display Equipment Strike, Clean Up

Equipment Strike removes all guns, racks and associated firing equipment from the site. Display debris and expendables will be disposed in a manner consistent with best practices.

Substrates and surfaces used to stage all equipment and pyrotechnics will be returned as best as possible to their original condition following completion of the display. All debris and byproduct materials will be removed and discarded in a manner consistent with responsible project management. Weather or unforeseen conditions withstanding, Exposhow will supply all materials and staff necessary to complete load-out and cleanup in accordance with required completion dates.

A Recreation Dept. or Town representative will be required to make a final walk through inspection with the lead operator to ensure compliance with contract terms and to certify substrates have been returned to its original condition without damage.

Risk Management and Hazardous Materials Transportation

Exposhows is a Federally licensed Hazardous Materials Shipper and has Interstate operating authority to transport Explosives and Hazardous Materials on public roadways throughout the United States. Exposhows carries \$5,000,000 in general liability.

Exposhows USDOT#2053003 maintains all current required permits that include FMCSA Hazardous Materials Interstate Transportation Permit, FMCSA Satisfactory Rating & PHMSA Registration. Exposhows carries a \$5,000,000 Commercial Transportation Policy, required by law to conduct Interstate Transport of Hazardous Materials in addition to our General Liability policy.

Employees are covered by Exposhows Workers Compensation policy limits of \$1,000,000 that include USL&H Longshoremans coverage for Marine work.

Transportation of Hazardous Materials (Explosives and Fireworks) are done in house by Exposhows employees who are also licensed operator(s). As Commercial Drivers with HazMat endorsements, they are subject to the requirements and regulations of 49 CFR that include random drug testing, physicals and DHS background checks.

Explosives Storage

In accordance with BATFE 27 CFR and DOT 49 CFR regulations that govern Explosives transport and storage, no overnight explosives storage is required and on-site explosives will be attended at all times by Exposhows staff.

Acceptance of Terms and Conditions

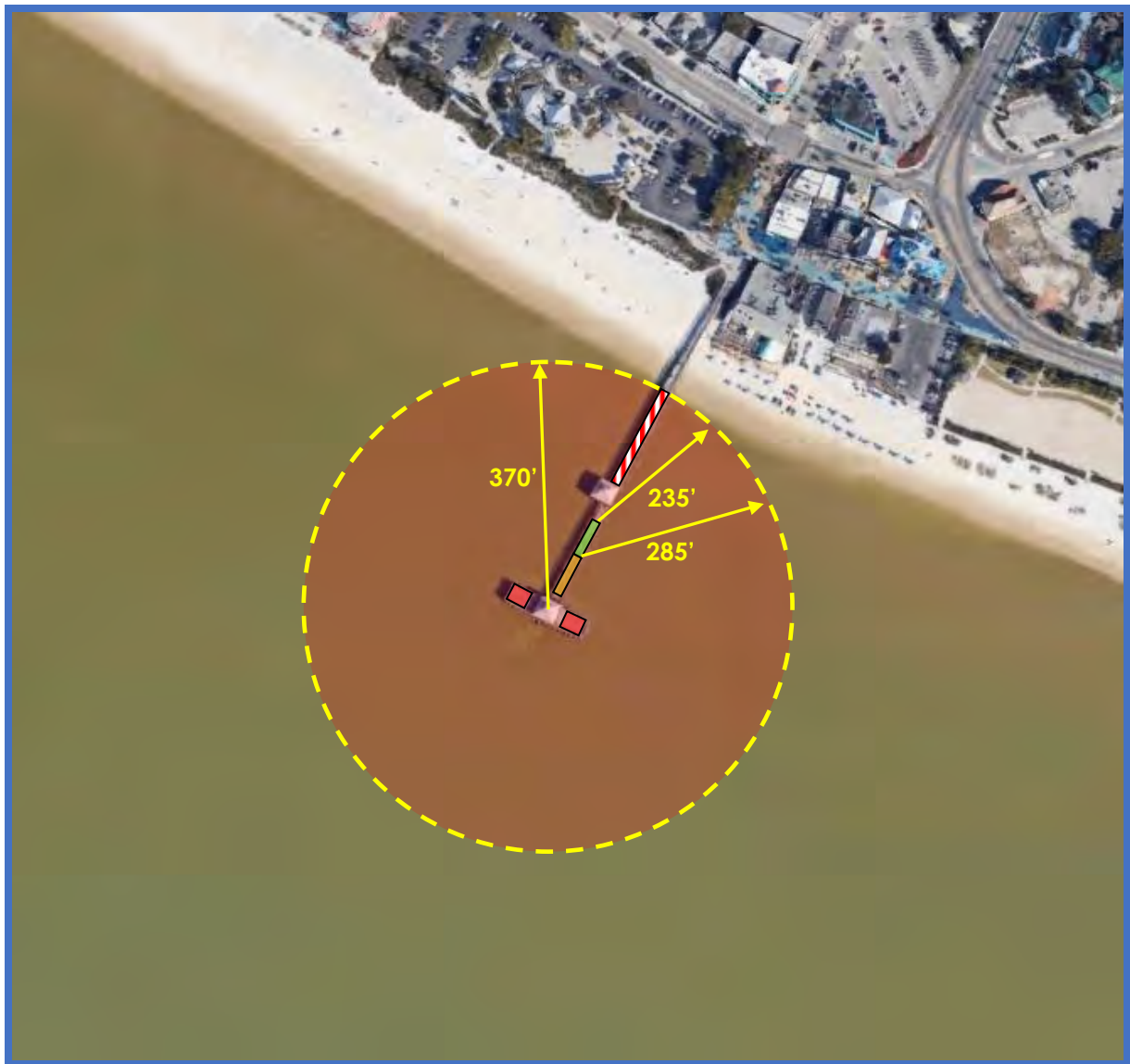
No Exceptions to terms and conditions are taken.

Any costs or permit filings with regard to maintenance of traffic (MOT) or vehicle traffic control fall outside the scope of work of Exposhows (vendor) responsibilities.

Exposhows is willing to enter into an agreement under the terms and conditions prescribed by Town of Fort Myers Beach or the Fort Myers Beach Fire Control District. It is our intention to streamline the production process by utilizing feedback to shape the show with the synergy of a shared vision.

Plot Map I / Firing Site Location

950 Estero Blvd. Adjacent Ft. Myers Beach FL 33931



■ Firing Site - Fort Myers Beach Fishing Pier

26°27'05.86" North Latitude 81°57'25.87" West Longitude El: 17'

Minimum Safety Radius Perimeter Fallout Zone

350' (5" Aerial Breaking Shells) 280' (4" Aerial Breaking Shells) 210' (3" Aerial Breaking Shells)

Tides July 4th 2022 High Tide 4:35 p.m. 2.76' Low Tide 11:39 p.m. 0.26'

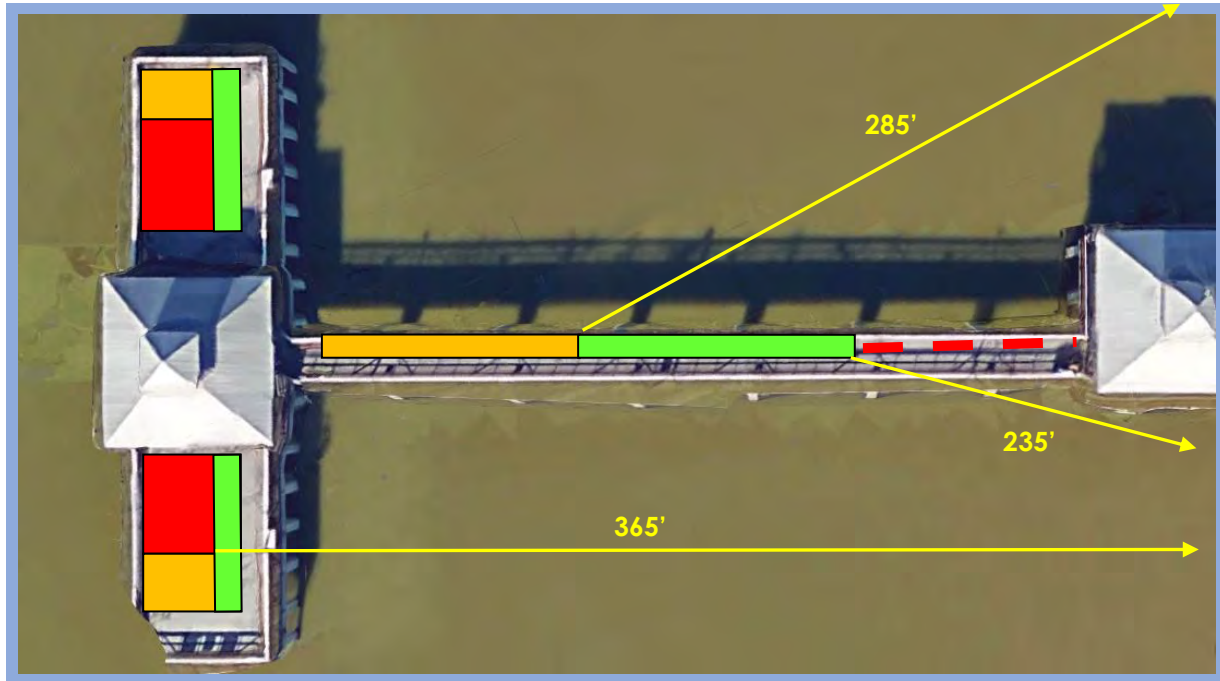
Shell Size Placement Legend

■ 5" ■ 4" ■ 3" ■ Fire Lane for FD /Public Safety Access

All listed distances subject to verification with on-site digital rangefinder measurements

Plot Map II / Firing Site Detail

950 Estero Blvd Adjacent Ft. Myers Beach FL 33931



Shell Size Placement Legend *

■ 5" ■ 4" ■ 3" - - - Fire Lane for FD / Public Safety Access

All listed distances to low tide mark subject to verification w/on-site digital rangefinder measurements.

Google Maps seems to have taken a bite out of the corner of the Fishing Pier.

Minimum Safety Radius Perimeter Fallout Zone (in feet)

350' (5" Aerial Breaking Shells) 280' (4" Aerial Breaking Shells) 210' (3" Aerial Breaking Shells)

*Angled pods of mortar (gun) batteries will be placed at the end of the pier to allow for the maximum use of the sky from left to right horizon. Gun pods on Pier Proper have no angles.

Display Elements and Shell Count

Listed shell count will be sent with permit filings for review and approval by Fort Myers Beach Fire Control District Fire Prevention.

All shells have various color rising tails to facilitate tracking by spectators. Specialty custom shells used to enhance the audience experience are made in the United States. Exposhow is proud to support American manufacturers whenever possible.

Shell Size /Effect / Device	Shell Count
Aerial Barrage Opening	
2" Titanium Salutes	20
3" Display Shells	10
4" Display Shells	3
5" Display Shells	1
Aerial Main Display	
3" Main Display Shells	216
4" Main Display Shells	226
5" Main Display Shells	226
MultiShot Devices	5
Aerial Grand Finale	
3" Shells (Chain Finale)	300
4" Shells (Chain Finale)	108
5" (Chain & Support Display Shells)	36
Total Shell Count / Run Time / Price	Summary Total
Aerial Breaking Shell Total	1146
Main Display Shells (Lift Rate Average)	37 / minute
Finale Run Time	2 minutes
Total Show Run Time	21 minutes
Total Display Price	\$29,250
Fire Dept & Public Safety Fees	\$ 750
Total Display Price	\$30,000

As an operating standard and value-added feature, Exposhow displays and permit filings have additional product above the listed total count to exceed expectations and ensure compliance with contracted minimum shell count. A limited number of 6" shells will be added at **no** additional charge for the Town if approved and safety perimeters allow.

2022 Town of Fort Myers Beach July 4th Fireworks Displays – Effect Inventory

Most Effect Categories below contain dozens of different effects with similar performance characteristics in different colors. Standard and custom special effects within a category have been detailed for reference. Each effect in a category is further defined by color or color(s)

Exposhow uses a balance of shells in all categories and all colors of the visible light spectrum for a specific Display Mix. Various Reds, Orange, Yellows, Greens, Blues, Indigo, Violet, Lime, Lemon, Aqua, Pink, Whites, Silvers and Golds are all employed for every show. All shells have rising tails in different colors to facilitate visual shell tracking by the spectators.

EFFECT CATEGORIES (Main Display and Finale Support Shells)

- 3" - 6" Floral Pattern Shells Peony/Gamboge/Cyas / Dahlia / Diadem / Chrysanthemum
- 3" - 8" Specialty Floral Pattern Effects with 2 Color Changing Pistil Core Effect Shells
- 3" - 8" Duration/Lingering Effects Strobes/Willow/Stars/Falling Leaves/Spiders
- 3" - 10" Multi-Break / Multi Break Dragons Egg / 1000 Flowers Color Effect Shells
- 3" - 10" Scattering Bees / Flying Dragon /Crossette / Shooting stars /Spining Flowers
- 3" - 10" Pattern Shells Hearts/ Saturn/ Happy Face/ Ring / Bowtie /Multi Rings
- 3" - 10" Specialty Effects 3 Color Changing with Palm or Strobe Core Effect Shells
- 3" - 10" Palm, Dahlia, Diadem & Color Changing Chrysanthemum Multi-Effect Shells
- 3" - 10" Single, Two & Three Color Waves. Color Changing Waves w/ Brocade Crown
- 3" - 10" Brocade Crown. Coconut, Cascade, Crown & Willow Shell Effects
- 3" - 10" Kamuro / Super Brocade / Gamboge Effect Shells
- 6" - 10" Super Pattern Stained Glass / Kaleidoscope / Rainbow Effects
- 6" - 10" Super Custom Octopus / Jellyfish /Ghost Effect Shells
- 3" - 4" Super Crackling / Whistles / Super Peony Titanium Salute Report Shells
- 4" - 6" Lampare, Dragons Eggs / Fish & Serpent Effect Shells
- 5" - 8" New Pattern Cat Face /Alien / Snail / Windmill / Stars in Stars / Jupiter
- 5" - 8" Falling Duration Lantern / Windbell / Waterfall / Horse Tail Effect Shells
- 3" - 6" Comet / Tiger Tail / Palm Tree / Coconut Tree Shell Effects
- 3" - 6" Sicilian Sky Picture Panorama Gold Waterfall with Pink Stars (40 Shell Effect)

FINALE CHAIN EFFECTS

- 3"-6" Finale Chain Red, White & Blue Color Display Shells
- 3"-4" Finale Chain Color Shells with Titanium Salutes
- 3"-6" Finale Chain Gold Brocade
- 3"-6" Finale Chain Gold Kamuro
- 3"-6" Finale Chain Niagara Falls with Blue Pistil
- 3"-4" Finale Chain Multi Color Peony with Report
- 3" Finale Chain Titanium Salute

References and Endorsements

City of Marco Island, FL- Parks & Rec Manager Samantha Malloy (239) 389-3917
Los Angeles County Beaches & Harbors - Marina del Rey - Catrina Love (424) 526-7874
City of Redondo Beach, CA- Community Services Director John LaRock (310) 618-2937
City of Orlando, FL – Communication and Events Stephanie Kobrin (407)246-2378
Catalina Island, CA - Event Director Leslie Boutillier (310) 510-4249
US Navy Fleet Week Los Angeles -LA City Fire Inspector John Williams (213) 978-3650
Battleship USS Iowa Director Jonathan Williams (877) 446-9261
City of Lancaster, CA - Recreation Manager Efrain Carrera (661) 723-5825
City of Beverly Hills - Special Events Director Magdalena Davis (310) 285-1098
NFL Superbowl Fireworks - LA Coliseum / LA Dodgers - Rosemary Jiminez (213) 744-7461
City of Lynwood - Recreation Services Director Rozie Carrillo (310) 603-0220 x-225
Orange County Fair , Costa Mesa CA- Courtney Duran - Events (714) 393-8952
Riverside County Fire Marshal - Deputy Marshal Sonia Cooley (760) 863-8886
State of Montana – Deputy State Fire Marshal Sally McKenna (406) 896-4388
El Caballero, Encino CA - General Manager Phil Lopez (818) 654-3000
City of Truckee, CA Fire Protection District - Fire Marshal Kevin McKechnie (530) 582-7855
Six Flags Magic Mountain - Entertainment Director Pam Bugbee (661) 255-4810
Crazy Mountain Ranch, Montana - Manager Jon Delaurier (406) 686-9099
Santa Monica Beach Club - Event Director Jeannie Mai (310) 395-3254
City of Downey Fire Inspector Lee Kirby (562) 904-7348
Orange County Fire Authority - Fire Inspector Darren Johnson (714) 402-3103
City of Murrieta Recreation Services Event Director – Laura Frasso (951) 461-6110
City of Fountain Valley Fire Department – Deputy Fire Marshal Adria Smith (714) 397-1734
City of Newport Beach Fire Department - Fire Inspector Steve Michael (949) 644-3110

Selected Marine Show Reference Details

Company Name: City of Marco Island FL

Address: 1361 Andalucia Terrace Marco Island FL 34145

Contact Person: Samantha Malloy- Manager of Parks, Culture & Recreation

Business Phone: 239-389-3917 E-Mail: smalloy@cityofmarcoisland.com

Project 2021 July 4th Barge Show Cost: \$77,500 Start/Completion Date: 2021-Current

Description of project or work completed: Large public Aerial Display Fireworks Outdoor Show.

Choreographed to music. Simulcast 25 Minutes 1200 shells. 3" – 10" shells.

Project Manager - David MacCormick (Project Manager and Licensed Operator) plus 4 staff

Company Name: County of Los Angeles - Beaches & Harbors Dept.

Address: 4701 Admiralty Way, Marina del Rey, CA 90272

Contact Person: Catrina Love – Senior Analyst

Business Phone: 424-526-7874 E-Mail: Clove@bh.lacounty.gov

Project: July 4th Barge Show Cost: \$260,000+ Start/Completion Date: 2016-2019

Description of project or work completed: Large Public Aerial Display Fireworks

Choreographed to music. 22 Minutes 1160 shells. 3"– 6"shells. 30,000+ Spectators

Project Manager - David MacCormick Licensed Operator - Shane O'Reilly plus 5 staff

Company Name: City of Redondo Beach

Address: 415 Diamond Street, Redondo Beach CA 90277

Contact Person: John LaRock – Director Community Services

Business Phone: 310-318-0160 E-Mail: jlalrock@torranceca.gov

Project: July 4th Barge Show Cost: \$350,000+ Start/Completion Date: 2009- Current

Description of project or work completed: Large public Aerial Display Fireworks Outdoor

Show. Choreographed to music. 22 Minutes 1180 shells. 3" – 8" shells. 2019 Contract

\$85,000 20,000+ Spectators (2020 & 2021 was COVID cancelled)

Project Manager - Daniel Douglass (Project Manager and Licensed Operator)plus 5 staff

Company Name: Two Harbors, Catalina Island

Address: 150 Metropole Ave. Avalon CA 90704

Contact Person: Leslie Boutillier - Event Director

Business Phone: 310-510-4249 E-Mail: lboutillier@scico.com

Project: July 4th Barge Show Cost: \$107,500 Start/Completion Date: 2017-Current Description

of project or work completed: Barge Show Public Aerial Display Fireworks Choreographed to

music. 21 Minutes 1200 shells. 3" – 10" shells. (2020 was COVID cancelled)

Project Manager - Michael Chang Licensed Operator - Natalia Hervia plus 4 staff

Company Name: City of Orlando FL

Address: 400 South Orange Ave. Orlando FL 32801

Contact Person: Stephanie Kobrin - City of Orlando Communications & Events

Business Phone: 407-246-2378 E-Mail: @Stephanie.Kobrin@cityoforlando.net

Project: 2021 July 4th City of Orlando Fireworks (Inland Barge) Start/Completion Date: 2021-23

Description of project or work completed: Large public Aerial Display Fireworks Outdoor Show.

Choreographed to music. 21 Minutes 1200 shells. 3" – 5" shells.

Project Manager - Larry Ochsner (Project Manager and Licensed Operator) plus 4 staff

CERTIFICATE OF INSURANCE

ISSUE DATE 04-08-2022

PRODUCER

PROFESSIONAL PROGRAM INSURANCE BROKERAGE
DIVISION OF SPG INSURANCE SOLUTIONS, LLC
1304 SOUTHPOINT BLVD., #101
PETALUMA CA, 94954

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER, THIS CERTIFICATE DOES NOT AMEND, EXTEND OR LATER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURER(S) AFFORDING COVERAGE

INSURER A: Certain Underwriters at Lloyd's, London

INSURED

Exposhow, Inc.
PO Box 5590
Santa Monica, CA 90409

INSURER B:

INSURER C:

INSURER D:

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE NAMED INSURED ABOVE FOR THE PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY CLAIMS MADE GEN'L AGGREGATE LIMIT APPLIES PER POLICY	PY/22-0052	04/06/2022	04/06/2023	EACH ACCIDENT	\$ 5,000,000
					MEDICAL EXP (Any one person)	\$
					FIRE LEGAL LIABILITY	\$ 50,000
					GENERAL AGGREGATE	\$ 5,000,000
					PRODUCTS-COMP/OPS AGG	\$
	AUTOMOBILE LIABILITY — ANY AUTO — ANY OWNED AUTOS — SCHEDULED AUTOS — HIRED AUTOS — NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident)	\$
					BODILY INJURY (Per person)	\$
					BODILY INJURY (Per accident)	\$
					PROPERTY DAMAGE (Per accident)	\$
	EXCESS LIABILITY FOLLOWING FORM				EACH ACCIDENT	\$
					AGGREGATE	\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				☐ WC STATUTORY LIMITS ☐ OTHER	\$
					E.L. EACH ACCIDENT	\$
					E.L. DISEASE-EA EMPLOYEE	\$
					E.L. DISEASE-POLICY LIMIT	\$
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

Town of Fort Myers Beach, FL its officers, subcontractors, employees, volunteers and representatives, ATIMA are Additional Insured as respects fireworks displays and special effects pyrotechnics in the Town of Fort Myers Beach performed by the named insured. Fort Myers Beach Fire Control District is additionally insured for Permit only. This insurance is primary and non-contributory to any other insurance available to the additional insured

CERTIFICATE HOLDER

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

Attn : Risk Management

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Susan Etter

POLICY NUMBER: PY/22-0052 PYROTECHNIC LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

Effective Date of This Endorsement: 04/06/2022 to 04/06/2023

PRIMARY AND NON-CONTRIBUTORY ENDORSEMENT

Section **XI. OTHER INSURANCE** of the Policy is hereby amended to add the following paragraph:

3. The coverage provided under this Policy to an Additional Insured pursuant to Section **III. PERSONS INSURED**, subsections d) or e), shall be primary and the Additional Insured's own coverage shall be excess and non-contributory but only when required by a written contract executed by the Named Insured prior to the **Display or Special Effects** for which additional insured coverage is required. This Endorsement shall not apply with respect to any other insurance providing additional insured coverage to the Additional Insured.

All other terms and conditions of this Policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED

Underwriter's at Lloyd's, London: Referred to in this endorsement as either the "Insurer" or the "Underwriters"

This endorsement modifies insurance provided under the following:

SECTION III. PERSONS INSURED

In consideration of the premium charged for the Policy, it is hereby understood and agreed that the following entity(ies) is an additional insured pursuant to Section III. e), but only as respects the specific Display or Special Effects listed on the attached Certificate of Insurance:

Name of Person or Organization (Additional Insured):

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

Any coverage afforded to any above person or entity as an Additional Insured shall apply only with respect to **Bodily Injury** or **Property Damage** directly resulting from (1) the **Named Insured's** ongoing operations performed for such specific person and entity; or (2) acts or omissions of the Additional Insured in connection with their general supervisions of the **Named Insured's** ongoing operations. Coverage for such person or entity as an Additional Insured does not apply to:

- (i) **Personal Injury and Advertising Injury** Liability;
- (ii) Fire Legal Liability;
- (iii) Employee Benefits Liability;
- (iv) **Bodily Injury** or **Property Damage** which the person or entity is obligated to pay as damages by reason of the assumption of liability under a contract or agreement but this shall not apply to liability for damages the person or entity would have in the absence of the contract or agreement;
- (v) **Property Damage** to: (1) property owned, used or occupied by or rented to such person or entity; (2) property in the care custody, or control of such person or entity or over which such person or entity is for any purpose exercising physical control; or (3) any work, including materials, parts or equipment furnished in connection with such work, which is performed for the person or entity by or on behalf of the **Named Insured**.
- (vi) **Products-Completed Operations Hazards**;
- (vii) Any obligation assumed by the Additional Insured in any contract related to the Display or Special Effects listed in the attached Certificate of Insurance.
- (viii) Such other **Claims, Accidents**, offenses, damages and/or liabilities which may be excluded pursuant to Section V. Exclusions of the Policy.

All other terms, exclusions and conditions of this Policy remain unchanged.

USDOT Number: _____ Date Received: _____

A Federal Agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2126-0008. Public reporting for this collection of information is estimated to be approximately 2 minutes per response, including the time for reviewing instructions, gathering the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Motor Carrier Safety Administration, MC-RRA, Washington, D.C. 20590.



United States Department of Transportation
Federal Motor Carrier Safety Administration

Endorsement for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980

FORM MCS-90

Issued to EXPOSHOVS INC. of California
(Motor Carrier name) (Motor Carrier state or province)

Dated at 5:30 pm on this 22nd day of June, 2021

Amending Policy Number: IXG931106B Effective Date: June 20th, 2021

Name of Insurance Company: GENERAL STAR INDEMNITY COMPANY

Countersigned by: 
(authorized company representative)

The policy to which this endorsement is attached provides primary or excess insurance, as indicated for the limits shown (check only one):

- ☐ This insurance is primary and the company shall not be liable for amounts in excess of \$ _____ for each accident.
- ☒ This insurance is excess and the company shall not be liable for amounts in excess of \$ 4,000,000.00 for each accident in excess of the underlying limit of \$ 1,000,000.00 for each accident.

Whenever required by the Federal Motor Carrier Safety Administration (FMCSA), the company agrees to furnish the FMCSA a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the FMCSA, to verify that the policy is in force as of a particular date. The telephone number to call is: 203.328.5571.

Cancellation of this endorsement may be effected by the company or the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the FMCSA's registration requirements under 49 U.S.C. 13901, by providing thirty (30) days notice to the FMCSA (said 30 days notice to commence from the date the notice is received by the FMCSA at its office in Washington, DC).

(continued on next page)

DEFINITIONS AS USED IN THIS ENDORSEMENT

Accident includes continuous or repeated exposure to conditions or which results in bodily injury, property damage, or environmental damage which the insured neither expected nor intended.

Motor Vehicle means a land vehicle, machine, truck, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway for transporting property, or any combination thereof.

Bodily Injury means injury to the body, sickness, or disease to any person, including death resulting from any of these.

Property Damage means damage to or loss of use of tangible property.

Environmental Restoration means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife.

Public Liability means liability for bodily injury, property damage, and environmental restoration.

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a motor carrier of property, with Sections 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Motor Carrier Safety Administration (FMCSA).

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon,

or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately to each accident and any payment under the policy because of anyone accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

(continued on next page)

SCHEDULE OF LIMITS — PUBLIC LIABILITY

Type of carriage	Commodity transported	January 1, 1985
(1) For-hire (in interstate or foreign commerce, with a gross vehicle weight rating of 10,000 or more pounds).	Property (nonhazardous)	\$750,000
(2) For-hire and Private (in interstate, foreign, or intrastate commerce, with a gross vehicle weight rating of 10,000 or more pounds).	Hazardous substances, as defined in 49 CFR 171.8 , transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Division 1.1, 1.2, and 1.3 materials, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in 49 CFR 173.403 .	\$5,000,000
(3) For-hire and Private (in interstate or foreign commerce, in any quantity; or in intrastate commerce, in bulk only; with a gross vehicle weight rating of 10,000 or more pounds).	Oil listed in 49 CFR 172.101 ; hazardous waste, hazardous materials, and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101 , but not mentioned in (2) above or (4) below.	\$1,000,000
(4) For-hire and Private (In interstate or foreign commerce, with a gross vehicle weight rating of less than 10,000 pounds).	Any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of a Class 7 material as defined in 49 CFR 173.403 .	\$5,000,000

*The schedule of limits shown does not provide coverage. The limits shown in the schedule are for information purposes only.

City of Marco Island Florida



CONTRACT #2022-007:

4th of July Fireworks

April 4, 2022

EXPOSHOWS INC
2455 190th Street Suite G
Redondo Beach, CA 90278
Phone: (310) 864-9616

AND

CITY OF MARCO ISLAND
50 Bald Eagle Drive
Marco Island, Florida 34145
Phone: (239) 389-5000

CITY OF MARCO ISLAND

Contract # 2022-007

4TH OF JULY FIREWORKS SHOW

Table of Contents

AGREEMENT FOR 4TH OF JULY FIREWORKS SHOW	3
Exhibit A: ITB # 2022-007.....	10
Exhibit B: CONTRACTOR'S RESPONSE TO ITB # 2022-007	11

City of Marco Island Contract# 2022-007 4th of July Fireworks

THIS AGREEMENT, made and entered into this 4th day of April 2022, by and between Exposhow, Inc, hereinafter called the "Contractor," and the City of Marco Island, Florida, a political subdivision of the State of Florida, Collier County, hereinafter called the "City."

WITNESSETH

1. **CITY APPROVAL OF BID/AGREEMENT**: The attached Contractor's bid for ITB #2022-007 4th of July Fireworks, dated 2/28/2022, has been approved for contract award.
2. **COMMENCEMENT**: Services to be rendered by the Contractor shall be commenced subsequent to the execution of this Agreement. This Agreement with all its terms and conditions shall be in effect for 2022, 2023, and 2024 4th of July fireworks shows subject to budget appropriations and successful performance by the contractor.
3. **STATEMENT OF WORK**: 4th of July Fireworks as defined and specified in the bidding documents.
4. **COMPENSATION**: The City shall compensate the contractor for the satisfactory performance of work based solely on the services provided in the amount of \$65,000 per show.
5. **NOTICES**: All notices from the City to the Contractor shall be deemed duly served if mailed by registered or certified mail to the Contractor at the following address:

David MacCormick
VP Sales
Exposhow Inc
2455 190th Street Suite G
Redondo Beach, CA 90278

All notices from the Contractor to the City shall be deemed duly served if mailed by registered or certified mail to the City at the following address:

Lina Upham
Purchasing and Risk Manager
Deputy City Clerk
City of Marco Island
50 Bald Eagle Drive
Marco Island, Florida 34145

The Contractor and the City may change the above mailing address at any time upon giving the other party written notification. All notices under this Agreement must be in writing.

6. **NO PARTNERSHIP:** Nothing herein contained shall create, or be construed as creating, a partnership between the City and the Contractor. Moreover, nothing stated in this Agreement shall be interpreted to indicate in any way that the Contractor is an agent of the City of Marco Island.

7. **PERMITS; LICENSES; TAXES:** In compliance with Section 218.80, F.S., all City permits necessary for the prosecution of the work shall be obtained by the Contractor. Payment of fees for all such permits issued by the City shall be processed internally by the City. All non-City permits necessary for the prosecution of the work shall be procured and paid for by the Contractor. The Contractor shall also be solely responsible for payment of any and all taxes levied on the Contractor. In addition, the Contractor shall comply with all rules, regulations and laws of the City of Marco Island, Collier County, the State of Florida, and the U.S. Government now in force or hereafter adopted. The Contractor further agrees to comply with all laws governing the responsibility of an employer with respect to persons directly or indirectly employed by the Contractor.

8. **NO IMPROPER USE:** The Contractor will not use, nor cause or permit any employee or subcontractor to use or occupy in any manner whatsoever, City or private facilities or properties for any improper, immoral or offensive purpose, or for any purpose in violation of any federal, state, county or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. In the event of such violation by the Contractor the City, or its authorized representative, shall deem such conduct on the part of the Contractor to be objectionable or improper. Accordingly, the City shall have the right to suspend this Agreement with Contractor in full or in part. Should the Contractor fail to correct any noted violation, conduct, or practice to the satisfaction of the City within twenty-four (24) hours after receiving notice of such violation, conduct, or practice, such suspension shall continue until the violation is cured. The Contractor further agrees not to commence operations during the suspension period until the violation has been corrected to the satisfaction of the City. The City reserves the right to immediately terminate this Agreement for the foregoing actions or inactions by the Contractor.

9. **TERMINATION:** Should the Contractor be deemed or found to have failed to perform services herein in a professional manner satisfactory to the City in accordance with standards of practice in the industry, and/or the terms and requirements of this Agreement, the City may terminate said Agreement immediately for cause. Moreover, the City may terminate this Agreement for convenience with a seven (7) day written notice to the Contractor. The City shall be the sole judge of non-performance or cause.

10. **NO DISCRIMINATION:** The Contractor agrees not to discriminate against or upon employees or subcontractors as to race, sex, color, creed or national origin.

11. **INSURANCE:** All entities wishing to perform work for the City of Marco Island will be required to comply with the following minimum insurance requirements.

- | | | |
|---|---|--|
| ❑ | COMMERCIAL GENERAL LIABILITY LIMITS
(MUST INCLUDE CONTRACTUAL LIABILITY) | \$ 2,000,000 AGGREGATE
\$ 1,000,000 EACH OCCURRENCE
\$ 1,000,000 PRODUCTS-OMP/OP
\$ 1,000,000 PERS & ADV INJURY |
| ❑ | AUTOMOBILE LIABILITY | \$ 1,000,000 COMBINED SINGLE LIMIT
(INCLUDE HIRED AND NON-OWNED LIABILITY) |
| ❑ | WORKER'S COMPENSATION | STATUTORY |

□ EMPLOYER'S LIABILITY

\$ 1,000,000 EACH ACCIDENT

\$ 1,000,000 DISEASE-POLICY LIMIT

\$ 1,000,000 DISEASE-EACH EMPLOYEE

□ THE CITY OF MARCO ISLAND, FLORIDA MUST BE NAMED AS AN ADDITIONAL INSURED UNDER THE GENERAL LIABILITY POLICY. CONTRACTOR'S AND/OR SUBCONTRACTOR'S GENERAL LIABILITY SHALL BE ON A PRIMARY AND NON-CONTRIBUTORY BASIS.

THE ABOVE REFLECTS THE MINIMUM REQUIREMENTS FOR WORKING WITH THE CITY OF MARCO ISLAND, FLORIDA. ANY REQUIREMENTS FOUND IN A PARTICULAR JOB'S CONTRACT THAT ARE OF A HIGHER STANDARD WILL PREVAIL.

THE CITY OF MARCO ISLAND, FLORIDA MUST BE GIVEN A CERTIFICATE OF INSURANCE SHOWING THAT THE ABOVE REQUIREMENTS HAVE BEEN COMPLIED WITH. A CURRENT CERTIFICATE OF INSURANCE MUST BE IN THE CITY'S OFFICES BEFORE THE WORK BEGINS. THE CERTIFICATE OF INSURANCE MUST REMAIN CURRENT IN ORDER FOR THE CITY TO ISSUE PAYMENTS TO THE CONTRACTOR OR SUB CONTRACTOR.

(1) The City of Marco Island City Council shall be named as an Additional Insured and the policy shall be endorsed that such coverage shall be primary to any similar coverage carried by the Owner.

(2) This policy shall include contractual liability coverage to contemplate the indemnity provisions of this agreement.

(3) Contractor shall ensure that all subcontractors comply with the same insurance requirements that he is required to meet. The same contractor shall provide the City with certificates of insurance meeting the required insurance provisions.

(4) The City of Marco Island must be named as **"ADDITIONAL INSURED"** on the Insurance Certificate for Commercial General Liability.

(5) The City of Marco Island shall be named as the Certificate Holder. NOTE: The "Certificate Holder" should read as follows:

The City of Marco Island
Attn: Risk Manager
50 Bald Eagle Drive
Marco Island, FL 34145

(6) **Thirty (30) Days Cancellation Notice is required.**

12. **INDEMNIFICATION:** The Contractor, in consideration of One Hundred Dollars (\$100), the receipt and sufficiency of which is accepted through the signing of this Agreement, shall hold harmless and defend the City of Marco Island and its agents and employees from all suits and actions, including attorneys fees, and all costs of litigation and judgments of any name and description arising out of or incidental to the performance of this Agreement or Work performed hereunder. This provision shall also apply to any claims brought against the City by any employee of the named Contractor, the Contractors' subcontractor or sub-subcontractor, or anyone directly or

indirectly employed by any of them. The Contractor's obligation under this provision shall not be limited in any way by the agreed upon contract price as listed in Section 4 above, or the Contractor's limit of, or lack of, sufficient insurance protection. The first One Hundred Dollars (\$100) of money received on the contract price herein is considered as payment of this obligation by the City.

This section does not pertain to any incident arising from the sole negligence of the City of Marco Island.

13. **ADMINISTRATION OF AGREEMENT:** This Agreement shall be fully administered by the City Manager or his designee on behalf of the City. The Contractor shall only receive and act upon orders and directives issued by the City Manager, his designee, or the City's Purchasing and Risk Manager/Deputy City Clerk.

14. **COMPONENT PARTS OF THIS AGREEMENT:** This Agreement consists of, by reference, the Contract Bidding Documents for: 4th of July Fireworks, **ITB# 2022-007** and the Contractor's Bid submittal, attached, and thus made a formal part of the binding Agreement between the City and the Contractor.

15. **OFFER EXTENDED TO OTHER ENTITIES:** The City of Marco Island encourages and agrees to the successful bidder/proposer extending the pricing, terms and conditions of this solicitation or resultant contract to other governmental entities at the discretion of the successful bidder/proposer.

16. **SUBJECT TO APPROPRIATION:** It is further understood and agreed by and between the parties herein that this Agreement is subject to the continuation of appropriation of funds by the City Council of the City of Marco Island.

17. **AUDITS AND PUBLIC RECORDS:**

17.1. Audits. Contractor shall maintain adequate records to justify all charges, expenses and costs incurred in performing the Work outlined in this Agreement for at least four (4) years after the completion of Work pursuant to this Agreement. Owner reserves the right to audit the records of the Contractor related to the Work performed at any time during the execution of the Work and for a period of four (4) years after final payment for such Work is made.

17.2. Public Records. Contractor acknowledges that the public shall have access, at all reasonable times, to certain documents and information pertaining to Marco Island contracts, pursuant to the provisions of Chapter 119, Florida Statutes. Contractor agrees to maintain public records in its possession or control in connection with its performance under this Agreement and to provide the public with access to public records in accordance with the record maintenance, production and cost requirements set forth in Chapter 119, Florida Statutes, or as otherwise required by law. Contractor shall ensure that public records that are exempt or confidential from public records disclosure requirements are not disclosed except as authorized by law.

Unless otherwise provided by law, any and all reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Owner. In the event of termination of this Agreement by either party, any reports, photographs, surveys and other data and documents and public records prepared by, or in the possession or control of, Contractor, whether finished or unfinished, shall become the property of the Owner and shall be delivered by Contractor to the Owner's City Manager, at no cost to the Owner, within seven

(7) days of termination of this Agreement. All such records stored electronically by Contractor shall be delivered to the Owner in a format that is compatible with the Owner's information technology systems. Upon termination of this Agreement, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure. Any compensation due to Contractor shall be withheld until all documents are received as provided herein. Contractor's failure or refusal to comply with the provisions of this Section may result in the immediate termination of this Agreement by the Owner.

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 239.389.5010; LLITZAN@CITYOFMARCOISLAND.COM; 50 BALD EAGLE DR., MARCO ISLAND, FL 34145.

18. **ANTI-LOBBYING:** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for Contractor any fee, commission, percentage fee, gifts or any other considerations contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Owner shall have the right to cancel this Agreement without liability.

19. **SEVETABILITY:** Should any provision of the Agreement be determined by a court to be unenforceable, such a determination shall not affect the validity or enforceability of any other section or part thereof.

20. **ORDER OF PRECEDENCE:** In the event of any conflict between or among the terms of any of the Contract Documents, the terms of the Construction Agreement and the General Terms and Conditions shall take precedence over the terms of all other Contract Documents. To the extent any conflict in the terms of the Contract Documents cannot be resolved by application of the Construction Agreement and the General Terms and Conditions, the conflict shall be resolved by imposing the more strict obligation under the Contract Documents upon Contractor.

21. **GOVERNING LAW, JURISDICTION AND VENUE:** The Agreement shall be interpreted under and its performance governed by the laws of the State of Florida. The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of, or relating to, this Agreement. Venue for any action to enforce this Agreement shall be in Collier County, Florida.

22. SAFETY, GOVERNMENTAL COMPLIANCE AND HAZARDOUS MATERIALS

22.1 Contractor shall be responsible for safety of its operations and its employees and shall take all reasonable safety precautions with respect to its Work. Contractor in addition to its own standards shall comply with all safety policies and procedures initiated by Contractor for the Project, including Contractor's policy regarding drugs, alcohol and controlled substances, and shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority for the safety of persons or property, including, but not limited to, the Federal Occupational Safety and Health Act (OSHA). Contractor shall immediately notify City of any injury to any of the Contractor's employees.

Contractor shall require its personnel to attend any safety meetings the City might conduct and direct Contractor to attend.

22.2 Contractor agrees that in performing its Work, it will not create, use or dispose of any hazardous chemicals or substances in an unlawful or hazardous manner and shall be solely responsible for the lawful, proper and safe handling, storage and removal of all hazardous wastes, chemicals and substances which are introduced to the site, or removed from the site, by Contractor's operations. The term "hazardous wastes, chemicals or substances" shall mean those materials and substances prohibited, proscribed, or the use of which is controlled by any agency of the federal government or the applicable state or local agency having jurisdiction of such matters. In the event Contractor encounters material reasonably believed to be hazardous wastes, chemicals or substances, Contractor shall immediately stop work in the area affected and report such condition to City in writing. Contractor shall comply with all federal, state and local regulations dealing with the use, storage or disposal of all hazardous wastes, chemicals and substances. Contractor shall be responsible for any and all claims and damages resulting from its use, handling, storage, removal and disposal of such hazardous wastes, chemicals or substances from the Project, and will indemnify, defend and hold City harmless from any and all liability associated with such use, handling, storage, removal and disposal including all associated attorney's fees and costs and costs of all cleanup operations wherever and whenever required by any governmental authority or City.

[The Remainder of This Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement on the latest date(s) indicated below.

ATTEST:

CONTRACTOR



Corporate Secretary/Witness
Michael Rickheim

BY: David MacCormick VP Sales

2nd Witness (If Not Incorporated)

ITS: Florida Operations

President (If Incorporated)

Date: 5 April 2022

[Corporate Seal]

ATTEST:

OWNER:
CITY OF MARCO ISLAND, FLORIDA

BY: Lina Upham, Deputy City Clerk

BY: Michael A. McNees, City Manager

Date:

Approved as to form and legal sufficiency for the
use and reliance of the City of Marco Island only.

BY: Alan L. Gabriel, City Attorney

EXHIBIT A
ITB #2022-007

ITB 2022-007, ISSUED BY THE CITY OF MARCO ISLAND ON 2/3/2022 IS HEREBY
INCORPORATED BY REFERENCE

EXHIBIT B

CONTRACTOR'S RESPONSE TO ITB #2022-007

**CONTRACTOR'S RESPONSE TO ITB 2022-007, DATED 2/28/2022 IS HEREBY
INCORPORATED BY REFERENCE**



P.O. BOX 8192, PLEASANTON, CA 94588

CERTIFICATE OF WORKERS' COMPENSATION INSURANCE**ISSUE DATE: 04-09-2022**

GROUP:
POLICY NUMBER: **9296059-2022**
CERTIFICATE ID: **16**
CERTIFICATE EXPIRES: **05-11-2022**
03-31-2022/05-11-2022

**OFFICE OF THE STATE FIRE MARSHAL
715 P ST
SACRAMENTO CA 95814-6400**

NA

This is to certify that we have issued a valid Workers' Compensation insurance policy in a form approved by the California Insurance Commissioner to the employer named below for the policy period that will expire or did expire as indicated above.

This certificate of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policy listed herein. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate of insurance may be issued or to which it may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions, of such policy.

A handwritten signature in black ink, appearing to read "Kent R. LaF...".

Authorized Representative

A handwritten signature in black ink, appearing to read "Vernon Steiner".

President and CEO

EMPLOYER'S LIABILITY LIMIT INCLUDING DEFENSE COSTS: \$1,000,000 PER OCCURRENCE.**ENDORSEMENT #2065 ENTITLED CERTIFICATE HOLDERS' NOTICE EFFECTIVE 03-31-2022 IS ATTACHED TO AND FORMS A PART OF THIS POLICY.**

EMPLOYER

**EXPOSHOVS INC.
2455 190TH ST
REDONDO BEACH CA 90278**

NA

[P1H,HO]

1. **Requested Motion:**

Meeting Date: April 18, 2022

Approve closing of Matanzas Pass Bridge on July 4, 2022, from 9:30am to 11:30am for the parade, and from 9pm to 11:30pm for traffic coming on the island.

Why the action is necessary:

Council approval is needed to acquire a permit from the Florida Department of Transportation to close the bridge.

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Council approval is needed to acquire a permit from the Florida Department of Transportation to close the bridge.

Attachments:

1. 4th of July Road and Bridge Closures 2022

Financial Impact:

6. **Alternative Action**

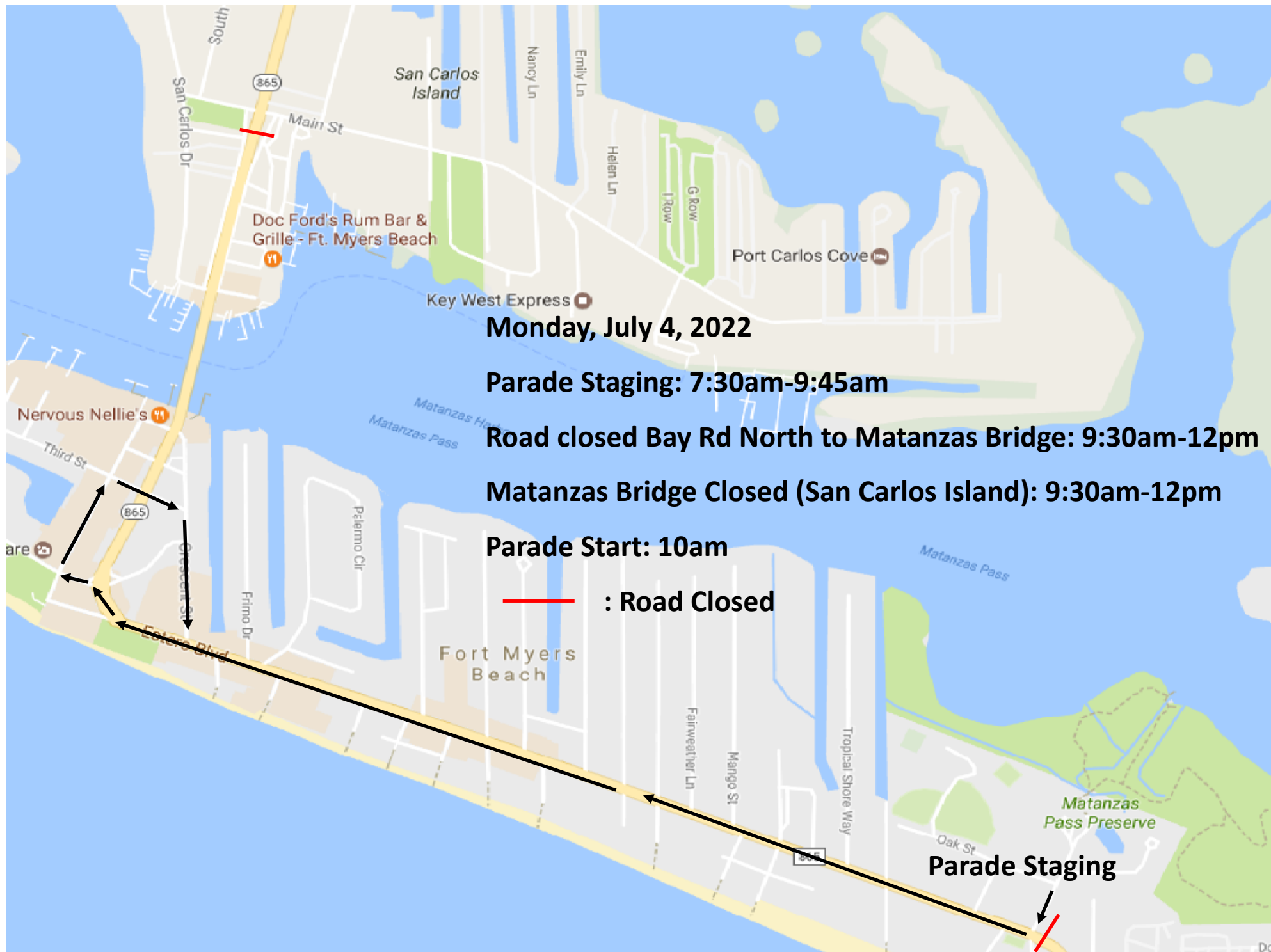
To not approve

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 4/13/2022
Approved - 4/13/2022
Approved - 4/13/2022
Approved - 4/13/2022
Final Approval - 4/13/2022



Monday, July 4, 2022

Parade Staging: 7:30am-9:45am

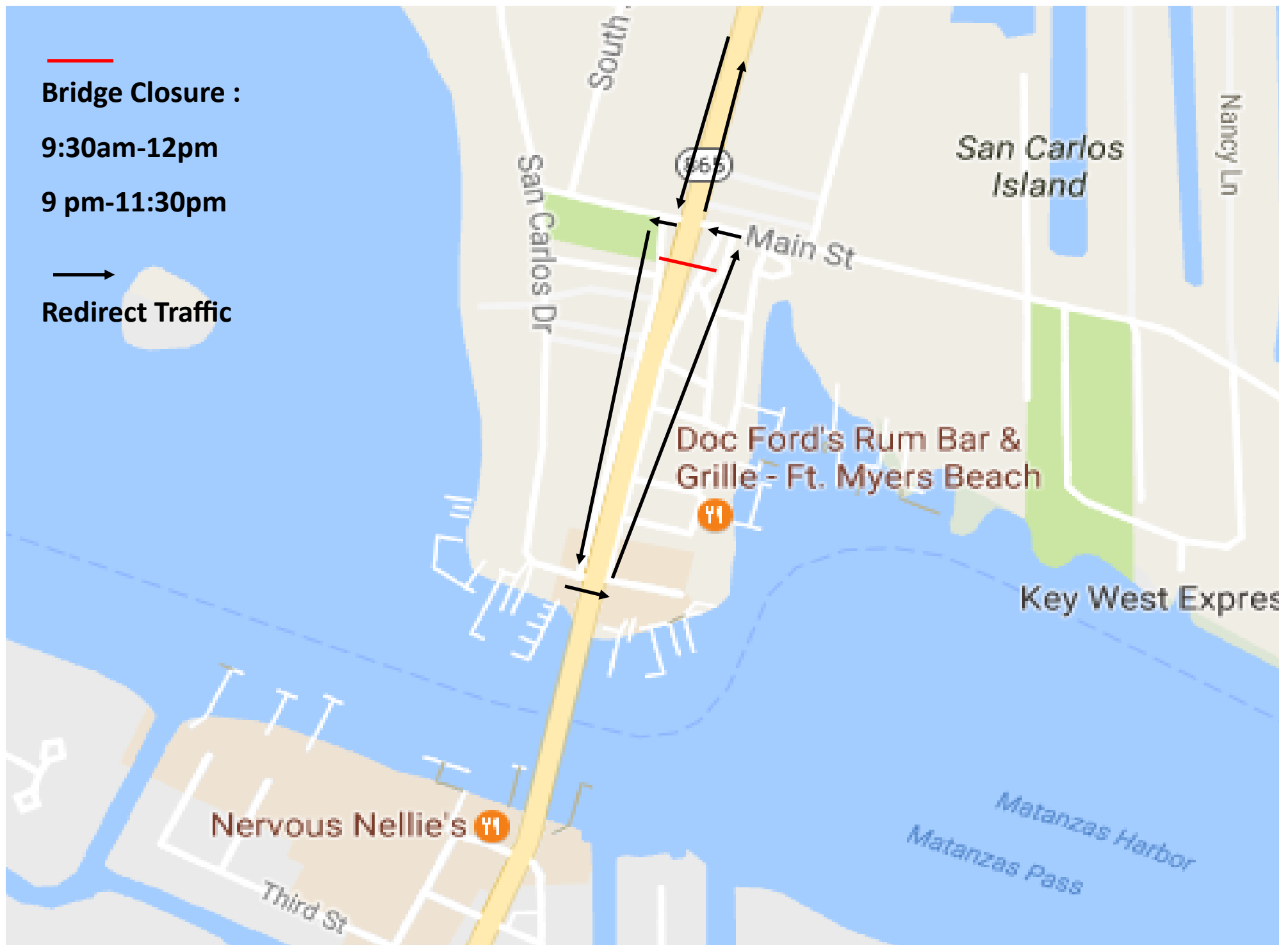
Road closed Bay Rd North to Matanzas Bridge: 9:30am-12pm

Matanzas Bridge Closed (San Carlos Island): 9:30am-12pm

Parade Start: 10am

 **: Road Closed**

Parade Staging



1. Requested Motion:

Meeting Date: April 18, 2022

Adopt Resolution 22-15, Updating the Town's Joint Local Mitigation Strategy.

Why the action is necessary:

This is the Town's opportunity to participate in the mandatory 5 year review of the Joint Local Mitigation Strategy.

What the action accomplishes:

Adoption of this resolution allows the Town of Fort Myers Beach to continue participation in the Joint Local Mitigation Strategy.

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

Resolution

4. Submitter of Information:

Chelsea O'Riley, Public Works
Director

5. Background:

The Town initially adopted a Local Mitigation Strategy in December 1999, then subsequently adopted a Joint Local Mitigation Strategy in April 2008. The Joint LMS was updated by the Lee County Local Mitigation Strategy Working Group in December 2011 and subsequently adopted by the Town under Resolution 12-18 and subsequently updated again via Resolution 17-11. The current plan has been reviewed by the Mitigation Strategy working group, has been reviewed by FDEM and awaits adoption by all municipalities.

Key Points to consider

- a. The Town receives Community Rating System (CRS) credit for adopting the Lee County Local Mitigation Strategy
- b. Assists in streamlining the receipt process for post-disaster state and federal funding through the pre-identification of mitigation initiatives.
- c. FEMA's CRS program requires the Flood Mitigation Plan to be updated every 5 years.
- d. Local Mitigation Strategy furthers Goal 5, Objectives 5-A and 5-B, and Policy 5-B-4 of the Comprehensive Plan.
- e. Maintaining eligibility for certain funding sources, which require an updated LMS.
- f. Local Mitigation Strategy has been updated to reflect the knowledge gained from disasters that Lee County has experienced over the past ten (15) years. It also reflects technological and scientific advances in mapping and data collection for risk assessment.
- g. Supports more effective pre-and post-disaster decision-making efforts

Attachments:

1. 22-15, Joint Unified Local Mitigation Strategy
2. FDEM Lee APA 3-24-22
3. FDEM LMS Plan Review Process
4. Joint Local Mitigation Strategy v2022.02

Financial Impact:

6. **Alternative Action**

Do not approve.

7. **Management Recommendations:**

Approve the Resolution.

8. **Recommended Approval:**

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

Created/Initiated - 3/30/2022
Approved - 3/30/2022
Approved - 3/30/2022
Approved - 4/8/2022
Final Approval - 4/12/2022

RESOLUTION 22-15

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING AN UPDATED JOINT UNIFIED LOCAL MITIGATION STRATEGY FOR LEE COUNTY PREPARED BY THE LOCAL MITIGATION STRATEGY WORKING GROUP OF LEE COUNTY REGARDING THE TOWN'S HAZARD MITIGATION ACTIVITIES; REPEALING ALL CONFLICTING RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the State Constitution and Chapter 166 of the 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 services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

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

WHEREAS, Lee County ("County") and the Town are vulnerable to various natural and human caused hazards including tropical storms, tornadoes, floods, fires, coastal erosion, drought, extreme temperatures, exotic pests, and chemical releases and face potential damage to life, property, natural resources, and the local economy because of the occurrence of such hazards ("Local Hazards"); and

WHEREAS, the County, the City of Bonita Springs, the City of Cape Coral, the City of Fort Myers, City of Sanibel, the Town of Fort Myers Beach, and the Village of Estero have formed the Local Mitigation Strategy Working Group, consisting of employees and community members and which is open for participation to all interested parties; and

WHEREAS, the Local Mitigation Strategy Working Group has identified Local Hazards and reassessed the county-wide vulnerability and risk of these Local Hazards based on the latest scientific and technically based risk assessment techniques; and

WHEREAS, the Working Group has identified and prioritized mitigation initiatives that would reduce local vulnerability from these Local Hazards; and

WHEREAS, the Local Mitigation Strategy has been updated to reflect the knowledge gained from disasters that Lee County has experienced over the past fifteen (15) years; and

WHEREAS, the Joint Unified Local Mitigation Strategy furthers the Town of Fort Myers Beach Comprehensive Plan; and

WHEREAS, projects identified in the Local Mitigation Strategy Mitigation Initiatives List are given more consideration by federal and state-managed funding programs such as the Hazard Mitigation Grant Program, the Flood Mitigation Assistance Program, Emergency Management

Preparedness Assistance Trust Fund, Communities Trust, Community Development Block Grant, Coastal Partnerships Initiative, and Home Investment Partnerships (HOME) Program; and

WHEREAS, the Local Mitigation Strategy can serve as the Flood Mitigation Plan as required of all communities participating in the National Flood Insurance Program and seeking project funding from the Flood Mitigation Assistance program; and

WHEREAS, the Local Mitigation Strategy can serve as the Post-Disaster Redevelopment Plan as required of all coastal counties in Florida by the Florida Administrative Code, Rule 9J-5 as part of the County Comprehensive Growth Management Plan; and

WHEREAS, the Local Mitigation Strategy is designed to be a process-oriented document with review and revision policies that allow the Local Mitigation Strategy to be changed to meet new or changing conditions including hazard-event frequency, perceived local needs and funding opportunities; and

WHEREAS, adoption of updated hazard mitigation measures necessary to provide for the protection of public health, safety, and welfare and to preserve the lives and property of the business owners, residents, and visitors of the Town is in the best interest of the Town.

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

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

Section 2. The updated Joint Unified Local Mitigation Strategy for Lee County, Florida, attached as Exhibit “A”, is adopted as part of the Town’s hazard mitigation activities.

Section 3. All resolutions or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 4 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.



STATE OF FLORIDA

DIVISION OF EMERGENCY MANAGEMENT

Ron DeSantis
Governor

Kevin Guthrie
Director

March 24, 2022

Sandra Tapfumaneyi, Director
Lee County Emergency Management
2675 Ortiz Avenue
Fort Myers, Florida 33905

Re: Lee County Local Hazard Mitigation Plan Approved Pending Adoption

Dear Director Tapfumaneyi,

This is to confirm that we have completed a State review of the Lee County Local Mitigation Strategy (LMS) update for compliance with the federal hazard mitigation planning standards contained in 44 CFR 201.6(b)-(d). Based on our review and comments, Lee County developed and submitted all the necessary plan revisions and our staff has reviewed and approved these revisions. We have determined that the Lee County LMS plan is compliant with federal standards, subject to formal community adoption, for the jurisdictions below:

Lee County, Unincorporated
City of Bonita Springs
City of Cape Coral
City of Fort Myers

City of Sanibel
Town of Fort Myers Beach
Village of Estero

Upon submittal of a copy of all participating jurisdictions' documentation of their adoption resolutions to our office, we will send all necessary documentation to the Federal Emergency Management Agency (FEMA) who will issue formal approval of the Lee County LMS.

If you have any questions regarding this matter, please contact your LMS Liaison Kristin Lentz at Kristin.Lentz@em.myflorida.com or 850-815-4519.

Respectfully,

Laura
Dhuwe

Digitally signed by Laura Dhuwe
DN: cn=Laura Dhuwe, o=DEM,
ou=Mitigation,
email=Laura.Dhuwe@em.myflorida.co
m, c=US
Date: 2022.03.24 14:01:32 -04'00'

Miles E. Anderson, for
Bureau Chief, Mitigation
State Hazard Mitigation Officer

MEA/kl

Attachments: MEMORADUM: State approval of LMS plans under Program Administration by States (PAS)

cc: FEMA Region IV, Mitigation Division – Risk Analysis Branch



STATE OF FLORIDA

DIVISION OF EMERGENCY MANAGEMENT

Ron DeSantis
Governor

Kevin Guthrie
Director

MEMORANDUM

TO: Local Mitigation Strategy Working Group Chair
FROM: Miles E. Anderson, Mitigation Bureau Chief, FDEM
DATE: October 20, 2021
SUBJECT: Local Mitigation Strategy Plan Review Process

Florida operates under Federal Emergency Management Agency's (FEMA) Program Administration by States (PAS) with regard to the review and approval of Local Mitigation Strategy (LMS) plans. Under this designation, the Florida Division of Emergency Management (FDEM) manages the approval of LMS plans with minimal FEMA oversight. FEMA sends final approval letters to the state for dissemination their county jurisdictions.

Updated LMS plans must be submitted to the FDEM six (6) months prior to the plan expiration date. Plans submitted later than this timeframe will be reviewed in the order they are received after timely submissions have been attended to. FDEM will attempt to complete reviews within 30 days whenever possible. The official submission shall consist of:

- Electronic copy (Excel version) of the Florida LMS Review Tool, completed as described in the Review Tool's instructions
- Electronic copy (email or file share platform e.g. SharePoint, Dropbox) of all the plan document(s) to be reviewed

The LMS working group must notify their state LMS liaison (via email or phone call) that their plan has been submitted. The assigned state mitigation planner will provide a confirmation of receipt. Upon completion of the review the state mitigation planner will inform the LMS chairperson that the plan is:

- a. Approved Pending Adoption (APA)
OR
- b. In need of revision. In this case, the plan must be revised and resubmitted to FDEM within 30 days of notification.

Once the county receives FDEM's APA letter, you may then take it to your jurisdictions to begin the adoption process. There is no specific order requirement for jurisdiction adoption. A copy of all adoption Resolutions must be submitted to FDEM for transmittal to FEMA.

Upon FDEM's receipt of each of your jurisdiction's resolutions, the FDEM Mitigation Planning Unit will send them to FEMA and await their approval letter. Once FDEM receives it, we will send it to the county for their records and further disbursement to your jurisdiction.

If you have any questions about this process, please speak with your state LMS liaison.

MEA/kl



2022

JOINT LOCAL MITIGATION STRATEGY

UNINCORPORATED LEE COUNTY, BONITA SPRINGS, CAPE CORAL,
ESTERO, FORT MYERS, FORT MYERS BEACH AND SANIBEL

Promulgation Document

Lee County and its political subdivisions are responsible for the preservation of life, property, and the environment during times of disaster. The *Joint Local Mitigation Strategy* forms the foundation for minimizing the risks posed to life and the built and natural environments through the implementation of short- and long-term mitigation strategies. In conjunction with prevention, protection, preparedness, response, and recovery efforts, the strategy builds resiliency into the communities that make up Lee County and its political subdivisions.

The *Joint Local Mitigation Strategy* is an extension of the *Hazard Identification and Risk Assessment* and a companion document to the *Lee County Comprehensive Emergency Management Plan*, as well as the comprehensive emergency management plans of the county's political subdivisions. This strategy sets forth the mitigation framework for Lee County and its political subdivisions and establishes a vision, mission, and set of priorities for mitigation activities in the area. Moreover, the strategy identifies core mitigation capabilities and describes short- and long-term mitigation strategies and activities. In addition to setting mitigation goals and objectives, the strategy delineates community actions that will reduce hazard risks.

The *Joint Local Mitigation Strategy* aligns with state and federal requirements and guidelines for local mitigation. The strategy undergoes regular, annual maintenance through the Local Mitigation Strategy Working Group and quinquennial review and adoption by the elected governing bodies of each participating jurisdiction. As part of this every-five-year practice, the strategy is reviewed by the State of Florida and by the Federal Emergency Management Agency.

Approval and Implementation

The *Joint Local Mitigation Strategy* was developed through a collaborative whole-community process that incorporated input from diverse stakeholders and mitigation principles from federal and state guidelines. The formal planning process for this strategy is laid out in the *Joint Local Mitigation Strategy Project Management Plan* (2021). The *Project Management Plan* also documents public input during the planning process. Upon concurrence from the elected governing bodies of Lee County and its political subdivisions, this strategy will be considered officially adopted and promulgated. The strategy is disseminated to county and municipal departments, local community interests, neighboring jurisdictions, and other stakeholders vital to preserving life, property, and the environment in the area.

The Lee County Department of Public Safety – Emergency Management will be the primary entity responsible for maintaining this document. The Local Mitigation Strategy Working Group, as part of the Disaster Advisory Council, will assist Emergency Management in that responsibility and with coordinating mitigation activities across the county and its political subdivisions.

This version of the *Joint Local Mitigation Strategy* supersedes previous versions, including the *Joint Unified Local Mitigation Strategy* (2017). In consultation with the Working Group and government leadership (county and municipal), Emergency Management is authorized to update and revise this strategy without additional approval from the aforementioned elected governing bodies. This exception does not apply to the five-year review and approval cycle required by the state and federal government.

Record of Changes

Version	Change	Reference	Date
2022.01	Vision and mission statement added	Chapter 1, p. 2	01/03/2022
	Plan integration updated	Chapter 1, p. 4	01/03/2022
	Community changes since last local mitigation strategy	Chapter 1, p. 8	01/03/2022
	Mitigation core capabilities added	Chapter 2, p. 12	01/03/2022
	Short-term and long-term strategies updated	Chapter 2, p. 16 & p. 17	01/03/2022
	Goals and objectives updated	Chapter 2, p. 18	01/03/2022
	Mitigation Action Plan added	Chapter 3, p. 21	01/03/2022
	Mitigation Project List updated	Chapter 3, p. 21	01/03/2022
	Review and maintenance updated	Chapter 4, p. 24	01/03/2022
	Community involvement updated	Chapter 4, p. 25	01/03/2022

Record of Distribution

This document is distributed formally to selected stakeholders every five years as part of the review and approval cycle (see Chapter 4 Review and Maintenance). The document is made available generally via the website for the Lee County Department of Public Safety – Emergency Management, which allows anyone to download and view the document at any time. Regular updates to this document that reflect changes in the mitigation strategy and associated programs and actions will be distributed via that website. The table below lists the recipients of the most recent formal distribution for review and approval.

Agency/Organization	Medium	Date
City of Bonita Springs	Digital	2022-04-01
City of Cape Coral	Digital	2022-04-01
City of Fort Myers	Digital	2022-04-01
City of Fort Myers Beach	Digital	2022-04-01
City of Sanibel	Digital	2022-04-01
Unincorporated Lee County	Digital	2022-04-01
Village of Estero	Digital	2022-04-01

Table of Contents

Promulgation Document.....	i
Approval and Implementation.....	ii
Record of Changes	iii
Record of Distribution	iv
Table of Contents	v
Chapter 1 Introduction.....	1
Purpose.....	1
Scope	1
Vision.....	2
Mission Statement.....	2
Stakeholders	2
Plan Integration.....	4
Public Involvement	7
Development Changes and Previous Mitigation Efforts	8
Chapter 2 Hazard Mitigation	9
Mitigation Framework	9
Coordinating Structures	10
Mitigation Core Capabilities	12
Mitigation Priorities.....	15
Short-Term Mitigation.....	16
Long-Term Mitigation.....	17
Goals and Objectives.....	18
Chapter 3 Mitigation Action Plan.....	21
Mitigation Actions	21
Mitigation Projects.....	21
Chapter 4 Review and Maintenance.....	24
Monitoring and Control.....	24

Joint Local Mitigation Strategy
Front Matter

Evaluation	24
Update Schedule	25
Community Involvement.....	25

Chapter 1 Introduction

This chapter describes the purpose and scope of the *Joint Local Mitigation Strategy*. It links this document with the *Hazard Identification and Risk Assessment* and the comprehensive emergency management plans for Lee County and its political subdivisions. The chapter establishes a unifying vision for the multijurisdictional mitigation framework, as well as a mission statement. The chapter concludes by identifying participating jurisdictions and the stakeholders that will make up the mitigation framework over the next five years.

Purpose

The purpose of this local mitigation strategy is to establish a multi-jurisdictional mitigation framework to reduce the probability and minimize the consequences of hazardous incidents.

Scope

This strategy addresses the natural hazards identified and assessed in the *Hazard Identification and Risk Assessment* (see Table 1 below) for Lee County and its political subdivisions (see the Stakeholders section below). The strategy encompasses mitigation activities that are either structural, regulatory, or social in nature. Human-caused hazards are not addressed in this document. The local mitigation strategy considers the planning area's economy, housing, health and social services, infrastructure, and natural and cultural resources¹. By doing so, the strategy encompasses systems that support and sustain communities and aligns mitigation efforts with the National Disaster Mitigation Framework².

Table 1 Natural Hazards in the Planning Area

Natural Hazards			
Animal/Plant Disease Outbreak	Coastal Erosion	Drought	Epidemic/Pandemic Disease
Excessive Heat	Extreme Cold	Flood	Freeze
Severe Weather	Tornado	Tropical Cyclone	Wildfire

¹ Federal Emergency Management Agency (June 2016), *National Mitigation Framework* 2nd ed, p. 3

² *ibid.* p. 16

Joint Local Mitigation Strategy Chapter 1 Introduction

Vision

A resilient network of communities and jurisdictions experiencing significantly reduced consequences from natural hazards.

Mission Statement

To save lives, protect property, and preserve the environment through collaborative mitigation actions.

Stakeholders

The *Joint Local Mitigation Strategy* is a collaborative, multijurisdictional effort to address natural hazards in the planning area (see Figure 1 and Figure 2 below). Within each jurisdiction are multiple private, public, and nonprofit interests with regards to the area's hazards. Attachment 3 of the *Joint Local Mitigation Strategy Project Management Plan* identifies these interests and their general role in the mitigation framework.

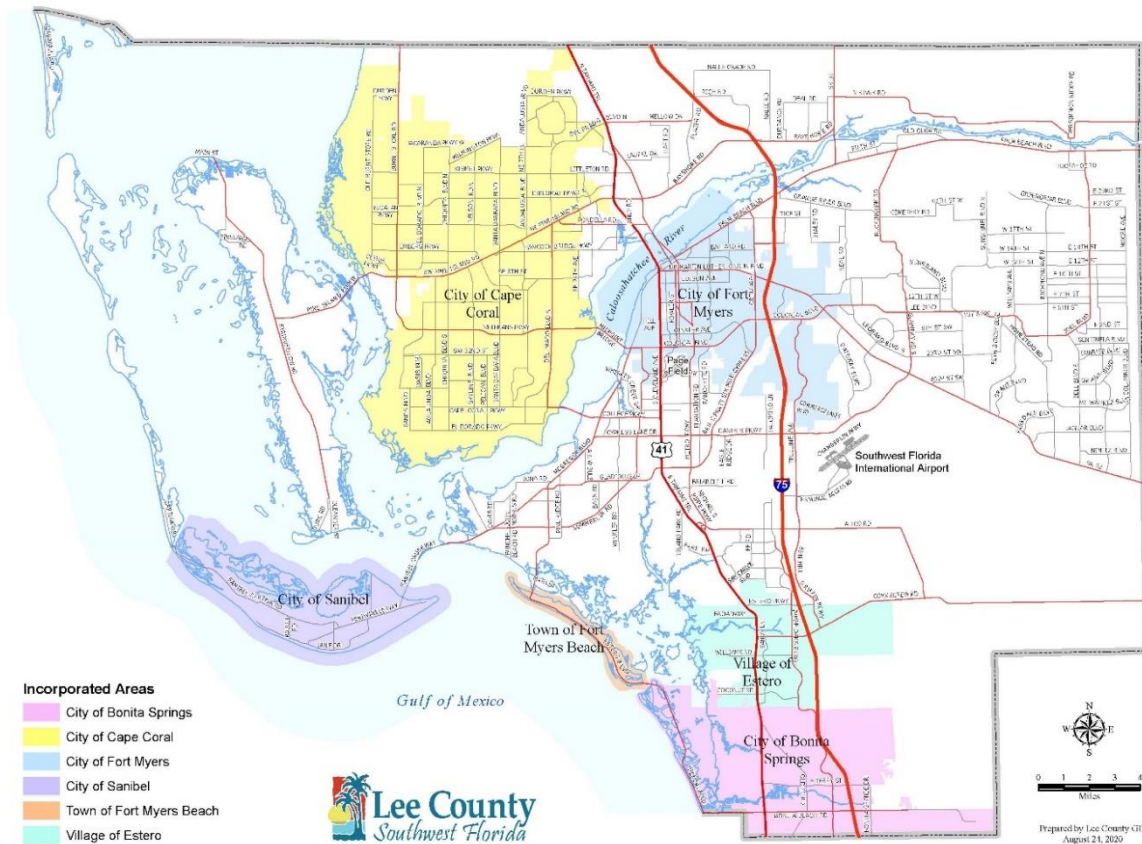


Figure 1 Joint Local Mitigation Strategy Planning Area

Joint Local Mitigation Strategy
Chapter 1 Introduction

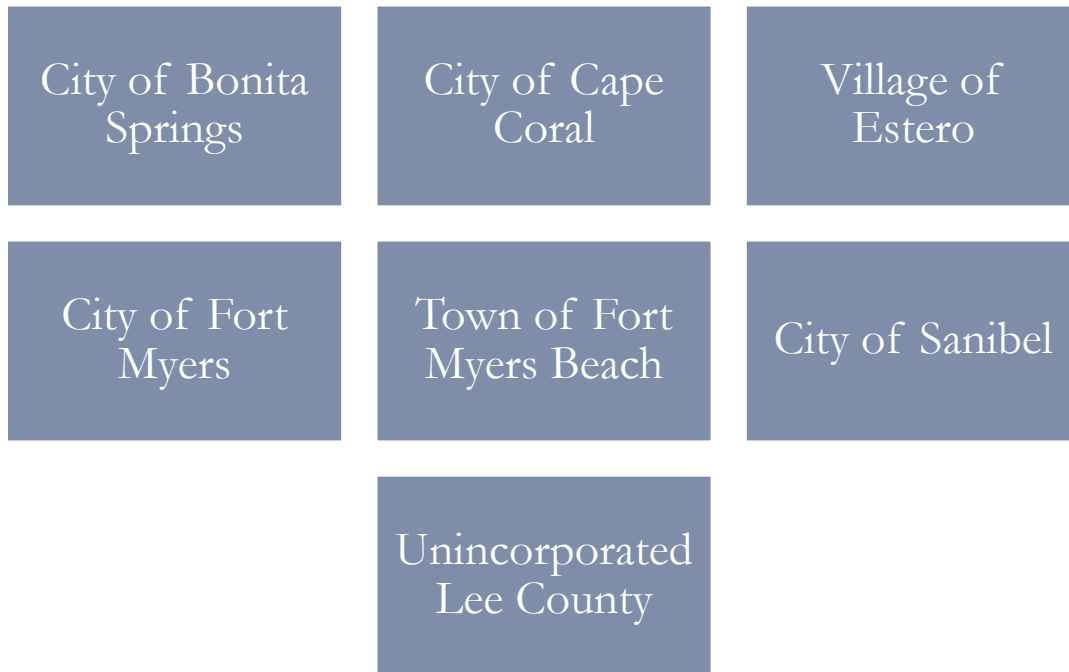


Figure 2 Joint Local Mitigation Strategy Jurisdictions

Mitigation is a constant, iterative process involving myriad stakeholders with similarly myriad interests. One purpose of the framework is to enable decision-makers to better identify and engage with entities to best match and allocate available resources with community needs. In addition to the governmental entities delineated in Figure 2 above, the mitigation framework relies on stakeholder involvement from the following³:

- Individuals, families, and households
- Communities
- Nongovernmental organizations
- Private sector entities
- Local governments
- State government entities
- Federal government entities

Local Mitigation Strategy Working Group

Stakeholder engagement and coordination for the framework is achieved through the Local Mitigation Strategy Working Group. In Lee County and its political subdivisions, this body consists of the membership for the Disaster Advisory Council (DAC). The

³ Federal Emergency Management Agency (2016), *National Mitigation Framework* (2nd ed), pp. 8-14

Joint Local Mitigation Strategy Chapter 1 Introduction

Coordinating Structures section provides more detailed information about the Working Group and its structure and role.

Plan Integration

The *Joint Local Mitigation Strategy* is designed to work in conjunction with existing plans, policies, and procedures in Lee County and its political subdivisions. Stakeholders coordinate the implementation of mitigation goals and objectives through county and municipal programs and systems, such as the documents listed below. Participating jurisdictions also incorporate the capabilities, priorities, goals, and objectives of the strategic framework with response and recovery operations through comprehensive emergency management plans and recovery plans.

The documents mentioned here are given brief descriptions. The section also notates the responsible parties. Members of the Local Mitigation Strategy Working Group provide technical assistance and coordinate with their agencies to integrate concepts in this framework into respective governance apparatuses.

County and Municipal Comprehensive Plans

These plans contain goals, objectives, and policies that help guide pre-disaster mitigation programs and activities. For example, Lee Plan contains a goal that specifically addresses hazard mitigation (Goal 72). Within that goal is a policy to adopt and maintain a flood plain management plan that analyzes flooding problems in unincorporated areas of Lee County, inventory the flood hazard area, review possible activities to remedy identified flooding problems, select appropriate alternatives, and formulate a schedule for implementation (for example, see Policy 72.1.5).

Florida Statutes allow local governments to amend comprehensive plans in several ways. The regular amendment cycle is the option most likely to be used to incorporate or implement mitigation strategies and activities. Responsible parties include the following: Lee County Community Development, Division of Planning; City of Bonita Springs; Town of Fort Myers Beach; City of Cape Coral; City of Fort Myers; and the City of Sanibel.

County and Municipal Capital Improvement Programs (CIP)

These programs are planning and budgetary tools that rank project funding to reflect a community's infrastructure needs for a given period (usually five years). In Florida, these programs consist of projects that comply with the government's comprehensive plan.

Joint Local Mitigation Strategy

Chapter 1 Introduction

They are used to fund projects and programs that avert or reduce both current and future damage potential to existing and new buildings to certain hazard types.

These programs are updated annually. Amendments to CIPs are usually made before the next annual review period and approved by a community's elected governing body. Responsible parties include the following: Lee County departments including Public Safety, Transportation, Construction and Design, Utilities, Solid Waste, and Natural Resources; City of Bonita Springs; Town of Fort Myers Beach; City of Cape Coral; City of Fort Myers; and the City of Sanibel.

County and Municipal Land Development Regulations, Zoning Ordinances, and Building Codes

Land development regulations or codes usually contain a codification of the land development ordinances of a community. They can be used to carry out actions that mitigate damage to new buildings and structures through design considerations. They also can be used to define type, density, and intensity of land uses in identified areas that account for natural and human-caused hazards. Examples of codes that can be used to mitigate hazards contained in this strategy include the Florida Building Code, the Fire Prevention Code, and each community's Flood Plain Management Ordinance. Low density zoning categories can also be used to reduce the amount and type of land uses exposed to certain types of hazards.

Lee County uses advisory committees to review changes to land development regulations. These committees meet on a regular basis to review and recommend changes to proposed county ordinances and regulations. Once finalized, these changes are sent to the governing body for public hearings. Responsible parties include the following: Lee County Community Development, Planning Section and Development Services; City of Bonita Springs; Town of Fort Myers Beach; City of Cape Coral; City of Fort Myers; City of Sanibel; and the Village of Estero.

Strategic Plans

Strategic plans identify the long-term direction to be taken in carrying out an agency's defined mission. These plans identify strategies, tasks, projects, and timeframes used to accomplished mitigation priorities, goals, and objectives. These plans usually focus on projects, but also can be used to define an agency's or elected body's policy toward mitigating hazard risks.

Surface Water Management Plans

Lee County maintains plans that identify existing flow ways, streams, and runoff rates for watershed basin. These plans also provide recommendations for protection and improvement of each flow way and stream. Such efforts protect lands from additional flooding that might be caused from downstream developments. Each plan is approved by the Board of County Commissioners. Responsible parties include the following: Lee County Surface Water Program, Division of Natural Resources Management.

Beach Management Plan

This plan addresses the restoration and maintenance needs of the county's beaches that are in a critical state of erosion, which is one of the planning area's identified natural hazards. Responsible parties include the following: The Coastal Advisory Council is a Board of County Commissioners appointed body overseeing the maintenance of the plan. The council holds monthly public meetings to discuss and review projects and to establish the budget to expend tourist tax funds for beach-related activities.

The Lee County Post Disaster Ordinance (07-20)

Lee County Ordinance 07-20 establishes the organizational framework for addressing hazard mitigation issues and policy development. It describes and assigns duties and responsibilities to the Disaster Advisory Council, which among other things, coordinates the planning area's mitigation framework. Responsible parties include Lee County and its political subdivisions, as well as representation from nonprofit, academic, commercial, and private citizen interests.

Lee County Community Wildfire Protection Plan(s)

Wildfire protections plans address specific wildfire problems for a given community. They can take a variety of forms and usually address local forest and range conditions, values-at-risk, and priorities for action. At a minimum, they identify and prioritize areas for hazardous fuel reduction treatments and recommend the types and methods of treatment that, if completed, reduces wildfire risk to the community. Other wildfire mitigation efforts include Firewise and the Ready, Set, Go program, as well as wildfire mitigation efforts in Lehigh Acres. The Florida Forest Service is responsible for these plans.

Comprehensive Emergency Management Plans

The *Hazard Identification and Risk Assessment* forms the foundation for mitigation, preparedness, response, and recovery efforts in the planning area. Mitigation priorities

Joint Local Mitigation Strategy Chapter 1 Introduction

and strategies are linked with the *Lee County Comprehensive Emergency Management Plan*, as well as the comprehensive emergency management plans of the county's political subdivisions.

City of Fort Myers Waterfront Visioning Plan

The Waterfront Visioning Plan outlines a vision for development along the Fort Myers downtown water front. The critical facility list updated during the planning process was used to identify the critical facilities in this smaller geography within the county and a critical facilities map was produced of the waterfront. The document is currently being updated to address sea-level rise and additional resiliency considerations. The Florida Department of Economic Opportunity is responsible for the plan.

Town of Fort Myers Beach Stormwater Master Plan

The Town of Fort Myers Beach experiences severe stormwater flooding, including in along Estero Boulevard, which is part of the area's evacuation routes. Stormwater flooding also poses water quality issues, which can result in beach closures and impacts on wildlife and aquatic species. The stormwater master plan includes projects for the Town to reduce the likelihood and consequences of stormwater flooding. The basis for the plan comes from the *Town of Fort Myers Beach Comprehensive Plan* developed in 1999. The comprehensive plan includes Goal Number 9, which states "to provide optimal flood protection and improved stormwater quality within the constraints imposed by location and existing land-use patterns."

Public Involvement

The development and implementation of the *Joint Local Mitigation Strategy* included involvement from the public. Public engagement included a county-wide survey made available on the Lee County Department of Public Safety webpage (along with the then-current version of the *Joint Unified Local Mitigation Strategy*). The survey was also distributed by the county's political subdivisions through newsletters, press releases, and so forth. Community outreach events, such as hurricane awareness seminars conducted by Lee County Emergency Management, educated public attendees on the county's identified hazards. Participants were encouraged to provide input and feedback through the survey link on the Lee County Department of Public Safety's webpage. The *Joint Local Mitigation Strategy Project Management Plan* (version 2021.03) addresses stakeholder engagement and public involvement in more specific detail.

Development Changes and Previous Mitigation Efforts

The *Hazard Identification and Risk Assessment* (HIRA) address changes in the community over the last 5-10 years. Chapter 2 Community Profile of the HIRA discusses trends in population changes in Lee County and its political subdivisions, changes in the built environment over the last decade or so, and fluctuations in the economy due to the recent pandemic. Notable increases in population over the last decade and related expansions in the built environment have increased the area's risk and vulnerability to hazardous incidents. More people live along the coastline and other areas prone to coastal flooding. Additional development in these areas also contributes to coastal erosion and increases in the Wildland-Urban Interface. Shifts in the economic well-being of the area's residents—particularly amongst communities also experiencing vulnerabilities (such as elderly populations and low-income households)—as a consequence of COVID have further increased risk and vulnerability.

Since the adoption of the *Joint Unified Local Mitigation Strategy* in 2017, the county has also added several public shelters, developed and improved stakeholder coordination, implemented ordinance and code enforcement for development in coastal areas, and engaged the public in hazard awareness campaigns. The county and its political subdivisions have developed and improved alert and warning capabilities, renewed its community and hazard assessments, and incorporated short-term mitigation activities as part of response operations to tropical cyclone and pandemic events.

In response to two major storm events in 2017, Lee County embarked on a 3 phase initiative to mitigate flooding impacts. The initial phase cleared major blockages in waterways to provide immediate relief to areas of inundation, focusing on those with structural impacts. The second phase did a detailed “on-the-ground” assessment of flood conditions and status of County stormwater infrastructure. Early action projects were procured to alleviate pending flooding threats. The third phase completed a detailed flood mitigation study to identify major capital improvements and operational needs to meet flood levels of service. Projects are now going through a selection and prioritization process for Board consideration and budget approval.

During the same period, while the mitigation priorities of Lee County and its political subdivisions have not changed, additional focus has been given to mitigating pandemic events. Testing and vaccination efforts during the pandemic lead the way for those efforts, as do developments in continuity of operations and continuity of business during staffing disruptions.

Chapter 2 Hazard Mitigation

This chapter outlines the planning area's hazard mitigation framework. It sets forth the core capabilities that will enable the community to mitigate against hazard risk.

Additionally, it establishes mitigation principles that will guide community efforts. The chapter delineates short- and long-term mitigation strategies, and then enumerates goals and objectives for mitigation.

Mitigation Framework

The *Joint Local Mitigation Strategy* establishes a hazard mitigation framework for the planning area. The framework consists of networks of individuals and organizations that work collaboratively to minimize hazard risk in Lee County and its political subdivisions. Coordination within the framework is done through stakeholders who are joined together by agreed upon goals and objectives, informed by industry guidelines and principles, and unified by joint initiatives and projects. The framework acts as an overarching mechanism to bring together otherwise disparate actions taking place across diverse interest groups. In this way, the *Joint Local Mitigation Strategy* brings participating jurisdictions together for cohesive action to address the area's hazards, risks, and vulnerabilities.

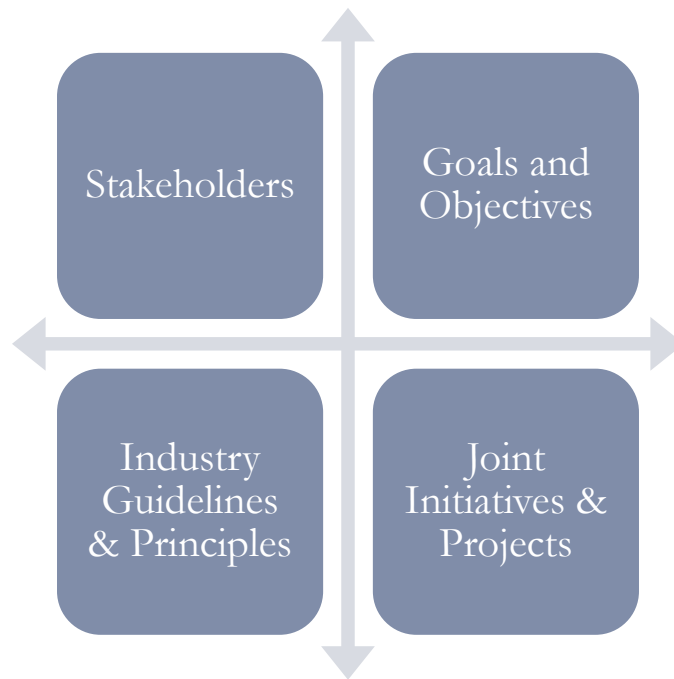


Figure 3 Hazard Mitigation Coordination

The hazard mitigation framework is made up of coordinating structures, core capabilities, priorities, and strategies for short- and long-term mitigation. The framework also contains goals, objectives, and milestones for achieving reduced risks and vulnerabilities. Finally, the framework encompasses an action plan for achieving mitigation goals and objectives and a project list for prioritizing allocation of available mitigation funds. These elements of the framework are addressed in more detail below.

Coordinating Structures

Implementation of the mitigation framework will require collaboration between diverse local, regional, state, and federal interests. To achieve effective collaboration, the framework seeks to network together coordinating structures⁴ that represent communities and interests across a broad spectrum. Coordinating structures develop and employ mitigation capabilities to reduce hazard risks. They facilitate communication between stakeholders and assist in creating consensus and action.

Local coordinating structures in Lee County and its political subdivisions include the following areas:

- Local and regional economic development organizations
- Public works agencies
- Private development enterprises
- Planning commissions
- Community emergency response teams
- Faith-based organizations
- Service groups
- Voluntary organizations
- Public and private schools
- Resources and referral/advocacy agencies for children, families, and those with disabilities and others with access and functional needs
- Local mitigation committees
- Long-term recovery groups
- Water conservation boards
- Coastal commissions
- Regional/Metropolitan planning organizations

⁴ Federal Emergency Management Agency (2016), *National Mitigation Framework* (2nd ed.), p. 30

Joint Local Mitigation Strategy Chapter 2 Hazard Mitigation

- Region healthcare coalitions
- Mutual aid compacts

Through the collaborative and iterative planning process undertaken to develop, implement, and maintain the *Hazard Identification and Risk Assessment* and the *Joint Local Mitigation Strategy*, representatives from the area's coordinating structures are able to coordinate and cooperate on mitigation activities. Linking this extensive network of networks is achieved primarily through the Local Mitigation Strategy Working Group.

Local Mitigation Strategy Working Group

The primary coordinating structure for the mitigation framework is the Local Mitigation Strategy Working Group. The Working Group oversees the development, implementation, and maintenance of the *Joint Local Mitigation Strategy*. It is the responsibility of the Working Group to identify community mitigation needs and to facilitate the development of projects to meet those needs. As part of the Disaster Advisory Council (DAC), the Working Group as a body has representation from Lee County, each municipality, the school district, institutions of higher education, utilities, special districts, regional districts, the public, and so forth. In addition to regular members, the DAC also engages with other relevant coordinating structures to ensure a broad-based approach to emergency management is achieved.

The DAC—and by extension, the Working Group—meets on a quarterly basis to discuss and update the *Joint Local Mitigation Strategy* and to address mitigation needs and projects in the community. The Working Group develops, implements, and monitors mitigation actions that address identified hazards. These actions are tied to the framework's goals and objectives and are guided by the strategy's mitigation priorities, which are outlined in Chapter 2 of this document. The DAC also develops, monitors, implements, and revises programs related to emergency preparedness, response, and recovery; in this way, the Working Group helps to ensure integration of mitigation principles and activities across all areas of emergency management in Lee County and its political subdivisions.

Lee County Department of Public Safety – Emergency Management is responsible for organizing and facilitating DAC meetings. The Director of Emergency Management appoints the chair for the Local Mitigation Strategy Working Group.

Mitigation Core Capabilities

The mitigation framework is built on a foundation of core capabilities. These capabilities enable the community to identify and address risks before, during, and after hazardous incidents occur. Mitigation core capabilities are similar to those found in other areas of emergency management. While there are numerous capabilities the planning area can leverage to reduce risks from hazards, core capabilities form the necessary basis to which those capabilities are affixed and used.

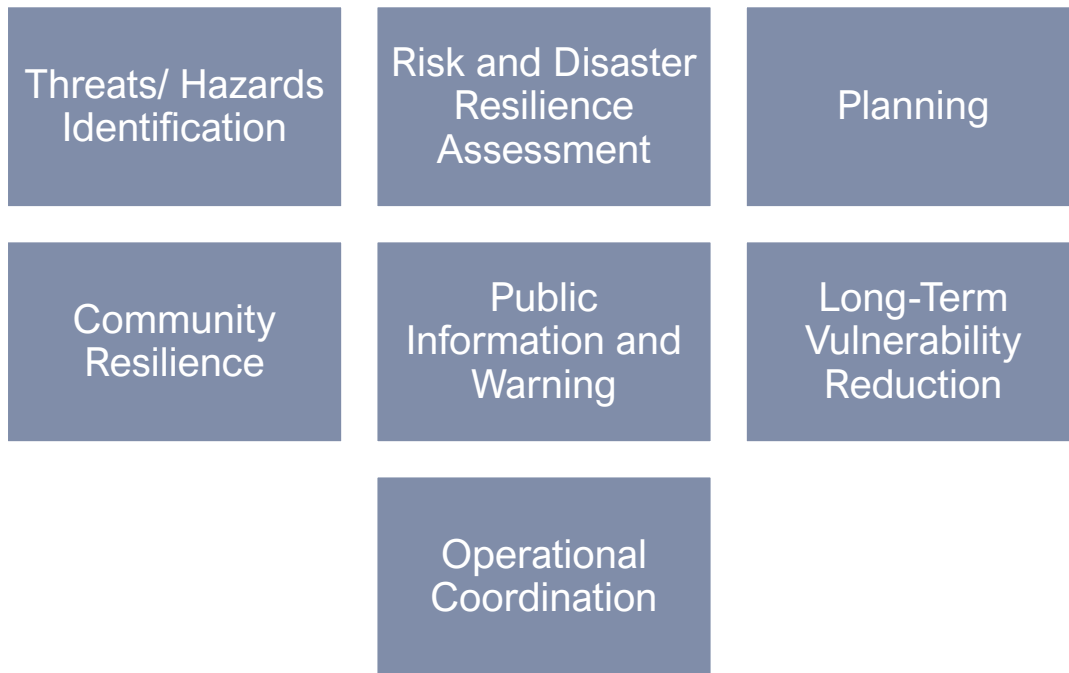


Figure 4 Mitigation Core Capabilities

The *National Mitigation Framework* by the Federal Emergency Management Agency (FEMA) provides extensive definitions for each core capability⁵. Application of the core capabilities in the community is achieved through a multitude of coordinating structures. Lee County and its political subdivisions develop and maintain these capabilities through consistent training, regular review of current mitigation principles, participation in industry workshops, and maintenance of plans, policies, and procedures related to mitigation activities. Continual maintenance of the *Hazard Identification and Risk Assessment*, the *Joint Local Mitigation Strategy*, and respective comprehensive emergency management plans and recovery plans ensure that these capabilities are

⁵ Federal Emergency Management Agency (June 2016), *National Mitigation Framework* (2nd ed.), pp. 2, 17-30

integrated fully with the planning area community.

Lee County and its political subdivisions use mitigation capabilities to address risks across all elements of the community. This includes economic systems, health and social services, housing inventory and markets, cultural resources, and the built and natural environments. In this way, the framework is applied consistently and across all facets of the planning area, including areas of comparatively high social vulnerability and areas traditionally underrepresented.⁶

Core Capability: Threats/Hazard Identification

This capability entails the continual identification and assessment of threats and hazards to people, property, and the environment in Lee County and its political subdivisions. As part of this capability, mitigation planners and participants identify data requirements, develop and analyze relevant data, deploy long-term monitoring schemes, share appropriate data, build cooperation between different community systems, and translate data into meaningful and actionable information.

The framework incorporates this capability through the *Hazard Identification and Risk Assessment*.

Core Capability: Risk and Disaster Resilience Assessment

This capability involves gaining an understanding of the planning environment, particularly with regards to community risks and resilience against the onset of hazardous events. Using this capability means evaluating threats, hazards, vulnerabilities, consequences, needs, and resources to define and prioritize mitigation actions.

The framework incorporates this capability through the *Hazard Identification and Risk Assessment*, which includes an extensive community profile examining the geography, economy, and demography of Lee County and its political subdivisions.

Core Capability: Planning

This capability applies combines the outcomes of the previous two capabilities with planning principles to address community needs. This capability involves embedding risk-based decisions into planning processes across all areas of emergency management and working through means that invite whole-community engagement. To

⁶ Federal Emergency Management Agency (2016), *National Mitigation Framework* (2nd ed.), p. 16

Joint Local Mitigation Strategy Chapter 2 Hazard Mitigation

develop and use this capability, the framework relies upon the expertise, knowledge, and systems in place in the planning area that support planning best practices.

The framework incorporates this capability through the *Hazard Identification and Risk Assessment*, the *Joint Local Mitigation Strategy*, and other efforts, such as those discussed in the Plan Integration section of this document.

Core Capability: Community Resilience

This capability centers on strengthening areas of the community, such as the economy, health and social services, housing, cultural resources, and the built and natural environments, to better withstand and/or recover from hazardous events. Employing this capability involves understanding the community, knowing what the risks are from hazards, communicating risk and risk reduction information, fostering a culture of cooperation, and promoting mitigation and resilience thinking.

The framework incorporates this capability through leadership commitment to resilience, collaboration between stakeholders, mitigation partnerships, training and education, and public outreach.

Core Capability: Public Information and Warning

This capability facilitates risk-informed decision-making by individuals, households, organizations, and jurisdictions. The capability entails internal and external communication between stakeholders, exchanges of analytical findings, outreach initiatives, education, and consensus building. Communities empowered with this capability are marked by a continuous flow of risk and hazard information among all stakeholders.

The framework incorporates this capability through stakeholder engagement throughout the development, implementation, maintenance, and revision processes for the *Hazard Identification and Risk Assessment* and the *Joint Local Mitigation Strategy*. The capability is also developed and used through public information initiatives, such as hazard-specific seminars and outreach events. Lee County and its political subdivisions also make extensive use of alert and warning tools, such as AlertLee, LeePrepares, and traditional and social media.

Core Capability: Long-Term Vulnerability Reduction

This capability encapsulates the principles and activities of other core capabilities to produce risk-reduction outcomes in the community. Building long-term vulnerability

Joint Local Mitigation Strategy Chapter 2 Hazard Mitigation

reduction involves broadening the acquisition and use of insurance, developing emergency preparedness at the individual and household level, advancing projects and activities that result in risk reduction and not just shifted risk, planning, integrating mitigation into buildings codes and ordinances, and so forth.

The framework incorporates this capability through mitigation strategies, projects, activities, and initiatives. The capability is also included in the framework through building code and ordinance implementation and enforcement. For example, the Lee County Department of Public Safety – Emergency Management has a role in reviewing proposed developments in unincorporated portions of the county to ensure compliance with building requirements related to construction in coastal high hazard areas, as well as relate to emergency preparedness plans for residential construction.

Core Capability: Operational Coordination

This capability is the ability to integrate mitigation strategies, principles, and activities into the daily operations of the community and its constituent parts. In this way, mitigation leaders and practitioners are able to connect with communities of interest, practice, and expertise. This capability drives the implementation of other core capabilities and aligns efforts in a way that institutes whole-community mitigation in Lee County and its political subdivisions.

The framework incorporates this capability through the Local Mitigation Strategy Working Group and the Disaster Advisory Council.

Mitigation Priorities

While developing and using mitigation capabilities and in pursuit of mitigation goals and objectives, Lee County and its political subdivisions focus on:

- Preventative activities that focus on reducing the risk to people, property, and the environment from identified hazards.
- Property protection activities to reduce or avert property damage on a building-by-building or parcel basis.
- Natural resource protection activities to preserve or maintain natural areas.
- Emergency services measures or activities, taken during any disaster incident caused by a hazard, which reduces the hazard's impact.
- Structural projects that minimize or wholly reduce a hazard's impact.
- Public information activities that advise property owners, potential property

owners, and visitors about hazards and ways to protect people and property.

- Pre- and post-disaster redevelopment and mitigation policies and procedures designed to reduce or avert the jurisdictions' potential for risks from future hazards.

Short-Term Mitigation

Short-term mitigation activities are achieved through emergency preparedness and response plans, policies, procedures, and operations. Lee County works with various partners to identify, retrofit, and maintain facilities that can be used as emergency shelters to move affected or potentially-affected people out of harm's way. The county, its municipalities, special districts, and state and federal entities consistently develop, train, and exercise coordination so that in times of hazardous incidents, life safety measures can be taken as soon as possible to save lives. This same coordination enables relevant stakeholders to expeditiously allocate and apply resources to protect the environment.

Other examples of short-term mitigation through response operations include initial and comprehensive damage assessments, needs assessments, utility restoration, search and rescue, and supply distribution. Public information immediately before, during, and after the onset of one or more hazards helps to reduce risk exposure to the community. Ultimately, effective preparation for and execution of response operations limits the risks and consequences of hazards when they occur.

Similarly, Lee County and its political subdivisions develop and (when needed) execute a recovery framework that renders aid to those affected by hazardous incidents. Rapid and effective recovery minimizes the long-term consequences of hazards in numerous ways. Recovery includes efforts such as post-disaster recovery, financial and economic relief, reconstruction, goods and services provisions, physical and mental health services, and so forth. The recovery framework also addresses the application of volunteered goods and services to areas of the community in need. Through a collaborative, well-executed recovery, members of the community affected by disaster, be they private, commercial, or otherwise are more resilient than they would be otherwise.

Important vehicles for short-term mitigation in Lee County and its political subdivisions include the following:

Joint Local Mitigation Strategy Chapter 2 Hazard Mitigation

- *Hazard Risk and Identification Assessment*
- *Lee County Comprehensive Emergency Management Plan*
 - Supporting plans, policies, standard operating guides, standard operating procedures, and checklists
- *Lee County Disaster Recovery Plan*
- *Lee County Training and Exercise Plan*
- County and municipal public education and outreach programs

Long-Term Mitigation

Long-term mitigation incorporates short-term mitigation activities with those that occur in the community continuously, regardless of whether a specific hazard has happened or not. Whereas response operations are tailored to a specific real-world instance of a hazard, long-term mitigation activities include drafting ordinances, constructing resilient buildings, retrofitting the built environment, and so forth. Moreover, it includes long-term projects following hazardous incidents, such as applying for and implementing hazard mitigation funds to install generators and reinforce buildings following a hurricane.

Lee County and its political subdivisions make use of building codes and land use ordinances to build mitigation in to the built and natural environments. These entities also participate in local and regional planning and engineering projects to study natural phenomena (such as water flow) and its interaction with people, economics, and the built environment. Recommendations for additional or revised codes and ordinances come from these efforts, as do proposals and designs for mitigation projects.

Other elements of the framework's long-term mitigation include participation in the National Flood Insurance Program's Community Rating System and public outreach programs. Each jurisdiction maintains and addresses floodplain areas and coordinates NFIP initiatives, strategies, and information with policyholders. Jurisdictions identify repetitive-loss properties and develop and implement strategies and actions to buyout those locations or assist with retrofitting. Outreach programs, such as annual hurricane seminars, educate residents on the area's identified hazards. These outreach programs provide residents with personal and family preparedness guidelines, which in turn build community resiliency, and resources for use during and after disasters.

Reducing long-term vulnerabilities, combined with continuity of operations and recovery planning before a disaster, increase resiliency and the likelihood that communities and organizations can perform essential functions and deliver core capabilities after an

event. In addition to other avenues, the mitigation framework institutes short- and long-term mitigation initiatives through the Mitigation Action Plan, which is provided in Chapter 3 of this strategy.

Goals and Objectives

The *Joint Local Mitigation Strategy* establishes six goals for Lee County and its political subdivisions to achieve over the next five years. Each goal has a number of objectives associated with them. Lee County, its municipalities, and respective stakeholders work in coordinated fashion with another to accomplish this strategies goals and objectives and thus reduce the negative outcomes of future hazardous incidents.

Goal 1

1. Reduce community risk and vulnerability to hazards.
 - 1.1. Evaluate and recommend changes to county and municipal codes and ordinances related to structural mitigation.
 - 1.2. Identify and develop mitigation actions and/or projects for each participating jurisdiction.
 - 1.3. Update and revise the Mitigation Projects List on a quarterly basis.
 - 1.4. Update the community and hazard profiles in the *Hazard Identification and Risk Assessment* annually.
 - 1.5. Conduct a survey of community vulnerability through established working groups and incorporate results into the *Hazard Identification and Risk Assessment* and the *Local Mitigation Strategy*.
 - 1.6. Hazard-proof existing and proposed critical facilities and registered historic structures, with regards to location and construction.

Goal 2

2. Coordinate and support efforts to reduce or eliminate repetitive loss.
 - 2.1. Develop projects and/or actions to acquire/relocate or retrofit repetitive loss properties.
 - 2.2. Conduct an examination of enacting development standards for the Wildland Urban Interface.

Joint Local Mitigation Strategy
Chapter 2 Hazard Mitigation

- 2.3. Develop and implement a program to reduce homeowner insurance policy rates on new construction.
- 2.4. Maintain or improve the Community Rating System score for Lee County and its political subdivisions over the next five years.

Goal 3

- 3. Support natural resource protection activities that preserve or maintain natural areas.
 - 3.1. Conduct wetland coordinating/evaluation programs with state and water management agencies.
 - 3.2. Enforce erosion sedimentation and control regulations that reduce how much sediment enters natural areas when development takes place.
 - 3.3. Protect and restore the ecological functions of wetland systems to ensure their long-term environmental, economic, and recreational values include hazard mitigation practices.
 - 3.4. Promote the use of agricultural practices that are compatible with the protection of natural systems.

Goal 4

- 4. Improve mitigation through response operations during and after the onset of a hazard.
 - 4.1. Incorporate revisions in the *Hazard Identification and Risk Assessment* with preparedness and response activities across all jurisdictions.
 - 4.2. Reduce the community's hurricane shelter-space deficit.
 - 4.3. Identify and fund critical facilities in need of improved mitigation.
 - 4.4. Increase flood-resistance among critical facilities located in Coastal High Hazard Areas.
 - 4.5. Integrate short-term mitigation priorities with comprehensive emergency management plans and recovery plans.

Goal 5

- 5. Improve community coordination for mitigation.

Joint Local Mitigation Strategy
Chapter 2 Hazard Mitigation

- 5.1. Catalogue mitigation-related ordinances, codes, policies, and plans to ensure up-to-date integration of all documents.
- 5.2. Integrate mitigation priorities, goals, and objectives across jurisdictional programs, policies, plans, and procedures.
- 5.3. Incorporate project management guidance and tools into mitigation initiatives and activities.
- 5.4. Engage with additional mitigation partners to develop better relationships, understanding, and communication.

Goal 6

6. Coordinate and implement public information programs and activities regarding hazards and mitigation.
 - 6.1. Develop and carry out public information programs for hazard mitigation that emphasize its direct benefits to citizens, including the public and private sector.
 - 6.2. Send annual information to repetitive loss owners on mitigation principles and improvements.

Chapter 3 Mitigation Action Plan

This chapter sets forth activities that will be undertaken by Lee County and its political subdivisions to mitigate the probability and consequences of hazardous events. The chapter describes the coordinating structures that will develop, implement, and monitor the mitigation activities. It lays out the role and responsibilities of the Local Mitigation Working Group and the Lee County Department of Public Safety – Emergency Management in executing and monitoring the mitigation action plan. The chapter concludes with enumerating what mitigation activities will be initiated and completed by the framework and its participating coordinating structures.

Mitigation Actions

The *Local Mitigation Strategy* assigns actions to each of its objectives. The actions are specific efforts that are currently being done or will be undertaken by Lee County and its political subdivisions to reduce risks and vulnerabilities to hazards. To direct the implementation of the strategy, these listed actions entail specific items that are measurable, time-delineate (by year and quarter), and assigned to an organization or position for accountability purposes. Each item is also associated with one or more hazards identified and assessed in the *Hazard Identification and Risk Assessment*.

As the Working Group and other stakeholders implement the *Joint Local Mitigation Strategy*, the actions listed in the plan will be updated to reflect completed, deferred, or ceased actions. New action items will be added as the community works toward completing its mitigation goals and objectives. When all needed actions for a given objective are completed (including any future items added after dissemination of this document), the objective will be considered achieved.

The Local Mitigation Strategy Working Group Chairperson maintains a current list of mitigation actions, which are shared with mitigation stakeholders

Mitigation Projects

Whereas mitigation actions are specific, time-delineated activities that various community systems at once, mitigation projects are specific structural mitigation endeavors that reduce risk and vulnerability in the built environment. Mitigation projects in this sense allow the framework a means to give particular focus to new and existing buildings and infrastructure. Mitigation actions may not require dedicated funds for

Local Mitigation Strategy

Chapter 3 Mitigation Action Plan

implementation; conversely, mitigation projects invariably require funding sources to procure goods and services for completion. In this manner, projects are often identified, developed, and held in waiting until funds are made available, such as through the Hazard Mitigation Grant Program (HMGP).

Because of the need for funding, which is oftentimes limited, the Working Group prioritizes mitigation projects. Prioritization uses a standardized process of scoring proposed projects according to a schedule of criteria that, taken together, ensure projects that provide the greatest and broadest benefit to risk and vulnerability reduction are prioritized over those with comparatively less benefit. The following constitutes the criteria used by the Working Group to assess, score, and rank proposed mitigation projects:

- Addressed in Community Comprehensive Plans, Programs and Policies
- Consistent with existing regulatory framework
- Probability of funding
- Community Rating System Credit
- Community Benefit
- Community Exposure to identified hazard
- Level of Public Demand, County wide
- Complexity of Implementation
- Estimated Ratio of Benefit vs. Cost: (FEMA cost benefit analysis preferred)
- Critical Service Improvement
- Time frame to complete project

Jurisdictions proposing projects complete a standardized form, which includes a description of the project, estimated cost, and information addressing each criterion. The Working Group reviews and assesses the completed forms, discusses the proposed project with the sponsoring jurisdiction, and then as a body determines the level of public demand. If the Working Group accepts the proposal, the project is added to the Mitigation Project List, with its overall rank determined by its total score (based on answers to the criteria mentioned above). Rejected projects can be revised and revisited by sponsoring jurisdictions, if they so choose. Figure 5 below illustrates this process.

Hurricane shelter projects go through an additional set of parameters that evaluates such factors as: storm surge vulnerability, building construction, increase in shelter capacity, and project cost effectiveness.

Local Mitigation Strategy Chapter 3 Mitigation Action Plan

Any projects submitted for federal funding also include a cost benefit analysis using approved methodology and consider dollars lost to the community.

The current version of the list and data related to it are stored on a database maintained by the Local Mitigation Strategy Working Group Chairperson.

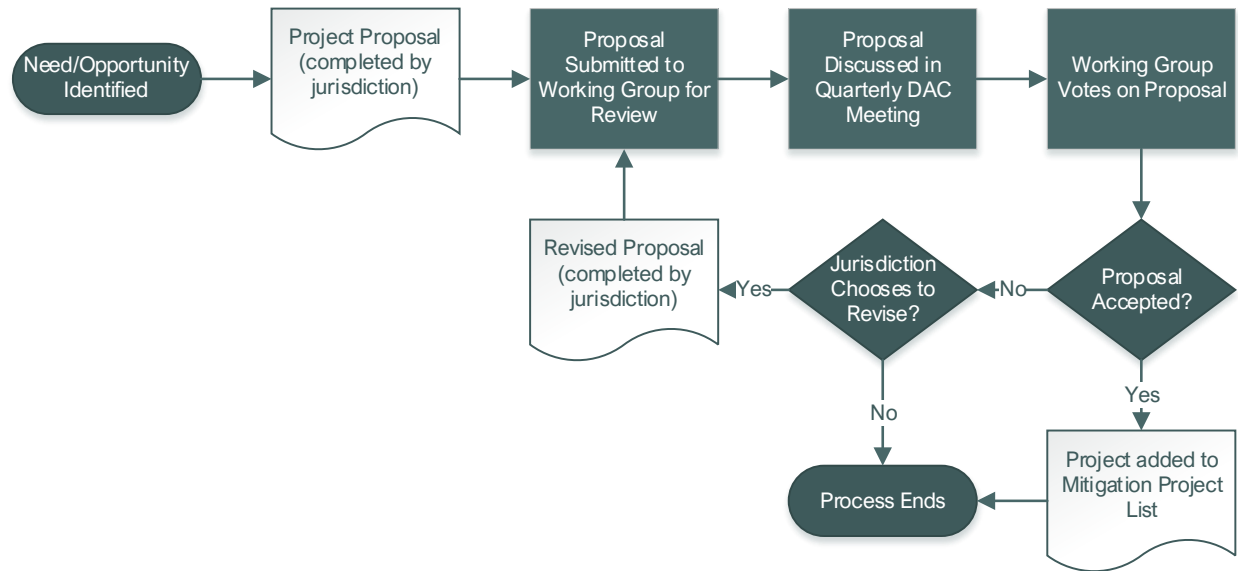


Figure 5 Process for Proposed Mitigation Action Acceptance/Denial

Chapter 4 Review and Maintenance

This chapter describes how the *Joint Local Mitigation Strategy* will be maintained during its implementation and reviewed and updated. The chapter addresses the manner in which the framework monitors progress of mitigation goals and objectives and disseminate such information throughout the community. It outlines the method used to evaluate progress, identify issues, address community needs, and leverage new opportunities for reducing risk and vulnerability. The chapter concludes by briefly summarizing how the strategy and this document will be maintained on an annual basis and references the *Joint Local Mitigation Strategy Project Management Plan* and its role in ensuring the strategy is kept current.

Monitoring and Control

The Local Mitigation Strategy Working Group Chairperson coordinates and communicates with Working Group members to monitor progress of the Mitigation Action Plan and the Mitigation Project List. The Chairperson maintains a database that tracks data related to action and project implementation, progress, and conclusion. At least once a quarter, the Chairperson contacts members of the Working Group to receive progress reports. In instances where project actions involve coordination with stakeholders not participating in the Working Group, the Chairperson works with those tasked with managing such coordination to receive similar progress reports.

Lee County Department of Public Safety – Emergency Management submits an annual report to the State of Florida Division of Emergency Management (per Administrative Code 27P-22). This report is due the last working weekday of each January and addresses the strategy, the Mitigation Action Plan, the Working Group, and other elements of the framework.

Evaluation

At least once a quarter, the Chairperson will distribute to the Working Group a Mitigation Action Plan Progress Report and a Mitigation Project List Progress Report. At each quarterly meeting of the Disaster Advisory Council (DAC), the Working Group discusses the progress reports and any needed or recommended changes to the *Joint Local Mitigation Strategy*. As Lee County and its political subdivisions maintain a continual assessment of the community and its risk and vulnerability reduction needs, the Working Group adds new mitigation actions and/or projects to the *Joint Local Mitigation Strategy*

as needs are identified or opportunities present themselves. The Working Group also considers any recent public input on mitigation during each quarterly DAC meeting.

Update Schedule

The *Joint Local Mitigation Strategy* is reviewed, revised, and distributed on an annual basis. The process and schedule for this is detailed in the *Joint Local Mitigation Strategy Project Management Plan*⁷.

Community Involvement

The Working Group works with each participating jurisdiction to engage with the community on mitigation issues. Engagement includes soliciting community feedback during outreach activities, as well as providing mechanisms for general public input (such as community-wide surveys). Engagement also is achieved through coordination activities with the coordinating structures mentioned previously in this document. More detailed information related to continual community involvement is addressed in the *Joint Local Mitigation Strategy Project Management Plan* (version 2022).

⁷ The next update and revision to this document is addressed in the *Joint Local Mitigation Strategy Project Management Plan* (version 2022)

1. **Requested Motion:**

Meeting Date: April 18, 2022

Approve Supplemental Task Authorization #12 with DRMP, Inc. for engineering services in the not to exceed amount of \$78,200 and approve the one-year renewal for DRMP and authorize the Town Manager to execute the contract documents.

Why the action is necessary:

As part of the Times Square Project will be an FDOT LAP Project, there are technical and specific standards and federal requirements for design and construction. DRMP will need to adjust the plans and design to satisfy all of the LAP requirements in order for the Town to be eligible for a \$1M grant.

What the action accomplishes:

Authorizes the Town Manager to execute the Supplemental Task Authorization.

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

Chelsea O'Riley, Public Works
Director

5. **Background:**

Attachments:

1. DRMP 19-06-PW Times Square Design One Year Renewal - PB Signed
2. STA 12 - Times Square Additional Services Bifurcation and Entrance Mods - PB Signed

Financial Impact:

6. **Alternative Action**

Do not approve.

7. **Management Recommendations:**

8. **Recommended Approval:**

Chelsea O'Riley, Public Works Director
Chelsea O'Riley, Public Works Director
Jason Freeman, Contracts Manager/Deputy Town Clerk
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 4/11/2022
Approved - 4/11/2022
Approved - 4/11/2022
Approved - 4/12/2022
Approved - 4/13/2022
Final Approval - 4/13/2022

PROFESSIONAL SERVICES AGREEMENT RENEWAL

The undersigned parties to that certain Professional Services Agreement entered into between the TOWN OF FORT MYERS BEACH and **DRMP, Inc.** dated May 10, 2019, in response to RFQ-19-06-PW Times Square Design hereby agree to renew the Agreement on the same terms and conditions for a period of one year, commencing on May 10, 2022 and expiring on May 10, 2023. Those terms and conditions are reflected in the prior agreement that is attached hereto and incorporated herein by reference as Exhibit A.

IN WITNESS WHEREOF, the parties have executed this Professional Services Agreement Renewal on the dates set forth below.

TOWN OF FORT MYERS BEACH

DRMP, Inc.

By: _____
Roger T. Hernstadt, Town Manager

By: Paul Benvie
Title: Paul Benvie, Office Leader

DATE: _____

DATE: 4/11/2022

ATTEST:

Amy Baker, Town Clerk

APPROVED AS TO LEGAL FORM:

By: _____
Town Attorney

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT is made and entered into this 10th day of May 2019 by and between the Town of Fort Myers Beach, Florida, a chartered municipality of the State of Florida, whose address is 2525 Estero Boulevard, Fort Myers Beach, Florida 33931 ("Town"), and **DRMP, Inc.** ("Consultant"), whose address is 2306 Dr. Martin Luther King Jr. Boulevard, Fort Myers, Florida 33901.

WHEREAS, the Town desires the Consultant to provide and perform professional services as further described hereinafter concerning Provide LAP Funded Project – Renovation/Reconstruction Professional Services for Times Square, ("Project"); and

WHEREAS, the selection and engagement of the Consultant has been made by the Town in accordance with the provisions of the Consultants' Competitive Negotiation Act, Chapter 287.055, Florida Statutes and applicable Town Ordinances, Rules, and Charter Provisions;

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

ARTICLE 1.00 - SCOPE OF PROFESSIONAL SERVICES

1.01 SCOPE OF SERVICES. Consultant hereby agrees to provide and perform the professional services required and necessary to complete the work set forth on EXHIBIT "A", entitled "Scope of Professional Services", which is attached hereto and incorporated herein by reference. Such services shall be referred to hereunder as "Basic Services."

1.02 ADDITIONAL SERVICES. Should the Town request the Consultant to provide and perform professional services for this Project which are not set forth in EXHIBIT "A", the Consultant agrees to provide and perform such Additional Services as may be agreed to in a Supplemental Task Authorization to this Agreement.

1.03 SUPPLEMENTAL TASK AUTHORIZATION. All authorized changes to the scope of professional services, tasks, work or materials to be performed or provided by the Consultant; the compensation and method of payment; the schedule or time period for performance and completion; and/or the guidelines, criteria and requirements pertaining thereto, shall be (i) reduced to writing on the Town's standard form Supplemental Task Authorization and (ii) signed by both parties, to be effective. Notwithstanding anything to the contrary herein, the Town shall have the unilateral right to delete all, or portions, of the Scope of Services, set forth on EXHIBIT "A" and/or any Supplemental Task Authorization executed hereunder, by the unilateral issuance of a written Supplemental Task Authorization to the Consultant, which shall be effective with or without Consultant's execution thereof.

ARTICLE 2.00 - OBLIGATIONS OF THE CONSULTANT

The obligations of the Consultant shall include, but not be limited to, the following:

2.01. LICENSES: Consultant certifies that it possesses valid, current licenses to do business, including, but not limited to, licenses required by the respective State Boards and other governmental agencies responsible for regulating and licensing the professional services provided and performed by the Consultant pursuant to this Agreement. Consultant agrees to maintain such licenses throughout the period that this Agreement is in effect.

2.02 QUALIFIED, WILLING AND ABLE. Consultant certifies it is qualified, willing and able to provide and perform all services hereunder, in accordance with the requirements hereof.

2.03 PERSONNEL

- (1) **QUALIFIED PERSONNEL:** The Consultant shall employ and/or retain only qualified personnel for all services it provides hereunder. Such personnel shall have all license(s), certificate(s) of authorization and other legal qualifications to provide such services.
- (2) **CONSULTANT'S PROJECT DIRECTOR:** The Consultant agrees to employ and designate, in writing, a qualified and properly licensed professional as the Consultant's Project Director. The Consultant's Project Director shall be authorized and responsible to act on behalf of the Consultant with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement and all addenda hereto. The Consultant's Project Director shall have full authority to bind and obligate the Consultant on any matter arising hereunder unless the parties have previously agreed otherwise in writing. The Project Director shall devote whatever time is required to satisfactorily direct, supervise and manage the services provided and performed by the Consultant throughout the entire period this Agreement is in effect. The person selected by the Consultant to serve as the Consultant's Project Director shall be subject to the prior approval and acceptance by the Town.
- (3) **REMOVAL OF PERSONNEL:** Within ten (10) days of receipt of the Town's written request, the Consultant shall remove and replace its Project Director, or any other personnel employed or retained by the Consultant, or personnel of the sub consultant(s) or subcontractor(s) engaged by the Consultant to provide and/or perform services and/or work pursuant to this Agreement, and any Addenda hereto. The Town shall have the ability to make such request with or without cause.
- (4) **SUB-CONSULTANT:** The Consultant shall have the ability to engage the professional services of a Sub-consultant or Sub-consultants to assist the Consultant in providing and performing the professional services, work and materials for which the Consultant is contractually obligated to perform hereunder. The Town shall not be a party to, responsible or liable for, or assume any obligation whatever for any Agreement entered into between the Consultant and any Sub-consultant. Such engagement shall be with the prior written approval of Town, and is subject to the terms of ARTICLE 8 below.
- (5) **SUB-CONTRACTOR:** The Consultant shall have the ability to engage the services of a Sub-contractor or Sub-contractors to assist the Consultant in providing and performing services, work and materials for which the Consultant is contractually obligated to perform hereunder. The Town shall not be a party to, responsible or liable for, or assume any obligation whatever for any Agreement entered into between the Consultant and any Subcontractor. Such engagement shall be with the prior written approval of Town, and is subject to the terms of ARTICLE 8 below.

2.04 TIMELY ACCOMPLISHMENT OF SERVICES: The timely performance and completion of the required services, work and materials is vitally important to the interests of the Town and time is of the essence for all of the duties and obligations contained in this Agreement. The Town may suffer damages in the event that the Consultant does not accomplish and complete the required services in a timely manner. The Consultant agrees to employ, engage, retain and/or assign an adequate number of personnel throughout the period of this Agreement so that all services will be provided, performed and completed in a timely and diligent manner throughout.

2.05 STANDARDS OF PROFESSIONAL SERVICE: The work and/or services to be provided and/or performed by the Consultant (and by any Sub-consultant(s) and/or Sub-contractor(s) engaged by the Consultant) as set forth in the Scope of Professional Services, EXHIBIT "A", shall be done in accordance with the generally accepted standards of professional practice and in accordance with the laws, rules, regulations, ordinances, codes, policies, standards or other guidelines issued by those governmental agencies which have jurisdiction over all or a portion of this project and which are in effect at the time the Town approves this Agreement, or which may subsequently be changed or revised.

2.06 CORRECTION OF ERRORS, OMISSIONS OR OTHER DEFICIENCIES

- (1) **RESPONSIBILITY TO CORRECT:** The Consultant agrees to be responsible for the professional quality, technical adequacy and accuracy, timely completion, and the coordination of all data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and other services, work and materials performed, provided, and/or furnished by Consultant or by any Sub consultant(s) and/or Subcontractor(s) retained or engaged by the Consultant pursuant to this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents and instruments, and other services, work and materials resulting from the negligent act, errors or omissions or intentional misconduct of Consultant or any Sub consultant(s) or Subcontractor(s) engaged by the Consultant.
- (2) **TOWN'S APPROVAL NOT RELIEVING CONSULTANT OF RESPONSIBILITY:** Neither review, approval, nor acceptance by the Town of data, studies, surveys, designs, specifications, calculations, estimates, plans, drawings, construction documents, photographs, reports, memoranda, other documents and instruments, and/or incidental professional services, work and materials furnished hereunder by the Consultant or any Sub consultant(s) or Subcontractor(s) engaged by the Consultant, shall in any way relieve Consultant of responsibility for the adequacy, completeness and accuracy of its services, work and materials and the services, work and materials of any and all Sub consultants and/or Subcontractors engaged by the Consultant to provide and perform services in connection with this Agreement. Neither the Town's review, approval or acceptance of, nor payment for, any of the Consultant's services, work and materials shall be construed to operate as a waiver of any of the Town's rights under this Agreement, or any cause of action it may have arising out of the performance of this Agreement.

2.07 LIABILITY/HOLD HARMLESS. The Consultant shall indemnify and hold the Town harmless for claims, suits, judgments or damages, losses and expenses including but not limited to court costs and attorney's fees (including but not limited to appellate attorney fees) arising out of, or resulting from, the Consultant's negligent acts, errors, omissions or those of Sub consultants and/or engaged by the Consultant during the providing, performing and furnishing of services, work and materials pursuant to this Agreement and Supplemental Task Authorizations hereto. The Consultant shall not be liable to nor indemnify the Town for any portions of damages arising out of any error, omission, and/or negligence of the Town, its employees, agents, or representatives or third parties. The Consultant hereby acknowledges that the compensation to be paid it by the Town hereunder includes compensation as consideration for the indemnification provided herein.

2.08 NOT TO DIVULGE CERTAIN INFORMATION: Consultant agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without Town's prior written consent, or unless incident to the proper performance of Consultant's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by Consultant or any sub consultant(s) or subcontractor(s) hereunder, subject to the requirements of the Florida Public Records Law. Consultant shall require all of its employees, Sub consultant(s) and Subcontractor(s) to comply with these provisions.

2.09 CONSULTANT TO REPAIR PROPERTY DAMAGE IT HAS CAUSED: Consultant agrees to promptly repair and/or replace, or cause to have repaired and/or replaced, at its sole cost and expense and in a manner acceptable to and approved by the Town, any property damage arising out of, or caused by, the willful or negligent acts of the Consultant, or of its Sub consultants and/or Subcontractors. The Consultant's obligation hereunder does not apply to property damage caused by any other Consultant or Contractor engaged directly by the Town. Should the Consultant fail to make such repairs and/or replacements within a reasonable time, the Town reserves the right to cause such repairs and/or replacement to be made by others and for all costs and expenses associated with having such repairs and/or replacement done to be paid for by the Consultant, or by the Consultant reimbursing the Town for all such costs and expenses.

2.10 PERMITS: The Consultant shall be responsible for preparing and submitting all required applications

and other supportive information necessary to assist the Town in obtaining all reviews, approvals and permits, with respect to the Consultant's design, drawings and specifications required by any governmental body having authority over the Project. Any fees required for such reviews, approvals or permits will be paid via check issued by the Town and made payable to the respective governmental body, upon the Consultant furnishing the Town satisfactory documentation of such fees. The Consultant will be similarly responsible for preparing and submitting all required applications and other supportive information necessary to assist the Town in obtaining any renewals and/or extensions of reviews, approvals or permits that may be required while this Agreement is in effect. The Town shall, at the Consultant's request, assist in obtaining required signatures and provide the Consultant with all information known to be available to the Town so as to assist the Consultant in the preparation and submittal of any original, renewal or extension of required reviews, approvals or permits.

2.11 TRUTH-IN-NEGOTIATIONS CERTIFICATE: The Consultant shall execute a Truth-in-Negotiations Certificate ("Certificate"), in a form attached as EXHIBIT "F" and incorporated herein by reference. The Certificate shall state that wage rates and other factual unit costs supporting the compensation are accurate, complete and current at the time this Agreement is executed. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the Town determines the contract price was increased due to inaccurate, incomplete or non-current wage rates or other factual unit costs.

2.12 COMPLETION OF TASKS: Unless otherwise set forth herein, the Consultant shall be responsible for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete all of the tasks set forth in EXHIBIT "A" entitled "Scope of Professional Services" and Supplemental Task Authorizations, if any, hereto. The compensation to be paid the Consultant as set forth in EXHIBIT "B" entitled "Compensation and Method of Payment" and Supplemental Task Authorizations authorized hereunder shall be understood and agreed to adequately and completely compensate the Consultant for providing and performing whatever services, work, equipment, material, personnel, supplies, facilities, transportation and administrative support that are necessary and required to complete the tasks set forth in EXHIBIT "A" and Supplemental Task Authorizations, if any, thereto.

2.13 DUTIES AND OBLIGATIONS IMPOSED ON THE CONSULTANT: The duties and obligations imposed upon the Consultant by this Agreement and the rights and remedies available hereunder to the Town shall be in addition to, and not a limitation of, any which are otherwise imposed or available by law, regulation, ordinance or statute.

2.14 REPRESENTATION OF THE TOWN BY CONSULTANT: Other than as specified in the Scope of Services which is attached to this Agreement as Exhibit "A" or in any duly executed addendum to this Agreement, the Consultant is not authorized to act on the Town's behalf, and shall not act on the Town's behalf. The Town will neither assume nor accept any obligation, commitment, responsibility or liability which may result from representation by the Consultant not specifically provided for and authorized as stated hereinabove.

ARTICLE 3.00 - OBLIGATIONS OF THE TOWN

3.01 TOWN PROJECT MANAGER: The Town shall promptly provide written notice to Consultant of the name of the Town's PROJECT MANAGER, who, on behalf of the Town, shall provide information, assistance, guidance, coordination, review, approval and acceptance of the professional services, work and materials to be provided and performed by the Consultant pursuant to this Agreement and any addenda hereto. The PROJECT MANAGER is not authorized to, and shall not issue any verbal or written request or instruction to the Consultant that would have the effect or be interpreted to have the effect, of modifying or changing in any way whatever the: (1) Scope of Services to be provided and performed by the Consultant; (2) the time the Consultant is obligated to commence and complete all such services; and (3) the amount of compensation the Town is obligated or committed to pay the Consultant.

3.02 AVAILABILITY OF TOWN INFORMATION

- (1) **PROJECT GUIDELINES AND CRITERIA:** Guidelines to the Consultant regarding requirements the Town has established or suggests relative to the Project, including, but not limited to such items as: goals, objectives, constraints, and any special financial, budgeting, space, site, operational, equipment, technical, construction, time and scheduling criteria, are set forth in EXHIBIT "E", entitled "PROJECT GUIDELINES AND CRITERIA", which is attached hereto and incorporated herein by reference.
- (2) **TOWN TO PROVIDE PERTINENT REFERENCE MATERIAL:** At the Consultant's request, the Town agrees to provide to the Consultant, at no cost to the Consultant, all pertinent information known to be available to the Town to assist the Consultant in providing and performing the required professional services. Such information may include, but not be limited to: previous reports; plans, drawings and specifications; maps; property, boundary, easement, right-of-way, topographic, reference monuments, control points, plats and related survey data; data prepared or services furnished by others to the Town such as sub-surface investigations, laboratory tests, inspections of natural and man-made materials, property appraisals, studies, designs and reports.

ARTICLE 4.00 - COMPENSATION AND METHOD OF PAYMENT

4.01 BASIC SERVICES: The Town shall pay the Consultant for all requested and authorized Basic Services rendered hereunder by the Consultant and completed in accordance with the requirements, provisions, and/or terms hereof and accepted by the Town. Such payment shall be as set forth in EXHIBIT "B", entitled "COMPENSATION AND METHOD OF PAYMENT", which is attached hereto and incorporated herein by reference.

4.02 ADDITIONAL SERVICES: The Town shall pay the Consultant for all such Additional Services as have been requested and authorized by the Town and agreed to, in writing, by both parties hereto, which have been rendered as Additional Services by the Consultant and completed in accordance with the requirements, provisions, and/or terms of this Agreement and accepted by the Town. Such payment shall be made as set forth under "ADDITIONAL SERVICES" in EXHIBIT "B".

4.03 LUMP SUM AND NOT-TO-EXCEED PAYMENTS

- (1) **LUMP SUM FEE(S):** When the Consultant's compensation hereunder (including any Addenda) is established on a Lump Sum Fee ("L.S.") basis, it shall include all direct and indirect labor costs, personnel-related costs, overhead and administrative costs, costs of Sub consultant(s) and/or Subcontractor(s), out-of-pocket expenses and costs, professional service fee(s) and any other costs or expenses which may pertain to the services and/or work to be performed, provided and/or furnished by the Consultant, as may be required and/or necessary to complete each and every task set forth in this Agreement and/or any Addenda hereto.

- (2) NOT-TO-EXCEED FEE(S): When the Consultant's compensation hereunder (including any Addenda) is established on a NOT-TO-EXCEED ("N.T.E.") amount basis, it shall mean:
- For the actual hours necessary, required and expended by the Consultant's professional and technical personnel, multiplied by the applicable hourly rates for each classification or position as set forth in Attachment No. 1 to EXHIBIT "B" to this Agreement; and
 - For actual necessary, required and expended non-personnel reimbursable expenses and costs, multiplied by the applicable "Basis of Charges" for each item as set forth in Attachment No. 2 to EXHIBIT "B" to this Agreement and any Supplemental Task Authorizations and
 - For actual, necessary and required hours, and non-personnel expenses and costs, expended by Sub-consultants and Subcontractors engaged by the Consultant, multiplied by such hourly rates and unit costs as are agreed to by the Town and the Consultant and as are set forth as a part of this Agreement and any Supplemental Task Authorizations thereto; and
 - Any payment hereunder is subject to the Consultant presenting an itemized and detailed invoice with appropriate supporting documentation attached thereto to show evidence satisfactory to the Town covering all such costs and expenses; and
 - The Consultant's invoices and all payments to be made for all N.T.E. amounts shall be subject to the review, acceptance and approval of the Town; and
 - When the Consultant's compensation is established on a N.T.E. basis for a specific Task(s), the total amount of compensation to be paid to the Consultant to cover all personnel costs, non-personnel reimbursable expenses and costs, and Sub consultant and Subcontractor costs for any such specific Task(s) shall not exceed the amount of the total N.T.E. compensation established and agreed to for each specific Task(s).
 - If the amount of compensation for any Task(s) which the Consultant is entitled on the N.T.E. basis set forth above is determined to be necessary, required and actually expended and is determined to be actually less than the N.T.E. amount established for the specific Task, any unexpended amount under a specific Task may not be used, applied, transferred, invoiced or paid for services or work provided or performed on any other Task(s).

4.04 METHOD OF PAYMENT

- (1) MONTHLY STATEMENTS: The Consultant shall submit no more than one invoice statement to the Town each calendar month, covering services rendered during the preceding calendar month. The Consultant's invoice statement(s) shall be itemized to correspond to the basis of compensation as set forth in the Agreement or Supplemental Task Authorization(s) hereunder. The Consultant's invoice statements shall contain a breakdown of charges, description of service(s) and work provided and/or performed, and where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in the Agreement, or in Supplemental Task Authorization(s) hereunder.
- (2) PAYMENT FOR SERVICES PERFORMED: The Town shall pay the Consultant for services performed using either of the following methods, or using a combination thereof:
- (A) The Town shall pay the Consultant on the basis of services completed, for tasks set forth in EXHIBITS "A" and "B", as evidenced by work products such as reports, drawings, specifications, etc., submitted by the Consultant and accepted by the Town. No payments shall be made for Consultant's Work-in-Progress until service items for which payment amounts have been established and set forth in this Agreement have been completed by the Consultant and accepted by the Town. Whenever an invoice statement covers services for which no work product is required to be furnished by the Consultant to the Town, the Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.
- (B) The Town shall pay the Consultant for services performed for tasks set forth in EXHIBITS "A" and "B" on the basis of an invoice statement covering Consultant's Work-in-Progress, expressed as a percentage of the total cost of the service and/or work required for each task invoiced in this manner. All such Work-in-Progress percentages (WIPP) are subject to the review and approval of the Town. The decision of the Town shall be final as to the Work-in-Progress percentages paid. Payment by the Town for tasks on a Work-in-Progress percentage basis shall not be deemed or interpreted in any way to constitute an approval or acceptance by the Town of any such service or

Work-in-Progress. The Consultant shall be responsible for correcting, re-doing, modifying or otherwise completing the services and work required for each task before receiving final, full payment whether or not previous Work-in-Progress payments have been made. All tasks to be paid for on a Work-in-Progress percentage basis shall be agreed to by both parties to the Agreement and each task to be paid in this manner shall be identified in EXHIBIT "B" with the notation (WIPP). Only tasks so identified will be paid on a Work-in-Progress percentage basis. The Town reserves the right to retain ten percent (10%) of the amount invoiced until such service requirements are fully completed.

- (2) PAYMENT SCHEDULE: The Town shall issue payment to the Consultant within thirty (30) calendar days after receipt of an invoice statement from the Consultant in an acceptable form and containing the requested breakdown and detailed description and documentation of charges. Should the Town object or take exception to the amount of any Consultant's invoice statement, the Town shall notify the Consultant of such objection or exception within the thirty (30) calendar day payment period set forth in this subparagraph. If such objection or exception remains unresolved at the end of said thirty (30) calendar day period, the Town shall withhold the disputed amount and make payment to the Consultant of the amount not in dispute. Payment of any disputed amount, or adjustments thereto, shall be made within thirty (30) calendar days of the date such disputed amount is resolved by mutual agreement of the parties to this Agreement.

4.05 PAYMENT IF SERVICES ARE TERMINATED AT CONVENIENCE OF THE TOWN:

If this Agreement is terminated at the convenience of the Town and not at the fault of the Consultant, the Town shall compensate the Consultant only for services performed prior to the effective date of termination and reimbursable expenses then due including project drawings, plans, data, and other project documents.

4.06 PAYMENT WHEN SERVICES ARE SUSPENDED: If the Town suspends the Consultant's services and work on all or part of the services required be providing and performing by the Consultant pursuant to this Agreement, the Town shall compensate the Consultant only for the services performed prior to the effective date of suspension and reimbursable expenses then due.

4.07 NON-ENTITLEMENT TO ANTICIPATED FEES IN THE EVENT OF SERVICE TERMINATION, SUSPENSION, ELIMINATION, CANCELLATION AND/OR DECREASE: If the services required pursuant to this Agreement are terminated, eliminated, cancelled, or decreased by the Town and/or are modified by the subsequent issuance of Supplemental Task Authorization(s), other than receiving the compensation set forth in Sub Articles 4.05 and 4.06, the Consultant shall not be entitled to receive compensation for anticipated professional fees, profit, mobilization costs, general and administrative overhead expenses or for any other anticipated or unanticipated income or expense which may be associated with the services terminated, suspended, eliminated, cancelled or decreased.

ARTICLE 5.00 - TIME AND SCHEDULE OF PERFORMANCE

5.01 NOTICE TO PROCEED: Following the execution of this Agreement by both parties, and after the Consultant has complied with the insurance requirements set forth hereinafter, the Town shall issue the Consultant a written Notice to Proceed. Following the issuance of such Notice to Proceed, the Consultant shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion. A separate Notice to Proceed shall be issued for each Project requested by the Town hereunder.

5.02 TIME OF PERFORMANCE: The Consultant agrees to complete the services required pursuant to this Agreement by the date assigned with each individual Supplemental Task Authorization as defined for completion of the various phases and/or tasks of each individual project as set forth and described in this Agreement, and specifically as set forth in EXHIBIT "C", entitled "Time and Schedule of Performance", which EXHIBIT "C" is attached hereto and hereby incorporated by reference.

Should the Consultant be obstructed or delayed in the prosecution or completion of its obligations under this Agreement as a result of causes beyond the control of the Consultant, or its Sub consultant(s) and/or Subcontractor(s), and not due to their fault or neglect, the Consultant shall notify the Town, in writing, within two (2) calendar days after the commencement of such delay, stating the cause(s) thereof and requesting an extension of the Consultant's time of performance. Upon receipt of the Consultant's request for an extension of time, the Town shall grant the extension if the Town determines the delay(s) encountered by the Consultant, or its Sub consultant(s) and/or Subcontractor(s), is due to unforeseen causes and not attributable to their fault or neglect, in the Town's sole judgment.

5.03 CONSULTANT WORK SCHEDULE: The Consultant shall be required as a condition of this Agreement to prepare and submit to the Town, on a monthly basis, commencing with the issuance of the NOTICE TO PROCEED, a Consultant's Work Schedule for each project. The Work Schedule shall set forth the time and manpower scheduled for all of the various phases and/or tasks required to provide, perform and complete all of the services and work requiring completion of the various phases and/or tasks of the project services set forth and described in this Agreement, as set forth in EXHIBIT "C", pursuant to this Agreement in such a manner that the Consultant's planned and actual work progress can be readily determined. The Consultant's Work Schedule of planned and actual work progress shall be updated and submitted by the Consultant to the Town on a monthly basis or as otherwise indicated by the Town in writing.

5.04 FAILURE TO PERFORM IN A TIMELY MANNER: Should the Consultant fail to commence, provide, perform and/or complete any of the services and work required hereunder in a timely and diligent manner, the Town may consider such failure as justifiable cause to terminate this Agreement. As an alternative to termination, the Town at its option, may, upon written notice to the Consultant, withhold any or all payments due and owing to the Consultant, not to exceed the amount of the compensation for the work in dispute, until such time as the Consultant resumes performance of his obligations in such a manner as to get back on schedule in accordance with the time and schedule of performance requirements set forth in this Agreement, or any Supplemental Task Authorization(s) hereto. The termination rights specified in this sub-paragraph are in addition to any termination rights set forth elsewhere herein.

ARTICLE 6.00 - SECURING AGREEMENT:

The Consultant warrants that the Consultant has not employed or retained any company or person other than a bona fide, regular, full time employee working for the Consultant to solicit or secure this Agreement and that the Consultant has not paid or agreed to pay any person, company, corporation individual, or firm, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 7.00 - CONFLICT OF INTEREST:

The Consultant 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 services required hereunder. The Consultant further agrees that no person having any such interest shall be employed or engaged by the Consultant for said performance.

If Consultant, for itself and on behalf of its Sub-consultants and Subcontractors, is about to engage in representing another client, which it in good faith believes could result in a conflict of interest with the work being performed by Consultant or such Sub consultant or Subcontractor under this Agreement, then it will promptly bring such potential conflict of interest to the Town's attention, in writing. The Town will advise the Consultant, in writing, within ten (10) calendar days as to the period of time required by the Town to determine if such a conflict of interest exists. If the Town determines that there is a conflict of interest, Consultant or such Sub consultant shall decline the representation upon written notice by the Town.

If the Town determines that there is not such conflict of interest, then the Town shall give its written consent to such representation. If the Consultant or Sub consultant accepts such a representation without obtaining the Town's prior written consent, and if the Town subsequently determines that there is a conflict of interest between such representation and the work being performed by Consultant or such Sub consultant under this Agreement, then the Consultant or such Sub consultant agrees to promptly terminate such representation. Consultant shall require each of such Sub consultants to comply with the provisions of this Section. Should

the Consultant fail to advise or notify the Town as provided hereinabove of representation which could, or does, result in a conflict of interest, or should the Consultant fail to discontinue such representation, the Town may consider such failure as justifiable cause to terminate this Agreement.

ARTICLE 8.00 - ASSIGNMENT, TRANSFER AND SUBCONTRACTS:

The Consultant shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from: (1) the merger or consolidation of Consultant with a third party; or (2) the disestablishment of the Consultant's professional practice and the establishment of a successor consultant, or consulting organization. The Consultant shall not subcontract any of its service obligations hereunder to third parties, except as otherwise authorized in this Agreement, without prior written approval of the Town. The Consultant shall have the right, subject to the Town's prior written approval, to employ other persons and/or firms to serve as Sub consultants and/or Subcontractors to Consultant in connection with Consultant providing and performing services and work pursuant to the requirements of this Agreement. The Town shall have the right and be entitled to withhold such approval.

In providing and performing the services and work required pursuant to this Agreement, Consultant intends to engage the assistance of the Sub consultant(s) and/or Subcontractor(s) set forth in EXHIBIT "D", entitled "CONSULTANT'S ASSOCIATED SUB-CONSULTANTS AND SUBCONTRACTORS."

ARTICLE 9.00 - APPLICABLE LAW:

Unless otherwise specified, this Agreement shall be governed by the applicable ordinances, laws, rules, and regulations of the Town of Fort Myers Beach, Lee County, Florida, and the State of Florida. It shall be governed by the laws, rules, and regulations of the United States when the Consultant is providing services funded by the United States government.

ARTICLE 10.00 - LITIGATION

The venue for any litigation arising from this Agreement shall be Lee County, Florida.

ARTICLE 11.00 - COVENANTS AGAINST DISCRIMINATION

The Consultant for itself, its successors in interest, and assigns as part of the consideration thereof, does hereby covenant and agree that in the furnishing of services to Town hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination. The Consultant shall comply with state laws in the hiring of sub consultants.

ARTICLE 12.00 - WAIVER OF BREACH:

Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

ARTICLE 13.00 - OWNERSHIP OF DOCUMENTS

All documents such as drawings, tracings, notes, computer files, photographs, plans, specifications, maps, evaluations, reports and other records and data relating to this project, other than working papers, specifically prepared or developed by the Consultant under this Agreement shall be property of the Consultant until the Consultant has been paid for providing and performing the services and work required to produce such documents.

Upon completion or termination of this Agreement, or upon the issuance by the Town of written Supplemental Task Authorization(s) deleting all or portions of the scope of services or task(s) to be provided or performed by the Consultant, all of the above documents, to the extent requested in writing by the Town, shall be delivered by the Consultant to the Town within seven (7) calendar days of the Town making such a request. If the Town gives the Consultant a written Notice of Termination of all or part of the services or work required, or upon the issuance to the Consultant by the Town of a written Supplemental Task Authorization deleting all or part of the services or work required, the Consultant shall deliver to the Town the requested documents as set forth hereinabove, with the mutual understanding and commitment by the Town that compensation earned or owing to the Consultant for services or work provided or performed by the Consultant prior to the effective date of any such termination or deletion will be paid to the Consultant within thirty (30) calendar days of the

date of issuance of the Notice of Termination or Supplemental Task Authorization.

The Consultant, at its expense, may make and retain copies of all documents delivered to the Town for reference and internal use. The Consultant shall not, and agrees not to use any of these documents, and data and information contained therein on any other project or for any other client without the prior express written permission of the Town.

Any use by the Town of said documents, and data and information contained therein, obtained by the Town hereunder for any purpose not within the scope of this Agreement shall be at the risk of the Town, and without liability to the Consultant.

ARTICLE 14.00 - MAINTENANCE OF RECORDS

The Consultant will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed hereunder. Said records and documentation will be retained by the Consultant for a minimum of five (5) years from the date of termination of this Agreement.

The Town and its authorized agents shall have the right to audit, inspect and copy all such records and documentation as often as the Town deems necessary during this Agreement, and during the period of five (5) years thereafter. Such activity shall be conducted only during normal business hours and at the expense of the Town. To the extent permitted by law, the Town shall retain all such records as confidential.

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 THE PUBLIC RECORDS AT (239) 765-0202, MICHELLE@FMBGOV.COM , 2525 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.

ARTICLE 15.00 - TERMINATION

This Agreement may be terminated by the Town without cause and/or at its convenience, or due to the fault of the Consultant, by the Town giving thirty (30) days' written notice to the Consultant. If the Consultant is adjudged bankrupt or insolvent; if it makes a general assignment for the benefit of its creditors; if a trustee or receiver is appointed for the Consultant or for any of its property; if it files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws; if it disregards the authority of the Town's designated representatives; if it otherwise violates any provisions of this Agreement; or for any other just cause, the Town may, without prejudice to any other right or remedy, terminate this Agreement.

In addition to the Town's contractual right to terminate this Agreement in its entirety as set forth above, the Town may also, at its convenience, stop, suspend, supplement or otherwise change all, or any part of, the Scope of Professional Services as set forth in EXHIBIT "A", or the Project Guidelines and Criteria as set forth in EXHIBIT "E", or as such may be established or modified by a Supplemental Task Authorization. The Town shall provide written notice to the Consultant in order to implement a stoppage, suspension, supplement or change.

The Consultant may request that this Agreement be terminated by submitting a written notice to the Town dated not less than sixty (60) calendar days prior to the requested termination date and stating the reason(s) for such a request. However, the Town reserves the right to accept or not accept the termination request submitted by the Consultant, and no such termination request submitted by the Consultant shall become effective unless and until Consultant is notified, in writing, by the Town of its acceptance.

Upon termination, the Consultant shall deliver to the Town all papers, drawings, models, and other material in which the Town has exclusive rights by virtue hereof or of any business done, or services or work performed

or provided by the Consultant on behalf of the Town.

ARTICLE 16.00 - MODIFICATION AND AMENDMENTS

Modifications and amendments to the covenants, terms and provisions of this Agreement shall only be valid when issued in writing as a properly executed Supplemental Task Authorization(s) or written contract amendment, executed by both parties. In the event of any conflicts between the requirements, provisions, and/or terms of this Agreement and any written Supplemental Task Authorization(s), the latest executed Supplemental Task Authorization(s) shall take precedence.

In the event the Town issues a purchase order, memorandum, letter, or other instruments covering the professional services, work and materials to be provided and performed pursuant to this Agreement, it is hereby specifically agreed and understood that such purchase order, memorandum, letter or other instruments are for the Town's internal control purposes only, and any terms, provisions and conditions contained therein, whether printed or written, shall in no way modify the covenants, terms and provisions of this Agreement and shall have no force or effect thereon.

No modification, waiver, or termination of the Agreement or of any terms hereof shall impair the rights of either party.

ARTICLE 17.00 - HEADINGS

The Headings of the Articles, Sections, Exhibits, Attachments, Phases or Tasks herein are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Sections, Exhibits, Attachments, Phases or Tasks.

ARTICLE 18.00 - ENTIRE AGREEMENT

This Agreement, including referenced Exhibits and Attachments hereto, constitute the entire Agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matters set forth herein, and any such prior agreements or understandings shall have no force or effect on this Agreement.

The following listed documents, which are referred to hereinbefore, are attached to and are acknowledged, understood and agreed to be an integral part of this Agreement:

- (1) EXHIBIT "A" entitled "Scope of Professional Services", dated May 10, 2019.
- (2) EXHIBIT "E" entitled "Project Guidelines and Criteria", dated May 10, 2019.
- (3) EXHIBIT "F" entitled "Truth in Negotiation Certificate", dated May 10, 2019.
- (4) EXHIBIT "G" entitled "Insurance". (Containing copies of applicable Certificates of Insurance)
- (5) EXHIBIT "H" entitled "Amendment to Articles", dated May 10, 2019.
- (6) EXHIBIT "I" entitled "Public Entity Crime Affidavit", January 7, 2019.
- (7) EXHIBIT "J" entitled "Affidavit Certification Immigration Laws", dated January 9, 2019.
- (8) EXHIBIT "K" entitled "Affidavit of Confidentiality", dated January 9, 2019.

ARTICLE 19.00 - NOTICES AND ADDRESS OF RECORD

19.01 NOTICES BY CONSULTANT TO TOWN

All notices hereunder from the Consultant to the Town shall be in writing and shall be given by US first class mail service, postage prepaid, addressed to: Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, Florida 33931

19.02 NOTICES BY TOWN TO CONSULTANT

All notices hereunder from the Town to the Consultant shall be in writing and shall be given by U.S. first class mail service, postage prepaid, addressed to:

DRMP, Inc.

(Consultant's Business Name)

2306 Dr. Martin Luther King Jr. Boulevard

(Street/ P.O. Box)

Fort Myers

(City)

FL

(State)

33901

(Zip Code)

Telephone Number: **239-206-5093**

Fax Number:

ATTENTION: **Partrick J. Day, PE, BCEE**

Project Director

19.03 CHANGE OF ADDRESS OF RECORD

Either party may change its address of record by written notice to the other party given in accordance with the requirements of this Article.

ARTICLE 20.00 - ACCEPTANCE. Acceptance of this Agreement shall be indicated by the signature of the duly authorized representative of the hereinabove named parties in the space provided hereinafter and being attested and witnessed as indicated.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Agreement effective the day and year first written above.

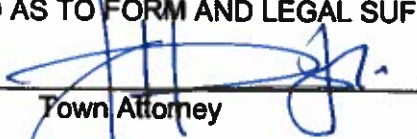
TOWN OF FORT MYERS BEACH

ATTEST:

By: 
Roger T. Hemstadt, Town Manager

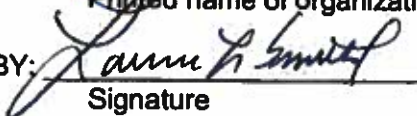
By: 
Michelle Mayher, Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

BY: 
Town Attorney

PROVIDER: **DRMP, INC.**

Printed name of organization

BY: 
Signature

Lawrence L. Smith, Jr.

Printed name of person signing

President

Title (printed)


Witness Signature

Nicole Baker

Printed name of Witness

EXHIBIT A - SCOPE OF PROFESSIONAL SERVICES

Ongoing Miscellaneous Professional Services RFQ-19-06-PW

TYPES OF WORK

The following is a list of the Types of Work the Town of Fort Myers Beach may require. Each Type of Work states the minimum requirements to be met in order to be qualified by the Town of Fort Myers Beach.

Type of Work

Development of conceptual design, final design, permitting, bid documents, bid evaluation, Construction Engineering Inspection (CEI) and coordination with other professional engineers i.e. Times Square Waterline Replacement. Significant experience and familiarity with the Local Area Planning (LAP) documentation and Florida Department of Transportation submittal process is required. The scope includes but not limited:

- Aesthetic Concept/Design, Permitting, Bid Documentation & Review, CEI etc.
- Landscaping
- Architecture/Engineering
- Lighting
- Aesthetics i.e. benches, sculptures etc.
- Resurfacing
- Coordination with other professional engineers i.e. waterline replacement/Stormwater.

EXHIBIT B - COMPENSATION AND METHOD OF PAYMENT

Date: May 10, 2019

Ongoing Miscellaneous Professional Services RFQ-19-06-PW

Section 1. BASIC SERVICES/TASK(S)

The TOWN shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 4.04(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
	To be negotiated through each Supplemental Task Authorization issued.			
TOTAL				

(Unless list is continued on next page)

Section 2. ADDITIONAL SERVICES

The TOWN shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the TOWN shall be as set forth in Article 4 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B
Ongoing Miscellaneous Professional Services
RFQ-19-06-PW

Date: May 10, 2019

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE

Consultant Name: **Castellanos+Tramonte Architect**

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)

*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

**NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

Date: May 10, 2019

ITEM	BASIS OF CHARGE
Telephone (Long Distance)	Actual Cost
Postage and Shipping	Actual Cost
Commercial Air Travel	Actual Cost (Coach)
Vehicle Travel Allowance (N.T.E. 50 miles one-way) (or)	\$0.54/mile
Vehicle Rental/Gas	Actual Cost
Lodging (Per Person)	Actual Cost or NTE \$100.00
Meals:	
Breakfast	\$12.01
Lunch	\$11.82
Dinner	\$24.72
Reproduction (Photocopy) 8 ½" x 11"	\$0.15/Page
8 ½" x 14"	\$0.20/Page
11" x 14"	\$0.35/Page
Reproduction (Blue/White Prints)	\$0.20/Sq. Ft.
Printing/Binding	Actual Cost
Mylar Sheets	Actual Cost
Photographic Supplies & Services	Actual Cost
Tolls	Actual Cost
*List other specific project related reimbursable (i.e. film/developing):	
NOTE: Receipts or in-house logs are required for all non-personnel reimbursable expenses unless exempt (such as meals).	
Administrative Services Fee – Applicable only when specifically authorized by the Town, for administering the procurement of special additional services, equipment, reimbursable etc. not covered under the costs and/or changes established in the Agreement.	

RFQ-19-06-PW LAP Funded Project – Renovation/Reconstruction Professional Services for Times Square
DRMP, Inc.
Page | 18

EXHIBIT C – TIME AND SCHEDULE OF PERFORMANCE
Ongoing Miscellaneous Professional Services
RFQ-19-06-PW

Date: May 10, 2019

This EXHIBIT "C" establishes a total time for completion, detailed by times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to this Agreement.

Phase and/or Task Reference As Enumerated in EXHIBIT "A"	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number Of Calendar Days For Completion From Date of Notice to Proceed
	Shall be negotiated through each Supplemental Task Authorization issued.		

EXHIBIT D - CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S)
Ongoing Miscellaneous Professional Services
RFQ-19-06-PW

Date: May 10, 2019

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S)

CONSULTANT has identified the following Sub Consultant(s) and/or Subcontractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project:
(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
					Yes	No

EXHIBIT E - PROJECT GUIDELINES AND CRITERIA
Ongoing Miscellaneous Professional Services
RFQ-19-06-PW

Date: May 10, 2019

The Town has established the following Guidelines, Criteria, Goals, Objectives, Schedule, Budget and/or Requirements which shall serve as a guide to the Consultant in performing the professional services and work to be provided pursuant to this Agreement:

Item No. 1

Work will be negotiated, authorized, scheduled, funded, and accounted for by the issuance of Supplemental Task Authorizations, by the requesting department, division, or government entity.

Item No. 2

Any governmental entity may utilize the provisions of this contract for their specific needs.

Item No. 3

Work may be assigned at any-time during the thirty-six (36) month contract duration. This contract also contains an option to renew by mutual agreement of both parties.

Item No. 4

No amount of work is guaranteed upon the execution of a Professional Services Agreement.

Item No. 5

Hourly rates and all other negotiated expenses will remain in effect throughout the duration of the contract.

Item No. 6

This Contract Document does not entitle any firm to exclusive rights to Town contracts. The Town reserves the right to perform any and all required work in house, through another firm, and/or by any means it so desires. The Consultant may be requested to complete portions of certain tasks in coordination with the Town and/or other Consultants under contract with the Town.

Item No. 7

In reference to Attachment No. 2 to Exhibit "B" of the Professional Service Agreement, vehicle travel mileage is considered incidental to the work and not an extra expense. Also, man-hours spent in travel time to and from work or the job site(s), are not compensational.

Item No. 8

Town reserves the right to add or delete, at any time, any or all tasks or services associated with this agreement.

The Consultant's services may be retained for any of the tasks separately or all of the tasks collectively. The Town and the Consultant will mutually establish the specific scope of work, which will serve as the basis for the Supplemental Task Authorization (STA) and will be based on the specifics and parameters relating to the issue or concern under study.

Item No. 9

Town shall have the right to use the documents on any Town project without the Consultant's authorization. All documents created, prepared and presented under this Agreement may be used by the Town in connection with any public offering; borrowing or other financing arrangements. The Consultant shall have the right to retain copies of all such materials.

EXHIBIT F - TRUTH IN NEGOTIATION CERTIFICATE
Ongoing Miscellaneous Professional Services
RFQ-19-06-PW

This Certificate is executed and given by the undersigned as a condition precedent to entering into a Professional Services Agreement with the Town of Fort Myers Beach for the project known as:
Ongoing Miscellaneous Professional Services

Before me, the undersigned authority personally appeared, who having personal knowledge as to the facts and statements contained herein after being duly sworn, deposes and states under oath that:

1. This Certificate shall be attached to and constitute an integral part of the above said Professional Services Agreement as provided in Article 2.11.
2. The undersigned hereby certifies that the wage rates and other factual unit costs supporting the compensation on which this Professional Services Agreement is established are accurate, complete, and current on the date set forth here-in-above.
3. The truth of statements made herein may be relied upon by the Town and the undersigned is fully advised of the legal effect and obligations imposed upon him by the execution of this instrument under oath.

Executed on behalf of the Party to the Professional Services Agreement referred to as the CONSULTANT, doing business as:

BY: _____
TITLE: _____

The foregoing instrument was signed and acknowledged before me this ____ day of _____, 2019,
by _____ who has produced _____ as identification
(Print or Type Name) (Type of Identification)

Notary Public Signature

Printed Name of Notary Public

Notary Commission Number/Expiration

EXHIBIT "G": INSURANCE

FOR THE PROJECT KNOWN AS: Ongoing Miscellaneous Professional Services RFQ-19-06-PW

Section One. Insurance Coverage's to Be Obtained

(1) The Consultant shall obtain and maintain such insurance as will protect it from: (1) claims under workers' compensation laws, disability benefit laws, or other similar employee benefit laws; (2) claims for damages because of bodily injury, occupational sickness or disease or death of its employees including claims insured by general personal injury liability coverage; (3) claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees including claims insured by usual personal injury liability coverage; and (4) from claims for injury to or destruction of tangible property, including loss of use resulting there from; any or all of which claims may arise out of, or result from, the services, work and operations carried out pursuant to and under the requirements of this Agreement, whether such services, work and operations are performed by the Consultant, its employees, or by any Sub consultant(s), Subcontractor(s), or anyone employed by or under the supervision of any of them, or for whose acts any of them may be legally liable.

(2) The insurance protection set forth hereinabove shall be obtained and written for not less than the limits of liability specified hereinafter, or as required by law, whichever is greater.

(3) The Consultant, throughout the time this Agreement is in effect, shall require and ensure that any and all of its Sub-consultants and/or Sub-Contractors obtain, have, and maintain the insurance coverages required by law to be provided.

(4) The Consultant shall obtain, have and maintain during the entire period of this Agreement all such insurance policies as are set forth and required herein.

(5) In the event that the Consultant engages Sub-consultants or Sub-Contractors to assist the Consultant in providing or performing services or work pursuant to the requirements of this Agreement, the insurance coverages required under this Article to be provided by the Consultant shall cover all of the services or work to be provided or performed by all of the Sub consultants or Subcontractors engaged by the Consultant. However, in the event the services or work of Sub consultants or Sub-Contractors engaged by the Consultant is not covered by the Consultant's insurance policy or policies, it shall be the responsibility of the Consultant to ensure that all Sub-consultants or Sub-Contractors have fully complied with the Town insurance requirements for: (1) Worker's Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; and (4) Professional Liability as required and set forth in this Exhibit.

The services or work to be provided or performed by the following Sub-consultant(s) or Sub-Contractor(s) identified elsewhere in this agreement are exempted and excluded from the Professional Liability insurance coverage requirements set forth in this Agreement:

Service and/or work to be
Provided and/or Performed

Indicate Name of
Individual or Firm

(If none, enter the word "none" in the space above.)

(6) The insurance coverage to be obtained by the Consultant or by Sub-consultants or Sub-Contractors engaged by the Consultant, as set forth in this Article for: (1) Workers' Compensation; (2) Comprehensive General Liability; (3) Comprehensive Automobile Liability; and (4) Professional Liability is understood and agreed to cover any and all of the services or work set forth in this Agreement and all subsequent Supplemental Task Authorization(s). In the event the Town shall execute and issue written Supplemental Task Authorization(s) authorizing the Consultant to provide or perform services or work in addition to those set forth in this Agreement, it is agreed that the Town has the right to change the amount of insurance coverages required to cover the additional services or work. If the additional insurance coverages established exceeds the amount of insurance coverage carried by the Consultant, the compensation established for the Supplemental Task Authorization(s) shall include consideration of any increased premium cost incurred by the Consultant to obtain same.

Section Two. Consultant Required to File Insurance Certificate(s)

(1) The Consultant shall submit to the Town's RISK MANAGEMENT DIVISION all insurance certificates which are required under this Agreement for review and approval with respect to compliance with the insurance requirements. After approval by the RISK MANAGER, the Town will execute this Agreement and issue a written Notice to Proceed. The Consultant may then commence with any service or work pursuant to the requirements of this Agreement. All such Insurance Certificates shall be attached to this Agreement at the end of this EXHIBIT "G" and are hereby incorporated by reference thereto.

(2) All such insurance certificates shall be in a form and underwritten by an insurance company(s) acceptable to the Town and licensed in the State of Florida.

(3) Each Certificate of Insurance submitted to the Town shall be an original and shall be executed by an authorized representative of the insurance company affording coverage.

(4) Each Certificate of Insurance shall be addressed to the TOWN OF FORT MYERS BEACH, ATTN: TOWN MANAGER, at the address listed at the beginning of this Agreement.

(5) Each Certificate of Insurance shall specifically include all of the following:

(A) The name and type of policy and coverages provided; and

(B) The amount or limit applicable to each coverage provided and the deductible amount, if any, applicable to each type of insurance coverage being provided; and

(C) The date of expiration of coverage; and

(D) The designation of the TOWN OF FORT MYERS BEACH both as an additional insured and as a certificate holder. (This requirement is excepted for Professional Liability Insurance and for Workers' Compensation Insurance); and

(E) A specific reference to this Agreement and the Project to which it pertains. (This requirement may be accepted for Professional Liability Insurance).

In the event the Consultant has, or expects to enter into an agreement for professional services with the Town in addition to those provided for in this Agreement, the Consultant may elect, in the alternative, to submit a certificate of insurance containing the following statement:

"This policy covers the services or work provided or performed by the Named Insured for any and all projects undertaken for the Town of Fort Myers Beach, pursuant to one or more written Professional Services Agreements, or written Supplemental Task Authorizations thereto, and the limit(s) of liability shown shall not be intended or construed as applying to only one project."

Upon receipt and approval of such a certificate of insurance, the Town will administer the insurance required for all such agreements utilizing the single "multi-project" certificate of insurance and a separate certificate of insurance will not be required for each separate agreement.

(F) The following clause must appear on the Certificate of Insurance:

"Cancellation - Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the Certificate Holder named."

(G) A statement indicating any services or work included in or required under this Agreement that is specifically excluded or exempted from coverage under the provisions, terms, conditions or endorsements of the Consultant's insurance policy(s). A statement which indicates any and all deductible amounts applicable to each type of insurance coverage required. In the absence of any such statements, the Town will proceed with the understanding, stipulation and condition that there are no deductible amount(s), or exclusions or exemptions to the insurance coverage(s) provided.

(6) Each Certificate of Insurance shall be issued by an insurance agent and/or agency duly authorized to do so by and on behalf of the insurance company affording the insurance coverage(s) indicated on each Certificate of Insurance.

(7) If the initial, or any subsequently issued Certificate of Insurance expires prior to the completion of the work or termination of this Agreement, the Consultant shall furnish to the Town renewal or replacement Certificate(s) of Insurance, or Certified Binder(s), not later than fifteen (15) calendar days prior to the date of their expiration. Failure of the Consultant to provide the Town with such renewal certificate(s) shall be considered justification for the Town to terminate this Agreement.

(8) If any of the insurance coverage(s) required by this Agreement shall reach the date of expiration indicated on the approved Certificate(s) of Insurance without the Town having received satisfactory evidence of renewal or replacement, the Consultant shall automatically and without further notice stop performing all previously authorized services and work. During any time period that the Consultant's services or work is suspended for failure to comply with the insurance requirements set forth in the Agreement, the Consultant shall not be entitled to any additional compensation or time to provide and perform the required services or work and the Town shall not be required to make payment on any invoices submitted by the Consultant. Upon receipt and approval of renewal or replacement Certificates of Insurance, payment for any such invoices shall be made promptly by the Town.

Section Three. Insurance Coverages Required

The Consultant shall obtain and maintain the following insurance coverages as provided hereinbefore, and in the type, amounts and in conformance with the following minimum requirements:

(1) WORKERS' COMPENSATION

Coverage to comply for all employees for statutory limits in compliance with the applicable State and Federal laws. In addition, the policy must include the following:

(A) Employer's Liability with a minimum limit per accident in accordance with statutory requirements, or a minimum limit of \$500,000 for each accident, whichever limit is greater.

(B) Notice of Cancellation and/or Restriction - The policy must be endorsed to provide the Town with thirty (30) days prior written notice of cancellation and/or restriction.

(2) COMMERCIAL GENERAL LIABILITY

Coverage must be afforded on a form no more restrictive than the last edition of the Commercial General Liability Policy filed by the Insurance Services Office and must include the following:

(A) Minimum limits of \$1,000,000 per occurrence and \$1,000,000 aggregate for Bodily Injury Liability and a minimum limit of \$1,000,000 for Property Damage Liability, or a minimum combined single limit of \$1,000,000.

(B) Contractual coverage applicable to this specific Agreement including any hold harmless and/or such indemnification agreement.

(C) Such additional requirements as are set forth in the Agreement above.

(3) BUSINESS AUTOMOBILE LIABILITY

Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy filed by the Insurance Services Office and must include the following:

(A) Minimum limits of \$1,000,000 per person and \$1,000,000 per accident for Bodily Injury Liability and a minimum limit of \$1,000,000 for Property Damage Liability, or a minimum combined single limit of \$1,000,000.

(B) Coverage shall include owned vehicles, hired and leased, or non-owned vehicles.

(C) Such additional requirements as are set forth in the Agreement above.

(4) PROFESSIONAL LIABILITY

Coverage must include the following:

(A) A minimum aggregate limit of \$1,000,000.00.

(B) Such additional requirements as are set forth in the Agreement above.

(C) Should the Professional Liability Insurance Policy issued pursuant to the above requirements and limits be written so as to provide an applicable deductible amount, or other exclusion or limitation as to the amount of coverage to be provided within the minimum coverage limits set forth above, the Town shall hold the Consultant responsible and liable for any such difference in the amount of coverage provided by the insurance policy. In the event of any such deductible amount, exclusion or limitation, the Consultant shall be required to provide written documentation that is acceptable to the Town establishing that the Consultant has the financial resources readily available to cover damages, injuries and/or losses which are not covered by the policy's deductible amounts, exclusions and/or limitations as stated above.

**EXHIBIT H - AMENDMENT TO ARTICLES
FOR THE PROJECT ENTITLED:
Ongoing Miscellaneous Professional Services
RFQ-19-06-PW**

Date: May 10, 2019

For amending (i.e., changing, deleting from or adding to) the articles.

(NOTE: Each Article to be amended should be set forth below and described in such a manner as to clearly indicate what the proposed changes, deletions or additions are with respect to the present Article provisions, and should set forth the wording of the Article resulting from the Amendment. The following identification system should be followed: Indicate additional (new) words or phrases by inserting the words in the text and then underline, (i.e., Months) and indicated words or phrases in the text to be deleted by striking over (i.e. ~~Weeks~~).

THE PROVISIONS HEREBY SUPERCEDE ANY PROVISIONS TO THE CONTRARY
CONTAINED ELSEWHERE IN THE ARTICLES OR EXHIBITS.

AMENDMENT NO.

ARTICLE No.____ is hereby amended as follows:

**TOWN OF FORT MYERS BEACH SERVICE AGREEMENT
SUPPLEMENTAL TASK AUTHORIZATION**

X Supplemental Task Authorization

NO.: STA # 12

CONTRACT/PROJECT NAME: Times Square Additional Services – LAP Project Bifurcation & Entrance Modifications

CONSULTANT: DRMP, INC

PROJECT NO.: _____

SOLICIT NO.: RFQ-19-06-PW/ RFQ-20-22-AD

CONTRACT NO.: _____

REQUESTED BY: CHELSEA O'RILEY / FMB PUBLIC WORKS DIRECTOR

DATE OF REQUEST: 04/06/2022

PURCHASE ORDER NUMBER: _____

Upon the completion and execution of this Supplemental Task Authorization by both parties, the Consultant/Provider is authorized to and shall proceed with the following:

EXHIBIT "A" SCOPE OF PROFESSIONAL SERVICE: DATED: 04/06/2022

EXHIBIT "B" COMPENSATION & METHOD OF PAYMENT: DATED: 04/06/2022

EXHIBIT "C" TIME AND SCHEDULE OF PERFORMANCE: DATED: 04/06/2022

EXHIBIT "D" CONSULTANT'S/PROVIDER'S ASSOCIATED
SUB-CONSULTANT(S)/SUB-CONTRACTORS: DATED: 04/06/2022

It is understood and agreed that the acceptance of this modification by the CONSULTANT/PROVIDER constitutes an accord and satisfaction.

RECOMMENDED:

By: _____ Date _____ By: _____ Date _____
Department Director Contracts Manager

By: _____ Date _____
Consultant/Provider

ACCEPTED: DRMP, INC

By: Paul Brunner 4/11/2022
Consultant/Provider Date

TOWN APPROVAL:

By: _____ Date _____ By: _____ Date _____
Town Manager Town Attorney

Date to Proceed: _____

Cost of STA: _____

Completion Due Date: _____

EXHIBIT A

SCOPE OF PROFESSIONAL SERVICES

STA # 12: Times Square Additional Services – LAP Project Bifurcation & Entrance Modifications

Project Understanding

As an amendment to our existing engineering services agreement, the Town of Fort Myers Beach (the “Town”) has requested DRMP (the “Consultant”) to provide additional services for the improvements to Times Square. The scope from the current Supplemental Task Authorization (STA #7) generally included the furnishing of complete, permitted design plans and specifications for bidding and construction purposes of the square.

Project Assumptions

This phase includes the construction administration services for the civil engineering, architectural, structural engineering, mechanical engineering, and landscape architectural design, as permitted and advertised for bid. Changes to the construction documents may require additional compensation. The scope required to deliver construction administration services is outlined in detail below.

- Client will prepare necessary document packages for submittal to TFMB and permit agencies as required.
- This Agreement includes performing all services described herein on a one-time basis, unless otherwise noted. Rework due to Town directed changes is considered supplemental services and is not included within this scope of services;
- Supplemental services outside of this scope, and when requested by the Town, may require additional compensation. Fees for individual tasks may be moved from tasks with surplus budget to those with a deficit;
- The Town’s decisions, approvals, reviews, and responses shall be communicated to the Consultant in a timely manner so as not to delay the performance of the Consultant services. Comments, if from a committee, client or multiple interested entities, must be a consolidation of all comments in order to provide clear direction to the Consultant and to avoid delays;
- Town’s decisions, approvals, reviews, and responses shall be communicated to the Consultant in a timely manner so as not to delay the performance of the Consultant services. Comments, if from a committee, multiple interested entities, or other groups shall be consolidated by the Town with clear and concise direction to the Consultant to avoid delays. Delays outside of Consultant’s control shall be added to the agreed upon schedule.
- Bid assistance and Construction Administration, including preparation of construction easements, exhibits, and new leasable space sketches will be negotiated between the Town and Consultant when those services are required.

Scope of Work

Task 1: Additional Services

Consultant will assist the Town with the following:

1.1 Bifurcation of Project for LAP Funding

Following directives from FDOT and MPO, the Town has instructed DRMP to split the project into two construction projects, one funded in part or in whole by LAP funds and one funded in whole by the Town. This task entails the modification of plans, specifications, and construction documents into two parts.

This task also includes the associated coordination with FDOT, Town, and other personnel as directed by the Town, as well as modifications to the Construction budget and schedule to prepare exhibits for discussion and decision making.

1.2 Design and Coordination of Estero Boulevard Driveway Entrance

Due to the contemplated Seafarer's Bridge Approach modifications to Estero Boulevard, extra work is required to design a phased plan for the entrance: (a) One that includes a wide area allowing for Lee Tran tram loading and offloading, and (b) one that converts the driveway to a right-in/right-out vehicular drive to be constructed in tandem with, or following the construction of the new bridge approach. Additional time for coordination efforts with Lee County DOT, FDOT, and the Town are included in this effort.

1.3 Design and Coordination of Old San Carlos Fire Lane Entrance

At the intersection of Old San Carlos and Fifth Street, there was an existing meandering ribbon curb that delineated the existing paved roadway and decorative paver pedestrian area that is to be demolished as a part of the Times Square Improvement project. The Consultant's proposed improvements to this area included a new curb between the existing pavement and proposed pedestrian area. Because the signalization and milling & resurfacing project was under construction, the Town agreed it would be ideal to construct the proposed curb as a part of the signalization project such that the construction of Times Square Improvements occurs behind the new curb. This would keep newly finished work from being demolished and eliminates further impacts to the intersection with additional future construction activities. Further, the Consultant redesigned the proposed grades established by the Town's signalization project engineering firm (Agnoli Barber & Brundage) to create better synergy between the two projects, promote positive drainage, and improve pedestrian facilities within Times Square.

Hourly Breakdown:

REFER TO RFQ 19-06-PW

Total Cost (of Job): *NTE: \$78,200.00*

EXHIBIT BDate: 04/06/2022

COMPENSATION AND METHOD OF PAYMENT FOR
Times Square Additional Services – LAP Project Bifurcation & Entrance Modifications

Section 1. BASIC SERVICES/TASK(S)

The TOWN shall compensate the CONSULTANT for providing and performing the Task(s) set forth and enumerated in EXHIBIT "A", entitled "SCOPE OF PROFESSIONAL SERVICES", as follows:

NOTE: A Lump Sum (L.S.) or Not-to-Exceed (N.T.E.) amount of compensation to be paid the CONSULTANT should be established and set forth below for each task or sub-task described and authorized in Exhibit "A". In accordance with Agreement Article 5.02(2) "Method of Payment", tasks to be paid on a Work-in-Progress payment basis should be identified (WIPP).

Task Number	Task Title	Amount of Compensation	Indicate Basis of Compensation LS or NTE	If Applicable Indicate (W.I.P.P.)
#1	Times Square Additional Services – LAP Project Bifurcation & Entrance Modifications	\$78,200.00	NTE	
TOTAL (Unless list is continued on next page)		\$78,200.00	NTE	

Section 2. ADDITIONAL SERVICES

The TOWN shall compensate the CONSULTANT for such ADDITIONAL SERVICES as are requested and authorized in writing for such amounts or on such a basis as may be mutually agreed to in writing by both parties to this Agreement. The basis and/or amount of compensation to be paid the CONSULTANT for ADDITIONAL SERVICES requested and authorized in writing by the TOWN shall be as set forth in Article 4 of this Agreement.

Should it be mutually agreed to base compensation for ADDITIONAL SERVICES on an hourly rate charge basis for each involved professional and technical employee's wage rate classification, the applicable hourly rates to be charged are as set forth and contained in ATTACHMENT NO. 1 hereto dated 04/06/2022, entitled "CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE".

Section 3. REIMBURSABLE EXPENSES AND COSTS

When the CONSULTANT'S compensation and method of payment is based on an hourly rate for professional and/or technical personnel, the CONSULTANT shall, in addition to such hourly rates as are set forth in Attachment No. 1 hereto, be entitled to reimbursement of out-of-pocket, non-personnel expenses and costs as set forth in ATTACHMENT NO. 2 hereto 04/06/2022 entitled "NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS".

ATTACHMENT NO. 1 TO EXHIBIT B

Date: 04/06/2022

CONSULTANT'S PERSONNEL HOURLY RATE SCHEDULE FOR TIMES SQUARE
ADDITIONAL SERVICES BIFURCATION

Consultant or Sub-consultant Name: DRMP, INC
(A separate Attachment No. 1 should be included for each Sub-Consultant)

(1) Project Position or Classification (Function to be Performed)	(2) Current Direct* Payroll Average Hourly Rate	(3) Multiplier**	(4) Hourly Rate To Be Charged (Column 2x3)
Standard Rate Schedule As Included with Proposal			

*NOTE: Direct Payroll hourly rate means the actual gross hourly wage paid.

**NOTE: Indicate applicable multiplier for indirect personnel costs, general administrative & overhead costs, and profit.

***NOTE: A separate personnel hourly rate schedule should also be attached for each Sub-Consultant listed in Exhibit "D".

ATTACHMENT NO. 2 TO EXHIBIT B

Date: 04/06/2022

**NON-PERSONNEL REIMBURSABLE EXPENSES AND COSTS FOR TIMES SQUARE
ADDITIONAL SERVICES BIFURCATION**

CONSULTANT OR SUB-CONSULTANT NAME: DRMP, INC.

(A separate Attachment No. 2 should be included for each Sub-Consultant)

ITEM	BASIS OF CHARGE
REFER TO RFQ 19-06-PW	
NOTE: Receipts or in-house logs are required for all non-personnel reimbursable expenses unless exempt (such as meals).	
Administrative Services Fee – Applicable only when specifically authorized by the Town, for administering the procurement of special additional services, equipment, reimbursables etc. not covered under the costs and/or changes established in the Agreement.	

NOTE: N.T.E. indicates Not-To-Exceed

EXHIBIT C

Date: 04/06/2022

TIME AND SCHEDULE OF PERFORMANCE FOR
TIMES SQUARE ADDITIONAL SERVICES BIFURCATION

This EXHIBIT "C" establishes times of completion for the various phases and tasks required to provide and perform the services and work set forth in EXHIBIT "A" of this Agreement. The times and schedule of performance set forth hereinafter is established pursuant to this Agreement.

Phase and/or Task Reference As Enumerated in EXHIBIT "A"	NAME OR TITLE Of Phase and/Task	Number Of Calendar Days For Completion Of Each Phase And/or Task	Cumulative Number Of Calendar Days For Completion From Date of Notice to Proceed
#1	<u>Times Square Additional Services – LAP Project Bifurcation & Entrance Modifications</u>	365 days	365 days

EXHIBIT D

Date: 04/06/2022

CONSULTANT'S ASSOCIATED SUB-CONSULTANT(S) AND SUBCONTRACTOR(S) FOR

TIMES SQUARE ADDITIONAL SERVICES BIFURCATION

CONSULTANT has identified the following Sub-Consultant(s) and/or Subcontractor(s) which may be engaged to assist the CONSULTANT in providing and performing services and work on this Project:

(If none, enter the word "none" in the space below.)

Service and/or Work to be Provided or Performed	Name and Address of Individual or Firm				Sub-Consultant Services are Exempted from Prime Consultant's Insurance Coverage	
					Yes	No
Support of Task 1.1	Ensite					X
Support of Task 1.1	RG Architects					X

1. Requested Motion:

Meeting Date: April 18, 2022

Authorize the Town Manager to spend an additional \$131,896.00 for the emergency repairs to the South Potable Water storage tank.

Why the action is necessary:

The additional expenditure for these repairs will certify the life of the tank for an additional 20 years by an engineer and insure the tank will meet the current and future needs of the southern end of the island.

What the action accomplishes:

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

4. Submitter of Information:

5. Background:

The chlorine residual was dropping in the tank while the chlorine residual in the system was remaining constant. After draining the tank and refilling, the chlorine residual continued to drop. The decision was made to take the tank out of service for evaluation. After an inspection of the tank, it was determined that the lining of the tank needed to be replaced. Repairs began on 1/3/22. Council approved the repair with a not to exceed cost of \$150,000. However, as the repairs continued, the engineers discovered additional structural deficiencies on the exterior of the tank (severe cracking and structural damage) that needed to be repaired immediately, resulting in an additional repair cost. By comparison, a new tank would cost upwards of \$3,000,000.

Attachments:

Financial Impact:

6. Alternative Action

There are no alternative actions. The tank must be repaired.

7. Management Recommendations:

Approve

8. Recommended Approval:

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

Created/Initiated - 4/12/2022
Approved - 4/12/2022
Approved - 4/12/2022
Approved - 4/13/2022
Final Approval - 4/13/2022

1. **Requested Motion:**

Meeting Date: April 18, 2022

Authorize the Town Attorney to enforce code violations and liens as shown in Attachment A, through court action to include - but not be limited to - foreclosure, injunctive relief, or monetary judgment.

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

TOWN ATTORNEY'S ITEMS

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Attachments:

1. Attachment A: Memo to Town Council re Code Enforcement Lien Title Searches(132769203.1)-C

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 4/12/2022
Approved - 4/12/2022
Approved - 4/13/2022
Final Approval - 4/13/2022



MEMORANDUM

TO: Fort Myers Beach Town Council
FROM: Victor Sanabria, Assistant Town Attorney
DATE: April 4, 2022
RE: **Lien Search Results for Properties with Active Code Enforcement Violations**

Dear Town Council:

At the direction of the Town Council, the Town Attorney's Office performed lien searches regarding the properties listed below, each of which is encumbered by at least one Town code enforcement lien. Briefly, after reviewing the lien searches and public records for the properties listed below, it appears that each property has sufficient equity to cover the code enforcement lien(s) encumbering each property in the event the Town sued to foreclose the lien(s).¹

A. 1046 Estero Boulevard (Folio No. 10127261)

This property is owned by Persaud Properties FL Investment LLC. Other than the Town's code enforcement liens, there are no liens or mortgages encumbering the property.

There are seven Town code enforcement liens recorded against the property. Three liens were recorded on March 27, 2019, with accrued fines of \$11,750, \$36,600 (with an additional \$200 daily fine accruing for as long as the property is in non-compliance), and \$11,750, for a total of \$60,100, plus the fine accrual of \$200 per day since March 21, 2019. The fourth lien was recorded on June 11, 2019, with an accrued fine of \$80,050. The fifth lien, recorded on February 13, 2020, had an accrued fine of \$44,824 (with an additional \$250 daily fine accruing for as long as the property is in non-compliance). The sixth lien, recorded on March 5, 2021, had an accrued fine of \$10,575. The seventh lien, recorded on March 30, 2021, had an accrued fine of \$9,575.

In total, these liens have \$205,124 in accrued fines as of the date of their recording, plus daily accruals for two of them. According to the Lee County Property Appraiser, the fair market value of the property is \$2,367,980. Therefore, there is sufficient equity in the property to cover the liens if the Town elects to foreclose on the liens.

¹ Under Florida law, a lienholder cannot foreclose its interests against a homestead property. However, it does not appear that any of the properties subject to these code enforcement liens is a homestead property.

B. 1028 Estero Boulevard (Folio No. 1012762)

This property is owned by Persaud Properties FL Investment LLC. Other than the Town's code enforcement liens, there are no liens or mortgages encumbering the property.

There are two Town code enforcement liens against the property. The first lien, recorded on March 27, 2019, accrued a fine in the amount of \$11,750 as of March 12, 2019. The second lien, recorded on March 30, 2021, accrued a fine of \$9,575 as of March 24, 2021 824 (with an additional \$250 daily fine accruing for as long as the property is in non-compliance).

According to the Lee County Property Appraiser, the fair market value of the property is \$2,837,877. Therefore, there is sufficient equity in the property to cover the two liens if the Town elects to foreclose on the liens.

C. 268/270 Nature View Court (Folio No. 10228578)

This property is owned by Dania Carballo Ortiz and Daisy Garcia. There are two priority liens encumbering this property. First, there is a mortgage that was recorded on August 12, 2013 and secures a promissory note for \$266,250.00. Second, there is a warrant for collection of delinquent tourist development taxes. Lee County recorded this lien on September 5, 2018, in the amount of \$2,934.05.

The Town has multiple code enforcement liens against the property. Two liens were recorded on October 7, 2020, with each of the two liens accruing fines of \$56,075, (with an additional \$250 daily fine accruing on each lien for as long as the property is in non-compliance). A third lien was recorded on June 2, 2021, with an accrued fine of \$12,075. The total fines accrued for these liens is \$124,225 at the time of recording (with an additional \$250 daily fine accruing for as long as the property is in non-compliance),

If the Town were to foreclose on the code enforcement liens, it is likely that they will recover a sum beyond the amount secured by the mortgage and the tax lien. According to Zillow, the fair market value of the property is \$1,126,800. According to the Lee County Property Appraiser, the fair market value of the property is \$541,674. Therefore, it is likely that the owners have sufficient equity in the property to cover the code enforcement lien if the Town elects to foreclose on the liens. However, as stated above the Town's liens do not have priority.

D. 1661 Estero Boulevard (Folio No. 10227974)

This property is owned by Key Estero Shops, LLC. There are no liens or mortgages encumbering the property other than the Town's one code enforcement lien. The Town's lien was recorded on September 11, 2020, with accrued fines of \$34,475, (with an additional \$200 daily fine accruing on each lien for as long as the property is in non-compliance).

According to the Lee County Property Appraiser, the fair market value of the property is \$7,220,518. Therefore, there is likely sufficient equity in the property to cover the code enforcement lien if the Town elects to foreclose on the lien.

E. 80 Ave East (Folio No. 10228170)

This property is owned by White Sand Properties of Fort Myers Beach, LLC. The Town has three code enforcement liens encumbering the property. The liens were recorded between April 12, 2016 and July 9, 2019. As of March 27, 2019, the accrued fines for these liens exceeded \$257,150, and continue to accrue at \$250 per day for two of the three liens.

There are two mortgages on the property, only one of which has priority of the Town's code enforcement liens. The first mortgage, which has priority, was recorded on October 8, 2014, and secured a promissory note for \$400,000. The second mortgage was recorded on February 18, 2020 to secure a promissory note for \$320,000. There is an active lawsuit filed by the holder of the note and second mortgage, FCG Associates LLC, to foreclose on this mortgage. We have filed a notice of appearance to monitor this lawsuit and preserve the priority of the Town's code enforcement liens regarding the second mortgage being foreclosed. If FGC forecloses on their junior mortgage, then any individual or entity that purchases the property at a foreclosure sale will take title to the property subject to the Town's code enforcement liens and the Town can still foreclose its interests.

The owner likely has equity exceeding the two mortgages. According to Realtor.com, the fair market value of the property is approximately \$1.2 million. According to the Lee County Property Appraiser, the fair market value is approximately \$1.1 million. Therefore, there is likely sufficient equity to cover the code enforcement liens if the Town elects to foreclose the liens.