



Fort Myers Beach Town Council

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

Agenda

Monday, June 6, 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

A. 2022 Citizen of Distinction

Naming Patrick (Pat) McKeown as the 2022 Fort Myers Beach Citizen of Distinction in the area of Arts and Culture for his authoring of the history of the Mound House book "*Crown Jewel of Fort Myers Beach The Mound House*".

VII. ADVISORY COMMITTEES ITEMS AND REPORTS

Bay Oaks Recreational Campus Advisory Board (BORCAB)

VIII. APPROVAL OF MINUTES

A. May 16, 2022 Town Council

IX. CONSENT AGENDA

A. 290 Carolina Avenue - Utility Easement Agreement

Authorize the Town Manager to execute a Utility Easement agreement between Steven Proctor, who resides at 290 Carolina Avenue, and the Town of Fort Myers Beach.

B. Surplus Items

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

C. Emergency POD Locations

Authorize the Town Manager to negotiate and execute Memorandums of Understanding (MOU) for emergency response Point-of-Distribution (POD) locations at Santini Plaza and the adjacent Fire Department property (2545 Estero Boulevard) for the 2022 hurricane season.

X. PUBLIC HEARINGS

A. Ordinance 22-10: Advisory Committees

2nd Reading and Public Hearing on proposed Ordinance 22-10 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 2-94 “QUALIFICATIONS AND APPOINTMENTS OF MEMBERS” OF ARTICLE IV “BOARDS, COMMISSIONS, COMMITTEES AND OTHER AGENCIES”, CHAPTER 2 OF THE CODE OF ORDINANCES, TOWN OF FORT MYERS BEACH, FLORIDA, DISSOLVING THE BAY OAKS RECREATIONAL CAMPUS ADVISORY BOARD (“BORCAB”), COMMUNITY RESOURCE ADVISORY BOARD (“CRAB”), AND CULTURAL AND ENVIRONMENTAL LEARNING CENTER ADVISORY BOARD (“CELCAB”); ESTABLISHING A NEW ADVISORY BOARD TO TAKE OVER THE FUNCTIONS OF BORCAB, CRAB, AND CELCAB; RENAMING THE MARINE RESOURCE TASK FORCE (“MRTF”); AND PROVIDING FOR CODIFICATION; CONFLICTS; SCRIVENER’S ERRORS; SEVERABILITY AND AN EFFECTIVE DATE.

B. Ordinance 22-11; Sea Turtle Conservation

Second reading and public hearing on proposed Ordinance 22-11 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING ARTICLE V OF CHAPTER 32 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH ENTITLED “SEA TURTLE CONSERVATION” TO SPECIFY A FIFTEEN-PERCENT (15%) OPACITY OF TINTED GLASS FOR ALL NEW CONSTRUCTION TO REDUCE THE INSIDE TO OUTSIDE LIGHT TRANSMITTANCE VALUE, TO SPECIFY A FORTY-FIVE PERCENT (45%) OPACITY OF TINTED GLASS FOR ANY RENOVATIONS, RETROFITTING, OR WINDOW REPLACEMENTS TO EXISTING BUILDINGS TO REDUCE THE INSIDE TO OUTSIDE LIGHT TRANSMITTANCE VALUE, PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER’S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.

XI. ADMINISTRATIVE AGENDA

A. FY2021 Audit

Accept FY2021 Audit Report prepared by Mauldin & Jenkins

B. Resolution 22-24; Tentative FY 2022-2023 Millage Rate

Approve Resolution 22-24 establishing the Town’s Tentative Millage rate for Fiscal Year 2022-2023

C. Playground Installation Agreement

Waive the Town’s purchasing policies and procedures for an

emergency purchase at the request of the Lee County School District and approve an Agreement with Conidaris Builders to serve as the project manager/general contractor to obtain all required permits for the installation of playground equipment and accessory items at Fort Myers Beach Elementary in an amount not to exceed \$117,992.00 (existing piggyback agreement will be amended and lowered \$68,000).

D. Mooring Field Expansion Construction Agreement

Awarding the mooring field expansion bid to Dock Marine Construction Corporation, as the low, responsive and responsible bidder, in response to ITB-22-11-PW Matanzas Pass Mooring Field Expansion Construction in the amount not to exceed \$269,454.00 (Town's share is up to \$138,939 which includes a \$67,430 grant match) for up to ten double anchor mooring systems and nine single anchor mooring systems and authorize the Town Manager to negotiate the number and size of systems to be installed, negotiate a final and best offer, and execute a construction agreement with Dock Marine Construction Corporation.

E. Parking Sensors and App

Authorize the Town Manager to waive the Town's procurement policies and procedures and to negotiate a best and final offer and execute a sole source agreement with Civic Smart in the amount of \$119,688.00 (with a recurring monthly fee of \$1320.00), for a parking app and installation of individual parking space sensors.

F. EV Charging Stations

Approve Resolution No. 22-26, authorizing the Town Manager to enter into a piggyback contract with Charge Point, Inc. to install Level 3 dual EV charging stations at Times Square-Center St., and Level 2 Dual EV charging stations at Newton Park and Town Hall in an amount not to exceed \$122,139.75

G. ITB-22-14-UT Bid Rejection

Authorize the Town Manager to reject bids and solicit new bids for ITB-22-14-UT; Tier 1 Water and Stormwater Improvements pursuant to Section 2-480(a)(11) of the Town Code, which states: "An invitation for Bid may be cancelled, or any or all bids or proposals may be rejected in whole or in part, with or without cause".

XII. FINAL PUBLIC COMMENT

XIII. TOWN MANAGER'S ITEMS

A. Bayside Park

Notice of Improvement to properties in the vicinity of Bayside Park

B. FYs 2023-2025 CDBG program

Letters of intent to rejoin the Urban County Cooperation agreement, to collaborate with Lee County to potentially receive HUD funding.

C. Supplemental FY2023 Budget Information

XIV. TOWN ATTORNEY'S ITEMS

XV. COUNCILMEMBERS ITEMS AND REPORTS

XVI. ADJOURNMENT

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

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

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

1. **Requested Motion:**

Meeting Date: June 6, 2022

Naming Patrick (Pat) McKeown as the 2022 Fort Myers Beach Citizen of Distinction in the area of Arts and Culture for his authoring of the history of the Mound House book "*Crown Jewel of Fort Myers Beach The Mound House*".

Why the action is necessary:

What the action accomplishes:

Recognizes the Citizen of Distinction

2. **Agenda:**

LOCAL ACHIEVEMENTS AND
RECOGNITIONS

3. **Requirement/Purpose:**

Other

4. **Submitter of Information:**

5. **Background:**

The Citizen of Distinction Award is designed to recognize, on an annual basis, an outstanding citizen who has made an exceptional contribution to our Town.

General Criteria

- Current residents, full or part time, living in the municipal limits of Fort Myers Beach for at least 3 years are eligible for the award.
- In selecting the Outstanding Citizen Award recipient, the Town Council will consider the following:
 - how the nominee has enhanced the name of the community through positive exposure
 - what exceptional contribution the nominee has made to the community

The Town Manager forwards nominations to the Town Council for their selection. The chosen Citizen recipient will be honored during a Town Council meeting. At this time the recipient will receive a presentation from the Mayor and Council and a small engraved plaque dedicated to the recipient will be placed on the Citizens of Distinction perpetual wall. The recipients will be afforded the opportunity of serving as the Grand Marshalls in the Town's next 4th of July parade.

Attachments:

1. McKeown, Patrick
2. mound-house-book

Financial Impact:

None

6. **Alternative Action**

7. **Management Recommendations:**

8. Recommended Approval:

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

Created/Initiated - 5/26/2022
Approved - 5/31/2022
Approved - 5/31/2022
Final Approval - 5/31/2022

Town of Fort Myers Beach Citizens of Distinction Award Nomination

The Town of Fort Myers Beach Achievement Awards are designed to recognize, on an annual basis, outstanding citizens, groups, organizations or businesses that have brought credit to our town.

Awards will be granted in the following categories:

- ❖ Arts and Culture Recognition Award
- ❖ Athletic Achievement Award
- ❖ Heritage Award
- ❖ Youth Award of Merit
- ❖ Mayor's Special Award (*not chose by nomination)

Town of Fort Myers Beach

MAY 6 2022

Submit nominations no later than March 31st to:

Received by: _____

Town of Fort Myers Beach
c/o Town Manager
2525 Estero Boulevard
Fort Myers Beach, FL 33931

Please review the criteria for nomination and present as complete information as possible.

Name of Individual, Team,
Group or Business:

Patrick McKown

(List all members of Team / Group on separate page)

Current Address:

2532 Estero Blvd

#605

Fort MB, FL 33931

Number of Years Individual, Team, Group or Business has
lived/operated in Fort Myers Beach

Area of Nomination
(please check)

- ☒ Arts and Culture
- ☐ Athletics
- ☐ Heritage
- ☐ Youth

Many!
lived in the beach
1946-1977 when
his parents owned
5 1/2 acres beach
vacationed in the
beach since 1969
owned condo since
1999
Legal resident since
2003

Attachments:
- statement
- book

Please provide information on the nominee including:

- ✓ History of the individual, team, group or business;
- ✓ Their achievements;
- ✓ Their contribution to the community; and
- ✓ Details on how they have brought recognition to Fort Myers Beach

Please include a statement concerning why they should be recognized as a Citizen of Distinction.

The nominator may include up to a maximum of five (5) pages of material in support of the nomination. The support material must directly relate to the above information. Extraneous information will be edited from the nomination.

The chosen recipients will be recognized at a Town Council in May.

Award winner will be notified prior to the presentations.

Nominator may be contacted if there are any questions regarding this nomination

Name of Nominator:	<u>Ellen Vaughan, Friends of Mound House President</u>
Address:	<u>7500 Estero Blvd #1107</u>
City / State / Zip	<u>Fort Myers, FL, 33931</u>
Telephone:	<u>734-846-6903</u>
Alt. Telephone:	<u></u>
Date Submitted:	<u></u>

Town of Myers Myers Beach Citizens of Distinction Award Nomination 2022

Arts and Cultural Recognition Award

Patrick (Pat) McKeown

Friends of the Mound House Docent and member of the Board of Directors

Upon learning of Mound House Director Alison Gieson's interest in having a book about the Mound House, Pat volunteered to take on the project. Pat's academic background and experience authoring college text books provided the skill match needed to create a caliber of Mound House history volume to match the "jewel of the island" that the property has become.

The book, submitted with this nominations speaks of the professionalism, commitment, and skill Pat brought to the project.

The book is for sale in the Museum Store and select retail establishments on the island.

The book is the product of long labor and demonstrates commitment that will serve the Mound House and the Town in good stead for years to come.

The Friends of the Mound House funded the publishing costs for the book:

Crown Jewel of Fort Myers Beach

The Mound House

by Patrick G. McKeown

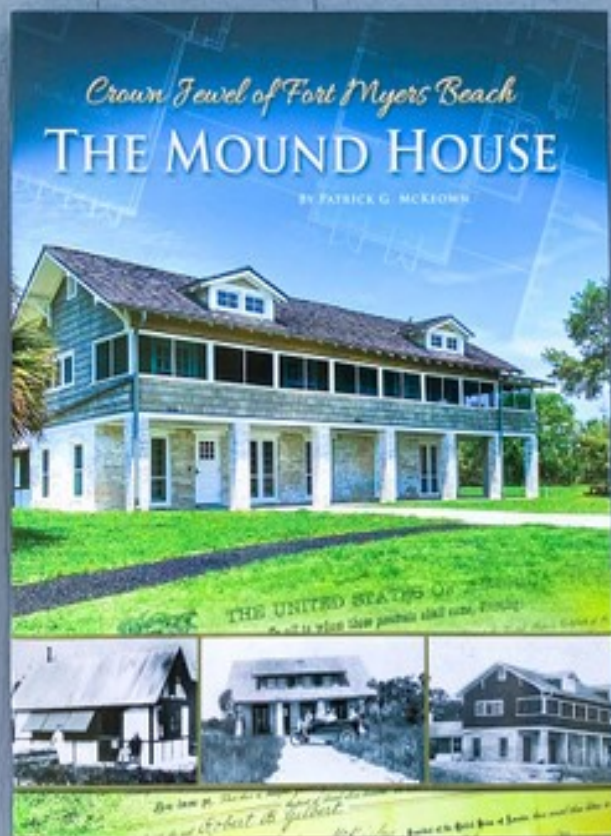
published 2020

(64 pages)

Town of Fort Myers Beach

MAY 6 2022

Received by: _____





Fort Myers Beach Town Council

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

Minutes

Monday, May 16, 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 (via Zoom).

II. INVOCATION

Town Clerk Baker.

III. PLEDGE OF ALLEGIANCE

IV. APPROVAL OF FINAL AGENDA

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

Motion carried unanimously.

V. PUBLIC COMMENT

Jennifer Rusk, Marine Resources Task Force (MRTF) member, provided an update concerning the pop-up events and noted they have held over 100 events.

Carol Newsome, resident, commented on the side streets flooding. She noted that Sterling flooded at high tide and whenever it rained. She questioned why Sterling was in the fourth tier when her house flooded.

Cindy Johnson, resident, stated she lived on Seminole Way and it flooded too. She requested that someone from the town investigate the situation.

Steve Johnson, resident, commented that Sterling and Seminole were managed by swales. He requested that the streets be moved up from tier four.

John Heim discussed water and air quality studies.

Tim Shadle questioned the Town Council's idea of a reasonable fee for renting affordable workforce housing. He felt the new property behind Town Hall would be a good location for workforce housing. He commended Town Council and staff for their work.

VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS**A. Mulholland Stewardship Award**

Mayor Murphy described the John Mulholland Stewardship Award and presented it to Cindy Johnson.

No additional achievements or recognitions.

VII. ADVISORY COMMITTEES ITEMS AND REPORTS - MARINE RESOURCES TASK FORCE (MRTF)

Steve Johnson, Chair of MRTF, previously distributed a list of priorities and commented on new and ongoing initiatives. He described a South Florida Water Management District model ordinance from 2020 and noted that Town Council had not determined whether to adopt it. He received approval from Town Council to move forward with the model ordinance and to review the Longboat Key sea turtle ordinance. Council Member Atterholt discussed recycling cigarette butts and a possible ban on smoking on the beach. Chair Johnson remarked that MRTF would research both topics. He discussed the lack of enforcement regarding lights and the sea turtle ordinance. He indicated that MRTF members visited properties with tinted windows and MRTF voted to rescind their previous recommendation regarding window tints. Except for new construction and replacement glass, the new recommendation was to follow the normal variance process when dealing with hardships. MRTF recommended that the Town continue to list more resources to help with enforcement, continue the 15% window tint requirement with replacement windows and new construction and continue to enforce the sea turtle ordinance. MRTF supported a more proactive approach to fining people for non-compliant lights.

VIII. APPROVAL OF MINUTES**A. May 2, 2022 Town Council**

Amendments: The vote under Public Hearing C. mistakenly listed Council Member Atterholt as Vice Mayor. On page 8, clarify that Council Member Atterholt intended to bring the ordinance back for consideration, not to change it.

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

Motion carried unanimously.

B. May 5, 2022 Management & Planning Session

Amendment: Remove "Council Member described Sanibel's land trust. He noted that a land trust was unnecessary if the town wanted the property owned by an entity that" at the end of page 1.

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

Motion carried unanimously.

IX. CONSENT AGENDA

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

Motion carried unanimously.

A. Historic Preservation Advisory Board Appointment

Appointment of Karyn Slomski to the Historic Preservation Advisory Board (HPAC)

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

Motion carried unanimously.

B. Resolution 22-20; Mound House / Bay Oaks Donations

Approve Resolution 22-20 accepting donations from the Fort Myers Beach Community Foundation, Kiwanis Club and Friends of Bay Oaks and directing the Town Manager to appropriate the donations to be used for Mound House Summer Camp Scholarships and Bay Oaks Teen and Youth programs including summer camp scholarships.

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

Motion carried unanimously.

X. PUBLIC HEARINGS

A. Ordinance 22-11, Sea Turtle Conservation

First Reading and Public Hearing: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING ARTICLE V OF CHAPTER 32 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH ENTITLED "SEA TURTLE CONSERVATION", PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on June 6, 2022 at 9:00 a.m.

Mayor Murphy read the title of the ordinance.

Public comment:

Eve Haverfield of Turtle Time stated there were 11 nests. She described how the 15% window tint helped the turtles and discussed why the turtles were important.

Erin Koster from PGT Industries noted that Longboat Key was installing a 45% window tint. PGT did not have an opinion regarding the 15% tint but noted it was conservative with no actual proof in studies. She added that installing a window tint on an existing window might void the manufacturer's warranty or create heat stress cracks in the glass. She discussed adding an additional tinted film to windows with a manufactured tint. She provided samples of 45% and 15% tints and noted a significant difference between tints.

Bill Althoff, President of Shamron Beach Condominiums, commented on the 15% window tint and indicated that additional window tint should not be required because there were only six turtle disorientations last year. He compared turtle disorientation data from other counties and did not see a correlation between the strength of the window tint and disorientations. He supported issuing fines based on measuring light infractions with a calibrated instrument. He stated that everyone wanted to protect the turtles.

Dave Vieceli remodeled condos with 45% glass, but other owners were putting off installing glass until the ordinance was finalized. He noted they followed the state statutes, and it was not beneficial to go to 15%.

Mary Rose Spalletta, resident, Turtle Time member and MRTF member, discussed the sea turtle population worldwide. She described the sea turtle's sensitive eyes with lights and turtles getting stuck under furniture left on the beach. She stated that humans had a responsibility to keep sea turtles alive.

Cindy Johnson, resident and Turtle Time volunteer, stated that she knocked on doors and asked people to turn their lights off during hatchings. She indicated that just one light could cause a disorientation and she noted that the Longboat Key ordinance had not been updated. She commented that it was up to the Town Council to protect the turtles. Broward County recommended the 15% tint even though it was not in their ordinance.

Jim Reiter from Jeld Wen Windows and Doors stated there was not enough science yet to prove that the 15% windows were the way to go and they supported more testing.

Jennifer Manning, resident, described a turtle hatching that did not go well because a house behind the nest was completely lit up.

Public comment closed.

Council Member Atterholt acknowledged there was a problem and property owners had an obligation to be respectful of marine life. He thought the Town had to be more aggressive in enforcing violations against people who were not being respectful. He commended Pink Shell for upgrading their windows. He stated the solution was to close blinds or shades and comply. He supported aggressively enforcing the ordinance. He felt it was fair that new construction was required to install 15% windows but thought that property owners should be allowed to comply and have the proper enforcement.

Vice Mayor Hosafros stated that she moved to hold off on the ordinance at the last meeting to gather additional information. She attended the Pink Shell demonstration of the two tints and did not think the 15% glass was a catastrophe, as some described. She will not vote for the ordinance today.

Council Member Allers indicated he did not notice a difference between the tints at Pink Shell. He noted that the FWC (Fish & Wildlife Conservation) recommended the 15% tint, but it was not required. He encouraged the condos to install 15% windows.

Council Member Veach stated that the 15% glass produced less light and reduced the likelihood of disorientations. He supported creating a restrictive ordinance and allowing variances for special cases.

Council Member Allers moved to move Ordinance 22-11 to a second reading on June 6 at 9:00 a.m., go back to 45% for replacement windows and to include an awareness clause that Town Council believes that protecting sea turtles was critical and staff was directed to enforce the code fully; second by Council Member Atterholt.

Discussion ensued regarding stricter enforcement methods.

Motion carried 3-2, with Vice Mayor Hosafros and Council Member Veach dissenting.

XI. ADMINISTRATIVE AGENDA

A. 2022 Citizen of Distinction

The Town has received the nomination of Patrick (Pat) McKeown for the annual Fort Myers Beach Citizen of Distinction Award in the area of Arts and Culture for his authoring of the history of the Mound House book "*Crown Jewel of Fort Myers Beach The Mound House*".

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

Motion carried unanimously.

B. Audit Committee Appointments

The Audit Committee currently has three vacancies on their 7 member board. Fort Myers Beach residents Michael Hauser, Jack Leson, Sherry Misgen and Barbara Puffer are each requesting to be appointed to one of the seats.

Town Council Members voted unanimously to appoint Michael Hauser, Sherry Misgen and Barbara Puffer.

C. Resolution 22-21; Laguna Shores Channel Dredge Assessment

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA PROPOSING THE ESTABLISHMENT AND FUNDING OF THE LAGUNA SHORES DREDGING ASSESSMENT AREA WITHIN THE AREA OF THE TOWN DESCRIBED HEREIN FOR THE PURPOSE OF PAYING THE COST OF THE LAGUNA SHORES CANAL DREDGING PROJECT; PAYING OTHER PROJECT, FINANCING AND COLLECTION COSTS; MAKING CERTAIN FINDINGS AND DETERMINATIONS OF SPECIAL BENEFIT AND THE LOGICAL RELATIONSHIP BETWEEN THE DREDGING PROJECT AND THE BENEFIT RECEIVED; SPECIFYING THE TOTAL ESTIMATED CAPITAL COST OF THE DREDGING PROJECT; SPECIFYING THE UNIT OF MEASUREMENT FOR, AND THE ESTIMATED MAXIMUM AMOUNT OF

SAID ASSESSMENT TO BE LEVIED AGAINST EACH PARCEL WITHIN THE DESCRIBED AREA; SPECIFYING THE NUMBER OF YEARS SAID ASSESSMENT IS TO BE LEVIED; ALLOWING FOR THE PREPAYMENT OF THE SPECIAL ASSESSMENT; PROVIDING FOR ANNUAL ADJUSTMENTS TO THE AMOUNT OF THE ASSESSMENT IF NECESSARY; PROVIDING FOR CERTAIN OTHER AUTHORIZATIONS AND DELEGATIONS OF AUTHORITY IN RELATION THERETO; AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

Mayor Murphy read the resolution.

Council Member Atterholt moved to approve the resolution; second by Vice Mayor Hosafros.

Motion carried unanimously.

D. ITB-22-10-EN; Laguna Shores Channel Dredge Contract

Authorize the Town Manager to enter into an Agreement with Arbor Tree & Land, Inc., the low, responsive, and responsible bidder to ITB-22-10-EN to perform the Laguna Shores Channel Dredge Project ("Project") in an amount not to exceed \$585,905.00 and expend budgeted funds for the Project.

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

Motion carried unanimously.

E. 2022 Estero Island Beach Monitoring

Approve Supplemental Task Authorization #14 with Coastal Engineering Consultants Inc., in the amount of \$47,013 for Professional Engineering Services to conduct annual monitoring of beach profiles along the shoreline of Estero Island and authorizing the Town Manager to execute the Supplemental Task Authorization and expend budgeted funds.

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

Motion carried unanimously.

F. BORC Additional Services

Approve Supplemental Task Authorization #14, in the not to exceed amount of \$109,886 for additional work on the Bay Oaks Redevelopment project and Community Pool and authorize the Town Manager to execute the Supplemental Task Authorization with DRMP Inc.

Vice Mayor Hosafros moved to approve; second by Council Member Atterholt.

Motion carried unanimously.

XII. FINAL PUBLIC COMMENT

No public comment.

XIII. TOWN MANAGER'S ITEMS

Town Manager Hernstadt noted that MRTF requested staff assistance and questioned whether Town Council approved. Town Council agreed to allow staff to assist. Town Manager Hernstadt reviewed the tier system for the stormwater project and noted that tier one streets would be under construction soon. He indicated that Sterling could be moved into tier two and listed ways to try to mitigate the flooding in the meantime. Mayor Murphy requested that they be elevated to tier two. He stated that water was coming back out of the drain on Curlew. Town Manager Hernstadt responded that staff would inspect the duckbills and remove any debris. He added that staff would also check the condition of swales on streets with similar issues.

Utilities Director Christy Cory stated that Sterling could be added to tier one with a change order. She noted that Bahia Via was also added to tier one and the swales were inspected. She thanked those who immediately gave easements to the town.

XIV. TOWN ATTORNEY'S ITEMS

No items.

XV. COUNCILMEMBERS ITEMS AND REPORTS

Council Member Atterholt noted that the town's projects were approved by the TDC (Tourist Development Council), but the beach renourishment piece was not part of the agenda and would go through the beach reserve trust fund because of the size of the ask. Negotiations between the town and the county were ongoing. Vice Mayor Hosafros and Council Member Atterholt agreed to let Lee County hold off implementing \$1.4 million for crosswalks until the town had a broader solution. Council Member Allers questioned how long they wanted to wait. Council Member Atterholt recommended waiting until June to see if the fixtures were approved.

Mayor Murphy suggested having a joint meeting with the County Commissioners to hash everything out. Council Member Atterholt agreed.

Town Manager Hernstadt will request a meeting. Council Member Veach requested more information regarding getting more money upfront, but less every year versus less money upfront, but more every year. Council Member Allers agreed to wait until June.

Council Member Veach questioned information regarding the movie made on the beach. Town Manager Hernstadt replied that the group did not receive a special event permit and staff were trying to track down what happened. Council Member Veach thanked Pink Shell and Charley's Boathouse for being good corporate citizens. He also thanked Council and staff for accommodating him to participate in the meeting.

Vice Mayor Hosafros questioned contacting LeeTran regarding the status of adding benches and other items to the bus stops. Town Manager Hernstadt replied that LeeTran was in the middle of their budget process, but he would contact them for an update.

Council Member Allers thanked the Pink Shell and described their elevated trash cans on the beach closer to the water. He noted that Chief Martin would draft a letter regarding the Lenell crosswalk.

Mayor Murphy thanked Bill from Pink Shell and noted that Pink Shell was considering improving their cottages for employee housing. Council Member Veach suggested that staff work on zoning for workforce housing.

Town Manager Hernstadt encouraged Council Members to submit topics to discuss at the joint meeting with Lee County.

A. Annual Review of Town Manager

Council Member Allers spoke in private to the Town Manager and nothing had changed.

Council Member Atterholt felt that one of the Town Manager's strengths was managing the ongoing construction projects, but he would like to see more relationship building and better communication with the county. He encouraged the Town Manager to continue to tell the town's story.

Council Member Veach felt that the Town Manager had a good skill set for where the town was with the infrastructure projects. He appreciated what he was doing, particularly the grants he secured to save taxpayers money. He supported the Town Manager.

Mayor Murphy was very pleased with the Town Manager's performance. He agreed that the Town Manager should blow his horn more often about the positive things going on in the town. He mentioned his salary and felt he should be at the top of the range.

Vice Mayor Hosafros stated that she received positive feedback from town employees regarding the Town Manager's performance. She appreciated his choices in filling positions and the good relationship with employees. She suggested that Town Council set new strategic plan goals. She was pleased to see progress with the budget process over the years.

XVI. ADJOURNMENT

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

The meeting was adjourned at 11:39 a.m.

1. Requested Motion:

Meeting Date: June 6, 2022

Authorize the Town Manager to execute a Utility Easement agreement between Steven Proctor, who resides at 290 Carolina Avenue, and the Town of Fort Myers Beach.

Why the action is necessary:

To authorize an agreement with Steven Proctor for a Utility Easement to facilitate stormwater improvements.

What the action accomplishes:

Provides stormwater drainage improvements for Carolina Avenue and Ostego Drive.

2. Agenda:

CONSENT AGENDA

3. Requirement/Purpose:

4. Submitter of Information:

5. Background:

Utility easements provide stormwater drainage relief on side streets where excess flooding occurs. This particular spot on the corner of Ostego Drive and Carolina Avenue is the lowest spot on the street. The easement agreement with Steven Proctor and the Town of Fort Myers Beach will provide stormwater improvements by providing direct drainage to the Bay by connecting to an existing outfall.

Attachments:

1. 5' DRAINAGE EASEMENT
2. 290 Carolina Easement Agreement - executed
3. Drainage Easement draft

Financial Impact:

6. Alternative Action

7. Management Recommendations:

Approve.

8. Recommended Approval:

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

Created/Initiated - 5/26/2022
Approved - 5/26/2022
Approved - 5/31/2022
Approved - 5/31/2022
Final Approval - 5/31/2022

SKETCH OF DESCRIPTION

(NOT A BOUNDARY SURVEY)



SURVEYOR'S NOTES:

1. THERE MAY BE EASEMENTS AND RESTRICTIONS OF RECORDS AND/OR PRIVATE AGREEMENTS NOT FURNISHED TO THIS SURVEYOR THAT MAY AFFECT PROPERTY RIGHTS AND/OR LAND USE RIGHTS OF THE LANDS SHOWN HEREON.
2. NO UNDERGROUND INSTALLATIONS, FOUNDATION FOOTINGS OR IMPROVEMENTS HAVE BEEN LOCATED EXCEPT AS NOTED.
3. NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL RAISED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
4. THIS SURVEY WAS PERFORMED IN ACCORDANCE WITH THE STANDARDS OF PRACTICE FOR SURVEYS AS SET FORTH BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS, CHAPTER 5J-17, FLORIDA ADMINISTRATIVE CODE.

TABLE OF CONTENTS

V-1-1 COVER SHEET
V-1-2 SURVEY

*NOT VALID WITHOUT SHEETS 1 THROUGH 2 OF 2.



TETRA TECH

www.tetrattech.com

201 EAST PINE STREET, SUITE 1000
ORLANDO, FL 32801
PHONE: 407.839.3955 FAX: 407.839.3790

SKETCH AND DESCRIPTION
5.00' DRAINAGE EASEMENT

LEE COUNTY
FLORIDA

LAWRENCE E. JENKINS
PROFESSIONAL
SURVEYOR AND MAPPER
FLORIDA REGISTRATION #5364
TETRA TECH - LB #26

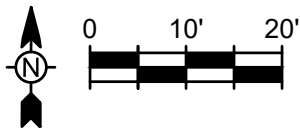
Project No.: 200-74765-22007

Date: 05/23/2022

Designed By: BLS / LEJ

Drawing No.
SHEET 1 OF 2

Monday, May 23, 2022 2:06:51 PM DRAWING: T:\BLS\JOBS\EASEMENTS\LEE COUNTY\EASEMENTV-XP-EASEMENT.DWG



DESCRIPTION
5.00' DRAINAGE EASEMENT

THE SOUTHERN 5.00 FEET OF THE FOLLOWING DESCRIBED PROPERTY PER INSTRUMENT NUMBER 2018000009440:

BEGINNING AT THE NORTHWEST CORNER OF LOT ELEVEN (11) OF T.P. HILL'S SUBDIVISION ON ESTERO ISLAND, AS RECORDED IN PLAT BOOK 3, AT PAGE 84, LEE COUNTY, FLORIDA, PUBLIC RECORDS, BEING ON THE SOUTH SHORE OF OSTEGO BAY; THENCE SOUTH ALONG THE WEST LINE OF SAID LOT ELEVEN (11), ONE HUNDRED THIRTY-NINE AND 48/100 (139.48') FEET; THENCE SOUTHEASTERLY AT AN INCLUDED OF 110°13' (NORTH TO SOUTHEAST), SIXTY-THREE AND 95/100 (63.95') FEET; THENCE NORTH PARALLEL WITH THE WEST SIDE OF LOT ELEVEN (11), A DISTANCE OF ONE HUNDRED THIRTY-SEVEN (137) FEET, MORE OR LESS TO THE SOUTH SHORE OF OSTEGO BAY; THENCE WESTERLY ALONG THE SOUTH SHORE OF OSTEGO BAY TO THE POINT OF BEGINNING.

DESCRIBED PARCEL CONTAINS 319.75 SQUARE FEET OR 0.007 ACRES, MORE OR LESS.

ABBREVIATIONS

INSTR INSTRUMENT NUMBER
PB PLAT BOOK
PG PAGE

FOLIO ID: 10228047
INSTR: 2017000004793
LOTS 1-4 INCLUSIVE
BLOCK A
VENETIAN GARDENS
PB. 6, PG. 70

POINT OF BEGINNING

NW CORNER OF LOT 11

FOLIO ID: 10227996
STEVEN PROCTOR
INSTR: 2018000009440
PART OF LOT 11
T.P. HILLS SUB
PB. 3, PG. 84

FOLIO ID: 10227991
INSTR: 2022000152653
PART OF LOT 11
T.P. HILLS SUB
PB. 3, PG. 84

**CAROLINA
AVE**

OSTEGO DR

OSTEGO BAY

WESTERLY ALONG SHORE

139.48'
WEST LINE OF LOT 11 T.P.
HILLS SUB. PB. 3, PG. 84

±137.00'

60.00'

5.00' DRAINAGE EASEMENT
319.75 SQUARE FEET

110°13"

63.95'

*NOT VALID WITHOUT SHEETS 1 THROUGH 2 OF 2.



TETRA TECH

www.tetrattech.com

201 EAST PINE STREET, SUITE 1000
ORLANDO, FL 32801
PHONE: 407.839.3955 FAX: 407.839.3790

SKETCH AND DESCRIPTION
5.00' DRAINAGE EASEMENT

**LEE COUNTY
FLORIDA**

Project No.: 200-74765-22007

Date: 05/23/2022

Designed By: BLS / LEJ

Drawing No.
SHEET 2 OF 2

Prepared by and After Recording Return to:
Town of Fort Myers Beach, Florida
2525 Estero Blvd.
Fort Myers Beach, FL 33931

Attn: Mrs. Christy Cory

STORMWATER DRAINAGE EASEMENT

THIS DRAINAGE EASEMENT ("Agreement") is made as of this 22nd day of May 2022, by and between Steven J Proctor, whose mailing address is 290 Carolina Avenue Fort Myers Beach Florida 33931, ("Grantor") and the TOWN OF FORT MYERS BEACH, a Florida municipal corporation whose address is 2525 Estero Blvd., Fort Myers Beach, Florida 33931 ("Grantee"). Wherever used herein, the terms, "Grantor" and "Grantee" shall include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations, partnerships (including joint ventures), public bodies and quasi-public bodies.

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

WHEREAS, Grantee desires a perpetual, non-exclusive easement for public use and other appropriate purposes incidental thereto, in, on, over, under, and across a portion of Grantor's Land; and

WHEREAS, the Grantor is willing to grant a Stormwater Drainage Easement on a portion of Grantor's Land to the Grantee; and

WHEREAS, the Grantee, at its expense, shall cause stormwater drainage improvements with all the fills, cuts, drains, ditches, and other incidents which Grantee may deem necessary to be constructed, maintained, replaced, and repaired on a portion of Grantor's Land, which portion is more particularly described in the attached Exhibit "A" with accompanying sketch of description and made a part hereof ("Easement Land").

WHEREAS, this Stormwater Drainage Easement shall be subject to the right of Grantor, its successors and assigns, to design, construct and cover this Stormwater Drainage Easement with concrete, asphalt or other similar surface pavements or materials for the purpose of providing parking and allowing ingress and egress across, over, upon and through this Stormwater Drainage Easement. Such rights to make surface improvements to the subject property shall not interfere with the rights granted to Grantee, pursuant to this instrument.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, Ten Dollars (\$10.00) and other good and valuable considerations the receipt and sufficiency of which are hereby acknowledged, the Grantor does grant the Grantee, subject to the terms hereof, a stormwater drainage easement for the public use, in perpetuity, in, on, over, under, and across the Easement Land.

1. Recitals. The recitals set forth above are hereby incorporated as if fully set forth herein.
2. Grant of Easement. The Grantor hereby grants Grantee a perpetual, nonexclusive easement in, on, over, under, and across the Easement Land described in Exhibit "A" for stormwater drainage improvements in perpetuity. This grant of easement is not a dedication to the public of the underlying fee simple ownership of the Easement Land.
3. Construction and Maintenance of Stormwater Drainage Improvements. At Grantee's sole cost

and expense, Grantee shall construct stormwater drainage improvements within the Easement Land pursuant to a site plan approved for Grantor's Land, and maintain, replace, and repair the facilities as necessary.

4. Termination/Relocation. Should the Grantee voluntarily cease using the Easement Land for a drainage outfall for a period of more than twelve (12) months (excluding acts of God, force majeure, construction activity, or other similar activities or causes outside the Grantee's control), this Agreement shall automatically terminate. The Grantee, through its Utility Department, in their reasonable discretion, may approve a request by Grantor to relocate this easement as described in Exhibit "A," to other lands owned by the Grantor.

5. Use by Grantor. Grantor, its successors and assigns, reserves the right to use and enjoy the Easement Land for all purposes consistent with this Agreement; provided, that, Grantor shall not construct or place or permit to be constructed or placed any structure or obstruction on the Easement Land.

6. Easement Runs with the Land. So long as this Agreement remains in effect, this Agreement, and the easements, covenants, conditions, and provisions herein, shall run with the Grantor's Land and the Easement Land and will be binding upon the Parties hereto and their respective heirs, devisees, personal representatives, successors, transferees and assigns, except as otherwise provided herein.

7. Title Warranties. Grantor warrants that Grantor has good and indefeasible fee simple title to and possession of the Easement Land and that it has good and lawful right to grant this Easement. Grantor represents that execution and delivery of this Agreement and performance of its obligations pursuant to this Agreement will not violate any agreement, instrument, order, judgment, decree, permit, approval, license, law, regulation or ordinance to which Grantor is a party or by which Grantor or Grantor's assets or the Grantor Property is bound or which otherwise affects the Grantor Property. Grantor shall indemnify, defend and hold Grantee and its successors and assigns harmless from and against all claims, damages, liabilities, losses, costs and expenses, including, without limitation, reasonable attorneys' fees arising from a breach of the representations, warranties, guarantees or covenants of Grantor contained in this Agreement.

8. Authority. The undersigned person executing this Agreement on behalf of Grantor represents and certifies that he or she has been fully empowered to execute and deliver this Agreement; that Grantor has full capacity to convey the Easement and other rights herein; and that all necessary action for the making of such conveyance has occurred. The undersigned person executing this Agreement on behalf of Grantee represents and certifies that he or she has been fully empowered to execute and deliver this Agreement; and that all necessary action for the execution of this Agreement has occurred.

9. Notices. All notices, demands and requests required or permitted to be given under this Agreement must be in writing and addressed to the appropriate Party at the appropriate address as set forth below and shall be deemed given and received (i) when hand delivered to the intended recipient, by any means; (ii) three (3) business days after the same is deposited in the United States mails, with adequate postage prepaid, and sent by registered or certified mail, with return receipt requested; (iii) one (1) business day after the same is deposited with an overnight courier service of national or international reputation having a delivery area encompassing the address of the intended recipient, with the delivery charges prepaid; or (iv) when received via electronic mail at the intended recipient's email address set forth below (provided such email delivery and receipt is confirmed via return receipt of the noticing Party). The initial addresses of the parties shall be:

If to Grantor: Steven J Proctor
290 Carolina Avenue
Fort Myers Beach, Florida
Attn: Steven J Proctor
Email: sjbaproctor@comcast.net

If to Grantee: Town of Fort Myers Beach

2525 Estero Blvd.
Fort Myers Beach, FL 33931
Attn: Mrs. Christy Cory
Email: christy@fmbgov.com

A Party may change its address, intended recipient party or email address by notice given in accordance with this Section.

10. Amendment and Termination. This Agreement may only be amended or terminated by a written agreement signed by the Parties.

11. Counterparts. This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed an original, all of which together shall constitute one instrument.

12. Enforcement; Attorneys' Fees. In the event that any Party is required to commence any action or proceeding against the other in order to enforce or interpret the provisions hereof, the prevailing Party in such action shall be awarded, in addition to any amounts or relief otherwise awarded, all reasonable costs incurred in connection therewith, including attorneys' fees.

13. Severability. If any provision in this Agreement is held invalid, illegal, or unenforceable in any jurisdiction, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not be impaired thereby.

14. Governing Law and Recordation. This Agreement shall be governed by the laws of the State of Florida.

15. Interpretation. Nothing contained herein is to be construed as creating a joint venture or partnership between Grantee and Grantor.

16. Headings. The Section headings are included only for convenience and shall not be construed to modify or affect the covenants, terms, or provisions of any Section.

17. No Third-Party Rights. Nothing contained in this Agreement shall create a contractual relationship with or duties, obligations or causes of action in favor of any third party.

18. Remedies Cumulative. The rights and remedies given in this Agreement and by law to a non-defaulting party shall be deemed cumulative, and the exercise of one of such remedies shall not operate to bar the exercise of any other rights and remedies reserved to a non-defaulting party under the provisions of this Agreement or given to a non-defaulting party by law.

19. No Waiver. One or more waivers of the breach of any provision of this Agreement by any party shall not be construed as a waiver of a subsequent breach of the same or any other provision, nor shall any delay or omission by a non-defaulting party to seek a remedy for any breach of this Agreement or to exercise the rights accruing to a non-defaulting party of its remedies and rights with respect to such breach.

20. WAIVER OF JURY TRIAL. EACH PARTY WAIVES ALL RIGHTS TO ANY TRIAL BY JURY IN ALL LITIGATION RELATING TO OR ARISING OUT OF THIS AGREEMENT.

21. Miscellaneous.

a. The Parties hereto covenant and agree that they will from time to time, upon the request of another Party, and without further consideration, execute, acknowledge, and deliver in proper form any further instruments, and take such other actions, as such Party may reasonably require in order to carry out the intent of this Agreement.

b. This Agreement is the final expression of the complete and exclusive agreement between the Parties with respect to the subject matter hereof.

c. As soon as reasonably practicable after the execution and acknowledgment hereof, the Parties shall cause this Agreement to be recorded in the Official Records of Lee County, Florida.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

185926\00001\108554632.v1
125096633.1

IN WITNESS WHEREOF, this Stormwater Drainage Easement is entered into as of the date first set forth above.

GRANTOR:

Name: Steven J Proctor

WITNESSES:

By: _____
Its: _____

Name: Johnny Owenby

Name: _____

STATE OF FLORIDA	)
	) ss.
COUNTY OF LEE	)

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 22ND day of MAY, by STEVEN PROCTOR, of LEE COUNTY, a State of Florida corporation, on behalf of the corporation; who (check one) ☐ is personally known to me or ☒ produced a valid FLORIDA driver's license as identification.

P623-790-56-178-0



MICAH OWENBY
Notary Public
State of Florida
Comm# HH192235
Expires 10/28/2025

Print or Stamp
Name: Micah Owenby
Notary Public, State of Florida at Large
Commission

No.: HH192235

My Commission Expires : 10/28/2025

SIGNATURE PAGE

108926730.v2
125096633.1

Prepared by and After Recording Return to:

Town of Fort Myers Beach, Florida
2525 Estero Blvd.

Fort Myers Beach, FL 33931

Attn: Mrs. Christy Cory

STORMWATER DRAINAGE EASEMENT

THIS DRAINAGE EASEMENT ("Agreement") is made as of this ____ day of December 2021, by and between [REDACTED], whose mailing address is [REDACTED], ("Grantor") and the TOWN OF FORT MYERS BEACH, a Florida municipal corporation whose address is 2525 Estero Blvd., Fort Myers Beach, Florida 33931 ("Grantee"). Wherever used herein, the terms, "Grantor" and "Grantee" shall include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations, partnerships (including joint ventures), public bodies and quasi-public bodies.

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

WHEREAS, Grantee desires a perpetual, non-exclusive easement for public use and other appropriate purposes incidental thereto, in, on, over, under, and across a portion of Grantor's Land; and

WHEREAS, the Grantor is willing to grant a Stormwater Drainage Easement on a portion of Grantor's Land to the Grantee; and

WHEREAS, the Grantee, at its expense, shall cause stormwater drainage improvements with all the fills, cuts, drains, ditches, and other incidents which Grantee may deem necessary to be constructed, maintained, replaced, and repaired on a portion of Grantor's Land, which portion is more particularly described in the attached Exhibit "A" with accompanying sketch of description and made a part hereof ("Easement Land").

WHEREAS, this Stormwater Drainage Easement shall be subject to the right of Grantor, its successors and assigns, to design, construct and cover this Stormwater Drainage Easement with concrete, asphalt or other similar surface pavements or materials for the purpose of providing parking and allowing ingress and egress across, over, upon and through this Stormwater Drainage Easement. Such rights to make surface improvements to the subject property shall not interfere with the rights granted to Grantee, pursuant to this instrument.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, Ten Dollars (\$10.00) and other good and valuable considerations the receipt and sufficiency of which are hereby acknowledged, the Grantor does grant the Grantee, subject to the terms hereof, a stormwater drainage easement for the public use, in perpetuity, in, on, over, under, and across the Easement Land.

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2. Grant of Easement. The Grantor hereby grants Grantee a perpetual, nonexclusive easement in, on, over, under, and across the Easement Land described in Exhibit "A" for stormwater drainage improvements in perpetuity. This grant of easement is not a dedication to the public of the underlying fee simple ownership of the Easement Land.
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8. Authority. The undersigned person executing this Agreement on behalf of Grantor represents and certifies that he or she has been fully empowered to execute and deliver this Agreement; that Grantor has full capacity to convey the Easement and other rights herein; and that all necessary action for the making of such conveyance has occurred. The undersigned person executing this Agreement on behalf of Grantee represents and certifies that he or she has been fully

empowered to execute and deliver this Agreement; and that all necessary action for the execution of this Agreement has occurred.

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If to Grantor:

Name
Mailing Address
Street, City, Zip
Attn:
Email:

If to Grantee:

Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach, FL 33931
Attn: Mrs. Christy Cory
Email: christy@fmbgov.com

A Party may change its address, intended recipient party or email address by notice given in accordance with this Section.

10. Amendment and Termination. This Agreement may only be amended or terminated by a written agreement signed by the Parties.

11. Counterparts. This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed an original, all of which together shall constitute one instrument.

12. Enforcement; Attorneys' Fees. In the event that any Party is required to commence any action or proceeding against the other in order to enforce or interpret the provisions hereof, the prevailing Party in such action shall be awarded, in addition to any amounts or relief otherwise awarded, all reasonable costs incurred in connection therewith, including attorneys' fees.

13. Severability. If any provision in this Agreement is held invalid, illegal, or unenforceable in any jurisdiction, the validity, legality, and enforceability of the remaining provisions of this Agreement shall not be impaired thereby.

14. Governing Law and Recordation. This Agreement shall be governed by the laws of the State of Florida.

15. Interpretation. Nothing contained herein is to be construed as creating a joint venture or partnership between Grantee and Grantor.

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18. Remedies Cumulative. The rights and remedies given in this Agreement and by law to a non-defaulting party shall be deemed cumulative, and the exercise of one of such remedies shall not operate to bar the exercise of any other rights and remedies reserved to a non-defaulting party under the provisions of this Agreement or given to a non-defaulting party by law.

19. No Waiver. One or more waivers of the breach of any provision of this Agreement by any party shall not be construed as a waiver of a subsequent breach of the same or any other provision, nor shall any delay or omission by a non-defaulting party to seek a remedy for any breach of this Agreement or to exercise the rights accruing to a non-defaulting party of its remedies and rights with respect to such breach.

20. **WAIVER OF JURY TRIAL.** EACH PARTY WAIVES ALL RIGHTS TO ANY TRIAL BY JURY IN ALL LITIGATION RELATING TO OR ARISING OUT OF THIS AGREEMENT.

21. Miscellaneous.

a. The Parties hereto covenant and agree that they will from time to time, upon the request of another Party, and without further consideration, execute, acknowledge, and deliver in proper form any further instruments, and take such other actions, as such Party may reasonably require in order to carry out the intent of this Agreement.

b. This Agreement is the final expression of the complete and exclusive agreement between the Parties with respect to the subject matter hereof.

c. As soon as reasonably practicable after the execution and acknowledgment hereof, the Parties shall cause this Agreement to be recorded in the Official Records of Lee County, Florida.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

1. Requested Motion:

Meeting Date: June 6, 2022

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

Why the action is necessary:

Following policy for declaring items for surplus auction.

What the action accomplishes:

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

2. Agenda:

CONSENT AGENDA

3. Requirement/Purpose:

4. Submitter of Information:

Jason Freeman, Public Works
Manager

5. Background:

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

From time to time, a department or division will identify town-owned property that is classified as salvage or obsolete. If other departments can find a use for any items in storage, the items can be reassigned. If not, the governing body is required to declare these items surplus and authorize staff to sell them to the highest bidder. Any items that have no buyers will be destroyed.

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

Attachments:

1. Surplus Items- Exhibit A

Financial Impact:

6. Alternative Action

Do not approve.

7. Management Recommendations:

8. Recommended Approval:

Randy Paniagua, Administrative Officer
Jason Freeman, Public Works Manager
John R Herin Jr, Town Attorney

Created/Initiated - 5/26/2022

Approved - 5/26/2022

Approved - 5/31/2022

Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Approved - 5/31/2022
Final Approval - 5/31/2022

Surplus Items

Parks and Recreation:

11 pool chairs

5 fiberglass pool tables

15 chaise lounges

Public Works:

TFB 19005 RTVX-1140

1. Requested Motion:

Meeting Date: June 6, 2022

Authorize the Town Manager to negotiate and execute Memorandums of Understanding (MOU) for emergency response Point-of-Distribution (POD) locations at Santini Plaza and the adjacent Fire Department property (2545 Estero Boulevard) for the 2022 hurricane season.

Why the action is necessary:

Designated POD locations are imperative for emergency response.

What the action accomplishes:

Provides two Emergency POD Locations for the Town at key locations across the island.

2. Agenda:

CONSENT AGENDA

3. Requirement/Purpose:

4. Submitter of Information:

5. Background:

The Town has 2 Memorandums of Understanding (MOUs) set to expire in July 2022. These MOU's are for Point-of Distribution (POD) locations in the event of an emergency and it is recommended that we have continued locations for Food/Water/Emergency Supplies, etc. to be delivered to the island and distributed to island residents. The Fire Department has agreed to let us use their property next to Town Hall for this hurricane season if needed and the Santini Plaza property is willing to continue their agreement for a longer term.

Attachments:

1. MOU for POD Locations

Financial Impact:

6. Alternative Action

7. Management Recommendations:

8. Recommended Approval:

Jason Freeman, Public Works Manager
Jason Freeman, Public Works Manager
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 5/26/2022
Approved - 5/27/2022
Approved - 5/31/2022
Approved - 6/1/2022
Final Approval - 6/1/2022

**MEMORANDUM OF UNDERSTANDING CONCERNING THE USE OF REAL
PROPERTY FOR EMERGENCY RESPONSE, RELIEF, AND DISASTER RECOVERY
EFFORTS**

This Memorandum of Understanding ("Memorandum") is entered into the ____ day of _____, 2022, by and between _____ the owner(s) of that certain real property located at _____ ("Owner") and the Town of Fort Myers Beach, Florida ("Town") a municipal corporation of the State of Florida, collectively herein the "Parties".

NOW, THEREFORE, for ten dollars (\$10.00) and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Owner grants the Town the right to temporarily use the real property or premises depicted and described in Exhibit A attached hereto ("Property") for emergency response, relief, and disaster recovery efforts. Said temporary use may include but cannot be limited to use as a staging area for emergency response equipment; as a point of distribution for emergency supplies; and, any other emergency-related activity.
2. Town agrees to notify the Owner, as soon as practicable depending on the type or emergency event, as to the intended dates and estimated duration of the temporary use. Town agrees to limit the duration of use to 21 consecutive calendar days unless a longer period is approved by the Owner. Upon such notice, Owner may terminate the use at any time with 7 days' notice to the Town.
3. Town agrees to exercise reasonable care during the use of the Property. Town will repair, replace, or reimburse the Owner for any damage to the Property caused by the Town, its agents, or employees during its use of the Property. Any such repair, replacement, or reimbursement shall be limited to returning the Property to the condition in which it existed prior to any damage.
4. The Town agrees to reimburse the owner a prorated share of telephone, electricity, water, and sewer charges applicable to the Property which are related to the temporary use by the Town. Owner shall provide the Town with an itemized, verifiable invoice for this purpose. The Town shall also reimburse the Owner for any specific increased costs incurred for utility services applicable to the temporary use upon submittal of an itemized, verifiable invoice.
5. Owner shall provide the Town with emergency contact information and to update said information as needed.
6. This Memorandum will remain-in-farce for a period of 5 years from the date of execution by the Parties. The parties may renew the agreement for an additional 5 years if so agreed to in writing.

7. Owner shall be provided with and must approve any printed or electronic material published by the Town that specifically refers to the Property.
8. Town will advise the Owner in writing, if requested, or by electronic means, of the use of the Property by any organizations assisting with emergency relief efforts. Any such organization will enter Into a Mutual-Aid-Agreement with the Town and shall be held to the same terms and conditions set forth herein with respect to the temporary use of the Property.
9. To the extent allowed by law and subject to the provisions and limitations provided for in Section 768.28, Florida Statutes, the Town agrees to be liable for injury or loss of property, personal Injury, or death caused by the negligent or wrongful act or omission of any Town employee or agent or Town contractor resulting from the Town's temporary use of the Property.
10. This Memorandum contains the entire agreement and understanding of the Parties.
11. Any modifications or amendments hereto must be mutually agreed and executed by the Parties with the same formality as this Memorandum.
12. Either the Town or the Owner may terminate this Memorandum without cause upon 30 days written notice to the non-terminating party.

IN WITNESS of the above, the Parties sign this document as provided below:

OWNER:

TOWN:

By: _____

Its: _____

Date: _____

By: _____

Its: _____

Date: _____

Approved as to Form and Legal Sufficiency
for the Use and Reliance of the Town Only:

Town Attorney.

EXHIBIT A
LEGAL DESCRIPTION

Property Address:

Property Owner's Address (if different):

STRAP Number of Property:

Attach photo of Property from the Lee County Property Appraiser website

EXHIBIT B

CONTACT LIST OF OWNER'S AUTHORIZED REPRESENTATIVES

Name:

Address of Property:

Phone/cell/text:

Email:

Primary Emergency Contact:

Name:

Title:

Office Address:

Office Phone:

Cell Phone:

Email:

Alternate Emergency Contact:

Name:

Title:

Office Address:

Office Phone:

Cell Phone:

Email:

1. Requested Motion:

Meeting Date: June 6, 2022

2nd Reading and Public Hearing on proposed Ordinance 22-10 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 2-94 "QUALIFICATIONS AND APPOINTMENTS OF MEMBERS" OF ARTICLE IV "BOARDS, COMMISSIONS, COMMITTEES AND OTHER AGENCIES", CHAPTER 2 OF THE CODE OF ORDINANCES, TOWN OF FORT MYERS BEACH, FLORIDA, DISSOLVING THE BAY OAKS RECREATIONAL CAMPUS ADVISORY BOARD ("BORCAB"), COMMUNITY RESOURCE ADVISORY BOARD ("CRAB"), AND CULTURAL AND ENVIRONMENTAL LEARNING CENTER ADVISORY BOARD ("CELCAB"); ESTABLISHING A NEW ADVISORY BOARD TO TAKE OVER THE FUNCTIONS OF BORCAB, CRAB, AND CELCAB; RENAMING THE MARINE RESOURCE TASK FORCE ("MRTF"); AND PROVIDING FOR CODIFICATION; CONFLICTS; SCRIVENER'S ERRORS; SEVERABILITY AND AN EFFECTIVE DATE.

Why the action is necessary:

Implements Town Council directive to update the Town's advisory boards

What the action accomplishes:

Implementation of Town Council directive

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

4. Submitter of Information:

5. Background:

At the request of the Town Council, staff drafted Ordinance 22-10, which dissolves BORCAB, CRAB & CELCAB, and establishes a replacement advisory board and renames the Marine Resources Task Force.

Attachments:

1. 22-10, Ordinance 22-10 Amending Article IV of Chapter 2 of the Town Code re Advisory Boards(133561718.1)-C

Financial Impact:

6. Alternative Action

7. Management Recommendations:

Approve on first reading

8. Recommended Approval:

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

Created/Initiated - 5/26/2022
Approved - 5/31/2022
Approved - 5/31/2022
Final Approval - 5/31/2022

ORDINANCE NO. 22-10

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING SECTION 2-94 “QUALIFICATIONS AND APPOINTMENTS OF MEMBERS” OF ARTICLE IV “BOARDS, COMMISSIONS, COMMITTEES AND OTHER AGENCIES”, CHAPTER 2 OF THE CODE OF ORDINANCES, TOWN OF FORT MYERS BEACH, FLORIDA, DISSOLVING THE BAY OAKS RECREATIONAL CAMPUS ADVISORY BOARD (“BORCAB”), COMMUNITY RESOURCE ADVISORY BOARD (“CRAB”), AND CULTURAL AND ENVIRONMENTAL LEARNING CENTER ADVISORY BOARD (“CELCAB”); ESTABLISHING A NEW ADVISORY BOARD TO TAKE OVER THE FUNCTIONS OF BORCAB, CRAB, AND CELCAB; RENAMING THE MARINE RESOURCE TASK FORCE (“MRTF”); AND 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 consolidating the functions of BORCAB, CRAB, and CELCAB and sunseting BORCAB, CRAB, and CELCAB will streamline the advisory board functions and reporting requirements of the Town’s advisory boards and facilitate the recruitment and appointment of volunteers to serve as members of the Town’s advisory boards; and

WHEREAS, the Town finds that re-naming MRTF will better reflect the function and responsibilities of MRTF; and

WHEREAS, the Town finds that it is in the best interests of the health, safety, and welfare of the Town’s residents and visitors to consolidate, rename, and sunset BORCAB, CRAB, CELCAB, and MRTF as set forth herein.

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

^{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 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, of Chapter 28 of the Code of Ordinance, Town of Fort Myers Beach is hereby amended to read as follows:

CHAPTER 2 – ADMINISTRATION

ARTICLE IV. – BOARDS, COMMISSIONS, COMMITTEES, AND OTHER AGENCIES

Sec. 2-94. –Qualifications and appointments of members.

In addition to qualifications, which may be specified for membership by state statutes, Charter, ordinance, or resolution, a person appointed to an agency, board, committee, or commission shall give preference to a registered voter within the town's jurisdiction or a property owner within the town's jurisdiction. Although no specific experience requirements shall be necessary as a prerequisite to appointment, consideration shall be given to applicants who have experience or who have shown interest in the subject matter. ~~In the event that~~ If any member is no longer a qualified elector, or is convicted of a felony, an offense involving moral turpitude while in office, or has unpaid fines or liens due the Town of Fort Myers Beach, the town council shall terminate the appointment of such person as a member of the agency, board, committee, or commission.

- (1) *Anchorage advisory committee.* The anchorage advisory committee shall advise the town council concerning all matters relevant to the management and use of the waters of the town for mooring and anchoring. The anchorage advisory committee shall prepare and submit the Matanzas Harbor Management Plan and any amendments thereto for review and approval by the town council and make recommendations for the establishment of managed municipal anchorages and mooring fields where warranted by objective evidence of environmental damage or user conflicts; or any other topics as assigned by the town council.
- (2) *Audit committee.* All members of the audit committee shall be town residents who do not have any direct financial or

business interests involving the town. The town council may waive the residency requirements by majority vote if there are an insufficient number of applicants who reside in the town. All members should, through education and experience, possess a basic understanding of governmental financial reporting and auditing. At least one member of the audit committee shall have accounting, auditing, or related financial management expertise that is specifically relevant to the government sector. The audit committee shall advise the town council on these matters and other matters pursuant to F. S. § 218.391, or any other topics as assigned by the town council.

- (3) *Parks and Arts Advisory Board.* The PAAB shall advise the town council concerning all matters relevant to the operation of the Bay Oaks Recreational Campus, the Mound House, Newton Beach through stewardship, advocacy, and oversight according to best practices of museums and the requirement as stated in the Florida Communities Trust Agreements for each property; the implementation of the town as a “living park” as defined in the comprehensive plan; and make recommendations to the town council on acquisition and management of public areas.

~~*Bay Oaks Recreational Campus Advisory Board.* The purpose of BORCAB is to serve the town as a community center and recreational facility providing individuals and groups passive and active recreational, social and community activities and events for both residents and visitors. BORCAB members shall work closely and in cooperation with the parks and recreation director, and advise the town council regarding matters concerning the Bay Oaks Recreational Campus and the community pool; or any other topics as assigned by the town council.~~

- (4) ~~*Community resource advisory board.* The broad objectives of CRAB are to further the welfare of the citizens of the town in the implementation of our community as a "living park" as defined in the comprehensive plan and make recommendations to the town council on acquisition and management of public areas including, but no limited to, pools, parks, beach accesses, streetscapes and other public easements and property to further the living park concept. The CRAB shall advise the town council on these matters or any other topics as assigned by the town council.~~

- (5) ~~*Cultural and Environmental Learning Center advisory board.*~~ The broad objectives of CELCAB are to ensure and promote the mission of the Mound House and Newton Beach Park to be accomplished through stewardship, advocacy and oversight according to best practices of museums and the requirement as stated in the Florida Communities Trust Agreements for each property. The CELCAB shall advise the town council on these matters or any other topics as assigned by the town council.
- (64) *Marine and environmental resources and task force.* The broad objectives of MERTF are to further the welfare of the business owners, residents, and visitors ~~citizens~~ of the town by helping to promote a better, more healthful, safe, and attractive community environment and to ensure that the unique and natural characteristics of our marine and environmental resources are preserved; or any other topics as assigned by the town council.
- (75) *Public safety committee.* The PSC shall address any safety and transportation issues specifically assigned to the committee by the town council for the purpose of the health, safety and welfare of the ~~citizens~~ business owners, residents, and visitors to the town ~~Town of Fort Myers Beach.~~ The committee shall review, discuss, and evaluate the most significant safety and transportation issues within the town. The PSC shall advise the town council on these matters or any other topics as assigned by the town council.

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

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

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

Section 6. If any section, subsection, sentence, clause, or phrase of this Ordinance

is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

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

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

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

ADOPTED this _____ day of May 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 May 2022.

1. Requested Motion:

Meeting Date: June 6, 2022

Second reading and public hearing on proposed Ordinance 22-11 entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING ARTICLE V OF CHAPTER 32 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH ENTITLED "SEA TURTLE CONSERVATION" TO SPECIFY A FIFTEEN-PERCENT (15%) OPACITY OF TINTED GLASS FOR ALL NEW CONSTRUCTION TO REDUCE THE INSIDE TO OUTSIDE LIGHT TRANSMITTANCE VALUE, TO SPECIFY A FORTY-FIVE PERCENT (45%) OPACITY OF TINTED GLASS FOR ANY RENOVATIONS, RETROFITTING, OR WINDOW REPLACEMENTS TO EXISTING BUILDINGS TO REDUCE THE INSIDE TO OUTSIDE LIGHT TRANSMITTANCE VALUE, PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.

Why the action is necessary:

Beachfront Condominium owners feel Ord. 21-03 requirement to install new and replacement windows with 15 percent light transmittance places an undue hardship on them.

What the action accomplishes:

Recognizes FL Fish & Wildlife Conservation Commission Sea Turtle Biologist guidance that windows with light transmittance greater than 15% may require additional window treatments such as opaque curtains to be in compliance with local ordinance.

Recognizes that enforcement of ordinance is necessary to protect sea turtle nesting habitat.

Changes the requirement for replacement window light transmittance from 15% to 45%. New construction windows must still tint to 15% light transmittance.

Adds definition of certified wildlife lighting.

Adds an additional strategy to use long wavelength, shielded interior lighting as a strategy to mitigate interior light pollution onto the beach.

Adds beach renourishment construction as an activity for temporary workzone lighting.

2. Agenda:

PUBLIC HEARINGS

3. Requirement/Purpose:

Ordinance

4. Submitter of Information:

5. Background:

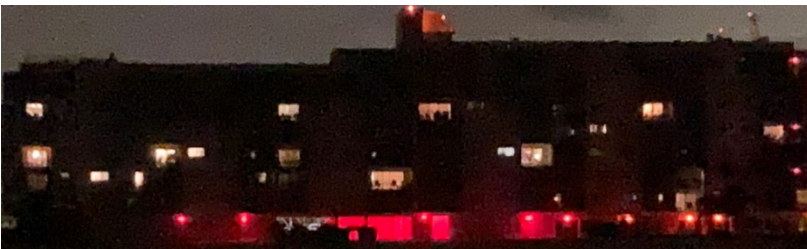
One of the successes of the new Sea Turtle Conservation Ordinance is that it gives the solution to leave exterior lights ON & still be IN COMPLIANCE. Once an exterior light is fitted with the solution, a long wavelength bulb in a downward directed fixture that shields the bulb from the beach, it can be left ON by accident or necessity without negatively impacting sea turtle nesting behavior.



The Sea Turtle Conservation Ordinance also gives a solution for interior lighting issues: 15% light transmittance tinting. There are a number of condos and SFR's have shown that black out curtains are effective to shield interior lights from the beach, demonstrating that the diligence of property management can solve the issue.



Having said that, enforcement of interior lights continues to be one of the challenging violations of the Sea Turtle Conservation Ordinance. The high volume of transient residents on the beach that, by ignorance or by apathy, leave interior lights on and unshielded from view of the beach makes continued enforcement necessary for property owners that are not managing their lighting.



FWC Guidance:

Review of disorientation data documents the negative impact of interior lights on nesting and hatching sea turtles, including in proximity to structures with windows tinted to 45% visible light transmittance. Florida Administrative Code (FAC) Rule recommends the use of 45% visible light transmittance or less. Based on FWC experience, both from lighting surveys and review of disorientation data, 45% transmittance does not adequately block interior light from the sea turtle nesting beach. Thus, Florida Fish and Wildlife Conservation Commission (FWC) staff continues to recommend darker tints, up to and including 15% tint. FWC has been involved in projects that utilized 15% tint successfully to block interior light and reduce light visibility from the beach. Thus, FWC staff supports local governments seeking to require tint levels darker than 45% as an effective option to block interior light visibility from the sea turtle nesting beach.

FWC staff was approached by representatives of the Fenestration & Glazing Industry Alliance (FGIA), who expressed their concerns, based on their expertise, with FWC's recommendation for darker tints, including 15%. These industry professionals raised potential issues related to the design and function of different glass and window products if darker tints are used. Based on their expertise, FWC staff agreed to work with FGIA to obtain additional empirical information on use of tints less than 45% and effect on hatching orientation. FWC feels this is a productive and necessary partnership to utilize their expertise on how best to reduce interior light visibility from the nesting beach using darker tints while considering other aspects related to window construction and consumer use. **However, that does not change FWC's recommendation and coordination with local governments to utilize darker tints, up to and including 15%.**

FWC staff appreciate and support the Town of Fort Myers Beach's work to protect nesting and hatchling sea turtles by updating their local lighting ordinance to require darker tints. **While FWC staff has seen 15% tints used successfully to reduce light visibility from the nesting beach with no negative effects to the structures involved, FWC agrees that there may be a range of tints below 45%, that may also be effective.** That is the goal of

the experiments FWC is conducting this summer, working cooperatively with FGIA members.

Attachments:

1. 22-11, Sea Turtle Protections 2nd reading
2. FWC and Fenestration Email Thread
3. 62B-55_ModelLightingOrdinance_NPR_0
4. SEE PAGE 4 - FWC Guidelines 2018
5. Turtles orient towards more intense light - Witherington Bjorndal Copeia 1991
6. 2022 WEEK 1 Light Issue Images

Financial Impact:

Town budget increase to administrator sea turtle conservation enforcement.

Town budget increase for inspection of window light transmittance for new and replacement windows.

6. Alternative Action

Do not approve amendments to Sea Turtle Conservation Ordinance to ensure inadvertent violations do not occur due to lesser tinting.

7. Management Recommendations:

8. Recommended Approval:

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

Created/Initiated - 5/27/2022
Approved - 5/31/2022
Approved - 5/31/2022
Approved - 5/31/2022
Final Approval - 5/31/2022

ORDINANCE NO. 22-11

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING ARTICLE V OF CHAPTER 32 OF THE CODE OF ORDINANCES OF THE TOWN OF FORT MYERS BEACH ENTITLED “SEA TURTLE CONSERVATION” TO SPECIFY A FIFTEEN-PERCENT (15%) OPACITY OF TINTED GLASS FOR ALL NEW CONSTRUCTION TO REDUCE THE INSIDE TO OUTSIDE LIGHT TRANSMITTANCE VALUE, TO SPECIFY A FORTY-FIVE PERCENT (45%) OPACITY OF TINTED GLASS FOR ANY RENOVATIONS, RETROFITTING, OR WINDOW REPLACEMENTS TO EXISTING BUILDINGS TO REDUCE THE INSIDE TO OUTSIDE LIGHT TRANSMITTANCE VALUE, PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW 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 of Fort Myers Beach, Florida ("Town") recognizes that artificial lighting and other human activities on the beach and upland areas have a detrimental effect on the life cycle and nesting activities of sea turtles, which are an endangered species protected by federal and state law, and therefore subject to reasonable regulations as proposed herein; and

WHEREAS, the Town also recognizes that both its economy and the quality of life of its residents are enriched by a healthy sea turtle population; and

WHEREAS, the Town also recognizes that Florida Fish and Wildlife Conservation Commission biologists have determined that glass tints/film with light transmittance values of 15 percent or less are required to prevent unshielded interior lights from being visible from the beach without the installation of additional darkening window treatments such as shades, blinds, or curtains; and

WHEREAS, the Town also recognizes preservation and protection of sea turtles and sea turtle nesting habitat requires strict enforcement of the Sea Turtle Conservation Ordinance in accordance with Florida Statutes Chapter 162; and

WHEREAS, the Town desires to minimize the detrimental impact on nesting sea turtle populations, and other listed sensitive wildlife by implementing a system of rules and regulations that reduces the amount of artificial light intentionally or unintentionally visible from beaches; and

133988000.1

133988000.2

WHEREAS, on May 16, 2022, the Town Council held a first reading of this proposed Ordinance; and

WHEREAS, on June 6, 2022, the Town Council held a second reading of this proposed Ordinance.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA: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. Article V of Chapter 32 of the Code of Ordinances of the Town of Fort Myers Beach entitled "Sea Turtle Conservation" is hereby amended to read as follows:

CHAPTER 32 - WATERWAYS AND BEACHES

ARTICLE V. - SEA TURTLE CONSERVATION

Sec. 32-101. - Article purpose and objectives.

The purpose of this article is to protect nesting and hatchling sea turtles on the beaches in the Town of Fort Myers Beach ("town") by ensuring that their nesting habitat is not degraded by artificial light. The objective of the article is to ensure artificial light does not interfere with sea turtle nesting and hatching events through the appropriate design and implementation of coastal lighting systems. ~~In order to~~ To further the objective of full implementation, this article also includes provisions designed to educate residents and beach users in the town on the benefits of appropriate coastal lighting and provides for weekly inspections to ensure compliance with the acceptable lighting standards.

Sec. 32-102. - Applicability.

The provision of this article shall apply to all properties within the town that may produce artificial light directly, indirectly, or cumulatively visible from any portion of the beach, regardless of whether those properties are beachfront properties; and to all buildings and related infrastructure, including landscaping, as well as all other activities that may adversely impact sea turtles.

^{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 ~~striketrough~~.
133988000.1

Sec. 32-103. - Definitions.

For the purposes of this article, the following words and phrases will have the meanings respectively ascribed to them by this section unless the context clearly indicates otherwise:

Artificial light means the light emanating from any human-made device.

Beach means the zone of unconsolidated material that extends landward from the mean low water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation.

Certified Wildlife Lighting means lighting fixtures and bulbs reviewed and approved with conditions of use through the Florida Fish and Wildlife Conservation Commission's Wildlife Lighting Certification Process and published at <https://myfwc.com/conservation/you-protect/conservation/lighting/criteria/certified/>.

Cumulatively visible means light from numerous artificial light sources on a single property that as a group are directly or indirectly visible to an observer standing anywhere on the beach.

Directly visible means visibility of the glowing elements, lamps, globes, or reflectors of an artificial light source by an observer standing anywhere on the beach.

Disorientation means an event caused by direct, indirect, or cumulative artificial lighting on sea turtle nesting habitat resulting in the disruption in the ability of nesting sea turtle females and sea turtle hatchlings to find the sea from the beach.

Footcandle means the English unit for measuring illuminance; the uniform illumination of a surface one foot away from a point source of one candela; one lumen per square foot equal to 10.76 lux.

Frontal dune means the first natural or man-made mound or bluff of sand which is located landward of the beach and which has sufficient vegetation, height, continuity, and configuration to offer protective value.

Full cutoff means a lighting fixture constructed in such a manner that no light emitted by the fixture, either directly from the

lamp or a diffusing element or indirectly by reflection or refraction from any part of the luminaire, is projected at or above 90 degrees as determined by photometric test or certified by the manufacturer.

Fully shielded means a lighting fixture constructed in such a manner that the glowing elements, lamps, globes, or reflectors of the fixture are completely covered by an opaque material to prevent them from being directly visible from the beach. Any structural part of the light fixture providing this shielding must be permanently affixed.

Indirectly visible means visibility of reflected light because of ~~as a result of~~ glowing elements, lamps, globes, or reflectors of an artificial light source which is visible to an observer standing anywhere on the beach without the light source being directly visible.

Lighting plan means plan view and cross section drawings describing location, number, wattage, wavelength, elevation, orientation, fixture cut sheets, and all types of proposed exterior artificial light sources, including, but not limited to, artificial lighting affixed to permanent structures, outdoor lighting, pool lighting, and internally or externally lighted signs.

Long wavelength means a luminaire emitting light wavelengths of 560 nanometers or greater and absent wavelengths below 560 nanometers. Lamps that meet the definition of long wavelength ~~through the use of~~ using filters, gels, or lenses are not permitted.

New Construction means all new construction of or additions ~~and alterations~~ to buildings, pools, pavement, other structures, landscape areas or lighting systems, including the change or resumption of land use.

Nesting season means the nesting period for sea turtles is from May 1 through October 31 of each year. Nesting season may be extended before or after these dates on an annual basis based on nesting activity observed in the Town of Fort Myers Beach.

Nighttime means the locally effective time ~~period~~ between sunset and sunrise.

Non-egress lighting means lighting that is not being used to light a distinct path or meet minimum requirements for emergency egress, including but not limited to, decorative lights (e.g.,

Christmas lights, strobe lights, string lights, etc.), balcony lights, ceiling fan lights, landscape lights, and up-lights.

Outdoor area means any portion of a property that could have an artificial light source not attached to a permanent structure, including but not limited to, pathway lighting, landscape lighting, pool lighting, etc.

Sea turtle means any turtle, including all life stages from egg to adult, of these species: Green (*Chelonia mydas*), Leatherback (*Dermochelys coriacea*), Loggerhead (*Caretta caretta*), Hawksbill (*Eretmochelys imbricata*), and Kemp's Ridley (*Lepidochelys kemp*i). For the purposes of this article, the term sea turtle is synonymous with marine turtle.

Sea turtle nesting habitat means all sandy beaches adjoining the waters of the Atlantic Ocean, the Gulf of Mexico, and the Straits of Florida in all coastal counties and all inlet shorelines of those beaches. Nesting habitat includes all sandy beach and unvegetated or vegetated dunes immediately adjacent to the sandy beach and accessible to nesting female turtles.

Take means an act that ~~actually~~ kills or injures marine turtles, and includes significant habitat modification or degradation that kills or injures marine turtles by significantly impairing essential behavioral patterns, such as breeding, feeding, or sheltering.

Temporary lighting means any non-permanent light source that may be hand-held or portable including, but not limited to, tiki torches, lanterns, flashlights (including cell phone flashlights), candles, flash photography, etc.

Tinted glass means glass modified via tinting, film, or other material to reduce the inside to outside light transmittance value to ~~15~~ 45 percent.

Sec. 32-104. - Annual public notice.

At least 30 days prior to the commencement of every sea turtle nesting season, the town shall provide written notice summarizing the provisions contained in this article.

Sec. 32-105. - Exterior and interior lighting affixed to new structures, new construction and improvements to existing structures.

133988000.1

133988000.2

- (a) All artificial lighting affixed to the exterior of new permanent structures, construction or additions shall be long wavelength, downward directed, full cutoff, fully shielded and mounted as close to the ground or finished floor surface as possible to achieve the required footcandles.
- (b) As an exception to (a) above, all non-egress lighting may be affixed to the landward exterior of permanent structures provided that the fixtures are fitted with a long wavelength source and are shall not be directly, indirectly, or cumulatively visible from any portion of the beach.
- (c) Lighting at egress points shall be limited to the minimum number of fixtures and footcandles necessary to meet federal, state, and local safety requirements.
- (d) Locations including, but not limited to, stairwells, elevators, parking garages, or courtyards shall not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach. Window film, tinting, light screens, shades, or curtains shall be used to block visibility of interior lights from the beach. Light screens shall be used on open or enclosed staircases on the seaward or shore-perpendicular side of a building or for parking garages to limit visibility of lights from the nesting beach.
- (e) All glass windows, walls, railings, and doors on the seaward and shore-perpendicular sides included in any new construction, ~~alteration, or window replacement~~ for structures within direct line of sight from the beach of structures located seaward of the Coastal Construction Control Line as defined by Florida Statutes Chapter 161.053 shall utilize glass with an inside to outside light transmittance value of ~~45~~ 45 15 percent or less.
- (f) All renovations, retrofitting, and replacement of glass windows, walls, railings, and doors on the seaward and shore-perpendicular sides of structures located seaward of the Coastal Construction Control

Line, as defined by Florida Statutes Chapter 161.053, shall utilize glass with an inside to outside light transmittance value of 45 percent or less. Glass windows, walls, railings, and doors with light transmittance values greater than 15 percent may require additional window coverings to be compliant with the requirement for interior light to not directly, indirectly, or cumulatively illuminate the beach.

- ~~(f)~~(g) Emergency lights shall be on a separate circuit and activated only during power outages or other situations in which emergency lighting is necessary for public safety.
- ~~(g)~~(h) Prior to issuance of a development order ~~and/or~~ building permit for all new structures, new construction, and improvements to existing structures seaward of the Coastal Construction Control Line as defined by F.S. § Chapter 161.053, Florida Statutes, a town approved lighting plan meeting the provisions of this article and Chapter 34. Article IV, Division 20. - Lighting Standards is required.
- ~~(h)~~(i) Prior to issuance of a development order ~~and/or~~ building permit for all multifamily, commercial, and industrial new structures, new construction, and improvements to existing structures landward of the Coastal Construction Control Line as defined by F.S. § Chapter 161.053, Florida Statutes, a town approved lighting plan meeting the provisions of this article and Chapter 34. Article IV. Division 20. - Lighting Standards is required.
- ~~(i)~~(j) Prior to the issuance of a certificate of occupancy (CO) or a certificate of completion (CC), the exterior and interior lighting of new development shall be inspected after dark by the town, with all exterior and interior lighting turned on, to determine compliance with the approved lighting plan and this article.
- (k) In addition, Prior to the issuance of a certificate of occupancy (CO) or a certificate of completion (CC), all glass windows, walls, railings, and doors on the seaward and shore-perpendicular sides of structures located seaward of the Coastal Construction Control

Line, as defined by Chapter 161.053, Florida Statutes, included in new construction and replacement shall be inspected to determine compliance with the approved light transmittance. All manufacturer specification stickers, including the National Fenestration Rating Council label, shall remain affixed to all glass windows, walls, railings, and doors on the seaward and shore-perpendicular sides of any new construction and replacements until the Town's inspection is complete to determine compliance with the approved window and door specifications and plan.

Sec. 32-106. - Existing exterior and interior lighting.

- (a) Existing artificial lighting affixed to the exterior of permanent structures shall not be directly, indirectly, or cumulatively visible from any portion of the beach during sea turtle nesting season.
- (b) Appropriate techniques for existing exterior lighting to achieve compliance with the provisions of this article include, but are not limited to:
 - (1) Reposition, modify, or remove existing lighting fixtures so that the point source of light or any reflective surface of the light fixture is no longer directly, indirectly, or cumulatively visible from the beach;
 - (2) Replace fixtures having an exposed light source with fully shielded fixtures;
 - (3) Replace any light source, light bulb or lamp that is not long wavelength (e.g., incandescent, fluorescent, or high intensity lighting) with the lowest wattage long wavelength (e.g., LED, or low-pressure sodium) light source or lamp available for the specific application;
 - (4) Replace non-directional fixtures with directional fixtures that point down and away from the beach;
 - (5) Provide shields for fixtures visible from the

beach and not practical to immediately be replaced. Beachside shields are to cover 270 degrees and extend below the bottom edge of the fixture on the seaward side so that the light source or any reflective surface of the light fixture is not visible from the beach;

- (6) Replace pole lamps with low-profile, low-level luminaries so that the light source or any reflective surface of the light fixture is not visible from the beach;
 - (7) Plant or improve vegetation buffers between the light source and the beach to screen light from the beach;
 - (8) Construct a ground level barrier to shield light sources from the beach. Ground-level barriers must not interfere with sea turtle nesting or hatchling emergence, or cause short- or long-term damage to the beach and dune system;
 - (9) Permanently remove or permanently disable any fixture which cannot be brought into compliance with the provisions of these standards;
 - (10) Televisions shall be shielded or positioned such that they are not directly, indirectly, or cumulatively visible from the beach.
- (c) Interior lighting shall not be directly, indirectly, or cumulatively visible from any portion of the beach during sea turtle nesting season.
- (d) Appropriate techniques to achieve compliance for interior lighting with the provisions of this article include, but are not limited to ÷—T the following measures ~~can~~ to reduce or eliminate the negative effects of interior light emanating from doors and windows within line-of-sight of the beach:
- (1) Apply window tint or film that ~~meets the~~ reduces the inside to outside light transmittance ~~standards for tinted glass to 15~~

percent or less;

- (2) Rearrange lamps and other moveable fixtures away from windows;
- (3) Use opaque shades or room darkening window treatments (e.g., blinds, curtains, screens) to shield interior lights from the beach.
- (4) Use artificial lighting that is long wavelength and shielded from the beach.
- (5) A combination of the above techniques may be required to achieve compliance with this article.

Sec. 32-112. - Special events, vehicles, raking and temporary lighting.

- (a) All special events or construction taking place on or adjacent to the beach require a permit from the town, and may require a permit from the Florida Department of Environmental Protection.
- (b) Lighting associated with a special event that may directly, indirectly, or cumulatively be visible from any portion of the beach shall not be authorized at nighttime during sea turtle nesting season.
- (c) The operation of all vehicles, except emergency and law enforcement vehicles or those permitted on the beach for sea turtle conservation in accordance with F.S. § Chapter 379.2431 Florida Statutes (F), or other research and conservation, shall be prohibited on the beach at nighttime during sea turtle nesting season. Excepted, non- emergency vehicles shall affix red filter to their headlights when operating on sea turtle nesting habitat at nighttime.
- (d) Beach raking activities during sea turtle nesting season, if permitted by the town, shall not:
 - (l) Operate at nighttime;

133988000.1

133988000.2

- (2) Begin before 9:00 a.m. or before the completion of daily monitoring for turtle nesting activity by the Florida Fish and Wildlife Conservation Commission (FWC) authorized marine turtle permit holder, whichever occurs first;
 - (3) Occur within ten feet of any marked sea turtle nest.
- (e) Within sea turtle nesting season, temporary work zone lighting for roadway construction, beach renourishment construction, and during declared emergencies shall be directed away from the beach to avoid illumination of or direct visibility from the beach. Work zone luminaires shall be shielded to avoid lighting areas outside of the immediate construction area.
- (f) All other temporary construction lighting shall be:
 - (1) Inclusive of all the standards herein, including utilizing fixtures that are long wavelength, downward directed, full cutoff, and fully shielded so light is not directly or indirectly visible from the beach, and
 - (2) Turned off during nighttime in sea turtle nesting season, or if temporary lighting is deemed necessary during sea turtle nesting season it shall only be allowed from 6:00 a.m. to 9:00 p.m., must be restricted to the minimal amount necessary, and shall incorporate all the standards herein, and
 - (3) Mounted less than eight feet above the adjacent floor or deck, measured from the bottom of fixture, and
 - (4) Restricted to the minimal number of footcandles necessary to conform to the applicable construction safety regulations.

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; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

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

Section 5. 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, or any part thereof, other than the part so declared.

Section 6. This ordinance shall become effective upon adoption by the Town Council.

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

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

ADOPTED this ____ day of _____, 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

RE: URGENT FW: information for the public hearing on sea turtle conservation

Trindell, Robbin <robbin.trindell@MyFWC.com>

Mon 5/16/2022 8:04 AM

To: Chadd Chustz <Chadd@fmbgov.com>

Cc: Jennifer Hatfield <jen@jhatfieldandassociates.com>; Long, Tonya <Tonya.Long@MyFWC.com>; Koperski, Meghan <Meghan.Koperski@MyFWC.com>

Review of disorientation data documents the negative impact of interior lights on nesting and hatching sea turtles, including in proximity to structures with windows tinted to 45% visible light transmittance. Florida Administrative Code Rule recommends the use of 45% visible light transmittance or less. Based on our experience both from lighting surveys and review of disorientation data, 45% transmittance does not adequately block interior light from the sea turtle nesting beach. Thus, Florida Fish and Wildlife Conservation Commission (FWC) staff continues to recommend for darker tints, up to and including 15% tint. We have been involved in projects that utilized 15% tint successfully to block interior light and reduce light visibility from the beach. Thus, FWC staff supports local governments seeking to require tint levels darker than 45% as an effective option to block interior light visibility from the sea turtle nesting beach.

As stated by Ms. Hatfield, FWC staff was approached by representatives of the Fenestration & Glazing Industry Alliance (FGIA), who expressed their concerns, based on their expertise, with FWC's recommendation for darker tints, including 15%. These industry professionals raised potential issues related to the design and function of different glass and window products if darker tints are used. Based on their expertise, FWC staff agreed to work with FGIA to obtain additional empirical information on use of tints less than 45% and effect on hatching orientation. We feel this is a productive and necessary partnership to utilize their expertise on how best to reduce interior light visibility from the nesting beach using darker tints while considering other aspects related to window construction and consumer use. However, that does not change FWC's recommendation and coordination with local governments to utilize darker tints, up to and including 15%.

FWC staff appreciate and support the City of Fort Myers work to protect nesting and hatchling sea turtles by updating their local lighting ordinance to require darker tints. While our staff has seen 15% tints used successfully to reduce light visibility from the nesting beach with no negative effects to the structures involved, we agree that there may be a range of tints below 45%, that may also be effective. That is the goal of the experiments we are conducting this summer, working cooperatively with FGIA members.

Sincerely,

Robbin N. Trindell, Ph.D.
Biological Administrator
Imperiled Species Management
Florida Fish and Wildlife Conservation Commission
1875 Orange Avenue East
Tallahassee, FL 32311
Phone: 850-922-4330

From: Chadd Chustz <Chadd@fmbgov.com>**Sent:** Friday, May 13, 2022 2:10 PM

To: Trindell, Robbin <robbin.trindell@MyFWC.com>

Subject: URGENT FW: information for the public hearing on sea turtle conservation

[EXTERNAL SENDER] Use Caution opening links or attachments

Dr. Robbin,

So to bother you... Can you verify the position statements made below on FWC's behalf?

See highlights below.

Chadd Chustz
Environmental Project Manager
Town of Fort Myers Beach

From: Jennifer Hatfield <jen@jhatfieldandassociates.com>

Sent: Friday, May 13, 2022 2:05 PM

To: Chadd Chustz <Chadd@fmbgov.com>

Subject: Re: information for the public hearing on sea turtle conservation

Chadd – thank you for the quick response and passing my email along. Here is the POC at FWC, I talked to her just a bit ago, and they are looking to now update the 2018 guidelines on page 4 to coincide with the update to the website we worked with them on. It was just missed by all parties.

Robbin N. Trindell, Ph.D.
Biological Administrator
Imperiled Species Management
Florida Fish and Wildlife Conservation Commission
1875 Orange Avenue East
Tallahassee, FL 32311
Phone: 850-922-4330
robbin.trindell@MyFWC.com

Best,

Jen

Jennifer Hatfield
J. Hatfield and Associates, PL
941-345-3263
Jen@jhatfieldandassociates.com

From: Chadd Chustz <Chadd@fmbgov.com>

Date: Friday, May 13, 2022 at 1:59 PM

To: Jennifer Hatfield <jen@jhatfieldandassociates.com>

Subject: RE: information for the public hearing on sea turtle conservation

Thank you Jennifer. I have passed your email along.

Who is your contact at FWC?

Chadd Chustz
Environmental Project Manager

Town of Fort Myers Beach

From: Jennifer Hatfield <jen@jhatfieldandassociates.com>
Sent: Friday, May 13, 2022 1:52 PM
To: Chadd Chustz <Chadd@fmbgov.com>
Subject: information for the public hearing on sea turtle conservation

Mr. Chustz – my name is Jennifer Hatfield and I represent the Fenestration & Glazing Industry Alliance (FGIA), a trade association made up of manufacturers and suppliers producing window, door, insulating glass, skylight, sloped glazing, curtain wall and storefront products and components for both the residential and commercial construction markets across North America. FGIA is dedicated to improving home and building performance through better glass, window, door and skylight technology and standards.

FGIA is actively involved in Florida, where I reside, through building code development and other regulatory areas that address our products. This includes recent and ongoing work with the Florida Fish & Wildlife Commission (FWC) that I want to provide you and the Town Council in how it relates to the Sea Turtle Ordinance before the Council this coming Monday. First, as a Floridian and on behalf of the FGIA members, we support sea turtle lighting guidelines for beachside communities as it is important to avoid and minimize impact to sea turtles. However, it is also important to ensure solutions presented can be achieved.

Last Summer, FGIA learned of the FWC language on their website to encourage a 15% VT rather than the 45% VT in the model ordinance. This was a concern for multiple reasons, including not only the fact this VT level can be extremely dark for homeowners, but that it is also not readily available in that glass manufacturers were not/are not targeting that exact percentage. FGIA reached out to FWC to get more information on how this came about and provide information to them on the many aspects that must be considered. This led to 9 months of discussions between FGIA and FWC with the following outcomes:

- This Summer FWC will be conducting testing with glass samples provided by FGIA members to determine what VT levels work for turtles. It is also our hope that the result will be a range that can be suggested instead of one set percentage, which allows for more readily available products that can be utilized.
 - It is important to note that in our many discussions with FWC over the last 9 months we found that there was no testing done to determine 15% was the “right” number and that the source of the 15% came from the automotive industry and not the fenestration industry. The fact is window and glass manufacturers have not been targeting 15%; therefore, products may exist that have say a 17%, 19%, 21% VT, but then will not meet the current Ft. Myer’s Beach ordinance of 15%...limiting consumers ability to choose a lower tint from 45% without having to go to perhaps a 13% or 9% VT that now has obscured their view and not allow the Florida sun into their homes.
 - Our intention working with the FWC is to a) provide industry knowledge and expertise on how our products work and b) find solutions that work for both turtles and people.
- Our discussions with FWC led to them updating their website (<https://myfwc.com/wildlifehabitats/wildlife/sea-turtle/lighting/>) language, see the old and new language screen shows below:

Original language:

- **Apply window tint** to your windows that meets the 45% (**15% recommended**) inside to outside transmittance standards for tinted glass.
- **Use window treatments** (blinds, curtains) to shield interior lights from the beach and move light fixtures away from windows.

New/updated language:

- **Apply window tint** so interior lights are not visible from the beach.
 - Utilize tint meeting the 45% or less inside to outside transmittance requirements on all glass or non-opaque windows, doors, or railings. Darker tints that restrict interior light visibility from the nesting beach are recommended to reduce adverse impacts to marine turtles, especially on buildings with large amounts of glass. Tints as low as 15% have been used successfully.
- **Use window treatments** (blinds, curtains) to shield interior lights from the beach and move light fixtures away from windows.

- In looking at the documents posted on the Ft. Myers Beach agenda under this issue item, we now understand that when working with FWC on updating wording for the website, we overlooked the 2018 document that on page 4 references the 15% VT, we have alerted FWC to this oversight this morning. We thought it was important for the Town to know this background in their deliberations on Monday. We do want to point out that the statement also on page 4 about the 25-30% being most popular is likely because it is more readily available and is a range rather than an exact target. However, we urge the Town to wait for the data coming from this Summer's FWC testing to determine what may be a proper VT range.

- FWC is no longer encouraging localities to adopt the 15% over the 45% in the model ordinance until more information/data is known. They are encouraging use of tints less than 45% and recognize that tints at 15% can be used, but also now realize the challenges that occur with a mandate at this precise level. FGIA is only aware of one locality adopting the 15% prior to our outreach and discussions with FWC, which is the Town of Ft. Myer's Beach.

We continue to work collaboratively with FWC and we are looking forward to participating in the Summer testing and learning more. In turn, we are providing the knowledge and background of how our industry produces the products and what other requirements we must meet related to building code safety and energy efficiency requirements. As all of this needs to be looked at holistically, as multiple factors must be considered. Which leads me to one last aspect we want to share with the Town and have let the FWC know this week as well.

The proposed changes to the current Ft. Myer's Beach ordinance suggests applying a window tint or film onto the existing window as one technique to reduce the light transmittance to 15% or less. This is another aspect where windows in your house are not like windows in your car. A car will have tempered glass and it works to add tinting to the car window after the fact. Whereas if folks start adding a tint/film to their existing windows, the heat absorbed could lead to stress cracking. The windows were not designed for this application. We would encourage the Town to remove this provision from the proposed ordinance.

One other perhaps minor point, if the Town determines they want to revert back to the 45% for now, we'd suggest revising the fourth whereas clause as well for consistency. Updating this clause would also align with the FWC website

and their upcoming testing, as I not believe even the 2018 document on page 4 states that the FWC has “determined that glass tints/film with lighting transmittance values of 15 percent or less are **required** to prevent...” Rather, the documents says “the best option is 15%” and based on all of the above information that is very subjective at the moment.

In conclusion, we support the proposed change back to the 45% or less VT until such time enough technical data is available from the FWC upcoming testing, which may require two Summer’s worth of testing to ascertain proper results (TBD). We encourage property owners to comply with all the solutions presented by FWC and the Town on ways to address exterior and interior lighting, in order to protect sea turtles.

We are happy to provide any additional information or answer any questions. Feel free to contact me via this email or the cell number below. If this information can be made available to the Councilmembers ahead of Monday’s meeting we would greatly appreciate it. Additionally, both myself and one of our FGIA members will be in attendance at your Monday’s meeting.

Best,

Jen

Jennifer Hatfield
J. Hatfield and Associates, PL
941-345-3263
Jen@jhatfieldandassociates.com

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.

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City/County of _____, Florida

Chapter ____.

MODEL LIGHTING ORDINANCE FOR SEA TURTLE PROTECTION

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ORDINANCE NUMBER 20__-__

LAND DEVELOPMENT CODE

AN ORDINANCE OF THE CITY/COUNTY OF _____ AMENDING CITY/COUNTY CODE CHAPTER _____ PROVIDING FOR AMENDMENTS TO ADOPT MODEL LIGHTING REQUIREMENTS; PROVIDING FOR REPEAL OF ORDINANCES; PROVIDING FOR TERRITORY EMBRACED; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION INTO THE CODE OF ORDINANCES; PROVIDING FOR EFFECTIVE DATE.

SECTION ____-1. – BASIS OF ORDINANCE

Sec. ____-1.1. - Findings of Fact

***Whereas, the City/County of _____** recognizes that light pollution of beaches is a serious threat to sea turtles and other species inhabiting its beaches; and

***Whereas, the City/County of _____** recognizes that nesting adult and hatchling sea turtles are negatively affected by light pollution created by artificial light visible from any portion of the beach; and

***Whereas, the City/County of _____** recognizes that sea turtles are protected by federal and state law; and

***Whereas, the City/County of _____** recognizes that both its economy and the quality of life of its residents are enriched by a healthy sea turtle population; and

***Whereas, the City/County of _____** desires to minimize the detrimental effect on nesting sea turtle populations, and other listed sensitive wildlife by implementing a system of rules and regulations that reduces the amount of artificial light intentionally or unintentionally visible from beaches;

**Guidance: These generic Findings of Fact are illustrative only. Findings of Fact should relate to the specific context of the County or City adopting a sea turtle lighting ordinance and may include data on sea turtle nesting, and disorientation/misorientation if available. It may also include information on the qualitative and quantitative value of sea turtles to the specific beachfront economies.*

NOW, THEREFORE, BE IT ORDAINED, BY THE CITY COUNCIL/BOARD OF COUNTY COMMISSIONERS OF THE CITY/COUNTY OF _____ ON THIS ____ DAY OF _____, 20__.

Sec. ____-1.2. - Title of Ordinance

This ordinance shall be referred to as the **City/County of _____** Lighting Ordinance for Sea Turtle Protection.

Sec. ____-1.3. - Ordinance Purpose and Objectives

The purpose of this Ordinance is to protect nesting and hatchling sea turtles on the beaches in the **City/County of _____** by ensuring that their nesting habitat is not degraded by artificial light. The objective of the ordinance is for the appropriate design and implementation of coastal lighting systems to

ensure that light pollution does not interfere with sea turtle nesting and hatching events while at the same time protecting public safety. In order to further the objective of full implementation, this Ordinance also includes provisions designed to educate residents and beach users in the **City/County of _____** on the benefits of appropriate coastal lighting and provides for regular inspections to ensure compliance with the acceptable lighting standards.

Sec. ____-1.4. - Definitions

1. **Artificial Light**: the light emanating from any human-made device.
2. **Beach**: the zone of unconsolidated material that extends landward from the mean low water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation.
3. **Certified Wildlife Lighting**: lighting fixtures and bulbs reviewed and approved with conditions of use through the Florida Fish and Wildlife Conservation Commission's Wildlife Lighting Certification Process and published at <https://myfwc.com/conservation/you- conserve/lighting/criteria/certified/>.
4. **Cumulatively Visible**: light from numerous artificial light sources that as a group can be seen by an observer standing anywhere on the beach.
5. **Directly Visible**: occurs when glowing elements, lamps, globes, or reflectors of an artificial light source can be seen by an observer standing anywhere on the beach.
6. **Foot-Candle**: the English unit for measuring illuminance; the uniform illumination of a surface one foot away from a point source of one candela; one lumen per square foot; equal to 10.76 lux.
7. **Frontal Dune**: the first natural or man-made mound or bluff of sand which is located landward of the beach and which has sufficient vegetation, height, continuity, and configuration to offer protective value.
8. **Full Cutoff**: a lighting fixture constructed in such a manner that no light emitted by the fixture, either directly from the lamp or a diffusing element or indirectly by reflection or refraction from any part of the luminaire, is projected at or above 90° as determined by photometric test or certified by the fixture manufacturer.
9. **Fully Shielded**: a lighting fixture constructed in such a manner that the glowing elements, lamps, globes, or reflectors of the fixture are completely covered by an opaque material to prevent them from being directly visible from the beach. Any structural part of the light fixture providing this shielding must be permanently affixed.
10. **Indirectly Visible**: light reflected from glowing elements, lamps, globes, or reflectors of an artificial light source that can be seen by an observer standing anywhere on the beach without the light source being directly visible.
11. **Long Wavelength**: a lamp or light source emitting light wavelengths of 560 nanometers or greater and absent wavelengths below 560 nanometers.

12. **Nesting Season:** For the **City/County of _____**, the sea turtle nesting period is from _____ of each year.

Guidance: For Brevard, Indian River, St. Lucie, Martin, Palm Beach, and Broward Counties, the sea turtle nesting period is from March 1 through October 31 of each year. For Bay, Charlotte, Collier, Dade, Duval, Escambia, Flagler, Franklin, Gulf, Lee, Manatee, Monroe, Nassau, Okaloosa, Pinellas, St. Johns, St. Lucie, Santa Rosa, Sarasota, Volusia, and Walton Counties, the sea turtle nesting period is from May 1 through October 31.

13. **Nighttime:** the locally effective time period between sunset and sunrise.
14. **Non-egress Lighting:** exterior lighting that is not being used to light a distinct route or meet minimum requirements for emergency access to or from a building, including but not limited to decorative lights (e.g. strobe lights, string lights, etc.), balcony lights, landscape lights, and uplights.
15. **Outdoor Area:** any portion of a property that could have an artificial light source not attached to a permanent structure, including but not limited to pathway lighting, landscape lighting, pool lighting, etc.
16. **Sea Turtle:** any turtle, including all life stages from egg to adult, of these species: Green (*Chelonia mydas*), Leatherback (*Dermochelys coriacea*), Loggerhead (*Caretta caretta*), Hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*). For the purposes of this ordinance, the term sea turtle is synonymous with marine turtle.
17. **Sea Turtle Nesting Habitat:** all sandy beaches adjoining the waters of the Atlantic Ocean, the Gulf of Mexico, and the Straits of Florida in all coastal counties and all inlet shorelines of those beaches. Nesting habitat includes all sandy beach and unvegetated or sparsely vegetated dunes immediately adjacent to the sandy beach and accessible to nesting female turtles.
18. **Temporary Lighting:** any non-permanent light source that may be hand-held or portable including but not limited to tiki torches, lanterns, flashlights (including cell phone flashlights), candles, flash photography, etc.
19. **Tinted glass:** glass modified via tinting, film or other material to reduce the inside to outside light transmittance value.

SECTION ____-2. - SEA TURTLE LIGHTING DISTRICT

Sec. ____-2.1. - Applicability

1. An overlay district, known as the *Sea Turtle Lighting District*, is hereby established within the **City/County of _____**.
2. The *Sea Turtle Lighting District* shall include all properties within the **City/County of _____**, that may produce artificial light directly, indirectly, or cumulatively visible from any portion of the beach, regardless of whether those properties are beachfront properties.

3. The provisions of this Ordinance apply to new and existing artificial lighting visible from the beach from all buildings and related infrastructure, including streetscapes, parking lots, outdoor areas, landscaping, as well as public parks and recreational areas and all other activities within the *Sea Turtle Lighting District*.
4. The provisions of this Ordinance are not intended to prevent the use of any design, materials or method of installation or operation not specifically prescribed herein, provided any such alternate has been approved. The **City/County of _____** may approve any such proposed alternate provided it:
 - a. Provides at least approximate equivalence to the applicable specific requirements of this Ordinance, and;
 - b. Is otherwise satisfactory or complies with the intent of this Ordinance, and;
 - c. Has been designed or approved by a registered lighting or electrical engineer and is supported by calculations showing that the design submitted meets that intent of the Ordinance. This sub-section shall not have the effect of waiving the lumen caps specified in this Ordinance.
 - d. Has been determined to meet requirements for Certified Wildlife Lighting and/or lights that meet FWC's Wildlife Lighting Guidelines, including long wavelength light sources (without the use of filters), full cut-off, and fully shielded fixtures.
5. Any person substantially aggrieved by any decision of the *Beach Lighting Inspector* or the *Building Official* made in administration of this Ordinance has the right and responsibilities of appeal to the *Advisory/Appeals Board* of this jurisdiction.

*Guidance: This Model establishes an Overlay District for the purpose of implementing the ordinance. This ordinance could be applied by simply consolidating (2) and (3) above and making it applicable to "all properties within the **City/County of _____** that may produce artificial light directly, indirectly, or cumulatively visible from any portion of the beach, regardless of whether those properties are beachfront properties." However, creating a District may have other benefits which include incorporating other Sea Turtle best management practices not related to lighting, as well as raising awareness through signage, etc.*

Sec. ____-2.2. - Annual Public Notice

At least thirty days prior to the commencement of every sea turtle nesting season, the **City/County of _____** shall provide notice to affected persons within the *Sea Turtle Lighting District* of the provisions contained in this Ordinance.

Declaring an official annual "lights out for sea turtles" day either the first Monday in February or April depending on the county, could also be useful. Another alternative would be designating the responsible department or official for implementing the ordinance and noticing the public.

SECTION ____-3. - LIGHTING PROVISIONS

Sec. ____-3.1. – General

Guidance: In order to provide the highest level of protection for nesting marine turtles and their hatchlings, local governments are encouraged to adopt all of the following standards for artificial beachfront lighting sources.

1. The following standards for artificial light sources are intended to help minimize harmful effects of light pollution in sea turtle nesting areas. The use of Certified Wildlife Lighting will provide the highest level of protection for nesting sea turtles and their hatchlings. Certified Wildlife Lighting refers to lighting fixtures and bulbs reviewed and approved through the Florida Fish and Wildlife Conservation Commission's Wildlife Lighting Certification Process and published at <https://myfwc.com/conservation/you-conserve/lighting/criteria/certified/>. Certified Wildlife Lighting and/or lights that meet FWC's Wildlife Lighting Guidelines, must be installed and maintained according to the approved conditions of use to achieve the light pollution reduction objectives of this Ordinance.

Guidance: The FWC Certified Wildlife Lighting website references the required options and bulleted caveats for each certified fixture. These conditions of approved use are also included in the certification letter issued to the manufacturer for the fixture. FWC Sea Turtle Lighting Guidelines can be accessed at the Sea Turtles and Lights webpage at <https://myfwc.com/wildlifehabitats/wildlife/sea-turtle/lighting/>.

2. New construction refers to all new construction of or additions and alterations to buildings, pools, pavement, other structures, landscape areas or lighting systems, including the change or resumption of land use. The most protective lighting standards apply to new construction visible from the beach.
3. Existing artificial lighting refers to lighting fixtures, sources and systems operating prior to the effective date of this ordinance. Existing lights and light sources that are visible from the beach shall be replaced or modified to conform to standards given in Section -3.7. In order to bring existing lighting systems into future compliance with this Ordinance, standards for new coastal construction shall be applied when permits are sought for new structures or the alteration, movement, enlargement, replacement or installation of new lighting systems.

Sec. ____-3.2. Exterior and Interior Lighting Affixed to New Structures, New Construction and Improvements to Existing Structures

1. All lighting affixed to the exterior of new permanent structures, construction or additions shall be long wavelength, downward directed, full cutoff, fully shielded and mounted as close to the ground or finished floor surface as possible to achieve the required foot-candles.
2. As an exception to -3.2.1. above, non-egress lighting may be affixed to the landward exterior of permanent structures provided that the fixtures are fitted with a long wavelength source and are not directly, indirectly, or cumulatively visible from any portion of the beach.

3. Lighting at egress points shall be limited to the minimum number of fixtures and foot-candles necessary to meet federal, state, and local safety requirements.
4. Locations including but not limited to stairwells, elevators, parking garages, or courtyards shall not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach. Light screens, shades or curtains shall be used to block visibility of interior lights from the beach. Light screens shall be used on open or enclosed staircases on the seaward or shore-perpendicular side of a building or for parking garages to limit visibility of lights from the nesting beach.
5. All glass windows, walls, railings and doors on the seaward and shore-perpendicular sides of any new construction shall use tinted glass with an inside to outside light transmittance value of 45 percent or less.

Guidance: Local governments may apply special considerations to control interior lighting from being directly visible from the beach.

6. Emergency lights are not subject to the above standards if on a separate circuit and activated only during power outtages or other situations in which emergency lighting is necessary for public safety.

Sec. ____-3.3. - Outdoor Areas

1. All lighting of outdoor areas shall be long wavelength, downward directed, full cutoff, fully shielded and mounted as close to the ground or finished floor surface as possible to achieve the required foot-candles.
2. Lighting of paths, walks and routes of building access shall use low level fixtures such as step, paver, path, recessed wall or bollard lights. Bollard lights are not to exceed 42 inches in height and other low level fixtures are to meet the height requirements of FWC's Wildlife Lighting Guidelines. Fixtures shall be downward directed and utilize long wavelength lamps and beachside shields.
3. As an exception to -3.3.1. above, non-egress outdoor lighting may be installed landward of buildings or other opaque structures provided that they are fitted with long wavelength light sources and are not directly, indirectly, or cumulatively visible from any portion of the beach.
4. Internally or externally lighted signs shall not be located on the seaward and shore-perpendicular sides of any structures, and shall not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach.
5. Ponds and fountains on the seaward and shore-perpendicular sides of any structures shall not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach.
6. Fire pits located on the seaward and shore-perpendicular sides of any structure shall be shielded with an opaque structure or partition, and positioned such that the flame is not directly, indirectly, or cumulatively visible from any portion of the beach. Bonfires and bonfire pits are prohibited within sea turtle nesting habitat during sea turtle nesting season.
7. Televisions or other illuminated screens shall be located landward of the dune and shall be shielded or positioned such that they are not directly, indirectly, or cumulatively visible from the beach.

Sec. ____-3.4. - Parking Areas and Roadways

1. All lighting of parking areas and roadways shall be long wavelength, downward directed, full cutoff, fully shielded, and mounted to the minimum level required to maintain compliance with federal, state and local law.
2. Parking area and roadway lighting shall be shielded from the beach via vegetation, natural features, or artificial structures rising from the ground. These shall prevent artificial light sources, including but not limited to vehicular headlights, from producing light that is directly, indirectly, or cumulatively visible from any portion of the beach.
3. Lighting of roadways and parking areas shall produce no more lighting than the minimum requirement as outlined by federal, state and local law.
4. Lighting of parking areas and roadways shall consist of either:
 - a. Ground-level downward-directed fixtures, equipped with interior dark-colored, non-reflective baffles or louvers, mounted either with a wall mount, on walls or piles, facing away from the beach, or
 - b. Bollard-type fixtures, which do not extend more than 42 inches above the adjacent floor or deck, measured from the bottom of fixture, equipped with downward-directed louvers that completely hide the light source, and externally shielded on the side facing the beach, or
 - c. Pole-Mounted Lights, if required, shall adhere to the restrictions located in subsection -3.4.5.
5. Pole-mounted lights shall only be used in parking areas and roadways when mounting the lights at lower elevations cannot practicably comply with minimum light levels set forth in applicable federal and state laws designed to protect public safety. If required, pole-mounted lights shall be:
 - a. Located on the landward sides of buildings and shall not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach,
 - b. Mounted at the minimum height required to meet the minimum light level requirement-, and
 - c. Downward-directed onto non-reflective surfaces.

Guidance: Roadway and parking area lighting designed pursuant to Section 231.2.1 Wildlife-Sensitive Conventional Lighting of the Florida Department of Transportation (FDOT) Design Manual (January 1, 2020) available at <https://www.fdot.gov/roadway/fdm/default.shtm>, and meeting the requirements of Section 992-2.4.2, Luminaires for Wildlife-Sensitive Conventional Lighting, of the FDOT "Standard Specifications for Road and Bridge Construction (January 2020)," and available at <https://www.fdot.gov/programmanagement/implemented/specbooks/default.shtm>, are expected to meet the minimum standards of this section.

6. Equipment yards, storage yards, and temporary security lights shall also adhere to the lighting restrictions contained in this Section.

Sec. ____-3.5. - Pool Areas

1. Lighting of pool decks, pool facilities, swimming pools, and spas shall be long wavelength and fully shielded.
2. Lighting of the pool water surfaces and the pool wet deck surfaces shall comply with the minimum light levels set forth in applicable federal and state laws designed to protect public safety.
3. Above-water lighting of pool decks, pool facilities, swimming pools, and spas shall otherwise adhere to the applicable requirements for acceptable light fixtures contained in Section 1 and Section 2 of this Section.
4. Underwater lighting of pools or spa light shall:
 - a. Be mounted horizontally in the wall,
 - b. Not produce light that is directly, indirectly, or cumulatively visible from any portion of the beach, and
 - c. Shall comply with minimum light levels set forth in applicable federal and state laws designed to protect public safety.

Sec. ____-3.6. - Beach Access Points and Dune Walkovers

1. Lighting of beach access points shall be located and configured to only illuminate areas landward of the beach and frontal dune. All lighting of beach access points shall be long wavelength, downward directed, full cutoff and fully shielded and shall not be directly, indirectly, or cumulatively visible from the beach.
2. Lights are allowable on dune walkovers or elevated boardwalks only as required for building code purposes and may only be installed landward of the frontal dune. Walkover lighting shall not be directly, indirectly or cumulatively visible from the beach.

Sec. ____-3.7. – Existing Exterior and Interior Lighting

1. Reduce or eliminate the negative effects of existing exterior artificial lighting through the following measures:
 - a. Reposition, modify or remove existing lighting fixtures so that the point source of light or any reflective surface of the light fixture is no longer directly, indirectly or cumulatively visible from the beach;
 - b. Replace fixtures having an exposed light source with fully shielded fixtures;
 - c. Replace any light source, light bulb or lamp that is not long wavelength (e.g. incandescent, fluorescent, or high intensity lighting) with the lowest wattage long wavelength (e.g. LED or low pressure sodium) light source or lamp available for the specific application;

- d. Replace non-directional fixtures with directional fixtures that point down and away from the beach;
 - e. Provide shields for fixtures visible from the beach and not practical to immediately be replaced. Beachside shields are to cover 270 degrees and extend below the bottom edge of the fixture on the seaward side so that the light source or any reflective surface of the light fixture is not visible from the beach;
 - f. Replace pole lamps with low-profile, low-level luminaries so that the light source or any reflective surface of the light fixture is not visible from the beach;
 - g. Plant or improve vegetation buffers between the light source and the beach to screen light from the beach;
 - h. Construct a ground level barrier landward of the beach and frontal dune to shield light sources from the beach. Ground-level barriers are to be considered a last resort when no other remediation of the light source is feasible. Ground level barriers may be subject to state coastal construction control line regulations under section 161.053, Florida Statutes, and must not interfere with sea turtle nesting or hatchling emergence, or cause short- or long- term damage to the beach and dune system;
 - i. Permanently remove or permanently disable any fixture which cannot be brought into compliance with the provisions of these standards.
2. Take one or more of the following measures to minimize interior light emanating from doors and windows within line-of-sight of the beach:
- a. Apply window tint or film that meets the light transmittance standards for tinted glass;
 - b. Rearrange lamps and other moveable fixtures away from windows;
 - c. Use opaque shades or room darkening window treatments (e.g., blinds, curtains, screens) to shield interior lights from the beach.

Guidance: In order to provide the highest level of protection for nesting marine turtles and their hatchlings, local governments are directed to adopt all of the above standards for existing artificial beachfront lighting sources.

Sec. ____-3.8. – Pier Structures

- 1. Lighting of pier structures projecting over the beach or over water shall be long wavelength, downward-directed, and fully shielded.
- 2. Lighting of pier structures projecting over the beach, or over water, shall be mounted no higher than 42 inches above the deck surface. These shall be directed onto the deck surface only, preventing light pollution or light spillage beyond the walking surface.
- 3. Lighting of pier structures projecting over the beach or over water shall comply with minimum light levels set forth in applicable federal and state laws designed to protect public safety.

Guidance: Note that the pier light standards do not address light sources from illuminated screens or signage associated with restrooms or bait shops on piers.

Sec. ____-3.9. - Special Events, Motor Vehicles, and Temporary Lighting

1. Lighting associated with a special event that may directly, indirectly, or cumulatively be visible from any portion of the beach shall not be authorized at nighttime during sea turtle nesting season.
2. The operation of all motorized vehicles, except emergency and law enforcement vehicles or those permitted on the beach for sea turtle conservation in accordance with Florida Statute 379.2431 (1), or other research and conservation, shall be prohibited on the beach at nighttime during sea turtle nesting season.
3. Within sea turtle nesting season, temporary work zone lighting for roadway construction and during declared emergencies shall be directed away from the beach to avoid illumination of or direct visibility from the beach. Work zone luminaires shall be shielded to avoid lighting areas outside of the immediate construction area.
4. All other temporary construction lighting shall be:
 - a. Inclusive of all the standards of this Section, including using fixtures that are long wavelength, downward directed, full cutoff, and fully shielded so light is not directly or indirectly visible from the beach, and
 - b. Turned off during nighttime in sea turtle nesting season, or if authorized by the *Beach Lighting Inspector* during sea turtle nesting season, shall only be allowed from 6:00am to 9:00pm, must be restricted to the minimal amount necessary, and shall incorporate all the standards of this Section, and
 - c. Mounted less than eight feet above the adjacent floor or deck, measured from the bottom of fixture, and
 - d. Restricted to the minimal number of foot-candles necessary to conform to the applicable construction safety regulations.
5. Handheld and other portable temporary lighting shall not be directed toward or used in a manner that disturbs sea turtles or other coastal wildlife.

SECTION ____-4. - COMPLIANCE AND ENFORCEMENT PROCEDURES

Sec. ____-4.1. - Beach Lighting Inspector

1. A position, known as the **City/County of _____** *Beach Lighting Inspector*, is hereby established.

Guidance: While the model creates a beach lighting inspector, local governments may choose to identify someone already on staff, such as a code enforcement officer, for the position. It is

most important that the designated individual receive appropriate training.

2. It shall be the duty of the City/County Manager to appoint the *Beach Lighting Inspector*. The *Beach Lighting Inspector* shall have the necessary training, technical knowledge, and resources to enable them to effectively carry out the duties of this office. The *Beach Lighting Inspector* may access resources provided by other local, state or federal agencies such as the *Sample Beach Lighting Survey Worksheet*, training, and other information available from the Florida Fish and Wildlife Conservation Commission.
3. The *Beach Lighting Inspector* shall be responsible for:
 - a. Inspecting the entire beach within the jurisdictional boundaries of the **City/County of _____** regularly during sea turtle nesting season to determine the extent of compliance with this Ordinance.
 - b. In the event of the finding of a violation at a particular public or private property, conducting further inspections at the property at any time beginning on the night after the deadline date given on the written notice of violation. These follow-up inspections shall continue until the lighting has been brought into compliance with this Ordinance.
 - c. *Beach Lighting Inspector* responsibilities may also include preparation of reports, issuance of non-compliance notices, outreach and education, supporting administrative actions before a review board or special magistrate, or attending building permit pre-application and pre-construction conferences.

Guidance: At minimum, night time lighting surveys and compliance inspections are recommended before and during sea turtle nesting season. Compliance inspections that are conducted frequently throughout the nesting season may be beneficial to local governments in identifying and addressing noncompliant lighting.

4. It shall be unlawful for any person to interfere with, or in any manner hinder the *Beach Lighting Inspector*, or any of their assistants, while in the discharge of their duties under the terms of this Ordinance.
5. It shall be unlawful for any person to knowingly conceal or disable any lighting on a property before it has been inspected by the *Beach Lighting Inspector*.

Sec. ____-4.2. - Notice of Violation

1. Upon finding any violation of this Ordinance, the *Beach Lighting Inspector* shall deliver a written notice of the violation of this Ordinance to the property owner and direct said owner to promptly remove or remediate lighting not in compliance with this Ordinance.
2. The time allowed for making the repairs shall be stated in the notice and should the responsible party neglect or refuse to remove or remediate non-compliance within the specified time stated in the notice, the party so offending shall commit a violation of this Ordinance and be penalized as provided in Subsection ____-4.3 of this Ordinance.

Sec. ____-4.3. - Penalties

1. Any person who takes any action or omission in violation of any provision of this Ordinance and fails to resolve such violation after proper notice is provided, shall be subject to a fine of up to \$ ____ per day per violation for initial violations, and \$ ____ per day per violation for repeat violations. All penalties incurred as a result of violation of this Ordinance shall continue to accrue until such violations are cured.
2. The **City/County of** _____ shall have the right to encumber such property in violation of this Ordinance with a lien for an amount equal to the total amount of fines owed at the time such lien is recorded.

Sec. ____-4.4. - Sea Turtle Fund

1. A *Sea Turtle Fund* is hereby established within the **City/County of** _____.
2. All funds collected as a result of the issuance of fines under Section 3 of this Part shall be deposited in the *Sea Turtle Fund*. The funds in this account shall be used for:
 - a. Assistance to property owners for the procurement of light systems equipment and materials that comply with this Ordinance and reduce the amount of artificial beach lighting,
 - b. Educational materials to inform the general public on the threats of artificial lighting to sea turtles, including but not limited to signs, door knockers, pamphlets, stickers, public service announcements, and other awareness campaigns, and
 - c. Equipment, materials and other resources supporting compliance assistance and enforcement by the *Beach Lighting Inspector*.
 - d. Other reasonable efforts to protect the sea turtle population within the **City/County of** _____, including but not limited to research and conservation projects.
3. The **City/County of** _____ may contribute funding from other sources into the *Sea Turtle Fund* for uses consistent with the purposes set forth above.

SECTION ____-5. - OTHER CLAUSES

Sec. ____-5.1. - Conflict with Other Ordinances

If this Ordinance conflicts with any other Ordinance or requirement of the **City/County of** _____, then this Ordinance shall control during sea turtle nesting season. Deviations from this Ordinance shall be subject to the variance procedures as established by this City/County.

Sec. ____-5.2. - Severability

If any Section or Subsection of this Ordinance is invalidated for any reason, the effected portion may be eliminated or modified to correct the reason of invalidation, if feasible without materially altering or negating the Ordinance Goals and the principles of sea turtle lighting.

Sec. ____-5.3. - Effective Date

The **City/County of** _____ Lighting Ordinance for Sea Turtle Protection shall become effective upon recommendation by _____ and approval by the _____.

FWC SEA TURTLE LIGHTING GUIDELINES

These guidelines provide general information for all property owners living adjacent to sea turtle nesting beaches, but they are specifically designed to help property owners required to avoid and minimize lighting impacts to sea turtles as part of the State permitting programs, such as Coastal Construction Control Line (CCCL) permits and Environmental Resource Permits (ERP). In the permitting process, property owners must minimize all lights that may be visible from the beach, including all exterior, structural, decorative, and landscape lighting. This includes interior light visible through glass windows, doors and walls (either facing or perpendicular to the beach) as well as light from pools, fire pits, electronic devices such as televisions, tiki torches, etc.

FWC recommends beachfront property owners follow the **three golden rules**, “**Low-Shielded-Long**” when installing or modifying lights. All three must be used in combination to be effective, as they are all equally important!

KEEP IT LOW

- Fixtures must be mounted as **low as possible** to achieve required light levels.
- Bulbs must produce the **lowest wattage/lumens** necessary for the needed purpose.

KEEP IT SHIELDED

- Fixtures must be completely downward-directed.
- Fixtures must shield the bulb, lamp, or glowing lens from the beach.

BAD EXAMPLE: Unshielded bulb



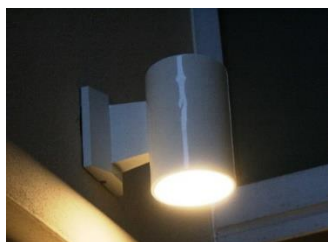
GOOD EXAMPLE: Shielded bulb with Amber LED (long-wavelength, 560 nm or higher)



KEEP IT LONG

- Lamp/Bulb must produce only **long wavelength light** (560 nm or greater, which is amber, orange, or red)
 - **The Best Current Technology:** Red LED, Orange LED, Amber LED, Low Pressure Sodium (LPS)
 - Please note, phosphorus converted bulbs, such as PC amber bulbs are not true long wavelength light sources, since there are wavelength readings below 560 nm.

BAD: Incandescent bulb



GOOD: Amber Bulb (long-wavelength, 560nm or higher)



Acceptable Fixtures

All exterior lights proposed for the seaward or shore perpendicular side of the structure should be well-shielded, full cut-off, downward directed fixtures with a long-wavelength light source (wavelength readings of 560 nanometers (nm) or higher).

If the exterior fixtures on the landward side of the structure are **not** visible directly or indirectly from the beach, they are only required to be downward directed.

How effective are full cut-off fixtures?

Below, look at an unshielded fixture and a full cut-off fixture side-by-side. The acorn light on the left wastes about 60% of the light into the sky. The one on the right is a full-cut off fixture with a recessed bulb, which provides more light on the ground. This is a good example of how full-cut off fixtures are not only good for sea turtles, but also for human safety because they direct light where it is needed, on the ground. To make the full cut-off example even better, it should be fitted with a shield that blocks light on the beachside and a long-wavelength lamp/bulb.



Acceptable Lamps / Bulbs

All fixtures visible from the beach should have a long-wavelength lamp – a bulb that looks amber or red because it only produces light with wavelengths of 560 nm or higher. White light such as metal halide, halogen, fluorescent, mercury vapor and incandescent lamps can disorient nesting sea turtles and their hatchlings, leading them away from the water. The following fixtures will minimize – but not totally remove – the risk of disorientation if properly installed in a well shielded, downward directed fixture.

- Low Pressure Sodium (LPS): 18W, 35W
- Red, Orange or Amber LED (true red, orange or amber diodes, NOT FILTERS)
- True red neon
- Other light sources that produce light of 560 nm or greater

HINT: LEDs tend to be much brighter than incandescent bulbs, so be sure not to over light an area!

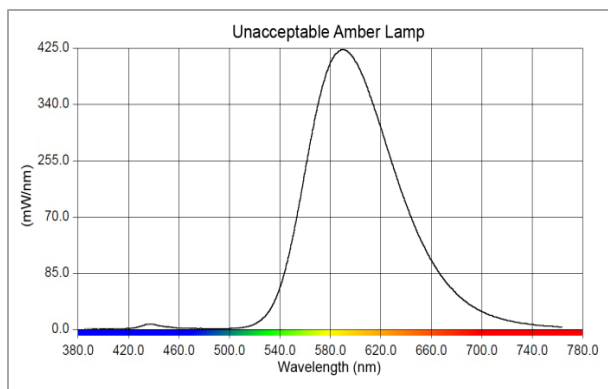
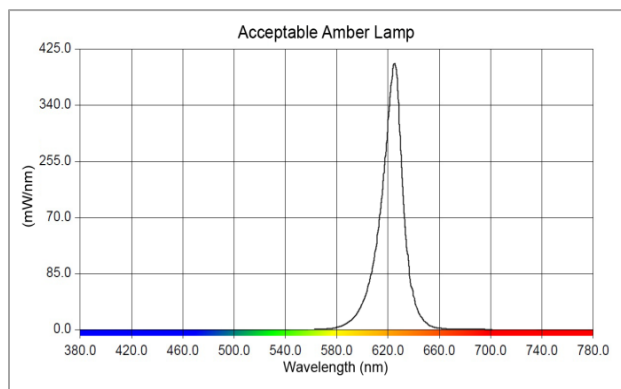
Upon review and approval by FWC, use of shorter wavelength lights may be allowed in limited areas where direct and indirect light or glow would not be visible from the beach.

A list of the Florida Fish and Wildlife Conservation Commission's Certified Wildlife Lighting, which includes acceptable lamps/bulbs for fixtures, can be found [here](#).

How can I tell if it is a long-wavelength light source?

Specifications for the wavelength is available from the manufacturer. Specifically, you can request a spectral distribution graph, as seen below.

The graph on the left displays an **acceptable** wavelength reading for a long-wavelength light source (i.e. amber lamp), with wavelength readings above 560 nm or higher. The graph on the right displays an **unacceptable** wavelength reading, with wavelength readings below the 560 nm cutoff.



Minimizing Light

Even though a fixture/lamp combination may be Low-Shielded-Long, too many fixtures may still result in sea turtles becoming disoriented. In addition to the lowest wattage necessary for safety, light can also be minimized by installing fewer fixtures.

- Use the lowest wattage necessary.
- Use a minimal number of fixtures.
- Use only if needed for safety.

Why do I need to minimize long-wavelength light?

A common misconception is that long-wavelength lighting (i.e. LPS, Red, Orange or Amber LEDs) is not visible to sea turtles. This is FALSE. Long-wavelength lighting is less disruptive than white light, but even long-wavelength lighting that is too bright may cause impacts to sea turtles and their hatchlings! Therefore, we recommend only utilizing lights that may be visible from the beach if there are state or federal requirements for specific light levels to ensure public safety (such as stairs or egress/ingress walkways).

We **do not recommend** the following types of lighting, since they are not needed for safety:

- Private balcony lights
- Pond lights
- Tree Strap Downlights
- Fountain lights on seaward or shore perpendicular side of a structure
- Up lights
- Dune Walk over lights
- Decorative Lighting

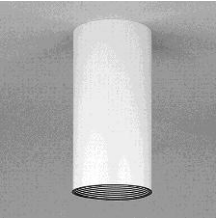
Impacts from interior lighting

State rules require that tinted glass or film with a visible light transmittance value of forty-five (45) percent or less (inside to outside) must be used on all glass windows, doors and walls within line of sight of the beach, usually the seaward and shore-perpendicular sides of the structure. However, since those rules were passed, there are now better options because of advances in tinting and more information on sea turtle disorientations. Window tints/film with transmittance values lower than 45% are available that are energy efficient, pleasing and easily seen through. **The best option for minimizing lighting impacts to sea turtles is 15% transmittance**, with 25-30% transmittance the most popular. Many local lighting ordinances require that interior lights cannot be visible from the beach; therefore, the use of higher transmittance tints (such as 45%) often requires installation of additional window treatments to achieve compliance with the ordinance.

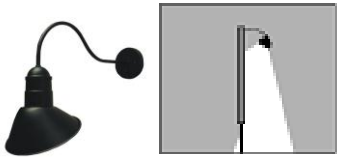
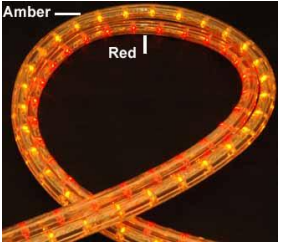
If the information above is followed, your home or building is not expected to adversely impact nesting sea turtles, their hatchlings or their habitat. Thank you for doing your part to protect Florida's sea turtles!

*Please email Wildlifelighting@MyFWC.com if you need additional information or help.

EXAMPLES OF TURTLE FRIENDLY FIXTURES

FIXTURE	LAMP & WATTAGE	MOUNTING TYPE & HEIGHT	LOCATION	COMMENTS and/or ADDITIONAL REQUIREMENT
Ceiling Mount Cylinder (with interior black baffles) 	Red/orange/amber LED	Ceiling Surface	If located on shore perpendicular or beach side of structure allow on <u>ground floor</u> only	Interior Black Baffles
Wall Mount Cylinder Down Light (with interior black baffles) 	Red/orange/amber LED	Wall Mount Downward Directed 8 ft from floor	If located on shore perpendicular or beach side of structure allow on <u>first habitable floor</u> only	Interior Black Baffles Hex cell louvers may be required to decrease wall wash
Recessed Ceiling Canister 	Red/orange/amber LED <u>The following short wavelength lamps may only be used for covered driveway entry on landward side of structures</u> • Halogen lamp • PAR spot lamps • LED lamps • HPS lamps • Compact Fluorescent	Recessed Ceiling	If located on shore perpendicular or beach side of structure allow on <u>ground floor</u> only	Interior black baffles Hex cell (honeycomb) louver

Recessed and Wall Mounted Step Lights (louwered or downward directed) 	Red/orange/amber LED	Wall Mount Maximum height 24 inches on Ground Floor only Above Ground Floor Max height 12 inches	Ground floor, second level, and pool Deck	If on perimeter of pool deck, must be mounted directed away from beach.
Bollard (with downward directed louvers) 	18w LPS Red/orange/amber LED	Maximum height 42 in	Parking areas, commercial walkway, landscape, pathway and pool deck	180° to 270° beach side shields on any fixture on perimeter of pool deck or immediately adjacent to beach.
High Intensity Full Cut Off Pole Lights 	18-35 w LPS (if twin head, maximum of 36w total) Orange/amber LED	Pole - maximum height 12 feet	Parking area Landward side of structure only.	Beach side shields and/or louvers for any fixture within line of sight of beach.
Paver Lights 	Red/orange/amber LED	In ground mount	Parking areas, driveways, pathways, pool decks	

Landscape/Pathway Lighting 	Red/orange/amber LED	Ground mount Maximum height 12 inches	Ground Level, landscape	
Signage 	Red/orange/amber LED	Must be mounted with light directed <u>down</u> on to sign. NOT UP	Sign should be on landward side of structure when possible and mounted perpendicular to the beach.	
Garage Lighting (Phoenix) 	35w LPS Amber/Orange/Red LED	Garage Ceiling	Garage	If a parking garage is not fully enclosed with solid walls, without windows, louvers, or screens so that the interior is not visible from any section of beach, only LPS or amber/orange LED lamps shall be used. Additional shields may be necessary if parking is above ground level.
Channel / Rope Lighting 	Red/orange/amber LED <u>NOT colored plastic tubing with white lights</u> <u>No White LED</u>	Must be mounted recessed under steps, bar, etc. and directed <u>down</u> to assure that light source or reflected light is not visible from beach	Pool deck, steps, pool bars.	

Water Feature Lighting 	Red/orange/amber LED	Light must be downward or horizontally directed <u>DO NOT direct light up</u>	Submerged lights are only allowed on landward side of structure and only if fully shielded from beach by structure	
Underwater Swimming Pool Lighting 	Red/orange/amber LED			
Emergency Egress Lighting  	Red LED Exit signs Full cut off downward directed Emergency egress fixtures may use short wavelength lamps			Short wavelength lamped emergency egress fixtures must be specified on fixture schedule and plans to be on separate circuit that will only illuminate fixtures during power outage

Influences of Wavelength and Intensity on Hatchling Sea Turtle Phototaxis: Implications for Sea-Finding Behavior

BLAIR E. WITHERINGTON AND KAREN A. BJORNDAAL

Visual cues are important to sea turtle hatchlings in determining seaward direction upon emerging from the nest. In this study, we examined the roles that color and intensity play in the sea-finding mechanisms employed by loggerhead (*Caretta caretta*) and green turtle (*Chelonia mydas*) hatchlings. We tested hatchling preference for a standard source of constant intensity and color (1.26×10^{15} photons $s^{-1} m^{-2}$ at 520 nm), versus an adjustable light source (one of five monochromatic colors at each of seven photon intensities), using a two-choice apparatus. Both species oriented toward near-ultraviolet (360 nm), violet (400 nm), and blue-green (500 nm) light but chose the standard light source over yellow-orange (600 nm) and red (700 nm) light. There was a positive relationship between intensity and preference with 360, 400, and 500 nm light. We also examined hatchling choice of either a darkened window or a window lighted by one of eight monochromatic colors at each of two intensities. In these experiments, loggerheads oriented toward 360, 400, and 500 nm light but away from light in the green-yellow to yellow-orange range (560, 580, and 600 nm). Loggerheads oriented toward 700 nm light only at high intensity. Green turtles responded insignificantly to 600 or 700 nm light at either intensity. The contrast of green turtle behavioral responses with published electrophysiological data and the aversion to yellow light observed in loggerheads suggest some level of spectral quality assessment in sea finding for both species.

HATCHLING sea turtles emerge from sub-surface nests on oceanic beaches, primarily at night, and immediately move toward the sea. Hatchlings not entering the ocean expeditiously suffer high mortality from predation, exhaustion, and desiccation. The sea-finding behavior of neonate hatchlings occurs to the exclusion of other predator avoidance behaviors. The robust nature of the sea-finding response in sea turtles makes it an excellent model for the study of animal orientation. A detailed description of hatchling sea-finding behavior in the green turtle (*Chelonia mydas*) is given by Carr and Ogren (1960).

Bilaterally blindfolded green turtle (Carr and Ogren, 1960) and loggerhead (*Caretta caretta*; Daniel and Smith, 1947) hatchlings are unable to orient directly toward the sea, providing the best evidence that hatchling sea finding is dependent on visual cues. Green turtle hatchlings also are attracted to artificial light sources (Mrosovsky and Shettleworth, 1968) and lightly tinted objects (Carr and Ogren, 1960) and will move in those directions irrespective of beach slope. The use of vision by sea-finding hatchlings may include an assessment of any combination of the many properties of light detectable by the eye.

Properties of light studied with respect to hatchling orientation include intensity, color, direction, and shape.

Two models predict that sea-finding hatchlings will move in the brightest direction. Brightness in this sense is a measure of intensity having both the directional and spectral sensitivity properties of the hatchling in question. Models describing the mechanism by which hatchlings orient in the brightest direction involve either phototropotaxis (Mrosovsky and Kingsmill, 1985) or a direction system (Verheijen and Wildschut, 1973; van Rhijn, 1979). A third model involves shape as a visual cue (Parker, 1922; Limpus, 1971; van Rhijn, 1979). This model implies form vision and the ability to recognize differences of pattern in the silhouettes of duneward and seaward horizons. Experiments conducted by van Rhijn and van Gorkom (1983) suggest this system may be distinct from, but complementary to, either of the two previous systems.

Spectral quality assessment, or the use of color as a seaward orientation cue also has been suggested (Hooker, 1911; Mrosovsky, 1972). Differential responses to colors may be because of color discrimination as well as a spectral bias

resulting from physiological spectral sensitivity range. Both light intensity and spectral properties play important roles in each of the visual sea-finding mechanisms above. Previous attempts to elucidate the roles of color and intensity in sea turtle hatchling orientation have been limited (Mrosovsky and Carr, 1967; Mrosovsky and Shettleworth, 1968). Primary limitations have been an inability to isolate narrow bandwidths of spectral light and to measure light intensity (e.g., irradiance) at specific wavelengths. Broad-band filters used in earlier studies allow the transmission of many wavelengths and make the assignment of hatchling response to specific colors questionable.

In this paper, we assess preferences for light intensities and narrow bandwidth color sources in loggerhead and green turtle hatchlings during their sea-finding behavior. We evaluate the spectral quality assessment model for hatchling sea finding and suggest a reassessment of models that predict "brightest direction" orientation.

METHODS

Hatchlings.—Loggerhead and green turtle hatchlings for the experiments were taken from clutches transferred into a secured hatchery near Melbourne Beach, Florida, during the summer nesting season, 1988. We examined hatchery nests for signs of hatchling emergence activity at dusk beginning 50 d into incubation (incubation period approximately 50–57 d). Hatchlings typically lie just beneath the surface of the sand until decreasing nighttime temperatures prompt their emergence en masse (Mrosovsky, 1968). We collected hatchlings just after dusk, when they were ready to emerge, and transported them in darkened buckets to an indoor laboratory within 200 m of the hatchery. We kept hatchlings in the dark to ensure that they remained dark adapted and photically naive for experimental trials. Hatchlings were collected and used in experiments during a time when hatchlings are normally emerging and moving to the sea (2100–0200 h, Witherington et al., 1990). Each hatchling was used for a single trial and released the same night on the beach.

Experimental apparatus.—We used a modified T-maze (V-maze) to determine hatchling preference with respect to photic cues (Fig. 1). This apparatus was a V-shaped wooden box, with each identical arm 78 cm in length. Openings

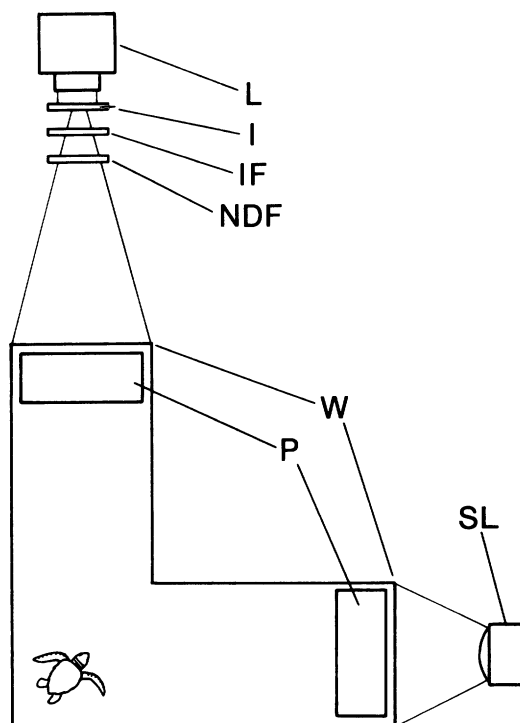


Fig. 1. Schematic diagram of a V-maze used in two-choice, color preference experiments with loggerhead and green turtle hatchlings. L = lamp; I = iris; IF = interference filter; NDF = neutral density filter; W = window; P = pitfall; SL = standard lamp.

at either end of the V-maze were 32×32 cm and covered with windows of diffusing acrylic. Black, flocked paper lined the inside of the box. Hatchlings were introduced into the V-maze through a 32×32 cm opening in the top of the box near the vertex, which was covered with a black cloth curtain. Hatchlings were covered with an opaque cup that was raised after approximately 20 s to release the hatchling for each trial. We placed hatchlings within the cup so that they pointed toward the midpoint between the two windows, although hatchlings often altered their orientation during the time preceding release. Hatchlings walking from the vertex down either alley of the V-maze would fall into a cloth pitfall pocket at the base of either window.

We positioned two light sources so they shone through each of the two windows of the V-maze (Fig. 1). One of the light sources—hereafter termed standard source—emitted light of constant color (peak emission 520 nm) and intensity

(1.26×10^{15} photons $\text{s}^{-1} \text{m}^{-2}$ at 520 nm). This source was a conventional tungsten lamp powered with a 3.0 V DC source and fitted with a blue gel filter. We used the blue filter to reduce intensity of the standard source and to make the color of the source more easily reproduced. This standard source attracted all hatchlings ($n = 20$) of each species to a lighted V-maze window when no other light was presented in pre-trials. A second source—hereafter termed adjustable source—could be varied in color and intensity. Light for this source originated from a 3200 K (manufacturer's specification) tungsten lamp operated at 115 V AC. We regulated spectral emission of the source with narrow band interference filters (Melles Griot, half bandwidth = 10 nm; transmission outside 20 nm bandpass <0.001%). The angle of the light source beam with the filters was 90° for all trials. We regulated intensity by use of an iris aperture and combinations of neutral density filters (Melles Griot, 3.0, 2.0, 1.0, 0.5, 0.3, 0.1, and 0.04 OD). Intensity was measured as photon flux at the hatchling release point with a LICOR LI-1800 spectroradiometer.

We conducted experiments in a room completely darkened except for the standard and adjustable sources. A series of light baffles prevented light of either source from affecting the other window. Line voltage for the sources was monitored and did not vary more than 1% during experiments.

Treatments.—To determine whether hatchling orientation might be biased toward one of the two windows, we released 42 hatchling loggerheads and 23 hatchling green turtles within the V-maze when both light sources were off. The distribution of loggerhead and green turtle hatchlings falling into pitfalls at either window of the V-maze with both light sources off could not be distinguished from random ($\alpha = 0.05$, binomial probability test, $Z = 0.179$ and $Z = 0.133$, respectively).

To determine the relative preference of hatchlings for light of specific color and intensity, we released hatchlings within the V-maze while respective windows were illuminated with the adjustable source and standard source. In these trials—identified as adjustable source versus standard source—the adjustable source varied among five monochromatic colors and six intensities. Treatment colors were 360 nm (near-ultraviolet), 400 nm (violet), 500 nm (blue-green), 600 nm (yellow-orange), and 700 nm

(deep red) peak transmission. We measured treatment intensities as photon flux and assigned values to a logarithmic scale. Intensities were (log values shown parenthetically) 2.50×10^{14} (0.7), 1.27×10^{15} (1.4), 6.31×10^{15} (2.1), 3.17×10^{16} (2.8), 1.58×10^{17} (3.5), and 1.44×10^{19} (5.5) photons $\text{s}^{-1} \text{m}^{-2}$ at respective peak wavelengths. Log intensity 0.7 at 500 nm approximated the illuminance level measured for a moonlit night. Higher light levels are comparable to those at dawn or dusk, times at which hatchlings also must locate the sea. Because of the emission spectrum of the incandescent source, the highest log intensity (5.5) could only be reached at the longest wavelengths (600 and 700 nm). We ran one set of trials for each species with the adjustable source off (intensity = 0.0). Combinations of wavelengths and intensities constituted 28 experimental treatments. Thirty loggerhead hatchlings, each from a different clutch, were used individually for each treatment. Ten green turtle hatchlings were used in each treatment and originated from three separate clutches.

To determine the polarity of hatchling response (attraction or avoidance) to light of specific color and intensity, we released hatchlings within the V-maze with one window illuminated by the adjustable source only. In these trials—identified as adjustable source versus darkened window—the standard source window remained dark. We used eight monochromatic colors for the adjustable source in these treatments: 360, 400, 500, 540 (yellow-green), 560 (green-yellow), 580 (yellow), 600, and 700 nm peak transmission. Adjustable source intensity for one set of eight experimental treatments was 3.5 on the log scale. In a second set of eight treatments, we used maximum source intensity, and log intensity of the source varied according to the maximum emission of the incandescent lamp at each wavelength. Maximum intensity of the source at each wavelength was 3.5 (360 nm), 4.0 (400 nm), 4.8 (500 nm), 5.0 (540 nm), 5.2 (560 nm), 5.3 (560 nm), 5.5 (580 nm), 5.5 (600 nm), and 5.7 (700 nm) log units. We ran additional treatments with the adjustable source off for 17 treatments total. Thirty loggerhead hatchlings, three from each of 10 clutches, were run individually per treatment. We used 20 green turtle hatchlings from a single clutch for only the 600 and 700 nm treatments at maximum intensity.

In all trials, we excluded from the analysis hatchlings not falling into either pitfall within

2 min following their release. Less than 10% of the 1523 loggerhead and 384 green turtle hatchlings were excluded. In one to five trials conducted for each treatment, we observed the behavior of hatchlings within the V-maze through the opening at the top of the box. In treatments with both sources darkened, hatchlings were observed through active system night vision goggles using an infrared source mounted above the opening. Data from these trials were not included in the analysis of source preference. Statistical tests for nominal data were used with a null hypothesis rejection criterion of $\alpha = 0.05$.

RESULTS

Hatchling behavior.—In trials resulting in a hatchling choosing one of the two windows of the V-maze, hatchlings exhibited a head-up posture prior to and during movement. Whereas loggerhead hatchlings typically paused prior to moving, green turtle hatchlings were more active, in some cases appearing to move in whatever direction they initially faced. Loggerhead hatchlings moving toward lighted sources typically made direct movements without circling (27 of 29). In trials with both sources off, hatchlings often circled (6 of 10) and made their way to either pitfall by walking along the walls of the box.

Loggerhead hatchlings that fell into the darkened window pitfall in trials with 600 nm light at the adjustable source window did not travel directly to the darkened window. In all of 35 trials observed, hatchlings appeared to turn away from the 600 nm lighted window and walk against the opposite wall, attempting to climb, until they fell into the dark window pitfall. In 30 additional trials, we placed loggerhead hatchlings halfway from the maze vertex to the 600 nm source window (log intensity 3.5) facing the 600 nm source. All of these hatchlings turned away from the lighted window and moved directly to the opposite wall.

Adjustable source versus standard source.—We found a positive relationship between log intensity and the number of loggerhead hatchlings preferring the adjustable source in the shorter wavelength treatments: 360, 400, and 500 nm (Fig. 2). This relationship did not differ among these three treatments (chi-square = 1.86, df = 8). At longer wavelengths, 600 and 700 nm, the number of hatchlings choosing the adjustable source was not statistically different from zero

(binomial probability test) at all intensity levels. With the adjustable source at log intensity 0, all loggerhead hatchlings chose the standard source.

The behavioral response of green turtle hatchlings to spectral light (Fig. 3) was similar to that of loggerhead hatchlings (Fig. 2). Sample sizes do not allow chi-square comparisons between green turtle and loggerhead distributions. Green turtle hatchlings showed little preference for 600 and 700 nm light at any intensity and increasing preference for 360, 400, and 500 nm light with increasing log intensity (Fig. 3).

Adjustable source versus darkened window.—Loggerhead hatchlings chose the window lighted with 360 nm (binomial probability test, $Z = 6.25$), 400 nm ($Z = 6.25$), or 500 nm ($Z = 5.43$) light at log intensity 3.5 significantly more often than the darkened window (Fig. 4a). Conversely, loggerheads presented 560 nm ($Z = -5.07$), 580 nm ($Z = -5.43$), or 600 nm ($Z = -6.25$) light at 3.5 intensity versus a dark window predominantly chose the dark window (binomial probability test). In the 540 nm ($Z = -1.02$) and 700 nm ($Z = 1.30$) trials, loggerhead hatchling preference for the adjustable source window or dark window could not be distinguished from random (binomial probability test). Loggerhead preference for the two windows, with the adjustable source at maximum intensity, was significantly different from random in all treatments (360 nm, $Z = 6.25$; 400 nm, $Z = 6.25$; 500 nm, $Z = 5.43$; 540 nm, $Z = 3.01$; 700 nm, $Z = 4.56$) except for the 560 nm ($Z = 0.08$) and 580 nm ($Z = 1.35$) trials (Fig. 4b, binomial probability test). In trials with 360, 400, 500, 540, or 700 nm light, the lighted window was significantly preferred, but in 600 nm trials ($Z = -6.25$), all loggerhead hatchlings chose the dark window over the lighted window (binomial probability test).

In the only trials of this type run with green turtles, more hatchlings chose the lighted window when presented 600 nm ($n = 14$ of 20) and 700 nm ($n = 11$ of 20) light at maximum intensity, but the distributions cannot be distinguished from random ($Z = 1.52$ and $Z = 0.471$, binomial probability test). Loggerhead and green turtle preference for either window of the V-maze in trials with both windows darkened was not different from random (loggerheads, $n = 30$, $Z = 0.520$; green turtles, $n = 30$, $Z = 0.252$; binomial probability test).

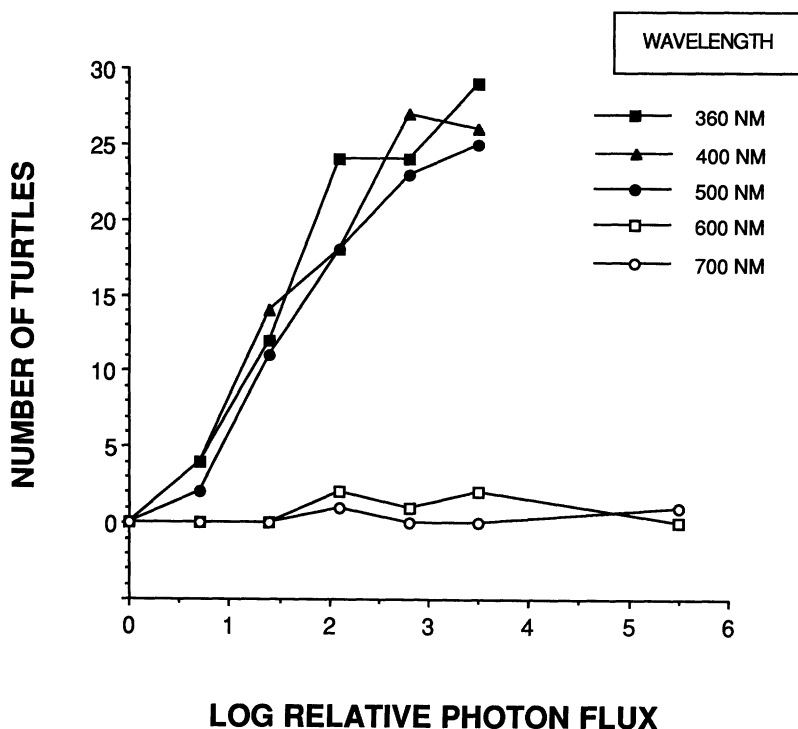


Fig. 2. The number of loggerhead hatchlings out of 30 choosing a light source varying among the wavelengths and intensities specified, over a source of constant color and intensity. All represented hatchlings chose one of the two sources. Colors are near-ultraviolet (360 nm), violet (400 nm), blue-green (500 nm), green (540 nm), green-yellow (560 nm), yellow (580 nm), yellow-orange (600 nm), and deep red (700 nm).

DISCUSSION

Range of spectral sensitivity.—This study gives an indication of a minimal spectral sensitivity range for loggerheads and green turtles. Detailed information on the spectral sensitivity of sea turtles exists only for the green turtle (Ehrenfeld, 1968; Granda and Dvorak, 1977). The action spectrum based on electrophysiological data provided by Granda and O'Shea (1972) shows a greater spectral sensitivity in the shorter wavelengths but does not extend to wavelengths shorter than 400 nm. Work by Ehrenfeld (1968) with green turtles demonstrates that adult females can locate the sea after nesting when fitted with goggles transmitting primarily near-ultraviolet light (300–400 nm). The goggles in these experiments did, however, transmit approximately 1% of the light in the 400 to 700 nm range, a substantial amount for the daytime trials conducted. Because of the narrow spectral bandwidths transmitted by the interference filters we used and the minimal leakage outside

the specified spectral bands, we can assign minimal spectral limits ± 10 nm to green turtle and loggerhead vision. We have shown that green turtle vision extends at least from the near-ultraviolet (360 nm) to green (500 nm). Vision in loggerhead turtles extends minimally from the near-ultraviolet (360 nm) to the red (700 nm).

One cannot quantify physiological spectral sensitivities using our preference data because of possible behavioral bias in the way the turtles react to spectral light. A naive analysis of the first series of treatments (Fig. 2), for instance, may discount the ability of loggerheads to see longer wavelengths (600 and 700 nm), an ability demonstrated by the nonrandom choice of the dark window in trials with 600 nm light (Fig. 4a–b) and the lighted window in trials with 700 nm light (Fig. 4b). The nonrandom response of loggerhead hatchlings to 700 nm light only at log intensity 5.7 may indicate that this wavelength borders the spectral sensitivity range of this animal. It is also possible that hatchlings responded to light of other wavelengths trans-

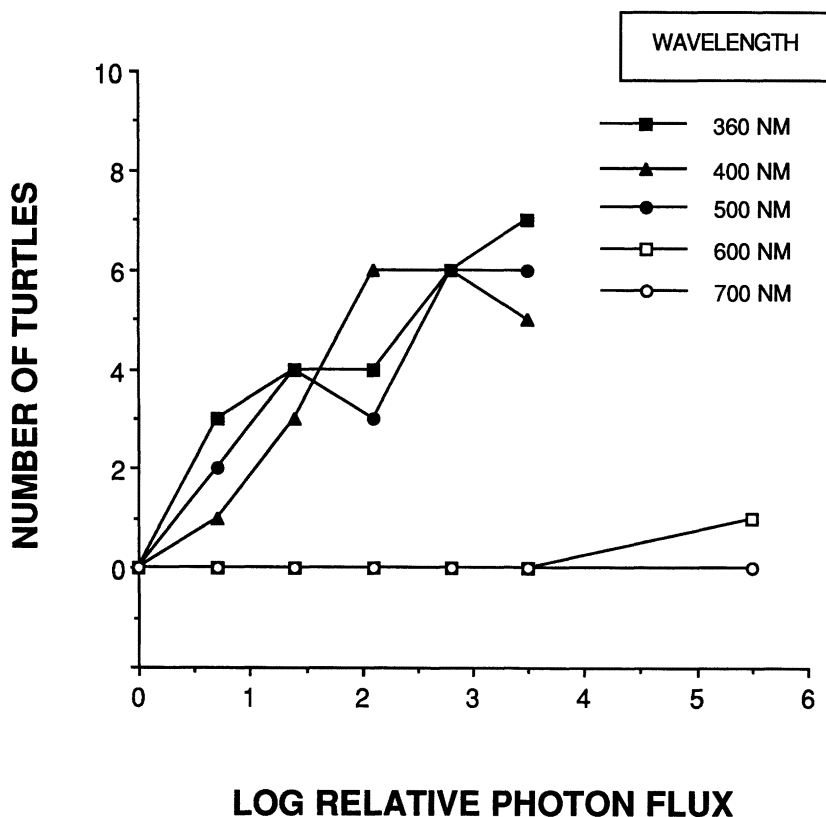


Fig. 3. The number of green turtle hatchlings out of 30 choosing a light source varying among the wavelengths and intensities specified, over a source of constant color and intensity. All represented hatchlings chose one of the two sources.

mitted by the 700 nm filter, although this light would have been more than four orders of magnitude less intense than the 700 nm light.

In comparison with the pond slider *Trachemys scripta*, vision in sea turtles extends farther into the shorter wavelengths (near-ultraviolet) and, at least in the case of the green turtle, diminishes more abruptly in the longer wavelengths (Granda and Dvorak, 1977). Heightened sensitivity in the near-ultraviolet and other short wavelengths might be characterized as an adaptation for vision in seawater where longer wavelength light attenuates more abruptly with depth (Loew and Lythgoe, 1985).

Spectral light and sea-finding.—A comparison of the green turtle action response measured by Granda and O'Shea (1972) with our measurements of behavioral response to spectral light (Fig. 5) reveals a behavioral bias against longer wavelength light. Care should be taken in draw-

ing conclusions from the comparison in Figure 5. The electroretinogram (ERG) and behavioral data were taken in different ways, although each constitutes a spectral sensitivity of sorts. The ERG curves are adapted from work by Granda and O'Shea (1972) and illustrate light intensities at each color necessary to evoke respective high and low criterion voltage responses at the dark-adapted green turtle eye. The behavioral curve is from the present study and illustrates the number of dark-adapted green turtle hatchlings choosing each color at a single intensity over a light source of standard intensity and color. The behavioral curve is from the data of Figure 3 for log intensity 3.5. The trend shown in Figure 5 is similar for all light intensities in the green turtle behavioral experiments we conducted (Fig. 3). That is, whereas both ERG curves show a peak sensitivity surrounding 600 nm, light in the 600 nm range is relatively unattractive to orienting green turtle hatchlings

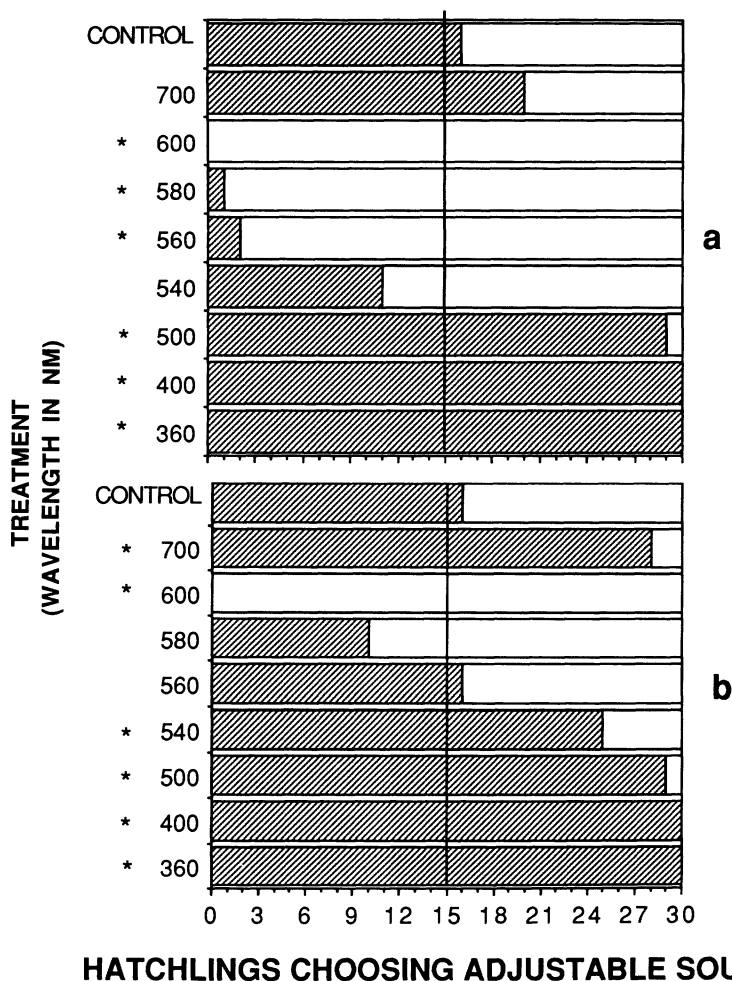


Fig. 4. The number of loggerhead hatchlings choosing an adjustable light source varying among the wavelengths specified, at an intensity of 3.5 log units (a) and at maximum source intensity (b). A darkened window served as the alternate choice. During the control treatment, lighting remained off. All represented hatchlings chose either the darkened window or the light source. Distributions marked with an asterisk (*) are significantly different from random (binomial probability test, $P < 0.05$).

(Fig. 3). This contrast holds when comparisons are made to ERG data taken from light-adapted green turtles as well (Granda and O'Shea, 1972). Mrosovsky (1972), using broad-band blue and red light, also observed discrepancies between behavioral responses of green turtles and the action spectra provided by Granda and O'Shea. Although evidence suggests that green turtle hatchlings use some assessment of spectral quality in sea finding, behavioral experiments that more closely match ERG methods are needed to quantify this pattern.

A phototactic response positively biasing short-wavelength light also has been found

among a variety of anurans (Hailman and Jaeger, 1974). Those workers have rejected the contention of Muntz (1962) that the response is an escape mechanism directly resulting in water finding but instead propose an "open sky" attraction hypothesis. In the case of hatchling sea turtles, phototaxis with a spectral bias for short-wavelength light, either reflected from a blue ocean or scattered from a blue sky, may result in seaward orientation under a majority of conditions.

Although no action spectrum exists that would allow a physiological-behavioral comparison to be made for the loggerhead, the manner in

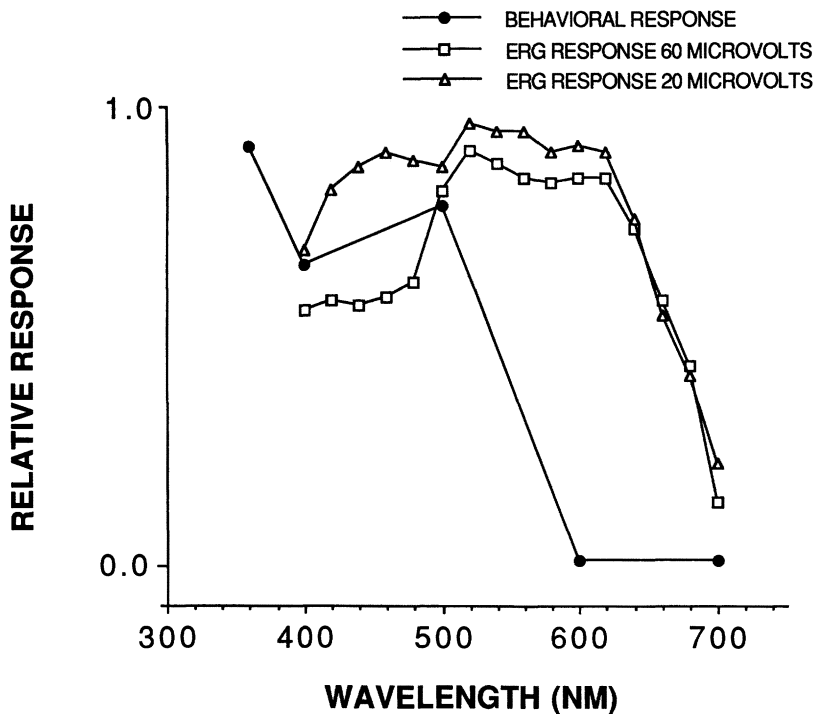


Fig. 5. Behavioral and action responses to spectral light in hatchling green turtles. Relative response for the behavioral curve is the proportion of green turtle hatchlings choosing a light source varying among the wavelengths specified at log intensity 3.5 (1.44×10^{17} photons $s^{-1} m^{-2}$), over a source of constant color and intensity. Action response curves are adapted from Granda and O'Shea (1972) and represent log sensitivity among wavelengths, as measured by electroretinography (ERG). Relative response for the ERG curves is intensity sufficient to evoke 60 and 20 microvolt criterion responses. The high and low criterion response curves represent high and low light intensity levels. Absolute intensity for the ERG light source was reported to be 2.7×10^{17} photons $s^{-1} m^{-2}$ at 580 nm.

which loggerhead hatchlings behave toward spectral light indicates that they too may use spectral cues in sea finding. Whereas loggerhead hatchlings orient positively to near-ultraviolet, violet, green, and red light (Fig. 2), they avoid yellow and yellow-orange light (Fig. 4a-b). The aversion that loggerhead hatchlings show toward yellow light, or xanthophobic response, has also been observed in loggerhead hatchlings orienting on a natural beach when presented 590 nm monochromatic yellow light from a low pressure sodium vapor (LPS) light source (Witherington and Bjørndal, 1991). Regardless of distance, no loggerhead hatchling was attracted to the LPS light source. In one of the first papers describing sea finding in sea turtles, Hooker (1911) reported that loggerhead hatchlings on a beach during the day responded negatively to panes of glass transmitting primarily orange-red light. Hooker could

not be certain, however, that this response indicated a reaction to color. Responses identical to those Hooker observed are predicted from hatchlings exhibiting simple phototaxis. The responses observed from loggerhead hatchlings in the laboratory (present study) and on the beach (Witherington and Bjørndal, 1991), however, strongly suggest a response to color. If the behavior we observed was simply a response to light of a specified brightness, the same response would have been expected to wavelengths and intensities other than the two intensities of yellow wavelengths (Fig. 4a-b).

A negative response to long-wavelength light (576 and 605 nm) during escape behavior has been reported for the leopard frog (*Rana pipiens*) (Fite et al., 1978). Because the normal escape response of this frog is toward water, this mechanism may share functional similarities with that of the loggerhead. One function

of xanthophobia in loggerhead hatchlings may be to reduce the attraction of light sources with a substantial participation of long-wavelength light. Such an adaptation could be advantageous if long-wavelength light sources with the potential to disrupt the sea-finding ability of a directional or phototropotaxis mechanism were common in nature. Rising and setting celestial bodies appear as predominantly long-wavelength sources because of the short-wavelength scattering effect of the atmosphere and have the potential to disrupt hatchling sea finding. Some controversy exists regarding whether the rising sun affects sea finding in sea turtles. Whereas Ehrenfeld and Carr (1967) and van Rhijn (1979) report that green turtles and hawksbill turtles (*Eretmochelys imbricata*) are affected insignificantly by the sun on the horizon, Mrosovsky (1970) and Mrosovsky and Kingsmill (1985) report that loggerhead, green, and hawksbill turtles are significantly affected. The loggerhead hatchlings in Mrosovsky's study orienting at sunrise or sunset without the contrast of a dune horizon still moved in the general ocean direction. It is remarkable that the sun, as an intense opposing light source, affected orientation in these experiments as little as it did.

The positive response of loggerhead hatchlings to 700 nm light at high intensity shows that a comprehensive bias against long-wavelength light does not exist. In addition to being on the periphery of color sensitivity in loggerheads, 700 nm light may also fall outside their ability for color discrimination. The variation in response of loggerhead hatchlings to 540, 560, and 580 nm light at varying intensity indicates that the xanthophobic response is not independent of light intensity.

Models of mechanisms by which sea turtles achieve a seaward orientation commonly employ the term brightness to denote the cue that guides hatchlings to the ocean (Verheijen and Wildschut, 1973; van Rhijn, 1979; Mrosovsky and Kingsmill, 1985). Unfortunately, brightness in this usage is not a currently measurable value. Brightness from the perspective of the sea turtle hatchling must certainly incorporate intensity in proportion to a species-specific action spectrum. Could perceived brightness, however, be influenced by other biased responses to color? Brightest-direction models must incorporate a definition for brightness that considers such complexities if those models are to explain the orientation behavior we observed in loggerhead and green turtle hatchlings.

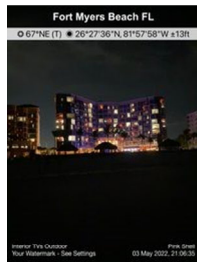
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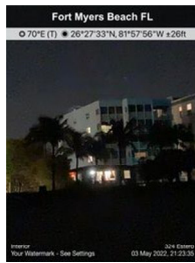
LITERATURE CITED

- CARR, A., AND L. OGREN. 1960. The ecology and migrations of sea turtles. IV. The green turtle in the Caribbean sea. *Amer. Mus. Nat. Hist. Bull.* 121: 1-48.
- DANIEL, R. S., AND K. U. SMITH. 1947. The sea-approach behavior of the neonate loggerhead turtle (*Caretta caretta*). *J. Comp. Physiol. Psychol.* 40:413-420.
- EHRENFELD, D. W. 1968. The role of vision in the sea-finding orientation of the green turtle (*Chelonia mydas*). II. Orientation mechanism and range of spectral sensitivity. *Anim. Behav.* 16:281-287.
- , AND A. CARR. 1967. The role of vision in the sea-finding orientation of the green turtle (*Chelonia mydas*). *Ibid.* 15:25-36.
- FITE, K. V., J. SOUKUP, AND R. G. CAREY. 1978. Wavelength discrimination in the leopard frog: a reexamination. *Brain Behav. Evol.* 15:405-414.
- GRANDA, A. M., AND P. J. O'SHEA. 1972. Spectral sensitivity of the green turtle (*Chelonia mydas mydas*) determined by electrical responses to heterochromatic light. *Ibid.* 5:143-154.
- , AND C. A. DVORAK. 1977. Vision in turtles, p. 451-495. *In: Handbook of sensory physiology.* Vol. VII/5, the visual system in vertebrates. F. Crescitelli (ed.). Springer-Verlag, Berlin, Germany.
- HAILMAN, J. P., AND R. G. JAEGER. 1974. Phototactic responses to spectrally dominant stimuli and use of colour vision by adult anuran amphibians: a comparative survey. *Anim. Behav.* 22:757-795.
- HOOKE, D. 1911. Certain reactions to color in the young loggerhead turtle. *Carnegie Inst. Washington Publ.* 132:71-76.
- LIMPUS, C. J. 1971. Sea turtle ocean finding behaviour. *Search* 2:385-387.
- LOEW, E. R., AND J. N. LYTHERG. 1985. The ecology of colour vision. *Endeavour* 14:170-174.
- MROSOVSKY, N. 1968. Nocturnal emergence of

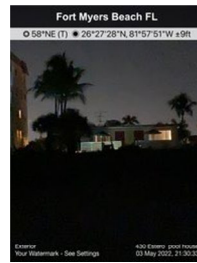
- hatchling sea turtles: control by thermal inhibition of activity. *Nature* 220:1338–1339.
- . 1970. The influence of the sun's position and elevated cues on the orientation of hatchling sea turtles. *Anim. Behav.* 18:648–651.
- . 1972. The water-finding ability of sea turtles. *Brain Behav. Evol.* 5:202–225.
- , AND A. CARR. 1967. Preference for light of short wavelengths in hatchling green sea turtles, *Chelonia mydas*, tested on their natural nesting beaches. *Behaviour* 28:217–231.
- , AND S. J. SHETTLEWORTH. 1968. Wavelength preferences and brightness cues in the water finding behaviour of sea turtles. *Ibid.* 32:211–257.
- , AND S. F. KINGSMILL. 1985. How turtles find the sea. *Z. Tierpsychol.* 67:237–256.
- MUNTZ, W. R. A. 1962. Effectiveness of different colors of light in releasing positive phototactic behavior of frogs, and a possible function of the retinal projection to the diencephalon. *J. Neurophysiol.* 25:712–720.
- PARKER, G. H. 1922. The crawling of young loggerhead turtle toward the sea. *J. Exp. Zool.* 6:323–331.
- VAN RHIJN, F. A. 1979. Optic orientation in hatchlings of the sea turtle, *Chelonia mydas*. I. Brightness: not the only optic cue in sea-finding orientation. *Mar. Behav. Physiol.* 6:105–121.
- , AND J. C. VAN GORKOM. 1983. Optic orientation in hatchlings of the sea turtle, *Chelonia mydas*. III. Sea-finding behaviour: the role of photic and visual orientation in animals walking on the spot under laboratory conditions. *Ibid.* 9:211–228.
- VERHEIJEN, F. J., AND J. T. WILDSCHUT. 1973. The photic orientation of sea turtles during water finding behaviour. *Neth. J. Sea Res.* 7:53–67.
- WITHERINGTON, B. E., AND K. A. BJORNDAL. 1991. Influences of artificial lighting on the seaward orientation of hatchling loggerhead turtles (*Caretta caretta*). *Biol. Conserv.* 55:139–149.
- , ———, AND C. M. MCCABE. 1990. Temporal pattern of nocturnal emergence of loggerhead turtle hatchlings from natural nests. *Copeia* 1990:1165–1168.
- ARCHIE CARR CENTER FOR SEA TURTLE RESEARCH AND DEPARTMENT OF ZOOLOGY, UNIVERSITY OF FLORIDA, GAINESVILLE, FLORIDA 32611. Accepted 19 Nov. 1990.



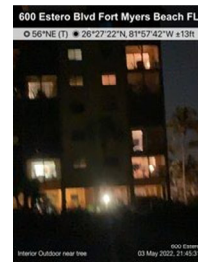
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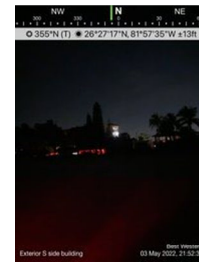
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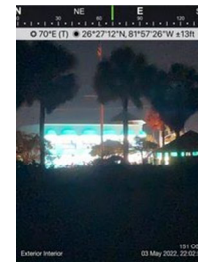
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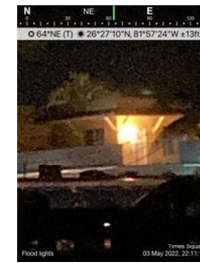
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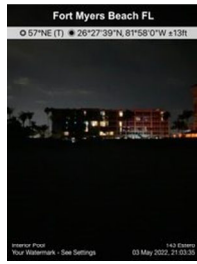
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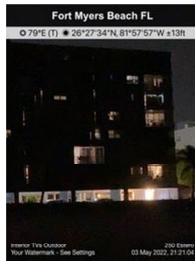
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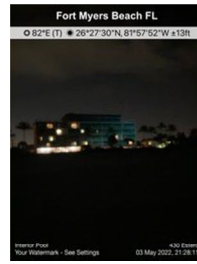
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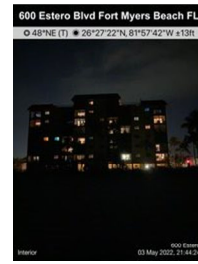
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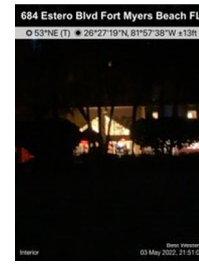
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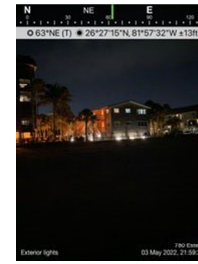
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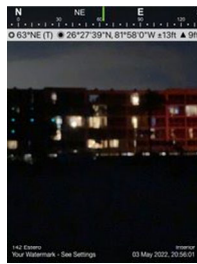
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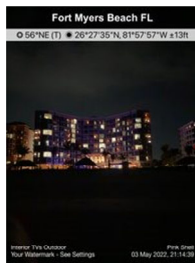
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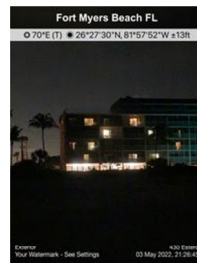
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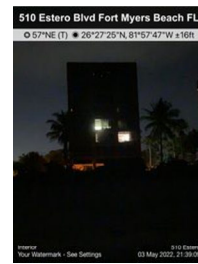
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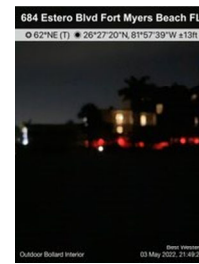
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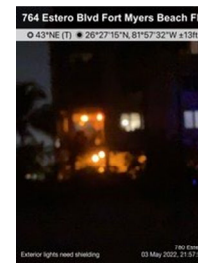
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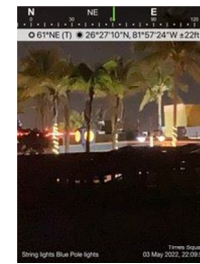
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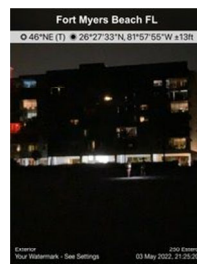
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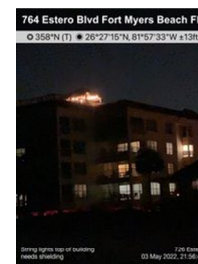
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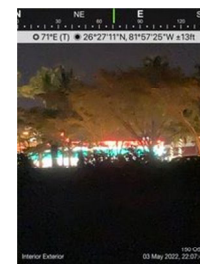
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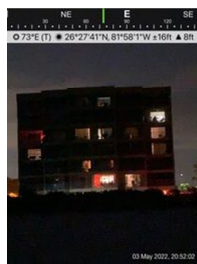
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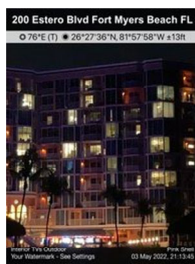
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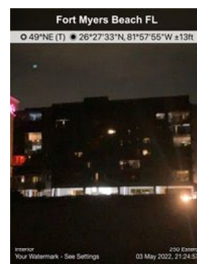
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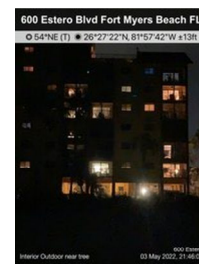
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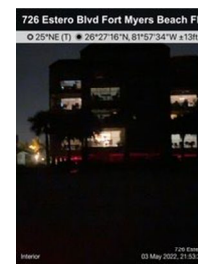
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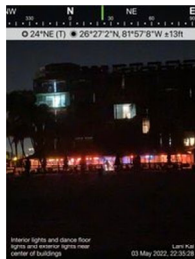
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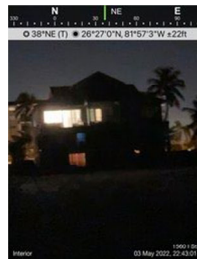
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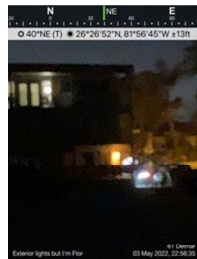
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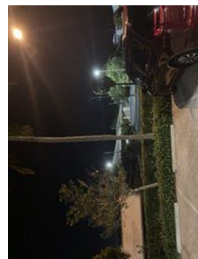
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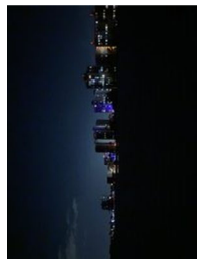
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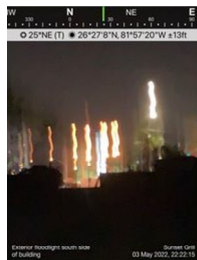
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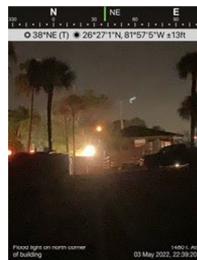
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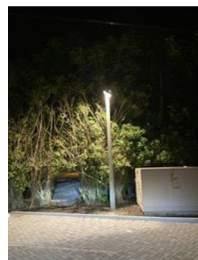
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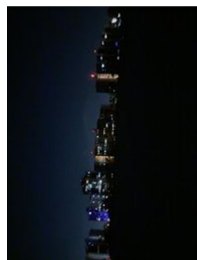
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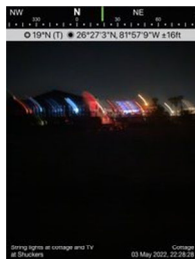
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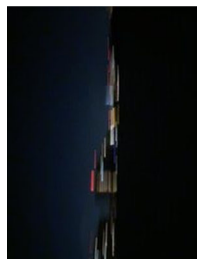
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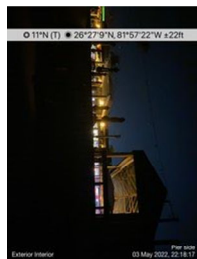
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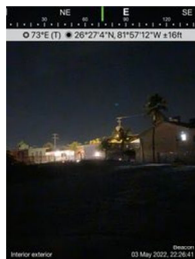
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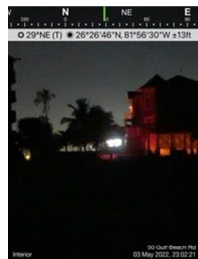
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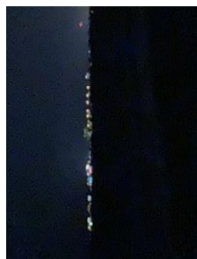
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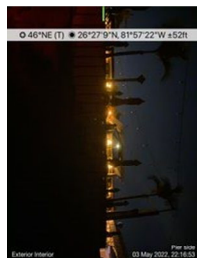
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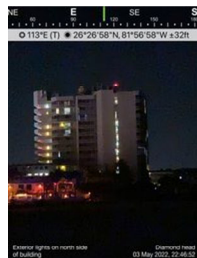
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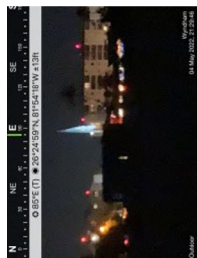
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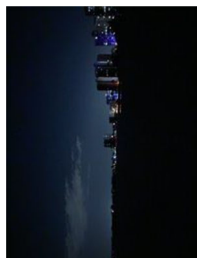
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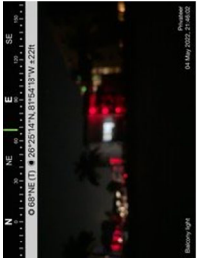
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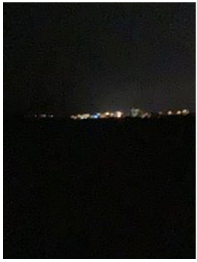
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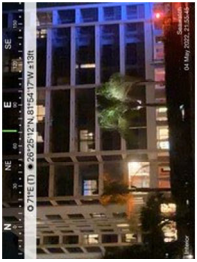
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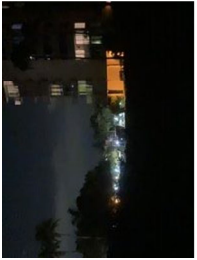
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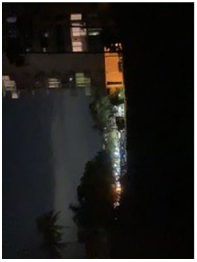
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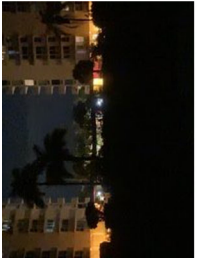
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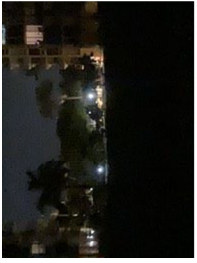
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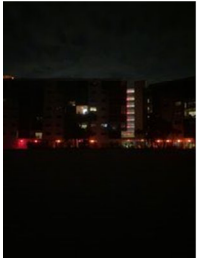
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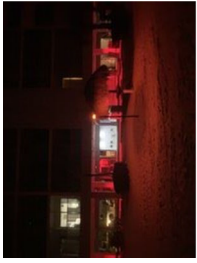
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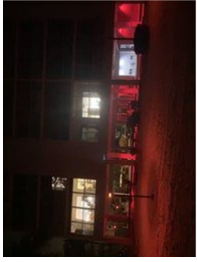
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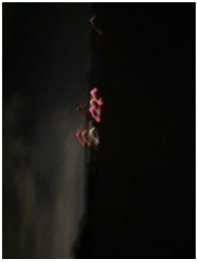
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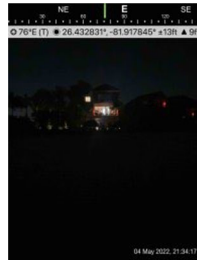
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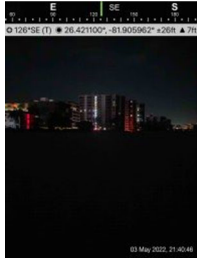
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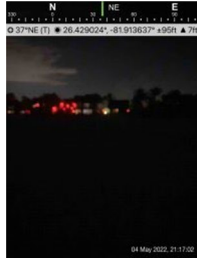
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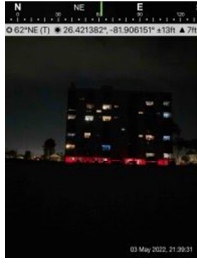
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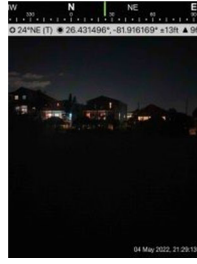
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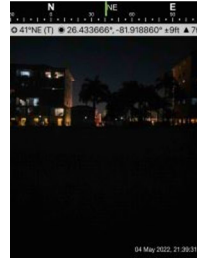
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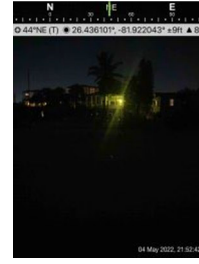
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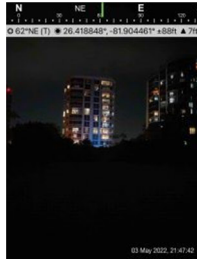
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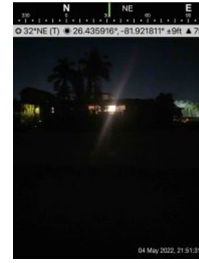
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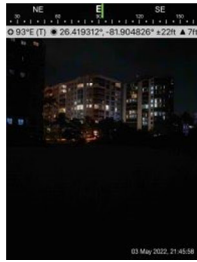
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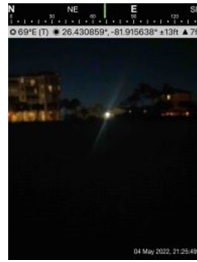
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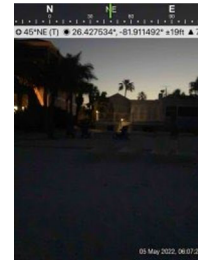
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1. Requested Motion:

Meeting Date: June 6, 2022

Accept FY2021 Audit Report prepared by Mauldin & Jenkins

Why the action is necessary:

Section 218.39, F.S., requires that local governments that meet specific criteria outlined in the chapter shall have an annual financial audit of its accounts and records completed within nine (9) months after the end of its fiscal year. The annual audited financial report could also be required to include a "single audit" in accordance with OMB Circular A-133 or Section 215.97, F.S., and Chapter 10.550, Rules of the Auditor General. The audit shall be performed by an independent certified public accountant in accordance with Section 218.39, F.S., and Chapter 10.550, Rules of the Auditor General. At the conclusion of the audit, the auditor shall discuss all comments that will be included in the audit report with management, each member of the governing body, and each member of an audit committee charged with governance.

The local government's response to the audit findings, including corrective action to be taken, must be filed with the local government's governing body within thirty (30) days after delivery of the audit findings. In addition, the audit findings and responses must be incorporated in the audit report package and submitted to the Auditor General within forty-five (45) days after the delivery of the audit report to the local government's governing body, but no later than nine (9) months after the end of the fiscal year.

References:

Section 215.97, F.S.; Florida Single Audit Act
Section 218.39, F.S.; Annual Financial Audit Reports
Section 218.391, F.S.; Auditor Selection Procedures
Section 218.503, F.S.; Determination of Financial Emergency
Chapter 10.550, Rules of the Auditor General; local Government Entity Audits

What the action accomplishes:

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

4. Submitter of Information:

5. Background:

The Town's annual audit was performed by Mauldin & Jenkins. A copy of the audit report was provided to the Town's Audit Committee. On May 24, 2022 the Committee reviewed and discussed the audit report and approved forwarding it to the Town Council.

Attachments:

1. 2021 Financial Statements - Town of Fort Myers Beach
2. 2021 AD&A - Town of Fort Myers Beach

Financial Impact:

6. **Alternative Action**

7. **Management Recommendations:**

8. **Recommended Approval:**

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

Created/Initiated - 5/31/2022
Approved - 5/31/2022
Approved - 5/31/2022
Final Approval - 5/31/2022

TOWN OF FORT MYERS BEACH, FLORIDA
FINANCIAL STATEMENTS
FOR THE FISCAL YEAR ENDED
SEPTEMBER 30, 2021

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TOWN OF FORT MYERS BEACH, FLORIDA
FINANCIAL STATEMENTS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2021

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TOWN OF FORT MYERS BEACH, FLORIDA
FINANCIAL STATEMENTS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2021

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INDEPENDENT AUDITOR'S REPORT

Honorable Mayor, Town Council and Town Manager
Town of Fort Myers Beach, Florida

Report on the Financial Statements

We have audited the accompanying financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the Town of Fort Myers Beach, Florida (the "Town"), as of and for the year ended September 30, 2021, and the related notes to the financial statements, which collectively comprise the Town's basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Opinions

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the Town, as of September 30, 2021, and the respective changes in financial position and, where applicable, cash flows thereof, and the budgetary comparisons for the General Fund, the Gas Tax Fund, the Building Fund, and the Beach Access Fund for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis (on pages 4 through 12) and the schedule of changes in total OPEB liability (on page 48) be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Information

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the Town's basic financial statements. The combining nonmajor fund financial statements are presented for purposes of additional analysis and are not a required part of the basic financial statements. The schedule of expenditures of federal awards and state financial assistance is presented for purposes of additional analysis as required by Title 2 *U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) and Chapter 10.550, *Local Governmental Entity Audits*, Rules of the Auditor General, and is also not a required part of the basic financial statements of the Town. The combining nonmajor fund financial statements and the schedule of expenditures of federal awards and state financial assistance are the responsibility of management and were derived from and relate directly to the underlying accounting and other records used to prepare the basic financial statements. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the basic financial statements or to the basic financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the combining nonmajor fund financial statements and the schedule of expenditures of federal awards and state financial assistance are fairly stated, in all material respects, in relation to the basic financial statements as a whole.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated May 11, 2022, on our consideration of the Town's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements, and other matters. The purpose of that report is solely to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Town's internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the Town's internal control over financial reporting and compliance.

Mauldin & Jenkins, LLC

Bradenton, Florida
May 11, 2022

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BASIC FINANCIAL STATEMENTS

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THE TOWN OF FORT MYERS BEACH, FLORIDA

MANAGEMENT'S DISCUSSION AND ANALYSIS

YEAR ENDED SEPTEMBER 30, 2021

Introduction

As management of the Town of Fort Myers Beach, we offer readers of the Town's financial statements this narrative overview and analysis of the financial activities of the Town for the fiscal year ended September 30, 2021. We encourage readers to read the information presented herein in conjunction with additional information furnished in the Town's financial statements, which follow this narrative.

Financial Highlights

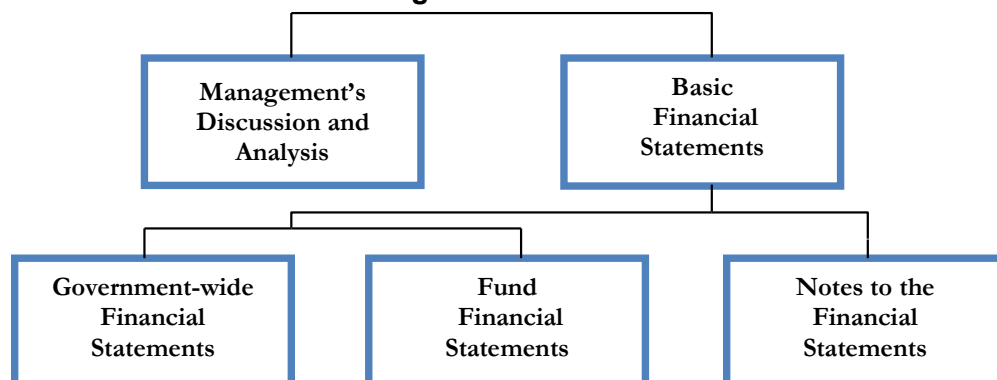
- The Town's assets and deferred outflows of resources exceeded its liabilities and deferred inflows of resources by \$62,400,478 (net position). Of this amount, \$13,986,310 is unrestricted net position that may be used to meet the Town's ongoing obligations.
- The Town's total net position increased by \$6,301,324 due primarily to increased charges for services and capital grants and contributions.
- The Town's combined governmental funds had combined ending fund balances of \$11,427,640 and a combined increase in fund balances of \$4,247,707, increased primarily by increases in revenue in the General Fund, the Building Fund, the Beach Access Fund, and other nonmajor funds.

Overview of the Financial Statements

This discussion and analysis introduce the Town of Fort Myers Beach's basic financial statements. The basic financial statements consist of three components: (1) government-wide financial statements, (2) fund financial statements, and (3) notes to the financial statements (see Figure 1). The basic financial statements present two views of the Town through government-wide statements and fund financial statements.

Required Components of the Annual Financial Report

Figure 1



THE TOWN OF FORT MYERS BEACH, FLORIDA MANAGEMENT'S DISCUSSION AND ANALYSIS YEAR ENDED SEPTEMBER 30, 2021

Basic Financial Statements

The statement of net position and statement of activities together comprise the government-wide financial statements. They provide both short and long-term information about the Town's financial status.

The next statements are fund financial statements. These statements focus on the individual parts of the Town's government. The fund statements provide more detail than the government-wide statements. There are two parts to the fund financial statements: (1) the governmental funds statements, and (2) the proprietary funds statements.

The next section of the basic financial statements is the notes. The notes to the financial statements explain in detail some of the data contained in the basic financial statements.

The following section is required supplementary information reporting changes in the Town's total OPEB liability.

Other supplementary information is included after the required supplementary information and provides combining fund financial statements of the nonmajor governmental funds.

Government-Wide Financial Statements

The *statement of net position* and the *statement of activities* provide information about the net position and activities of the Town as a whole. The *government-wide financial statements* separate governmental from business-type activities. Both statements are measured and reported on the full accrual basis of accounting using the economic resources measurement focus. The government-wide financial statements are designed to provide the reader with a broad overview of the Town's finances - similar to private-sector business financial statements.

The statement of activities presents information showing how the Town's net position changed during the 2021 fiscal year. The statement reflects the expenses of a given function or segment, offset by program revenues. Program revenues are defined as charges for services, operating grants and contributions, and capital grants and contributions directly associated with a given function. Property taxes and other taxes are reported under general revenue.

Both financial statements display the primary types of functions of the Town as follows:

- **Governmental activities** – Most of the Town's primary functions are reported in governmental activities, including culture/recreation, public works, streets, roads, planning, zoning, and general and administrative services. Major revenues supporting these activities are property taxes, gas taxes, communications services taxes, and intergovernmental revenues.
- **Business-type activities** – These activities include the water and stormwater enterprise funds. The water fund accounts for the operations of the water system. The stormwater fund accounts for operations of the stormwater system. User fees support both services.

**THE TOWN OF FORT MYERS BEACH, FLORIDA
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEAR ENDED SEPTEMBER 30, 2021**

Fund Financial Statements

The fund financial statements provide a more detailed look at the Town's most significant activities. A fund is a grouping of related accounts used to maintain control over resources that have been segregated for specific activities or objectives. The Town, like other state and local governments, uses fund accounting to ensure and reflect compliance (or non-compliance) with finance-related legal requirements. All of the funds of the Town can be divided into two categories: governmental funds and proprietary funds.

1. **Governmental funds** – Governmental funds are used to account for those functions reported as governmental activities in the government-wide financial statements. Most of the Town's basic services are accounted for in governmental funds. These funds focus on how assets can readily be converted into cash flow in and out and what monies are left at year-end will be available for spending in the next year. Governmental funds are reported using an accounting method called *modified accrual basis accounting* which provides a short-term spending focus. As a result, the governmental fund financial statements give the reader a detailed short-term view that helps him or her determine if there are more or less financial resources available to finance the Town's programs.

The relationship between government activities (reported in the statement of net position and the statement of activities) and governmental funds is described in a reconciliation that is a part of the fund financial statements.

2. **Proprietary funds** – The Town has two proprietary funds, which are *enterprise funds* used to report the same functions presented as business-type activities in the government-wide financial statements. The Town uses enterprise funds to account for its water and stormwater activities. The funds use full accrual basis accounting and the economic measurement focus. Fees or charges are the primary revenue service for the funds.

Government-Wide Financial Analysis

Town of Fort Myers Beach's Net Position

	Governmental Activities		Business-type Activities		Total	
	2021	2020	2021	2020	2021	2020
Current and other assets	\$ 13,969,647	\$ 8,242,713	\$ 11,588,955	\$ 9,480,112	\$ 25,558,602	\$ 17,722,825
Capital assets	24,273,379	24,016,746	57,415,379	51,263,824	81,688,758	75,280,570
Total assets	<u>38,243,026</u>	<u>32,259,459</u>	<u>69,004,334</u>	<u>60,743,936</u>	<u>107,247,360</u>	<u>93,003,395</u>
Deferred outflows of financial resources	39,117	28,783	7,107	5,843	46,224	34,626
Current and other liabilities	2,345,987	756,906	2,368,496	3,161,947	4,714,483	3,918,853
Noncurrent liabilities	1,214,354	471,712	38,858,570	32,446,707	40,072,924	32,918,419
Total liabilities	<u>3,560,341</u>	<u>1,228,618</u>	<u>41,227,066</u>	<u>35,608,654</u>	<u>44,787,407</u>	<u>36,837,272</u>
Deferred inflows of financial resources	89,448	84,452	16,251	17,143	105,699	101,595
Net investment in capital assets	23,534,673	23,976,784	22,423,626	18,874,954	45,958,299	42,851,738
Restricted	2,455,869	1,548,591	-	-	2,455,869	1,548,591
Unrestricted	8,641,812	5,449,797	5,344,498	6,249,028	13,986,310	11,698,825
Total net position	<u>\$ 34,632,354</u>	<u>\$ 30,975,172</u>	<u>\$ 27,768,124</u>	<u>\$ 25,123,982</u>	<u>\$ 62,400,478</u>	<u>\$ 56,099,154</u>

**THE TOWN OF FORT MYERS BEACH, FLORIDA
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEAR ENDED SEPTEMBER 30, 2021**

Government-Wide Financial Analysis (Continued)

Key elements in the analysis of the Town's net position at the end of the year are as follows:

- The assets and deferred outflows of the Town of Fort Myers Beach exceeded liabilities and deferred inflows by \$62,400,478 as of September 30, 2021.
- Total net position increased by 11% over the prior year.
- The net investment in capital assets was 74% of the Town's total net position. The Town uses these capital assets to provide services to citizens; consequently, these assets are not available for future spending. Therefore, although the Town's net investment in capital assets is reported net of the outstanding related debt, the resources needed to repay that debt must be provided by other sources since the capital assets cannot be used to liquidate these liabilities.
- Net assets of the Town subjected to external restrictions on their use was 4% of total net position.
- Unrestricted net assets of the Town was 22% of total net position.
- Total liabilities of the Town increased by 22%.

**THE TOWN OF FORT MYERS BEACH, FLORIDA
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEAR ENDED SEPTEMBER 30, 2021**

Government-Wide Financial Analysis (Continued)

Town of Fort Myers Beach's Changes Net Position

	Governmental Activities		Business-type Activities		Total	
	2021	2020	2021	2020	2021	2020
Program revenues						
Charges for services	\$ 4,070,014	\$ 3,004,041	\$ 7,207,884	\$ 6,612,879	\$ 11,277,898	\$ 9,616,920
Operating grants and contributions	1,041,739	1,141,802	-	-	1,041,739	1,141,802
Capital grants and contributions	1,640,318	160,848	-	940,765	1,640,318	1,101,613
General revenues						
Property taxes	3,404,467	3,262,934	-	-	3,404,467	3,262,934
Franchise fees	1,093,483	1,009,307	-	-	1,093,483	1,009,307
Gas taxes	369,879	359,248	-	-	369,879	359,248
Communications taxes	536,426	531,850	-	-	536,426	531,850
Business taxes	4,159	4,751	-	-	4,159	4,751
Intergovernmental revenues, unrestricted	904,098	760,191	-	-	904,098	760,191
Investment earnings	9,828	137,844	10,573	19,799	20,401	157,643
Total revenues	<u>13,074,411</u>	<u>10,372,816</u>	<u>7,218,457</u>	<u>7,573,443</u>	<u>20,292,868</u>	<u>17,946,259</u>
Program expenses						
Governmental activities						
General government	3,753,674	4,182,881	-	-	3,753,674	4,182,881
Public safety	459,555	441,972	-	-	459,555	441,972
Physical environment	196,835	201,482	-	-	196,835	201,482
Transportation	1,840,712	1,826,276	-	-	1,840,712	1,826,276
Culture/recreation	3,156,915	3,094,364	-	-	3,156,915	3,094,364
Interest on long-term debt	9,538	2,636	-	-	9,538	2,636
Business-type activities						
Water Utility	-	-	3,976,287	3,618,996	3,976,287	3,618,996
Stormwater	-	-	598,028	357,986	598,028	357,986
Total expenses	<u>9,417,229</u>	<u>9,749,611</u>	<u>4,574,315</u>	<u>3,976,982</u>	<u>13,991,544</u>	<u>13,726,593</u>
Change in net position before transfers	<u>3,657,182</u>	<u>623,205</u>	<u>2,644,142</u>	<u>3,596,461</u>	<u>6,301,324</u>	<u>4,219,666</u>
Transfers	<u>-</u>	<u>(150,000)</u>	<u>-</u>	<u>150,000</u>	<u>-</u>	<u>-</u>
Change in net position	<u>3,657,182</u>	<u>473,205</u>	<u>2,644,142</u>	<u>3,746,461</u>	<u>6,301,324</u>	<u>4,219,666</u>
Net position, beginning	<u>30,975,172</u>	<u>30,501,967</u>	<u>25,123,982</u>	<u>21,377,521</u>	<u>56,099,154</u>	<u>51,879,488</u>
Net position, ending	<u>\$ 34,632,354</u>	<u>\$ 30,975,172</u>	<u>\$ 27,768,124</u>	<u>\$ 25,123,982</u>	<u>\$ 62,400,478</u>	<u>\$ 56,099,154</u>

Governmental Activities

Governmental activities in the current year increased the Town's net position by \$3,657,182. Key net elements of these activities are as follows:

- Total governmental revenues increased by 26% from the prior year.
- Charges for services increased 35% from the prior year.
- Capital grants and contributions increased 920% from the prior year.
- Total governmental expenses decreased 3% from the prior year.

**THE TOWN OF FORT MYERS BEACH, FLORIDA
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEAR ENDED SEPTEMBER 30, 2021**

Business-Type Activities

Business-type activities in the current year increased the Town's net position by \$2,644,142. Key net elements of these activities are as follows:

- Total business-type revenues decreased 5% from the prior year.
- Charges for services increased 9% from the previous year and are nearly 100% of operating revenues.
- The Town did not receive any capital grants and contributions during the current year, a reduction of \$940,765 from the prior year.
- Total business-type expenses increased 15% from the prior year.

Financial Analysis of the Town's Funds

Governmental Funds

Governmental funds comprise the *General Fund*, special revenue funds, and a capital projects fund. Governmental funds use the current financial resources measurement focus that provides information on the near-term inflows, outflows, and balances of available resources.

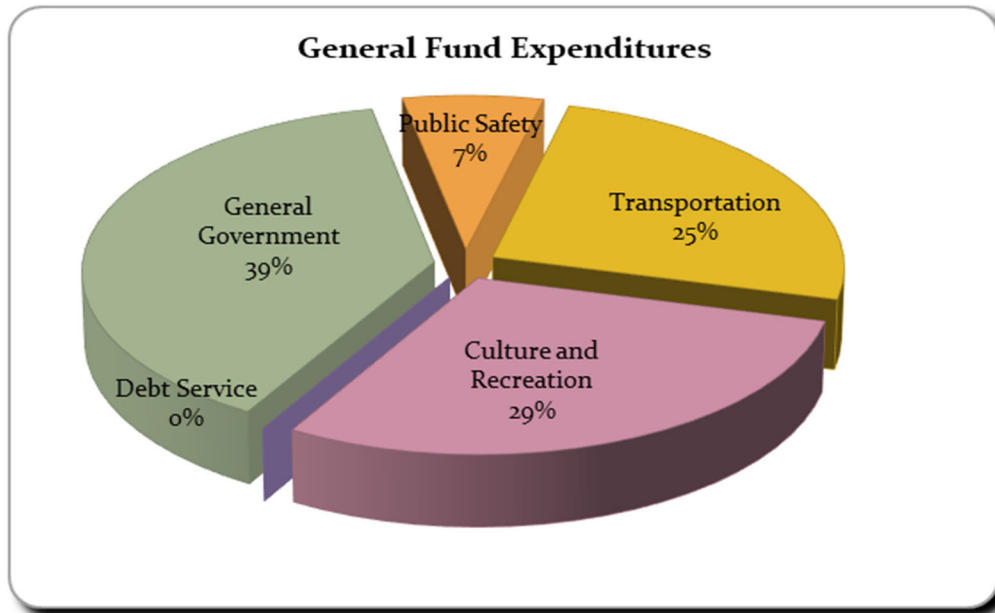
The *General Fund* is the primary operating fund for the Town. The fund accounts for all the financial resources not restricted by federal and state laws, local ordinances, or other outside restrictions. Key components and the highlights in the activities of the *General Fund* are as follows:

- Total assets increased 32% from the prior year.
- Total fund balance increased 59% from the prior year.
- Total revenues increased 19% from the prior year, and expenditures increased 7%.

**THE TOWN OF FORT MYERS BEACH, FLORIDA
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEAR ENDED SEPTEMBER 30, 2021**

Governmental Funds (Continued)

The percentages (rounded) of General Fund expenditures for the various functions are presented in the graph below:



The *Gas Tax Fund* accounts for gas taxes and other resources restricted for road-related projects. At the end of the current year, the total fund balance was \$774,487. The fund balance increased 30% from the prior year.

The *Building Fund* accounts for Town-administered building permits and plans review. At the end of the current year, the fund balance was \$404,205. The fund balance increased 252% from the prior year.

The *Beach Access Fund* accounts for the expenditures incurred to maintain the Town's beaches and records the reimbursement received from Lee County Tourist Development Council. The amount of reimbursement increased 29% from the prior year.

The *Capital Projects Fund* is maintained by transfers from the *General Fund* and other special revenue funds. Capital outlays totaled \$1,256,838 in the current year.

American Rescue Fund is a federally funded relief package used for investments in water, sewer, and infrastructure. The fund had cash and cash equivalents of \$1,776,528 at September 30, 2021. There was no project activity during the year.

The *Nonmajor Governmental Funds* consist of two special revenue funds, the *Park Impact Fund* and the *Road Impact fund*. The *Park Impact Fund* had an increase in fee revenue of \$191,756 or 4,858%, and the *Road Impact Fund* had an increase in fee revenue of \$524,074 or 6,550%.

**THE TOWN OF FORT MYERS BEACH, FLORIDA
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEAR ENDED SEPTEMBER 30, 2021**

Proprietary Funds

The *Water Fund* accounts for the assets and activities of the Town's water system. The fund's net position increased by \$2,074,786, primarily due to a 14% increase in operating revenues.

The *Stormwater Fund* accounts for the assets and activities of the Town's stormwater system. The fund's net position increased by \$569,356, primarily due to strong operating revenues in excess of operating expenses.

Budgetary Highlights

Revenue budget-to-actual in the General Fund resulted in a positive revenue variance of \$1,512,297, or 18%. The positive variance was due primarily to an increase of \$988,282 in actual intergovernmental revenues over budgeted revenues.

Budget-to-actual expenditures in the General Fund resulted in a positive variance of \$726,439 (less than fiscal budget), primarily due to reduced expenditures in general governmental services of \$211,531 and reduced expenditures of \$416,068 in cultural and recreation activities.

Revenue budget-to-actual in the Building Fund resulted in a positive revenue variance of \$466,899, or 62%. The positive variance was due primarily to an increase of \$466,899 in actual licenses and permits revenue over budgeted revenues.

Capital Asset and Debt Administration

Capital Assets

The following table provides a comparative summary of capital assets (net of accumulated depreciation) by category:

	Governmental Activities		Business-type Activities		Total	
	2021	2020	2021	2020	2021	2020
Land	\$ 10,536,780	\$ 10,536,780	\$ 305,000	\$ 305,000	\$ 10,841,780	\$ 10,841,780
Buildings and leasehold improvements	6,286,808	6,509,633	520,981	565,947	6,807,789	7,075,580
Improvements other than buildings	1,717,141	1,854,368	-	-	1,717,141	1,854,368
Office furniture and equipment	94,857	145,378	-	-	94,857	145,378
Vehicles and other equipment	973,144	913,146	112,634	156,250	1,085,778	1,069,396
Infrastructure	3,912,402	4,057,441	41,740,736	12,726,764	45,653,138	16,784,205
Construction in progress	752,247	-	14,736,028	37,509,863	15,488,275	37,509,863
Total capital assets	<u>\$ 24,273,379</u>	<u>\$ 24,016,746</u>	<u>\$ 57,415,379</u>	<u>\$ 51,263,824</u>	<u>\$ 81,688,758</u>	<u>\$ 75,280,570</u>

Additional information on the Town's capital assets can be found in Note 6 to the financial statements.

**THE TOWN OF FORT MYERS BEACH, FLORIDA
MANAGEMENT'S DISCUSSION AND ANALYSIS
YEAR ENDED SEPTEMBER 30, 2021**

Long-Term Debt

As of September 30, 2021, and 2020 the Town had \$39,533,940 and \$32,428,832, respectively, in long-term debt. The following table provides a breakdown:

	Governmental Activities		Business-type Activities		Total	
	2021	2020	2021	2020	2021	2020
Refunding bond payable	\$ -	\$ -	\$ 540,000	\$ 720,000	\$ 540,000	\$ 720,000
Capital improvements revenue note	708,090	-	-	-	708,090	-
State revolving fund loans	-	-	38,255,234	31,668,870	38,255,234	31,668,870
Capital lease payable	30,616	39,962	-	-	30,616	39,962
Total debt	<u>\$ 738,706</u>	<u>\$ 39,962</u>	<u>\$ 38,795,234</u>	<u>\$ 32,388,870</u>	<u>\$ 39,533,940</u>	<u>\$ 32,428,832</u>

Additional information on the Town's long-term debt can be found in Note 7 to the financial statements.

Economic Factors and Next Fiscal Year's Budget

The State of Florida operates primarily using sales, gasoline, and corporate income taxes. Local governments (cities, counties, and school boards) primarily rely on property and a limited array of permitted other taxes (sales, gasoline, communication services, etc.) and fees (franchise, occupational licensing, impact, etc.) for funding their governmental activities. There are several state-shared revenues and recurring and non-recurring (one-time) grants from both the state and federal governments.

The following factors were considered in preparing the Town's budget for the 2020-2021 fiscal year:

- The Town continued planning significant investment in infrastructure in the water utility as well as the expansion of the stormwater utility, which will provide for dedicated operation and maintenance and future stormwater infrastructure. Pursuant to funding the infrastructure improvements. Ordinance 15-08 established the stormwater utility, and Resolution 16-07 adopted February 16, 2016, adopted the user fee to support a dedicated source of funding. The State of Florida Department of Environmental Protection has approved a stormwater loan for the side streets in the Town in the amount of \$12,500,000, and it is anticipated that future state loans will be pursued to complete Towns' stormwater infrastructure program. In addition, the Town established a new Building Service Fund that will recognize Building Permit and Plans Review revenue and all other revenue specific to Building Operations and account for the expenditures funded from the revenues collected.

The Town has continued to budget for a lobbyist to monitor state legislation for capital projects.

Requests for Information

The financial report is designed to provide a general overview of the Town of Fort Myers Beach, Florida's finances. Questions concerning any information provided in this report or requests for additional financial information should be addressed to:

Town of Fort Myers Beach
Finance
2525 Estero Boulevard
Fort Myers Beach, Florida 33931

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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	4,493,131	5,013,797
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	<u>38,243,026</u>	<u>69,004,334</u>	<u>107,247,360</u>
Deferred outflows of resources			
Deferred outflows - OPEB	<u>39,117</u>	<u>7,107</u>	<u>46,224</u>
Liabilities			
Accounts payable and other accrued liabilities	569,459	1,958,085	2,527,544
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	152,820	1,461,596	1,614,416
Due in more than one year	1,061,534	37,396,974	38,458,508
Total liabilities	<u>3,560,341</u>	<u>41,227,066</u>	<u>44,787,407</u>
Deferred inflows of resources			
Deferred inflows - OPEB	<u>89,448</u>	<u>16,251</u>	<u>105,699</u>
Net position			
Net investment in capital assets	24,242,763	22,423,626	46,666,389
Restricted for			
Parks and recreation	242,431	-	242,431
Transportation	2,213,438	-	2,213,438
Unrestricted	7,933,722	5,344,498	13,278,220
Total net position	<u>\$ 34,632,354</u>	<u>\$ 27,768,124</u>	<u>\$ 62,400,478</u>

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

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 Services	Operating Grants and Contributions	Capital Grants and Contributions	Governmental Activities	Business-Type Activities	Total
Functions/programs	Expenses						
Governmental activities							
General government	\$ 3,753,674	\$ 1,615,134	\$ 12,000	\$ -	\$ (2,126,540)	\$ -	\$ (2,126,540)
Public safety	459,555	-	750	41,161	(417,644)	-	(417,644)
Physical environment	196,835	-	-	-	(196,835)	-	(196,835)
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	9,538	-	-	-	(9,538)	-	(9,538)
Total governmental activities	<u>9,417,229</u>	<u>4,070,014</u>	<u>1,041,739</u>	<u>1,640,318</u>	<u>(2,665,158)</u>	<u>-</u>	<u>(2,665,158)</u>
Business-type activities							
Water and sewer	3,976,287	6,048,690	-	-	-	2,072,403	2,072,403
Stormwater	598,028	1,159,194	-	-	-	561,166	561,166
Total business-type activities	<u>4,574,315</u>	<u>7,207,884</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>2,633,569</u>	<u>2,633,569</u>
Total primary government	<u>\$ 13,991,544</u>	<u>\$ 11,277,898</u>	<u>\$ 1,041,739</u>	<u>\$ 1,640,318</u>	<u>(2,665,158)</u>	<u>2,633,569</u>	<u>(31,589)</u>
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					<u>6,322,340</u>	<u>10,573</u>	<u>6,332,913</u>
Change in net position					<u>3,657,182</u>	<u>2,644,142</u>	<u>6,301,324</u>
Net position, beginning of year					<u>30,975,172</u>	<u>25,123,982</u>	<u>56,099,154</u>
Net position, end of year					<u>\$ 34,632,354</u>	<u>\$ 27,768,124</u>	<u>\$ 62,400,478</u>

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

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 (deficit)								
Nonspendable								
Prepaid items	18,382	694	-	-	-	-	-	19,076
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 (deficit)	<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.

**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 improvements revenue note	(708,090)	
Capital leases payable	<u>(30,616)</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.

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	4,940	-	-	12,000	-	-	203,714
Total revenues	9,701,367	381,925	1,219,114	1,019,453	132,226	-	730,180	13,184,265
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	-	-	-	9,482	-	-	9,538
Total expenditures	6,612,881	204,827	549,015	1,002,259	1,275,666	-	-	9,644,648
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)								
Loan issuance	-	-	-	-	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 (deficit), 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.

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
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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)
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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)
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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>
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Change in Net Position of Governmental Activities	<u>\$ 3,657,182</u>
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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-GENERAL FUND
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2021

	Budgeted Amounts			Variance With Final Budget- Positive (Negative)
	Original	Final	Actual	
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.

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			Variance With Final Budget- Positive (Negative)
	Original	Final	Actual	
Revenues				
Taxes				
Gas taxes	\$ 347,865	\$ 347,865	\$ 369,879	\$ 22,014
Intergovernmental	41,000	41,000	7,106	(33,894)
Miscellaneous	-	-	4,940	4,940
Total revenues	<u>388,865</u>	<u>388,865</u>	<u>381,925</u>	<u>(6,940)</u>
Expenditures				
Current				
Transportation	263,865	263,865	148,608	115,257
Capital outlay	125,000	125,000	56,219	68,781
Total expenditures	<u>388,865</u>	<u>388,865</u>	<u>204,827</u>	<u>184,038</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>

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-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>	<u>-</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.

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	1,802,595	2,690,536	4,493,131
Prepaid items	127,392	-	127,392
Total current assets	<u>6,060,014</u>	<u>5,316,572</u>	<u>11,376,586</u>
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	<u>40,421,068</u>	<u>17,311,402</u>	<u>57,732,470</u>
Total assets	<u>46,481,082</u>	<u>22,627,974</u>	<u>69,109,056</u>
Deferred outflows of resources			
Deferred outflow - OPEB	<u>5,824</u>	<u>1,283</u>	<u>7,107</u>
Liabilities			
Current liabilities			
Payable from current assets			
Accounts payable	1,520,771	437,314	1,958,085
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	<u>2,892,721</u>	<u>1,042,093</u>	<u>3,934,814</u>
Long-term liabilities			
Compensated absences	17,956	-	17,956
Notes payable	25,769,509	11,582,800	37,352,309
Total OPEB liability	21,888	4,821	26,709
Total long-term liabilities	<u>25,809,353</u>	<u>11,587,621</u>	<u>37,396,974</u>
Total liabilities	<u>28,702,074</u>	<u>12,629,714</u>	<u>41,331,788</u>
Deferred inflows of resources			
Deferred Inflows - OPEB	<u>13,318</u>	<u>2,933</u>	<u>16,251</u>
Net position			
Net investment in capital assets	14,784,474	7,639,152	22,423,626
Unrestricted	2,987,040	2,357,458	5,344,498
Total net position	<u>\$ 17,771,514</u>	<u>\$ 9,996,610</u>	<u>\$ 27,768,124</u>

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

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	140	2,287	2,427
Total operating revenues	<u>6,048,690</u>	<u>1,159,194</u>	<u>7,207,884</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>2,224,853</u>	<u>632,652</u>	<u>2,857,505</u>
Nonoperating revenues (expenses)			
Interest income	2,383	8,190	10,573
Interest expense	<u>(152,450)</u>	<u>(71,486)</u>	<u>(223,936)</u>
Total nonoperating revenues (expenses)	<u>(150,067)</u>	<u>(63,296)</u>	<u>(213,363)</u>
Change in net position	2,074,786	569,356	2,644,142
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>\$ 17,771,514</u></u>	<u><u>\$ 9,996,610</u></u>	<u><u>\$ 27,768,124</u></u>

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

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	\$ 6,144,887	\$ 1,301,889	\$ 7,446,776
Cash paid to suppliers	(3,333,694)	(556,979)	(3,890,673)
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 used 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	\$ 2,224,853	\$ 632,652	\$ 2,857,505
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	(567,234)	(232,300)	(799,534)
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

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2021

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Town of Fort Myers Beach, Florida (the “Town”) was incorporated pursuant to Chapter 95-494, *Laws of Florida*. The Town operates under a Town Manager form of government and is governed by an elected five-member Town Council. The Town Manager is appointed by a majority vote of the Council. The Town provides the following services: parks and recreation, public works, streets and roads, planning and zoning, water utility services, museum and cultural, stormwater, and general and administrative services.

The basic financial statements of the Town have been prepared in conformity with accounting principles generally accepted in the United States of America (GAAP), applicable to state and local governmental units. The Governmental Accounting Standards Board (GASB) is the standard-setting body for governmental accounting and financial reporting. The GASB periodically updates its codification of the existing Governmental Accounting and Financial Reporting Standards, which along with subsequent GASB pronouncements (statements and interpretations), constitutes GAAP for governmental units.

A. Reporting Entity

In evaluation of the Town as a reporting entity, management considered all potential component units in accordance with applicable Governmental Accounting Standards Board Statements (GASBS). A component unit is a legally separate organization for which the elected officials of the primary government are financially accountable. Management reviewed all of the financial accountability concepts and determined that there are no component units required to be included in the Town’s financial statements.

B. Government-Wide and Fund Financial Statements

The government-wide and fund financial statements along with the notes to the financial statements comprise the basic financial statements. The government-wide financial statements (i.e., the statement of net position and the statement of activities) report information on all of the nonfiduciary activities of the Town. For the most part, the effect of interfund activity has been removed from these statements. Government-wide financial statements do not provide information by fund, but distinguish between the Town’s governmental activities and business-type activities. *Governmental activities*, which normally are supported by taxes and intergovernmental revenues, are reported separately from *business-type activities*, which rely to a significant extent on fees and charges for support.

The statement of net position includes non-current assets and non-current liabilities. In addition, the government-wide statement of activities reflects depreciation expense on the Town’s capital assets. The statement of activities demonstrates the degree to which the direct expenses of a given function or activity is offset by program revenues. Direct expenses are those that are clearly identifiable with a specific function or segment. Program revenues include: (1) charges to customers or applicants who purchase, use or directly benefit from goods, services or privileges provided by a given function or segment, and (2) grants and contributions that are restricted to meeting the operational or capital requirements of a particular function or activity. Taxes and other items not properly included among program revenues are reported instead as general revenues.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2021

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Separate financial statements are provided for governmental funds and proprietary funds. Major individual governmental funds and major individual enterprise funds are reported as separate columns in the fund financial statements.

Major individual governmental funds and major individual enterprise funds are reported as separate columns in the fund financial statements. The reports the following major governmental funds:

The **General Fund** is the Town's primary operating fund. It accounts for all financial resources, except those required to be accounted for in another fund.

The **Gas Tax Fund (Special Revenue Fund)** is used to account for gas taxes and other resources dedicated to road related projects.

The **Building Fund (Special Revenue Fund)** is used to account for funds and other resources dedicated to community development.

The **Beach Access Fund (Special Revenue Fund)** is used to account for funds and other resources used for improvements to, and maintenance of, public beach access.

The **Capital Projects Fund** is used to account for funds and other resources used for the acquisition and/or construction of major capital facilities.

The **American Rescue Fund (Special Revenue Fund)** is used to account for grant funds received by the Town under the American Rescue Plan Act.

The Town reports the following major proprietary funds:

The **Water Fund** is used to account for the activities of the Town's water system.

The **Stormwater Fund** is used to account for the activities of the Town's stormwater system.

C. Measurement Focus, Basis of Accounting and Financial Statement Presentation

The government-wide financial statements are reported using the economic resources measurement focus and the accrual basis of accounting, as are the proprietary fund financial statements. Revenues are recorded when earned and expenses are recorded when a liability is incurred, regardless of the timing of related cash flows. Property taxes are recognized as revenues in the year for which they are levied. Grants and similar items are recognized as revenue as soon as all eligibility requirements imposed by the provider have been met.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2021

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Governmental fund financial statements are reported using the current financial resources measurement focus and the modified accrual basis of accounting. Revenues are recognized as soon as they are both measurable and available. Revenues are considered to be available when they are collectible within the current period or soon enough thereafter to pay liabilities of the current period. For this purpose, the Town considers revenues, except intergovernmental revenues, to be available if they are collected within 60 days of the end of the current fiscal period. Intergovernmental revenues are recognized in the year in which all eligibility requirements have been satisfied. Eligibility requirements include timing requirements, which specify the year when the resources are required to be used or the year when use is first permitted, matching requirements, in which the Town must provide local resources to be used for a specified purpose, and expenditure requirements, in which the resources are provided to the Town on a reimbursement basis. Expenditures generally are recorded when a liability is incurred, as under accrual accounting. However, expenditures related to long-term debt, compensated absences and claims and judgments are recorded only when payment is due.

Taxes, licenses and permits, intergovernmental revenue, charges for services, and investment earnings associated with the current fiscal period are all considered to be susceptible to accrual and so have been recognized as revenues of the current fiscal period. All other revenue items are considered to be measurable and available only when cash is received by the government.

In accordance with GASB Statement No. 33, *Accounting and Financial Reporting for Non-exchange Transactions*, the corresponding assets (receivables) in non-exchange transactions are recognized in the period in which the underlying exchange occurs, when an enforceable legal claim has arisen, when all eligibility requirements have been met, or when resources are received, depending on the revenue source.

As a general rule, the effect of interfund activity has been eliminated from the government-wide financial statements. Exceptions to this general rule are charges between the Town's water function and various other functions of the Town. Elimination of these charges would distort the direct costs reported for the various functions concerned.

Proprietary funds distinguish operating revenues and expenses from non-operating items. Operating revenues and expenses generally result from providing services and producing and delivering goods in connection with a proprietary fund's principal ongoing operations. The principal operating revenues of the Town's enterprise funds are charges to customers for sales and services. Operating expenses for enterprise funds include the cost of sales and services, administrative expenses and depreciation on capital assets. All revenues and expenses not meeting this definition are reported as non-operating revenues and expenses.

The preparation of basic financial statements in conformity with GAAP requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2021

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

D. Assets, Liabilities, Deferred Inflows of Resources, and Fund Balance/Net Position

Cash and Investments

The Town's cash consists of amounts in demand deposits and certificates of deposit. Investments consist of amounts on deposit with the Florida State Board of Administration's Florida Prime pool and with the Florida Municipal Investment Trust.

The Town's investment policy follows Section 218.415 of the Florida Statutes and allows management to invest any surplus funds in its control in the following:

- The Florida State Board of Administration's SBA Florida Prime;
- Florida Municipal Investment Trust (an intergovernmental investment pool authorized pursuant to the Florida Interlocal Cooperation Act as provided in Florida Statute 163.01);
- Securities and Exchange Commission registered money market funds with the highest credit quality rating from a nationally recognized rating agency;
- Interest-bearing time deposits or savings accounts in qualified public depositories, as defined in Florida Statutes, Chapter 280.02;
- Direct obligations of the United States Treasury.

For accounting and investment purposes, the Town maintains cash and investment pool available for use by all funds except those whose cash and investments must be segregated due to legal or other restrictions. Investments within this pool are treated as a demand deposit account by the various funds of the Town that participate. Interest earned on investments in the pool is allocated to the various funds based upon each fund's equity balance in the pool during the allocation period.

SBA Florida Prime meets the necessary criteria to elect to measure all of the investments in Florida Prime at amortized cost.

For purposes of the statement of cash flows, the Town considers highly liquid investments, including those held as restricted assets, with maturities of three months or less when purchased to be cash equivalents.

Customer deposit resources in the Water Fund are restricted to the payment of customer's deposits as they become due.

Receivables

The accounts receivable of the Town are recorded net of an allowance for doubtful accounts which generally is equivalent to the receivables that are over 90 days past due. In the Water Fund, revenues and receivables are accrued for services provided to customers through year-end even if the customers have not yet been billed.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2021

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Interfund Transactions

During the course of operations, the Town has activity between funds for various purposes. Activity between funds that are representative of lending/borrowing arrangements outstanding at the end of the fiscal year are reported as either "due from/to other funds" or "advances to/from other funds," the latter being amounts due in excess of one year. Any residual balances outstanding between the governmental activities and business-type activities are reported in the government-wide financial statements as "internal balances."

Prepaid Items

Payments made to vendors for services that will benefit periods beyond September 30, 2021 are recorded as prepaid items using the consumption method by recording an asset for the prepaid amount and reflecting the expenditure/expense in the year in which services are consumed. At the fund reporting level, an equal amount of fund balance is reported as nonspendable as this amount is not available for general appropriation.

Restricted Assets

Assets are reported as restricted when limitations on their use change the nature or normal understanding of the availability of the asset. Such constraints are either externally imposed by creditors, contributors, grantors or laws of other governments, or are imposed by law through constitutional provisions or enabling legislation. Restricted assets in the enterprise funds represent cash and cash equivalents set aside for the repayment of deposits to utility customers.

Capital Assets

Capital assets include property, plant, equipment, and infrastructure assets (e.g., roads, bridges, sidewalks, and similar items) and are reported in the governmental activities column in the government-wide financial statements. As permitted by GASB No. 34, the Town has elected not to report infrastructure assets retroactively.

Capital assets are recorded at cost if purchased or constructed. Donated capital assets are recorded at their acquisition value at the date of donation. The costs of normal maintenance and repairs that do not add to the value of the asset or materially extend asset lives are not capitalized. The Town follows a capitalization policy that calls for the capitalization of all capital assets that have costs of \$1,000 or more and useful lives in excess of one year. Property, plant and equipment are depreciated using the straight-line method over the following estimated useful lives:

Buildings and improvements	10 - 40 years
Leasehold improvements	10 years
Equipment	5 - 10 years
Computer equipment	3 - 10 years
Furniture	3 - 10 years
Vehicles and rolling stock	3 - 10 years
Distribution lines	20 - 25 years
Booster stations	25 years
Generators	10 years
Infrastructure	40 years

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2021

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Deferred Outflows/Inflows of Resources

The Town reports deferred inflows and deferred outflows related to the recording of changes in its total OPEB liability. Certain changes in these liabilities are recognized as OPEB expense over time instead of all being recognized in the year of occurrence. Experience gains or losses result from periodic studies by the Town's actuary which adjust the total OPEB liability for actual experience for certain trend information that was previously assumed, for example the assumed dates of retirement of plan members. These experience gains or losses are recorded as deferred outflows of resources or deferred inflows of resources and are amortized into OPEB expense over the expected remaining service life of plan members. Changes in actuarial assumptions which adjust the total OPEB liability are also recorded as deferred outflows of resources or deferred inflows of resources and are amortized into expense over the expected remaining lives of plan members. Additionally, any contributions made by the Town to the OPEB plan before year-end but subsequent to the measurement date of the Town's total OPEB liability are reported as deferred outflows of resources.

In addition to the above OPEB related deferred inflows, the Town also has one other type of these items, which arises only under a modified accrual basis of accounting that qualifies for reporting in this category. Accordingly, the item, *unavailable revenue*, is reported only in the Governmental Funds Balance Sheet. The governmental funds report unavailable revenues from certain charges for services and fines and these amounts are deferred and will be recognized as an inflow of resources in the period in which the amounts become available.

Long-Term Obligations

In the government-wide financial statements and proprietary fund financial statements, long-term debt and other long-term obligations are reported as liabilities in the applicable governmental activities, business-type activities, or proprietary fund statement of net position. Debt premiums and discounts are deferred and amortized over the life of the debt using the effective interest method. Debt payable is reported net of the applicable debt premium or discount.

In the fund financial statements, governmental fund types recognize debt premiums and discounts during the current period. The face amount of debt issued and debt premiums are separately reported as other financing sources, while discounts on debt issuances are reported as other financing uses. Issuance costs, whether or not withheld from the actual debt proceeds received, are reported as debt service expenditures when incurred.

Compensated Absences

Full-time employees may accumulate paid time off. The Town's policy allows employees to accumulate up to 560 hours of paid time off. Upon voluntary or involuntary separation from employment, an employee will be paid for all accumulated vacation leave (up to 560 hours). The accumulated compensated absences are accrued when incurred in the government-wide financial statements for both the current and long-term portions.

Fund Balance/Net Position

Fund equity at the governmental fund financial reporting level is classified as "fund balance." Fund equity for all other reporting is classified as "net position."

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2021

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Fund Balance—Generally, fund balance represents the difference between current assets and current liabilities in fund financial statements using the current financial resources measurement focus. In the fund financial statements, governmental funds report fund balance classifications that comprise a hierarchy based primarily on the extent to which the Town is bound to honor constraints on the specific purposes for which amounts in those funds can be spent.

Fund balances are classified as follows:

Nonspendable—Fund balances are reported as nonspendable when amounts cannot be spent because they are either: (1) not in spendable form (i.e., items that are not expected to be converted to cash such as prepaid items), or (2) legally or contractually required to be maintained intact.

Restricted—Fund balances are reported as restricted when there are limitations imposed on their use either through enabling legislation or through external restrictions imposed by creditors, grantors or laws or regulations of other governments.

Committed—Fund balances are reported as committed when they can be used only for specific purposes pursuant to constraints imposed by formal action of the Town Council through the adoption of a resolution or ordinance. Only the Town Council may modify or rescind the commitment. These self-imposed limitations must be set in place prior to the end of the fiscal year.

Assigned—Fund balances are reported as assigned when amounts are constrained by the Town's intent to be used for specific purposes, but are neither restricted nor committed. Intent is stipulated by the Town Council or an official for whom that authority has been given by Town Council. The Town Manager has the authority to assign fund balance.

With the exception of the General Fund, amounts in all other governmental funds that are not *nonspendable*, *restricted* or *committed* will be considered to be *assigned*. Also, at fiscal year-end, any appropriation of existing fund balance to eliminate a projected budgetary deficit in the next year's budget is considered to be an assignment of fund balance.

Unassigned—Fund balances reported as unassigned are the residual amount of balances that do not meet any of the above criterion. The Town reports positive unassigned fund balance only in the General Fund. Negative unassigned fund balances may be reported in other funds.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2021

NOTE 1 – SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (CONTINUED)

Net Position—Net position represents the difference between assets and liabilities in reporting units using the economic resources measurement focus. Net position reported as net investment in capital assets consists of capital assets, net of accumulated depreciation, reduced by the outstanding balances of any borrowing used for the acquisition, construction or improvement of those assets, adding back unspent proceeds. Net position reported as restricted consists of amounts that have limitations imposed on their use either through enabling legislation or through external restrictions imposed by creditors, grantors or laws or regulations of other governments. Net position not reported as “net investment in capital assets” or “restricted” is reported as unrestricted.

Flow Assumptions—When both restricted and unrestricted amounts of fund balance/net position are available for use for expenditures/expenses incurred, it is the Town’s policy to use restricted amounts first and then unrestricted amounts as they are needed.

For unrestricted amounts of fund balance, it is the Town’s policy to use fund balance in the following order:

- Committed
- Assigned
- Unassigned

Property Taxes

The billing and collection of all property taxes is performed for the Town by the Lee County, Florida Tax Collector. Property taxes are levied after formal adoption of the Town’s budget and become due and payable on November 1 of each year. Discounts are allowed for payment of property taxes before March 1 of the following year. Taxes are recognized as revenue when levied to the extent that they result in current receivables and meet availability criteria. On April 1, any unpaid taxes become delinquent. If the taxes are still unpaid in May, tax certificates are then offered for sale to the general public. The proceeds collected are remitted to the Town. There were no delinquent taxes or uncollected taxes at year-end.

Key dates in the property tax cycle (latest date, where appropriate) are as follows:

July 1	Assessment roll validated
September 30	Millage resolution approved and taxes levied following certificate of assessment roll
October 1	Beginning of fiscal year for which tax is to be levied
November 1	Property taxes due and payable (levy date) with various discount provisions through March 1
April 1	Taxes become delinquent
Prior to June 1	Tax certificates sold by Lee County Tax Collector

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2021

NOTE 2 – STEWARDSHIP, COMPLIANCE AND ACCOUNTABILITY

Budgetary Information

The Town follows the procedures enumerated below in establishing the legally adopted budgetary data reflected in the fund financial statements:

1. On or before July 15 of each year, the Town Manager is to submit to the Town Council a proposed operating budget, including a Town Manager's message explaining the budget, for the fiscal year commencing the following October 1. The operating budget will include a complete financial plan of all Town funds and activities for the ensuing fiscal year.
2. The Town Council shall publish in one or more newspapers of general circulation the time and place of public hearings. Public hearings are then conducted to obtain taxpayer comments.
3. Prior to October 1, the budget is legally enacted through passage of a resolution required by Town Charter and as required by the State of Florida.
4. Budgets are adopted on a basis consistent with accounting principles generally accepted in the United States of America.
5. Budget amounts, as shown in the fund financial statements, are as originally adopted and as finally amended by the Town Council. If, during the fiscal year, additional revenues become available for appropriation in excess of those estimated in the budget, the Town Council may make supplemental appropriations by resolution for the year up to the amount of such excess. There were no supplemental appropriations during the year.
6. The annual budgets serve as the legal authorization for expenditures. Expenditures cannot legally exceed the total amount budgeted for each fund. The Town Council must approve all budget amendments, which change the legally adopted total appropriation for a fund. Authority to transfer budget within a fund is delegated to the Town Council. Appropriations lapse at the fiscal year-end.

Deficit Fund Balance

The Beach Access Fund reported a deficit of \$282,404. The Town expects the deficit to be recovered from subsequent reimbursement requests from the Tourist Development Council.

Excess of Expenditures over Appropriations

For the year ended September 30, 2021, expenditures exceeded appropriations in the debt service of the General Fund by \$56 and capital outlay of the Beach Access Fund by \$144,113.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2021

NOTE 3 – CASH AND INVESTMENTS

Deposits

Custodial credit risk for deposits is the risk that, in the event of the failure of a depository financial institution, a government will not be able to recover deposits or will not be able to recover collateral securities that are in the possession of an outside party. In accordance with its policy, all Town depositories are banks designated by the Florida State Treasurer as qualified public depositories. Chapter 280 of the Florida Statutes, *Florida Security for Public Deposits Act*, provides procedures for public depositories to ensure public monies in banks and saving and loans are collateralized with the Treasurer as agent for the public entities. Chapter 280 defines deposits as demand deposit accounts, time deposit accounts, and non-negotiable certificates of deposit.

Financial institutions qualifying as public depositories shall deposit with the Treasurer eligible collateral having a market value equal to or in excess of the average daily balance of public deposits times the depository collateral pledging level required pursuant to Chapter 280 as computed and reported monthly or 125% of the average monthly balance, whichever is greater. The Public Deposit Security Trust Fund has a procedure to allocate and recover losses in the event of a default or insolvency. When public deposits are made in accordance with Chapter 280, no public depositor shall be liable for any loss thereof, and therefore, the Town is not exposed to custodial credit risk.

Investments

As of September 30, 2021, the Town had the following investments:

<u>Investment Type</u>	<u>Percent of Portfolio</u>	<u>Fair Value</u>
Florida Municipal Investment Trust (FMIT)	79.85%	\$ 1,601,578
SBA Florida PRIME	20.15%	404,206
		<u>\$ 2,005,784</u>

The FMIT is an external investment pool. The Town's investment in the FMIT is not evidenced by securities that exist in physical or book form and, therefore, disclosures for concentration of credit risk and custodial credit risk are not applicable. The Town's investment at FMIT is in the Intermediate High Quality Bond Fund. This fund was rated AA+/S3 by Fitch Ratings as of September 30, 2021. The Town's investment policy addresses interest rate risk by requiring that the Town's investment portfolio be structured so that securities mature to meet cash requirements for ongoing operations and/or long-term debt payments, thereby avoiding the need to sell securities on the open market prior to maturity. The weighted average days to maturity (WAM) of the FMIT Intermediate High Quality Bond Fund at September 30, 2021 was 3.9 years.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2021

NOTE 3 – CASH AND INVESTMENTS (CONTINUED)

In accordance with GASBS No. 79, *Certain External Investment Pools and Pool Participants*, the Florida State Board of Administration's (SBA) Florida PRIME meets the necessary criteria to elect to measure all of the investments in Florida PRIME at amortized cost. Therefore, the Town's participant account balance should also be considered the fair value of its investment and exempt from the GASBS No. 72, *Fair Value Measurement and Application*. The WAM of the Florida PRIME at September 30, 2021 was 49 days and the weighted average life (WAL) was 64 days. The Florida PRIME is rated AAAM by *Standards and Poor's*. The Florida PRIME is administered by SBA under the regulatory oversight of the State of Florida, Chapter 19-7, *Florida Administrative Code*.

With regard to redemption gates, Chapter 218.409(8)(a), Florida Statutes, states that "The principal, and any part thereof, of each account constituting the trust fund is subject to payment at any time from the moneys in the trust fund. However, the Executive Director may, in good faith, on the occurrence of an event that has a material impact on liquidity or operations of the trust fund, for 48 hours limit contributions to or withdrawals from the trust fund to ensure that the Board can invest moneys entrusted to it in exercising its fiduciary responsibility. Such action must be immediately disclosed to all participants, the Trustees, the Joint Legislative Auditing Committee, the Investment Advisory Council, and the Participant Local Government Advisory Council. The Trustees shall convene an emergency meeting as soon as practicable from the time the Executive Director has instituted such measures and review the necessity of those measures. If the Trustees are unable to convene an emergency meeting before the expiration of the 48-hour moratorium on contributions and withdrawals, the moratorium may be extended by the Executive Director until the Trustees are able to meet to review the necessity for the moratorium. If the Trustees agree with such measures, the Trustees shall vote to continue the measures for up to an additional 15 days. The Trustees must convene and vote to continue any such measures before the expiration of the time limit set, but in no case may the time limit set by the Trustees exceed 15 days."

With regard to liquidity fees, Florida Statute 218.409(4) provides authority for the SBA to impose penalties for early withdrawal, subject to disclosure in the enrollment materials of the amount and purpose of such fees. At present, no such disclosure has been made.

As of September 30, 2021, there were no redemption fees or maximum transaction amounts, or any other requirements that serve to limit a participant's daily access to 100% of their account value. Florida PRIME did not participate in a securities lending program in the period October 1, 2020 through September 30, 2021.

Fair Value Measurements

The Town categorizes its fair value measurements within the fair value hierarchy established by GAAP. The hierarchy is based on the valuation inputs used to measure the fair value of the asset. Level 1 inputs are quoted prices in active markets for identical assets; Level 2 inputs are significant other observable inputs; and Level 3 inputs are significant unobservable inputs.

The Town has the following recurring fair value measurements as of September 30, 2021: FMIT (Intermediate High Quality Bond Fund) of \$1.6 million based on market-corroborated date (Level 2).

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2021

NOTE 4 – ACCOUNTS RECEIVABLE

Receivables at September 30, 2021, including the applicable allowances for uncollectible accounts, are as follows:

	Accounts Receivable	Due from Other Governments	Less Allowance for Doubtful Accounts	Total
Governmental activities				
General Fund	\$ -	\$ 182,600	\$ -	\$ 182,600
Gas Tax Fund	-	30,767	-	30,767
Beach Access	-	307,299	-	307,299
Governmental activities subtotal	-	520,666	-	520,666
Business-type activities				
Water Fund	1,168,771	1,802,595	(54,752)	2,916,614
Stormwater	183,501	2,690,536	-	2,874,037
Business-type activities subtotal	1,352,272	4,493,131	(54,752)	5,790,651
Total	<u>\$ 1,352,272</u>	<u>\$ 5,013,797</u>	<u>\$ (54,752)</u>	<u>\$ 6,311,317</u>

NOTE 5 – INTERFUND RECEIVABLES, PAYABLES, AND TRANSFERS

At September 30, 2021, the Town reported the following due from/to other funds:

	Due from Other Funds	Due to Other Funds
General	\$ 365,055	\$ -
Beach Access	-	365,055
Road Impact	90,487	-
Water	-	14,235
Stormwater	14,235	90,487
Total	<u>\$ 469,777</u>	<u>\$ 469,777</u>

These balances resulted from the time lag between the dates that: (1) interfund goods and services are provided or reimbursable expenditures occur, and (2) payments between funds are made.

At September 30, 2021, the Town reported the following interfund transfers:

	Transfers In	Transfers Out
General	\$ -	\$ 1,363,245
Capital Projects	1,363,245	-
Total	<u>\$ 1,363,245</u>	<u>\$ 1,363,245</u>

Transfers of resources from a fund to the fund through which resources are to be expended, are recorded as transfers and are reported as other financing sources (uses) in the governmental funds and as transfers in (out) in the proprietary funds.

These transfers from the General Fund were used to fund capital projects for the year ended September 30, 2021.

TOWN OF FORT MYERS BEACH, FLORIDA

**NOTES TO THE FINANCIAL STATEMENTS
SEPTEMBER 30, 2021**

NOTE 6 – CAPITAL ASSETS

Capital asset activity for the year ended September 30, 2021 was as follows:

	Beginning Balance	Additions	Deletions	Transfers	Ending Balance
Governmental Activities					
Capital assets, not being depreciated					
Land	\$ 10,536,780	\$ -	\$ -	\$ -	\$ 10,536,780
Construction in progress	-	752,247	-	-	752,247
Total capital assets, not being depreciated	10,536,780	752,247	-	-	11,289,027
Capital assets, being depreciated					
Buildings and improvements	8,673,057	66,984	-	-	8,740,041
Improvements other than buildings	2,689,713	68,664	-	-	2,758,377
Office furniture and equipment	1,048,686	56,361	-	-	1,105,047
Vehicles and other equipment	2,782,537	361,048	-	-	3,143,585
Infrastructure	5,878,476	53,510	-	-	5,931,986
Total capital assets, being depreciated	21,072,469	606,567	-	-	21,679,036
Less accumulated depreciation for					
Buildings and improvements	(2,163,424)	(289,809)	-	-	(2,453,233)
Improvements other than buildings	(835,345)	(205,891)	-	-	(1,041,236)
Office furniture and equipment	(903,308)	(106,882)	-	-	(1,010,190)
Vehicles and other equipment	(1,869,391)	(301,050)	-	-	(2,170,441)
Infrastructure	(1,821,035)	(198,549)	-	-	(2,019,584)
Total accumulated depreciation	(7,592,503)	(1,102,181)	-	-	(8,694,684)
Total capital assets, being depreciated, net	13,479,966	(495,614)	-	-	12,984,352
Governmental activities capital assets, net	\$ 24,016,746	\$ 256,633	\$ -	\$ -	\$ 24,273,379

TOWN OF FORT MYERS BEACH, FLORIDA

**NOTES TO THE FINANCIAL STATEMENTS
SEPTEMBER 30, 2021**

NOTE 6 – CAPITAL ASSETS (CONTINUED)

	Beginning Balance	Additions	Deletions	Transfers	Ending Balance
Business-Type Activities					
Capital assets not being depreciated					
Land	\$ 305,000	\$ -	\$ -	\$ -	\$ 305,000
Construction in progress	37,509,863	6,707,656	-	(29,481,491)	14,736,028
Total capital assets, not being depreciated	37,814,863	6,707,656	-	(29,481,491)	15,041,028
Capital assets being depreciated					
Computer equipment	62,975	-	-	-	62,975
Buildings and leasehold improvement:	1,137,739	-	-	-	1,137,739
Vehicles and other equipment	411,749	-	-	-	411,749
Infrastructure	17,145,604	-	-	29,481,491	46,627,095
Total capital assets, being depreciated	18,758,067	-	-	29,481,491	48,239,558
Less accumulated depreciation for					
Computer equipment	(62,975)	-	-	-	(62,975)
Buildings and leasehold improvement:	(571,792)	(44,966)	-	-	(616,758)
Vehicles and other equipment	(255,499)	(43,616)	-	-	(299,115)
Infrastructure	(4,418,840)	(467,519)	-	-	(4,886,359)
Total accumulated depreciation	(5,309,106)	(556,101)	-	-	(5,865,207)
Total capital assets, being depreciated, net	13,448,961	(556,101)	-	29,481,491	42,374,351
Business-type activities capital assets, net	<u>\$ 51,263,824</u>	<u>\$ 6,151,555</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$ 57,415,379</u>

Depreciation expense was charged to functions/programs as follows:

Governmental Activities

General government	\$ 516,287
Transportation	6,039
Physical environment	196,835
Culture and recreation	383,020
Total depreciation expense, governmental activities	<u>\$ 1,102,181</u>

Business-Type Activities

Water	\$ 440,203
Stormwater	115,898
Total depreciation expense, business-type activities	<u>\$ 556,101</u>

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2021

NOTE 7 – LONG-TERM OBLIGATIONS

Long-Term Obligations

Changes in long-term obligations for the year ended September 30, 2021 are as follows:

	Beginning Balance	Additions	Reductions	Ending Balance	Due Within One Year
Governmental Activities					
Compensated absences	\$ 313,396	\$ 156,040	\$ (140,797)	\$ 328,639	\$ 142,909
Capital improvements revenue note	-	708,090	-	708,090	-
Capital lease payable	39,962	-	(9,346)	30,616	9,911
Total OPEB liability	118,354	40,029	(11,374)	147,009	-
	<u>\$ 471,712</u>	<u>\$ 904,159</u>	<u>\$ (161,517)</u>	<u>\$ 1,214,354</u>	<u>\$ 152,820</u>
Business-Type Activities					
Utility revenue refunding bonds	\$ 720,000	\$ -	\$ (180,000)	\$ 540,000	\$ 180,000
Notes payable from direct borrowings:					
State revolving fund loans	31,668,870	7,765,856	(1,179,492)	38,255,234	1,262,925
Compensated absences	33,812	21,210	(18,395)	36,627	18,671
Total OPEB liability	24,025	7,276	(4,592)	26,709	-
	<u>\$ 32,446,707</u>	<u>\$ 7,794,342</u>	<u>\$ (1,382,479)</u>	<u>\$ 38,858,570</u>	<u>\$ 1,461,596</u>

For the governmental activities, compensated absences and other post-employment benefits are generally liquidated by the General Fund.

Governmental Activities

\$10,000,000 Capital Improvement Revenue Note, Series 2020 – Issued for the purpose of providing funding for various capital improvement projects of the Town and to pay the costs of issuance related thereto. The note bears interest at 3.15% through November 1, 2030, and are payable from and secured by a lien upon and pledge of the net revenues of the public service tax revenues. Monthly interest payments are due commencing on December 1, 2020 until the note is paid in full and principal payments paid monthly commencing on December 1, 2023. Final maturities will be determined after all funds have been drawn. The amount drawn down by the Town and outstanding as of September 30, 2021 was \$708,090.

Business-Type Activities

\$1,980,000 Utility Revenue Refunding Bonds, Series 2013 – Issued for the principal purpose of paying off the Town's Public Utility Revenue Note, Series 2010 which was issued to refinance monies expended to acquire the water system of the Town and pay certain capital costs for additions and/or improvements to the water system. The bonds bear interest at 1.81%, and are payable from and secured by a lien upon and pledge of the net revenues of the utility. Additionally, payment of the bonds is secured by a covenant to budget and appropriate non-ad valorem revenues for payment of principal and interest in the event the utility's net revenues are insufficient to make those payments. Annual principal payments of \$180,000 plus interest are due on October 1 through final maturity on October 1, 2023. The outstanding balance as of September 30, 2021 was \$540,000.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2021

NOTE 7 – LONG-TERM OBLIGATIONS (CONTINUED)

Notes Payable from Direct Borrowings:

\$17,148,027 State Revolving Fund Loan – issued for the purpose of funding the water main improvement projects. The loan bears interest ranging from 0.92% to 1.24%, and is collateralized by a subordinated pledge of the net revenues of the utility. Principal and interest is payable in 40 semi-annual payments of \$444,904 through November 2038. The outstanding balance as of September 30, 2021, including amounts receivable for eligible expenses, was \$14,023,891.

\$20,329,458 State Revolving Fund Loan – issued for the purpose of funding the water main improvement projects. The loan bears interest of 0.98%, and is collateralized by a subordinated pledge of the net revenues of the utility. Principal and interest is payable in 40 semi-annual payments of \$574,614 commencing upon project completion. The outstanding balance as of September 30, 2021, including amounts receivable for eligible expenses, was \$12,169,184.

\$13,523,051 State Revolving Fund Loan – issued for the purpose of funding the stormwater management system project. The loan bears interest ranging from 0.32% to 0.49%, and is collateralized by a subordinated pledge of the net revenues of the utility. Principal and interest will be payable in 40 semi-annual payments commencing upon the project completion. The semi-annual payment will be determined upon the last draw at the completion of the project. The outstanding balance as of September 30, 2021, including amounts receivable for eligible expenses, was \$9,371,623.

\$12,500,000 State Revolving Fund Loan – issued for the purpose of funding the stormwater management system project. The loan does not bear interest and is collateralized by a subordinated pledge of the net revenues of the utility. Principal will be payable in 40 semi-annual payments commencing upon the project completion. The semi-annual payment will be determined upon the last draw at the completion of the project. The outstanding balance as of September 30, 2021, including amounts receivable for eligible expenses, was \$2,690,536.

The annual debt service requirements to maturity for the business-type activities (excluding the SRF loans not yet in repayment) as of September 30, 2021 are as follows:

	Principal	Interest	Total
2022	\$ 1,442,925	\$ 134,174	\$ 1,577,099
2023	1,371,919	201,926	1,573,845
2024	1,382,830	187,753	1,570,583
2025	1,213,862	175,093	1,388,955
2026	1,225,015	163,939	1,388,954
2027-2031	6,296,729	648,045	6,944,774
2032-2036	6,594,635	350,138	6,944,773
2037-2041	4,407,599	63,083	4,470,682
	<u>\$23,935,514</u>	<u>\$ 1,924,151</u>	<u>\$25,859,665</u>

Loan Agreements

The loan agreements contain various covenants, including such items as debt service coverage, reporting requirements, and maintenance of facilities. Management believes that it has complied, in all material respects, with the covenants of the loan agreement for the year ended September 30, 2021.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2021

NOTE 8 – CAPITAL LEASE

The Town has entered into a lease agreement for the financing of various mower equipment. The lease agreement qualifies as a capital lease for accounting purposes and, therefore, have been recorded at the present value of their future minimum lease payments as of the inception date.

The asset acquired through capital lease is as follows:

	Governmental Activities
Mowing equipment	\$ 49,486
Less: accumulated depreciation	(19,794)
Total	<u>\$ 29,692</u>

The future minimum lease obligations and the net present value of these lease payments as of September 30, 2021 for governmental activities are as follows:

<u>Fiscal Year</u>	
2022	\$ 11,449
2023	11,449
2024	<u>10,494</u>
Total minimum lease payments	33,392
Less: amount representing interest	<u>(2,776)</u>
Present value of minimum lease payments	<u>\$ 30,616</u>

NOTE 9 – RETIREMENT PLAN

The Town sponsors a defined contribution pension plan entitled the Town of Fort Myers Beach Pension Plan (Plan 002) as well as a governmental 457(b) plan entitled the Town of Fort Myers Beach Deferred Compensation Plan (Plan 001). Plan 001 covers eligible regular full-time and part-time employees, while Plan 002 covers only eligible regular full-time employees.

The Plans are being administered by the Town, and administrative services are being provided by a third party under an Administrative Services Agreement. Effective April 1, 2020, the Town switched service providers (from Valic to Massachusetts Mutual Life Insurance Company), while simultaneously adopting restated plan documents and reducing the employer contribution for Plan number 002 from 10% to 4% of an employee's Code §415 Compensation. However, under a "grandfather" provision in Plan number 002, employees who were in full-time status prior to April 1, 2020, and who remain in full-time status onwards without a break in service, will remain eligible for a 10% employer contribution. Plan number 001 is funded only by voluntary employee contributions. Employee and employer contributions vest 100% to the employee upon contribution to the Plans.

For the year ended September 30, 2021, employer contributions to Plan number 002 was \$196,150.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2021

NOTE 10 – SELF-INSURANCE

On October 1, 2018, the Town became a member of the Florida Local Government Health Insurance Consortium ("the Consortium"). The Consortium is a public entity risk pool organized under the provision of the Florida Interlocal Cooperation Act of 1969 with the objective of obtaining preferential pricing on health care services and diversification of self-insurance risk. The Consortium's membership is comprised of county and municipal governments located in Florida.

The Consortium is fully funded by its members. Each member funds their claim liability separately. Stop loss insurance levels are set up for each member to cap their claim liability. Each member's rates, as determined by actuarial calculation, are generated based on their own benefits, census, and experience. Additionally, members pledge a percentage of their claim fund surplus towards a cross share arrangement which creates a pool of money used to pay claims on behalf of members whose total claims for the year exceed their maximum claim fund for the year. This arrangement keeps the stop loss costs lower for every member and creates equity within the group by recognizing variations in the size of member communities and their varying risk retention levels. In the event of a shortfall, members must fund the difference. For this purpose, the Town has created a budgetary reserve of \$100,000 for the year ended September 30, 2021.

NOTE 11 – OTHER POST-EMPLOYMENT BENEFITS

Plan Description and Funding Policy

The post-employment healthcare benefits plan is a single-employer defined benefit plan administered by the Town. Pursuant to the provisions of Section 112.0801, Florida Statutes, former employees and eligible dependents who retire from the Town may continue to participate in the Town's group health insurance plan. The Town subsidizes the premium rates paid by retirees by allowing them to participate in the plan at a reduced or blended group (implicitly subsidized) premium rate. These rates provide an implicit subsidy for retirees because, on an actuarial basis, their current and future claims are expected to result in higher costs to the plan on average than those of active employees. The post-employment healthcare benefits plan does not issue a stand-alone financial report.

As of September 30, 2019, there were 52 active plan members, there were no inactive retirees and eligible dependents receiving post-employment healthcare benefits, and there were no inactive employees entitled to but not yet receiving benefits.

Contribution requirements for the post-employment healthcare benefits of the Town are established and may be amended by Town Council. The Town has not advance funded or established a funding methodology for the annual other post-employment benefit (OPEB) costs or the net OPEB obligation. Currently, retirees pay 100% of the cost of the healthcare insurance premiums. The Town's actuarially required contributions are based on a projected pay-as-you-go basis. Therefore, no assets are accumulated in a trust that meets the criteria in paragraph 4 of GASB Statement No. 75.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2021

NOTE 11 – OTHER POST-EMPLOYMENT BENEFITS (CONTINUED)

Total OPEB Liability of the Town

The Town's total OPEB liability was measured as of September 30, 2020, and was determined by an actuarial valuation as of October 1, 2019, with the actuary using standard techniques to roll forward the liability to the measurement date.

Actuarial Assumptions. The total OPEB liability in the October 1, 2019, actuarial valuation was determined using the following actuarial assumptions, applied to all periods included in the measurement:

Inflation Rate:	2.50%
Salary Increase:	3.00%
Discount Rate:	2.14%
Initial Trend Rate:	6.50%
Ultimate Trend Rate:	5.00%
Years to Ultimate:	4
Participation Rate:	80%

Mortality Basis. Sex-distinct rates set forth in the PUB-2010 Mortality Table (without income adjustments) for general employees, with full generational improvements in mortality using Scale MP-2020.

Discount Rate. Given the Town's decision not to fund the program, all future benefit payments were discounted using a high quality municipal bond rate of 2.14%. The high quality municipal bond rate was based on the week closest but not later than the measurement date of the Bond Buyer 20-Bond Index as published by the Federal Reserve. The 20-Bond Index consists of 20 general obligation bonds that mature in 20 years. The average rating of the 20 bonds is roughly equivalent to Moody's Investors Service's Aa2 rating and Standard & Poor's Corp.'s AA.

Changes in the Total OPEB Liability of the Town. The changes in the total OPEB liability of the Town for the year ended September 30, 2021 were as follows:

Total OPEB Liability	
Service Cost	\$ 27,556
Interest	3,609
Change in Benefit Terms	-
Differences Between Expected and Actual Experience	16,140
Employer Contributions	-
Changes of Assumptions	(13,368)
Benefit Payments	(2,598)
Net Change in Total OPEB Liability	<u>31,339</u>
Total OPEB Liability - Beginning	<u>142,379</u>
Total OPEB Liability - Ending	<u>\$ 173,718</u>

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2021

NOTE 11 – OTHER POST-EMPLOYMENT BENEFITS (CONTINUED)

Changes in assumptions reflect a change in the discount rate from 3.58% for the reporting period ended September 30, 2020, to 2.14% for the reporting period ended September 30, 2021. The mortality improvement scale was updated from Scale MP-2018 to Scale MP-2020.

The required schedule of changes in the Town's total OPEB liability and related ratios immediately following the notes to the financial statements presents multi-year trend information about the total OPEB liability.

Sensitivity of the Total OPEB Liability to Changes in the Discount Rate. The following presents the total OPEB liability of the Town, as well as what the Town's total OPEB liability would be if it were calculated using a discount rate that is 1-percentage-point lower (1.14%) or 1-percentage-point higher (3.14%) than the current discount rate:

	1.14% Discount Rate	2.14% Discount Rate	3.14% Discount Rate
Total OPEB Liability	\$ 197,874	\$ 173,718	\$ 153,210

Sensitivity of the Total OPEB Liability to Changes in the Healthcare Cost Trend Rates. The following presents the total OPEB liability of the Town, as well as what the Town's total OPEB liability would be if it were calculated using healthcare cost trend rates that are 1-percentage-point lower or 1-percentage-point higher than the current healthcare cost trend rates:

	Trend Rate Minus 1%	6.50% Graded Down to 5.00%	Trend Rate Plus 1%
Total OPEB Liability	\$ 143,955	\$ 173,718	\$ 212,102

Actuarial valuations involve estimates of the value of reported amounts and assumptions about the probability of events far into the future, and actuarially determined amounts are subject to continual revisions as results are compared to past expectations and new estimates are made about the future. Actuarial calculations reflect a long-term perspective. Calculations are based on the substantive plan in effect as of September 30, 2021, and the current sharing pattern of costs between employer and inactive employees.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2021

NOTE 11 – OTHER POST-EMPLOYMENT BENEFITS (CONTINUED)

OPEB Expense and Deferred Outflows/Inflows of Resources Related to OPEB. For the year ended September 30, 2021, the Town recognized OPEB expense of \$23,845. At September 30, 2021, the Town reported deferred outflows of resources and deferred inflows of resources related to OPEB from the following sources:

Description	Deferred Outflows of Resources	Deferred Inflows of Resources
Differences between expected and actual experience	\$ -	\$ 65,447
Change of assumptions	46,224	40,252
	<u>\$ 46,224</u>	<u>\$ 105,699</u>

Amounts reported as deferred outflows and inflows of resources related to OPEB will be recognized in OPEB expense as follows:

Fiscal Year Ending	
2022	\$ (4,722)
2023	(4,722)
2024	(4,722)
2025	(4,722)
2026	(4,722)
Thereafter	(35,865)
	<u>\$ (59,475)</u>

NOTE 12 – RISK MANAGEMENT

The Town is exposed to various risks of loss related to torts; theft of, damage to and destruction of assets; errors and omissions; injuries to employees; and natural disasters.

The Town participates in the public entity risk pool administered by the Florida League of Cities, Inc. for general/professional liability, property and workers compensation. The Town pays an annual premium to Florida League of Cities, Inc. for this insurance program. Participation in this risk pool is non-assessable. There were no significant reductions in insurance coverage in the past three fiscal years. The amount of settlements did not exceed insurance coverage in each of the past three fiscal years.

The Florida League of Cities, Inc. published financial report for the year ended September 30, 2021, can be obtained from the Florida League of Cities, Inc., Public Risk Service, 135 East Colonial Drive, Orlando, Florida 32853-0065.

The Town retains the risk of loss up to a deductible amount (ranging from \$0 to \$250) with the risk of loss in excess of this amount transferred to the pool with limits of liability of \$1,000,000 to \$3,000,000 per occurrence.

The Town carries commercial coverage for all other risks of loss such as for mooring field operations and floor insurance for Town owned buildings. There have been no significant reductions in insurance coverage in the prior year, and claims have not exceeded coverage in any of the past three fiscal years.

TOWN OF FORT MYERS BEACH, FLORIDA

NOTES TO THE FINANCIAL STATEMENTS SEPTEMBER 30, 2021

NOTE 13 – COMMITMENTS AND CONTINGENCIES

The Town has received federal and state grants for specific purposes that are subject to review and audit by the grantor agencies. Such audits could lead to the disallowance of certain expenditures previously reimbursed by those agencies. Based upon prior experience, management of the Town believes such disallowances, if any, will not be significant.

In fiscal year 2003, the State of Florida and Lee County provided funding toward the purchase of property known as the "Jim and Ellie Newton Property." The Town is required to comply with the terms of the grant agreements as to the use and maintenance of the acquired property. Title to this property would revert to the State of Florida if the Town does not comply with the terms of the grant agreement. In addition, the Town would be required to repay Lee County the original funding amount of \$969,230 plus interest at 12% per annum.

The Town is a defendant in various lawsuits. The Town is not in a position at this time to predict the outcome of the lawsuits or the exact amount of costs and/or potential recovery. The Town plans to contest these matters unless settled. The Town believes the outcome of these lawsuits will not have a material effect on the financial statements.

On December 1, 2016, the Town entered into a contract for three years, with two one-year renewal options, with Estero Bay Hotel Company, dba Matanzas Inn, to provide services for the operation and management of the Town's Municipal Anchorage. Pursuant to the agreement, the Town is to make monthly payments of an amount equal to 55% of the previous month's net revenue. Amounts paid pursuant to this agreement for fiscal year ended September 30, 2021 were approximately \$90,500.

As of year-end, the Town has several ongoing construction contracts and commitments relating to various capital projects within the Town. The remaining construction commitments as of September 30, 2021 total approximately \$11.4 million.

NOTE 14 – ECONOMIC DEPENDENCY

On August 3, 2001, a Bulk Water Agreement was entered into with Lee County, Florida, to provide the Town with potable water. Lee County is currently the only source of the Town's potable water that it supplies to the residents of the Town of Fort Myers Beach. The Bulk Water Agreement is for 25 years. The inter-local agreement provides that the County may, from time to time, increase the rate charged for the cost of bulk water provided to the Town. Effective October 1, 2014, Lee County raised its rate from \$3.20 to \$3.84 per 1,000 gallons. The Town conducted a rate study which recommended adjustments to the Town's rates to cover anticipated costs of the reserve and debt payment for the water relocation project. As a result, the Town revised its base rate effective August 15, 2016, to pass this increase on to its customers.

NOTE 15 – SUBSEQUENT EVENTS

The Town has evaluated all subsequent events through May 11, 2022, the date the financial statements were available to be issued.

REQUIRED SUPPLEMENTARY INFORMATION

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TOWN OF FORT MYERS BEACH, FLORIDA

**SCHEDULE OF CHANGES IN THE TOTAL OPEB LIABILITY
SEPTEMBER 30, 2021**

	2021	2020	2019	2018	2017
Total OPEB Liability					
Service cost	\$ 27,556	\$ 24,301	\$ 31,025	\$ 23,443	\$ 21,172
Interest	3,609	6,975	5,735	5,008	2,777
Differences between expected and actual experience	16,140	(45,248)	(32,437)	(8,725)	-
Employer contributions	-	-	-	(1,220)	-
Changes of assumptions	(13,368)	(13,164)	41,636	(17,690)	-
Benefit payments	(2,598)	(1,994)	(1,919)	-	(187)
Net change in total OPEB liability	<u>31,339</u>	<u>(29,130)</u>	<u>44,040</u>	<u>816</u>	<u>23,762</u>
Total OPEB liability - beginning	142,379	171,509	127,469	126,653	102,891
Total OPEB liability - ending	<u>\$ 173,718</u>	<u>\$ 142,379</u>	<u>\$ 171,509</u>	<u>\$ 127,469</u>	<u>\$ 126,653</u>
Covered-employee payroll	<u>\$ 2,408,360</u>	<u>\$ 2,311,759</u>	<u>\$ 2,118,269</u>	<u>\$ 2,002,493</u>	<u>\$ 2,152,467</u>
OPEB liability as a percentage of covered-employee payroll	<u>7.21%</u>	<u>6.16%</u>	<u>8.10%</u>	<u>6.37%</u>	<u>5.88%</u>

Notes to the Schedule

The schedule will present 10 years of information once it is accumulated.

No assets are accumulated in a trust that meets the criteria of GASBs No. 75, paragraph 4, to pay related benefits.

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OTHER SUPPLEMENTARY INFORMATION

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

	Special Revenue Funds		Nonmajor Governmental Funds
	Park Impact	Road Impact	
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>

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>

OTHER REPORTS

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**INDEPENDENT AUDITOR'S REPORT ON INTERNAL CONTROL OVER FINANCIAL
REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF
FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH
GOVERNMENT AUDITING STANDARDS**

Honorable Mayor, Town Council and Town Manager
Town of Fort Myers Beach, Florida

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the Town of Fort Myers Beach, Florida (the "Town"), as of and for the year ended September 30, 2021, and the related notes to the financial statements, which collectively comprise the Town's basic financial statements, and have issued our report thereon dated May 11, 2022.

Internal Control Over Financial Reporting

In planning and performing our audit of the financial statements, we considered the Town's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Town's internal control. Accordingly, we do not express an opinion on the effectiveness of the Town's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that have not been identified. We did identify certain deficiencies in internal control, described in the accompany schedule of findings and questioned costs as items 2021-001, 2021-002 and 2021-003 that we consider to be material weaknesses.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Town's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the financial statements. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Town's Response to Findings

The Town's response to the findings identified in our audit are described in the accompanying schedule of findings and questioned costs. The Town's responses were not subjected to the auditing procedures applied in the audit of the financial statements and, accordingly, we express no opinion on them.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

A handwritten signature in black ink that reads "Mauldin & Jenkins, LLC". The signature is written in a cursive, flowing style.

Bradenton, Florida
May 11, 2022

**INDEPENDENT AUDITOR'S REPORT ON COMPLIANCE FOR EACH MAJOR
FEDERAL PROGRAM AND STATE PROJECT AND ON INTERNAL CONTROL OVER
COMPLIANCE REQUIRED BY THE UNIFORM GUIDANCE AND CHAPTER 10.550,
RULES OF THE AUDITOR GENERAL**

Honorable Mayor, Town Council and Town Manager
Town of Fort Myers Beach, Florida

Report on Compliance for Each Major Federal Program and State Project

We have audited the Town of Fort Myers Beach, Florida's (the "Town") compliance with the types of compliance requirements described in the *OMB Compliance Supplement* and the requirements described in the *Department of Financial Services' State Projects Compliance Supplement*, that could have a direct and material effect on each of the Town's major federal programs and state projects for the year ended September 30, 2021. The Town's major federal programs and state projects are identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs.

Management's Responsibility

Management is responsible for compliance with federal and state statutes, regulations, and the terms and conditions of its federal and state awards applicable to its federal programs and state projects.

Auditor's Responsibility

Our responsibility is to express an opinion on compliance for each of the Town's major federal programs and state projects based on our audit of the types of compliance requirements referred to above. We conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; Title 2 U.S. Code of Federal Regulations Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) and Chapter 10.550, Rules of the Auditor General. Those standards, the Uniform Guidance, and Chapter 10.550, Rules of the Auditor General require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on a major federal program or state project occurred. An audit includes examining, on a test basis, evidence about the Town's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances.

We believe that our audit provides a reasonable basis for our opinion on compliance for each major federal program and state project. However, our audit does not provide a legal determination of the Town's compliance.

Opinion on Each Major Federal Program and State Project

In our opinion, the Town complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on each of its major federal programs and state projects for the year ended September 30, 2021.

Report on Internal Control Over Compliance

Management of the Town is responsible for establishing and maintaining effective internal control over compliance with the types of compliance requirements referred to above. In planning and performing our audit of compliance, we considered the Town's internal control over compliance with the types of requirements that could have a direct and material effect on each major federal program and state project to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing our opinion on compliance for each major federal program and state project and to test and report on internal control over compliance in accordance with the Uniform Guidance and Chapter 10.550, Rules of the Auditor General, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the Town's internal control over compliance.

A *deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program or state project on a timely basis. A *material weakness in internal control over compliance* is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program or state project will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program or state project that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of the Uniform Guidance and Chapter 10.550, Rules of the Auditor General. Accordingly, this report is not suitable for any other purpose.

Mauldin & Jenkins, LLC

Bradenton, Florida
May 11, 2022

TOWN OF FORT MYERS BEACH, FLORIDA

**SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND STATE FINANCIAL ASSISTANCE
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2021**

Federal/State Agency, Pass-through Entity, Federal/State Program	AL / CSFA No.	Grantors No.	Expenditures	Passed Through to Subrecipients
Federal Awards:				
U.S. Department of Environmental Protection				
Passed through Florida Department of Environmental Protection				
Capitalization Grants for Drinking Water SRF	66.468	DW360800 - 140129	\$ 871,289	\$ -
Capitalization Grants for Drinking Water SRF	66.468	DW360801 - 140129	3,216,456	-
Total U.S. Department of Environmental Protection			<u>4,087,745</u>	<u>-</u>
U.S. Department of the Interior				
Passed through Florida Department of Environmental Protection				
Clean Vessel Act	15.616	MV381	12,326	-
Total U.S. Department of the Interior			<u>12,326</u>	<u>-</u>
Total Expenditures of Federal Awards			<u>\$ 4,100,071</u>	<u>\$ -</u>
State Awards:				
State of Florida Department of Environmental Protection				
Wastewater Treatment Facility Construction	37.077	SW360830-140131	\$ 728,672	\$ -
Wastewater Treatment Facility Construction	37.077	SW360860-140131	2,690,536	-
Total State of Florida Department of Environmental Protection			<u>3,419,208</u>	<u>-</u>
Total Expenditures of State Financial Assistance			<u>\$ 3,419,208</u>	<u>\$ -</u>

TOWN OF FORT MYERS BEACH, FLORIDA
NOTES TO SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND
STATE FINANCIAL ASSISTANCE
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2021

NOTE 1. BASIS OF PRESENTATION

The accompanying schedule of expenditures of federal awards and state financial assistance includes the federal and state grant activity of the Town of Fort Myers Beach, Florida (the "Town"), and is presented on the modified accrual basis of accounting.

The information in this schedule is presented in accordance with the requirements of Title 2 *U.S. Code of Federal Regulations (CFR) Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. Therefore, some amounts presented in the schedule may differ from amounts presented in, or used in the preparation of, the basic financial statements.

NOTE 2. DE MINIMIS INDIRECT COST RATE

The Town chose not to use the 10% de minimis cost rate for the year ended September 30, 2021.

NOTE 3. NON-CASH AWARDS

The Town did not receive non-cash federal awards during the year ended September 30, 2021.

NOTE 4. CONTINGENCIES

Grant monies received and disbursed by the Town are for specific purposes and are subject to review by the grantor agencies. Such audits may result in disallowed expenditures under the terms of the grants. Based upon prior experience, the Town does not believe that such disallowances, if any, would be material.

NOTE 5. LOANS OUTSTANDING

The Town had \$38,255,234 in State Revolving Fund loans outstanding at September 30, 2021.

**TOWN OF FORT MYERS BEACH, FLORIDA
SCHEDULE OF FINDINGS AND QUESTIONED COSTS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2021**

**SECTION I
SUMMARY OF AUDIT RESULTS**

Financial Statements

Type of report the auditor issued on whether the financial statements audited were prepared in accordance with GAAP:

Unmodified

Internal control over financial reporting:
Material weaknesses identified?

☒ yes ☐ no

Significant deficiencies identified not considered to be material weaknesses?

☐ yes ☒ none reported

Noncompliance material to financial statements noted?

☐ yes ☒ none reported

Federal Programs

Internal control over major federal programs:
Material weaknesses identified?

☐ yes ☒ no

Significant deficiencies identified not considered to be material weaknesses?

☐ yes ☒ none reported

Type of auditor's report issued on compliance for major federal programs:

Unmodified

Any audit findings disclosed that are required to be reported in accordance with the Uniform Guidance?

☐ yes ☒ no

Identification of major federal program:

CFDA Number

66.468

Name of Federal Program or Cluster

U.S. Environmental Protection Agency –
Capitalization Grants for Drinking Water-SRF

Identification of major state financial assistance project:

CSFA Number

37.077

Name of Federal Program or Cluster

Florida Department of Environmental Protection –
Wastewater Treatment Facility Construction

Dollar threshold used to distinguish between Type A and Type B federal programs:

\$750,000

Dollar threshold used to distinguish between Type A and Type B state projects:

\$750,000

Auditee qualified as low-risk auditee?

☐ yes ☒ no

TOWN OF FORT MYERS BEACH, FLORIDA
SCHEDULE OF FINDINGS AND QUESTIONED COSTS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2021

SECTION II
FINANCIAL STATEMENT FINDINGS AND RESPONSES

2021-001 Proprietary Funds Capital Assets and Project Loans Payable (Material Weakness)

Criteria: Enterprise funds are required to be maintained on the full accrual basis of accounting. As such, capital outlays should be capitalized and depreciated and loans obtained should be recorded as long-term liabilities.

Condition: As of September 30, 2021, the Town did not properly record its capital outlays and loans payable in relation to its ongoing water and stormwater projects.

Context: During our review of the Town's water and stormwater trial balances, we noted these activities had been recorded through the income statement instead of properly capitalizing the capital outlays and recorded loans payable.

Effect: Adjustments were needed in both enterprise funds to properly report capital assets and loans payable as of September 30, 2021. These adjustments included increasing accrued liabilities and loans payable by \$437,680; increasing revenues by \$396,364; increasing capital asset accounts including construction in progress by \$6,380,972; increasing due from other governments by \$1,384,435; and reducing expenditures by \$6,931,363.

Cause: Town personnel were recording these transactions throughout the year against budgeted revenues and expenses versus in accordance with GAAP.

Recommendation: We recommend the Town adjust these balances at least as of year-end on a GAAP basis versus a budgetary basis to ensure the proper reporting of all capital asset additions as well as debt draw downs.

Views of Responsible Officials and Planned Corrective Actions:

The Town acknowledges that the books provided to the auditors included accounting for the capital outlay and loans payable within the propriety fund on the budgetary basis instead of in accordance with generally accepted accounting principles. After its discovery of this finding, the Town began the process of recording the capital outlay and loans payable in accordance with generally accepted accounting principles to correct this going forward.

2021-002 Accounts Payable (Material Weakness)

Criteria: Internal controls should be in place to provide reasonable assurance that all transactions are recorded in accordance with accounting principles generally accepted in the United States of America. As part of the audit process, we identified the need for significant adjustments to accounts payable for the Town to properly obtain an appropriate cutoff as of September 30, 2021.

Condition: We identified issues with the Town's accounts payable balances as of year-end.

Effect: Adjustments were needed within various funds to correct the Town's accounts payable balances and to properly record all payables where goods had been received or services had been performed by September 30, 2021. Additionally an adjustment was needed to correct for proper revenue recognition. These adjustments decreased expenses by \$18,552; decreased revenues by \$1,766,648; increased unearned revenues by \$1,776,528; and decreased accounts payable by \$28,432 as of September 30, 2021.

TOWN OF FORT MYERS BEACH, FLORIDA
SCHEDULE OF FINDINGS AND QUESTIONED COSTS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2021

SECTION II
FINANCIAL STATEMENT FINDINGS AND RESPONSES (CONTINUED)

Cause: Differences were caused mostly by system issues and turnover within the accounting department.

Recommendation: We recommend that responsible Town personnel review and properly record any adjustments to the proper period and review all disbursements at year end and subsequent to ensure a proper cutoff of accounts payable as of year-end. These adjustments and accounts payable postings should then be reviewed by a responsible official to ensure accuracy and appropriateness.

Views of Responsible Officials and Planned Corrective Actions:

The Town acknowledges that it did not exercise proper accounting oversight to ensure that its accounts payable process was accurately recording items in the proper period that goods were received, or services were performed. After its discovery of this finding, the Town has added additional resources to its Accounting Department to increase the oversight of its accounts payable process to ensure more timely and accurate financial reporting. The Town has instituted a month-end closing process with will strengthen the year-end process to ensure proper cutoff of accounts payable.

2021-003 Accounts Receivable (Material Weakness)

Criteria: Internal controls should be in place to provide reasonable assurance that all transactions are recorded in accordance with accounting principles generally accepted in the United States of America. As part of the audit process, we identified the need for adjustments to accounts receivable for the Town to properly obtain an appropriate cutoff as of September 30, 2021.

Condition: We identified issues with the Town's accounts receivable balances as of year-end.

Effect: Adjustments were needed within various funds to correct the Town's accounts receivable balances and to properly record all revenues in accordance with GAAP as of September 30, 2021. These adjustments increased expenses by \$125,112; decreased revenues by \$698,798; increased deferred inflows by \$196,020; and decreased accounts receivable and due from other governments by \$627,890 as of September 30, 2021.

Cause: Differences were caused mostly by system issues and turnover within the accounting department.

Recommendation: We recommend that responsible Town personnel review and properly record any adjustments to the proper period and review all subsequent collections to ensure a proper cutoff of accounts receivable as of year-end. These adjustments and accounts receivable postings should then be reviewed by a responsible official to ensure accuracy and appropriateness.

Views of Responsible Officials and Planned Corrective Actions:

The Town acknowledges that it did not exercise proper accounting oversight to ensure that the accounts receivable process was accurately reporting items in the proper period. After its discovery, an increase in oversight of its accounts receivable process was implemented to ensure more timely and accurate financial reporting. The Town has instituted a month-end closing process that will strengthen the year-end close process to ensure proper cutoff of accounts receivable.

**TOWN OF FORT MYERS BEACH, FLORIDA
SCHEDULE OF FINDINGS AND QUESTIONED COSTS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2021**

**SECTION III
FEDERAL PROGRAMS FINDINGS AND QUESTIONED COSTS**

None noted.

**SECTION IV
STATE PROJECTS FINDINGS AND QUESTIONED COSTS**

None noted.

**TOWN OF FORT MYERS BEACH, FLORIDA
SCHEDULE OF FINDINGS AND QUESTIONED COSTS
FOR THE FISCAL YEAR ENDED SEPTEMBER 30, 2021**

**SECTION V
SUMMARY SCHEDULE OF PRIOR AUDIT FINDINGS**

2020-001 Proprietary Funds Capital Assets and Project Loans Payable (Material Weakness)

Criteria: Enterprise funds are required to be maintained on the full accrual basis of accounting. As such, capital outlays should be capitalized and depreciated and loans obtained should be recorded as long-term liabilities.

Condition: As of September 30, 2020, the Town did not properly record its capital outlays and loans payable in relation to its ongoing water and stormwater projects.

Status: Substantially repeated as finding number 2021-001.

2020-002 Accounts Payable (Material Weakness)

Criteria: Internal controls should be in place to provide reasonable assurance that all transactions are recorded in accordance with accounting principles generally accepted in the United States of America. As part of the audit process, we identified the need for significant adjustments to accounts payable for the Town to properly obtain an appropriate cutoff as of September 30, 2020.

Condition: We identified several issues with the Town's accounts payable balances as of year-end.

Status: Substantially repeated as finding number 2021-002.

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INDEPENDENT AUDITOR'S MANAGEMENT LETTER

Honorable Mayor, Town Council and Town Manager
Town of Fort Myers Beach, Florida

Report on the Financial Statements

We have audited the financial statements of the Town of Fort Myers Beach, Florida (the "Town"), as of and for the fiscal year ended September 30, 2021, and have issued our report thereon dated May 11, 2022.

Auditor's Responsibility

We conducted our audit in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the audit requirements of Title 2 *U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance); and Chapter 10.550, Rules of the Auditor General.

Other Reporting Requirements

We have issued our Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards*; Independent Auditor's Report on Compliance for Each Major Federal Program and State Project and Report on Internal Control over Compliance; Schedule of Findings and Questioned Costs; and Independent Accountant's Report on an examination conducted in accordance with *AICPA Professional Standards*, AT-C Section 315, regarding compliance requirements in accordance with Chapter 10.550, Rules of the Auditor General. Disclosures in these reports, which are dated May 11, 2022, should be considered in conjunction with this management letter.

Prior Audit Findings

Section 10.554(1)(i)1., Rules of the Auditor General, requires that we determine whether or not corrective actions have been taken to address findings and recommendations made in the preceding annual financial audit report. The status of findings and recommendations made in the preceding financial audit report is listed within the Schedule of Findings and Questioned Costs, Section V.

Official Title and Legal Authority

Section 10.554(1)(i)4., Rules of the Auditor General, requires that the name or official title and legal authority for the primary government and each component unit of the reporting entity be disclosed in this management letter, unless disclosed in the notes to the financial statements. The Town discloses this information in the notes to the financial statements.

Financial Condition and Management

Sections 10.554(1)(i)5.a. and 10.556(7), Rules of the Auditor General, require us to apply appropriate procedures and communicate the results of our determination as to whether or not the Town has met one or more of the conditions described in Section 218.503(1), Florida Statutes, and to identify the specific condition(s) met. In connection with our audit, we determined that the Town did not meet any of the conditions described in Section 218.503(1), Florida Statutes.

Pursuant to Sections 10.554(1)(i)5.b. and 10.556(8), Rules of the Auditor General, we applied financial condition assessment procedures. It is management's responsibility to monitor the Town's financial condition, and our financial condition assessment was based in part on representations made by management and the review of financial information provided by same.

Section 10.554(1)(i)2., Rules of the Auditor General, requires that we communicate any recommendations to improve financial management. In connection with our audit, we did not have any such recommendations.

Special District Component Units

Section 10.554(1)(i)5.c, Rules of the Auditor General, requires, if appropriate, that we communicate the failure of a special district that is a component unit of a county, municipality, or special district, to provide the financial information necessary for proper reporting of the component unit, within the audited financial statements of the county, municipality, or special district in accordance with Section 218.39(3)(b), Florida Statutes. The Town does not have any special district component units.

Additional Matters

Section 10.554(1)(i)3., Rules of the Auditor General, require us to communicate noncompliance with provisions of contracts or grant agreements, or abuse, that have occurred, or are likely to have occurred, that have an effect on the financial statements that is less than material but which warrants the attention of those charged with governance. In connection with our audit, we did not note any such findings.

Purpose of this Letter

Our management letter is intended solely for the information and use of the Legislative Auditing Committee, members of the Florida Senate and the Florida House of Representatives, the Florida Auditor General, federal and other granting agencies, the Mayor and Members of the Town Council Members, and applicable management, and is not intended to be and should not be used by anyone other than these specified parties.

Mauldin & Jenkins, LLC

Bradenton, Florida
May 11, 2022

INDEPENDENT ACCOUNTANT'S REPORT

Honorable Mayor, Town Council and Town Manager
Town of Fort Myers Beach, Florida

We have examined the Town of Fort Myers Beach, Florida's (the "Town") compliance with Section 218.415, Florida Statutes, regarding the investment of public funds during the year ended September 30, 2021. Management of the Town is responsible for the Town's compliance with those requirements. Our responsibility is to express an opinion on the Town's compliance based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. Those standards require that we plan and perform the examination to obtain reasonable assurance about whether the Town complied, in all material respects, with the specified requirements referenced above. An examination involves performing procedures to obtain evidence about whether the Town complied with the specified requirements. The nature, timing and extent of the procedures selected depend on our judgement, including an assessment of the risks of material noncompliance, whether due to fraud or error. We believe that the evidence we obtained is sufficient and appropriate to provide a reasonable basis for our opinion.

Our examination does not provide a legal determination on the Town's compliance with specified requirements.

In our opinion, the Town complied, in all material respects, with the aforementioned requirements during the year ended September 30, 2021.

This report is intended solely for the information and use of the Town and the Auditor General, State of Florida, and is not intended to be and should not be used by anyone other than these specified parties.

Mauldin & Jenkins, LLC

Bradenton, Florida
May 11, 2022

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TOWN OF FORT MYERS BEACH, FLORIDA



Auditor's Discussion and Analysis Presentation of Financial and Compliance Audit Results September 30, 2021

Presented by:
Wade Sansbury, CPA

**MAULDIN
& JENKINS**
CPAs & ADVISORS

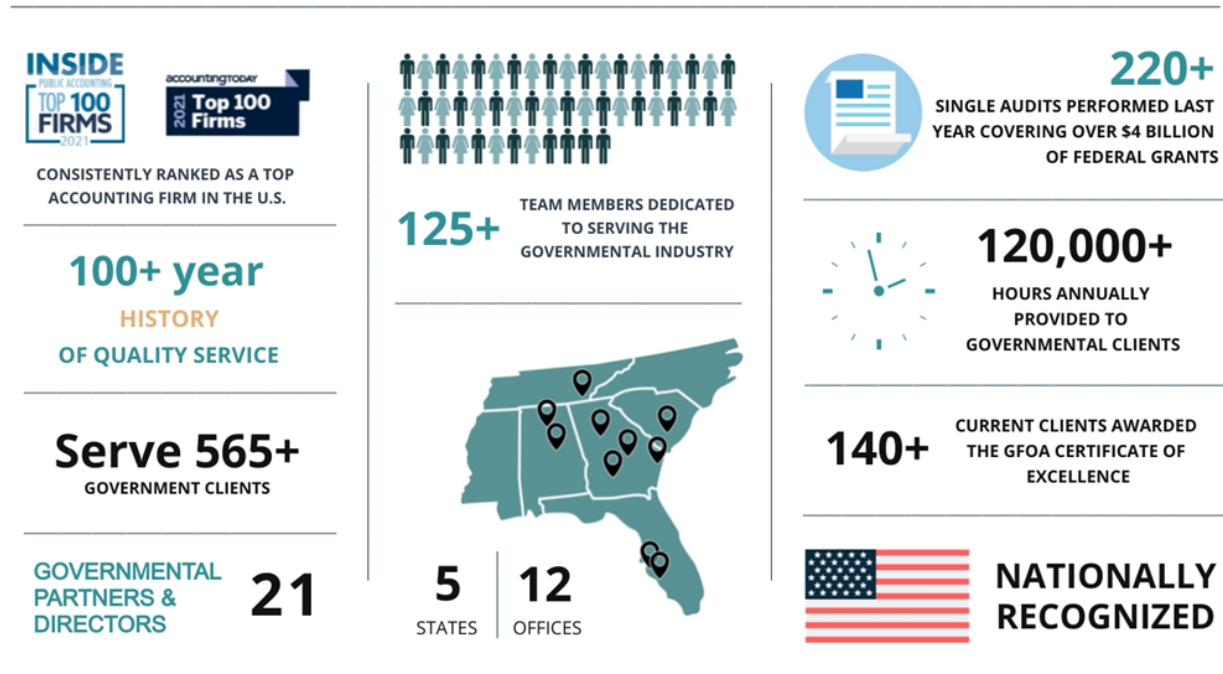
TOWN OF FORT MYERS BEACH, FLORIDA
AUDITOR'S DISCUSSION AND ANALYSIS
SEPTEMBER 30, 2021

PURPOSE OF THE AUDITOR'S DISCUSSION AND ANALYSIS

- ◆ Engagement Team and Firm Information.
- ◆ Overview of:
 - Audit Opinion;
 - Financial Statements, Footnotes and Supplementary Information;
 - Compliance Reports;
 - Audit Scopes and Procedures.
- ◆ Required Communications under *Government Auditing Standards*.
- ◆ Accounting Recommendations and Related Matters.
- ◆ Answer Questions.

TOWN OF FORT MYERS BEACH, FLORIDA
AUDITOR'S DISCUSSION AND ANALYSIS
SEPTEMBER 30, 2021

MAULDIN & JENKINS – BY THE NUMBERS



Engagement Team Leaders for the Town Include:

- Wade Sansbury, Engagement Lead Partner: 26 years of experience, 100% governmental
- Meredith Lipson, Engagement Quality Assurance Partner: 30 years of experience, 100% governmental

TOWN OF FORT MYERS BEACH, FLORIDA
AUDITOR'S DISCUSSION AND ANALYSIS
SEPTEMBER 30, 2021

MAULDIN & JENKINS – ADDITIONAL INFORMATION

Other Industries and Services by Mauldin & Jenkins:

Each of Mauldin & Jenkins' offices provides a wide variety of services to a broad range of clientele. We have partners and managers who are responsible for specialized practice areas of auditing and accounting, taxes and management advisory services. Their purpose, as leaders in the particular practice area, is to establish policies with respect to technical matters in these specific areas and ensure that the quality of the Firm's practice is maintained.

Industries Served: Over the years our partners have developed expertise in certain industries representative of a cross section of the Florida economy, including:

- Governmental Entities (state entities, cities, counties, school systems, business type operations, libraries, and other special purpose entities)
- SEC Registrants
- Wholesale Distribution
- Agri-Businesses
- Manufacturing
- Professional Services
- Employee Benefit Plans
- Financial Institutions (community banks, savings and loans, thrifts, credit unions, mortgage companies, and finance companies)
- Non-Profit Organizations
- Retail Businesses
- Long-Term Healthcare
- Construction and Development
- Individuals, Estates and Trusts
- Real Estate Management

Services Provided: This diversity of practice enables our personnel to experience a wide variety of business, accounting and tax situations. We provide the traditional and non-traditional services such as:

- Financial Audit/Review/Compilation
- Compliance Audits and Single Audits
- Agreed-Upon Procedures
- Forensic Audits
- Bond Issuance Services
- Performance Audits
- State Sales Tax Matters
- International Tax Matters
- Business and Strategic Planning
- Profitability Consulting
- Budgeting
- Buy-Sell Agreements and Business Valuation Issues
- Income Tax Planning and Preparation
- Multi-State Income Tax Issues
- Information Systems Consulting
- Cost Accounting Analysis
- Healthcare Cost Reimbursement
- Outsourced Billing Services
- Fixed Asset Inventories
- Succession and Exit Strategy Consulting
- Estate Planning
- Management Information Systems
- Employee Benefit Plan Administration
- Merger/Acquisition and Expansion Financing

TOWN OF FORT MYERS BEACH, FLORIDA
AUDITOR'S DISCUSSION AND ANALYSIS
SEPTEMBER 30, 2021

INDEPENDENT AUDITOR'S REPORT

The standard independent auditor's report for governmental units has specific sections of significance to readers of the financial report.

Management's Responsibility for the Financial Statements

The financial statements are the responsibility of management.

Auditor's Responsibility

Our responsibility, as external auditors, is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. We planned and performed our audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

Opinion

We have issued an unmodified audit report which is the highest form of assurance we can render with regard to the fairness of financial information on which we are opining. The financial statements are considered to present fairly the financial position and results of operations as of, and for the year ended September 30, 2021.

Other Matters

Certain required supplementary information and other information is included in the financial report, and as directed by relevant auditing standards, we have not expressed an opinion or provided any assurance on the respective information.

Other Reporting

Government Auditing Standards require auditors to issue a report on our consideration of internal control over financial reporting and on our tests of compliance with certain provisions of laws, regulations, contracts and grant agreements and other matters. We have issued such a report and reference to this report is included in the independent auditor's report.

TOWN OF FORT MYERS BEACH, FLORIDA
AUDITOR'S DISCUSSION AND ANALYSIS
SEPTEMBER 30, 2021

OVERVIEW OF FINANCIAL STATEMENTS

A Single Audit report is included in this year's report as the Town expended in excess of \$750,000 of federal expenditures.

The financial statements as presented to you today include the basic financial statements as well as Management's Discussion and Analysis as prepared by Town management.

The Town's basic financial statements include three components: (1) government-wide financial statements; (2) fund financial statements; and (3) notes to the financial statements.

The **government-wide financial statements** provide a broad overview of all of the Town's activities. The *Statement of Net Position* presents information on all assets and liabilities of the Town, with the difference between the two reported as net position. The *Statement of Activities* presents information showing how the Town's net position changed during the most recent fiscal year. Revenues are categorized as program revenues or general revenues. Expenses are categorized by function.

The **fund financial statements** more closely resemble the financial statements as presented prior to the adoption of GASB Statement No. 34. All of the funds of the Town can be divided into three categories: (1) governmental funds, (2) proprietary funds, and (3) fiduciary funds.

COMPLIANCE REPORTS

The financial report package contains two compliance reports.

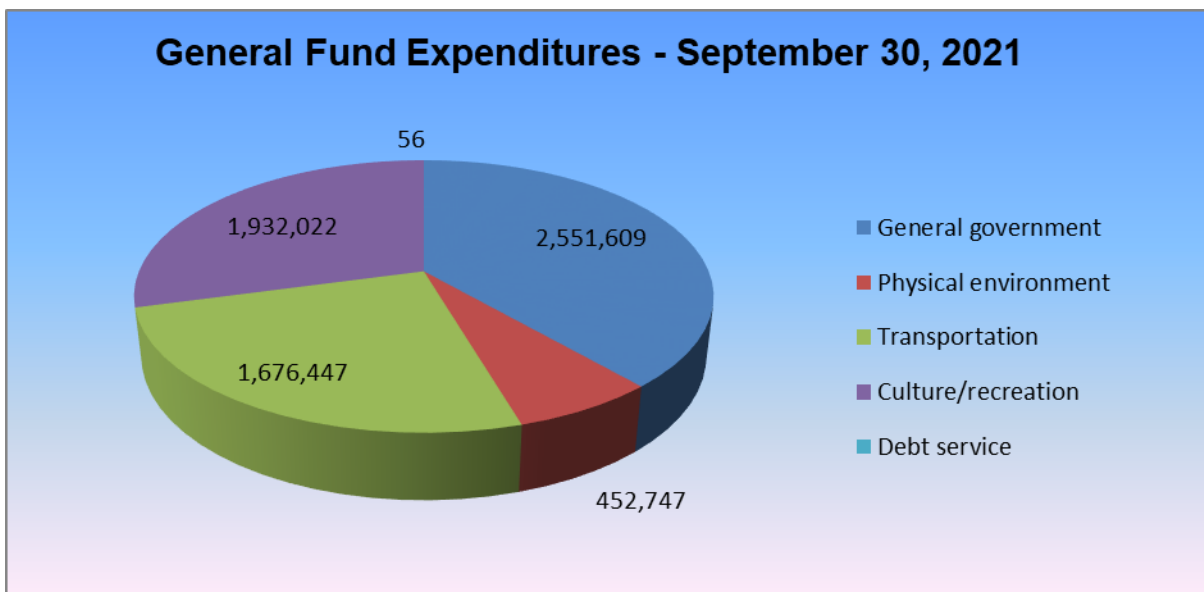
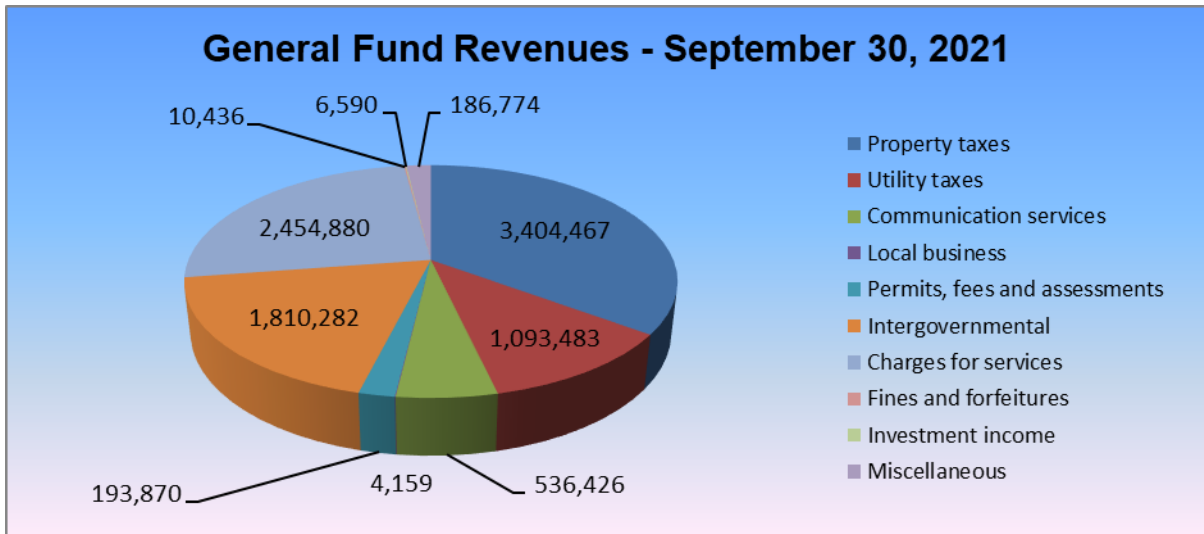
Yellow Book Report: The first compliance report is a report on our tests of the Town's internal controls and compliance with laws, regulations, etc. The tests of internal controls were those we determined to be required as a basis for designing our financial statement auditing procedures. Such tests also considered the Town's compliance with certain provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. In accordance with the respective standards, the report is not intended to provide an opinion, but to provide a form of negative assurance as to the Town's internal controls and compliance with applicable rules and regulations.

Single Audit Report: The second compliance report is a report on our tests of the Town's internal controls and compliance with laws, regulations, etc. relative to certain federal and state grant programs and the respective expenditures. Our tests were performed on the Town's major programs (as defined by the relevant federal guidelines), and were not applied to each and every federal or state grant expended by the Town. In accordance with the respective standards, we did provide an unmodified (or positive) opinion on the Town's compliance based on our audit. However, we were not required to provide an opinion on the relevant internal controls, but to provide a form of negative assurance on such controls.

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General Fund

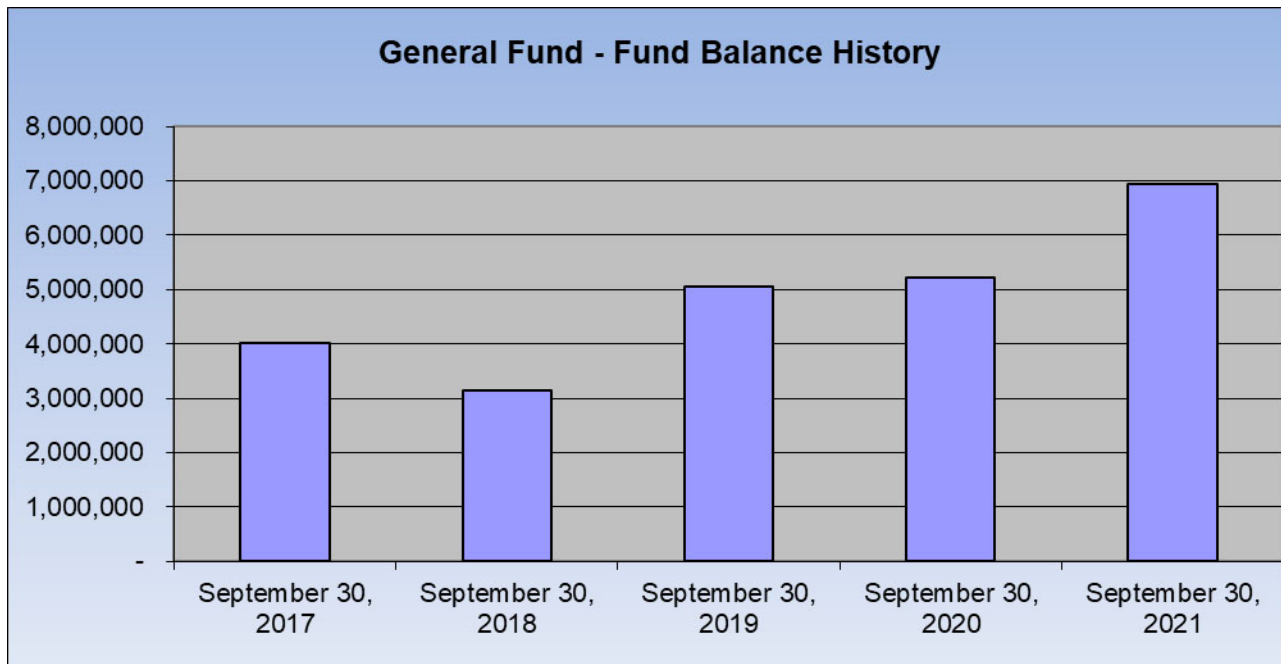
Of primary interest to the Town is the General Fund, which accounts for the majority of revenues received and funds expended in the operations of the Town, including administration, public safety, physical environment, transportation, economic environment, and culture and recreation. The following charts present the sources of revenues and the expenditures of the General Fund for the fiscal year ended September 30, 2021:



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Total fund balance of the General Fund at September 30, 2021 was a positive \$6,943,896. Fund balance does not necessarily equal cash on hand and available to spend. Fund balance is the difference between assets and liabilities, only a portion of which is cash available to be spent. While the Town has cash and investments on hand at September 30, 2021 of \$6,668,785, the Town also has approximately \$290,000 in current liabilities due to outside parties and employees. Additionally, the General Fund incurs expenditures of approximately \$551 thousand per month. A large part of the cash on hand at September 30, 2021 will be needed in subsequent months to fund these expenditures, until the Town's property tax revenues are collected beginning in November and December.

The following is a history of the total ending fund balance of the General Fund over the past five years:



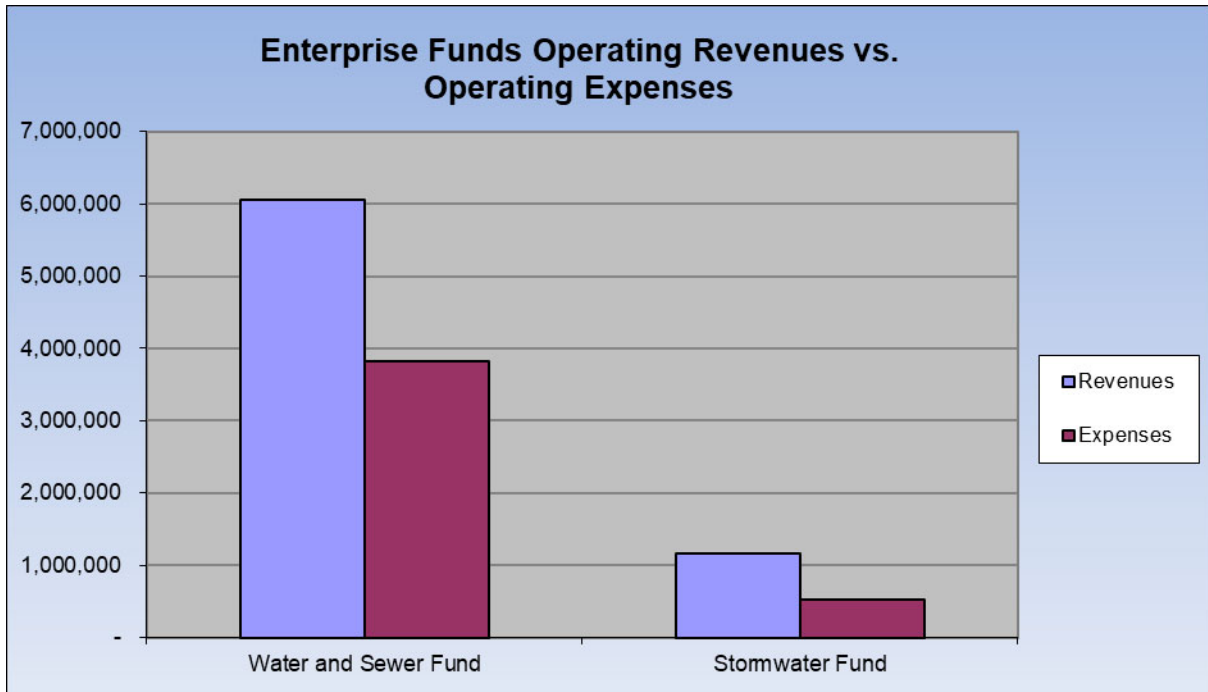
Other Governmental Funds

The Town maintains various special revenue funds (Gas Tax, Building, Park Impact, Road Impact, Beach Access, and American Rescue). These funds account for revenues derived from specific sources which are legally restricted to finance particular functions or activities. The Town's Capital Projects Fund is used to account for revenues and expenditures related to the renovation and/or construction of major capital assets.

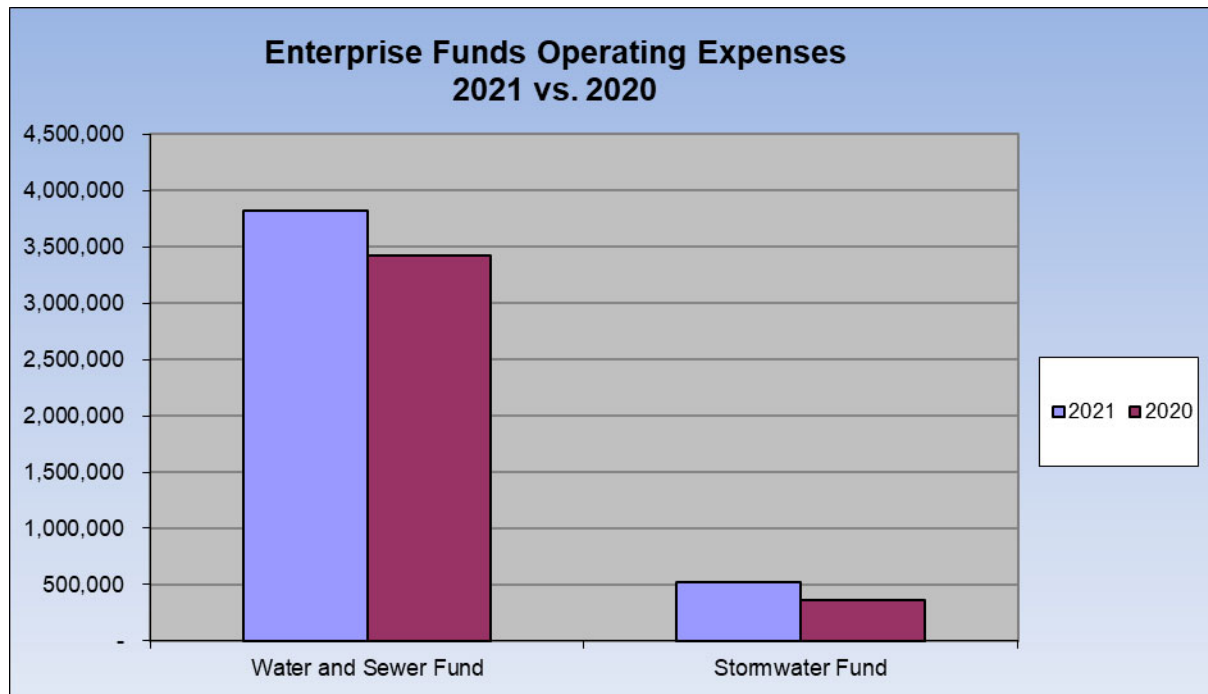
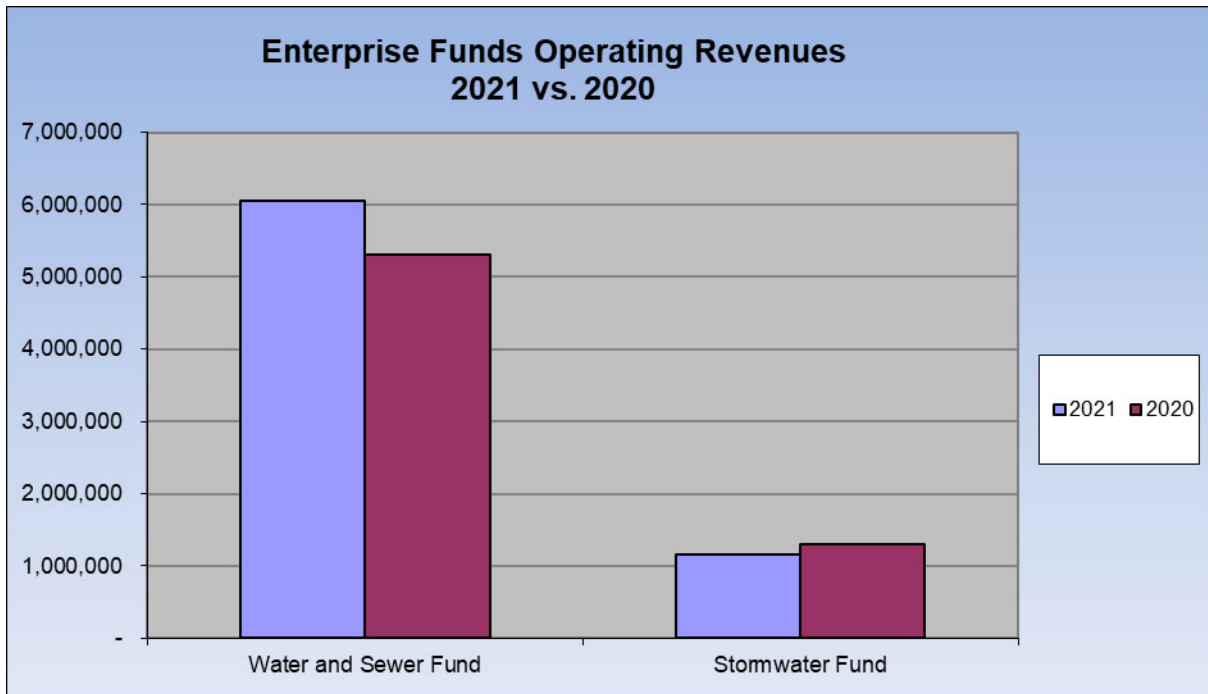
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Enterprise Funds

The Town maintains two enterprise funds which are used to account for operations in a manner similar to private business enterprises – where the intent is that the costs of providing the goods or services to the general public on a continuing basis be financed or recovered primarily through user charges. For 2021, the Water Fund and Stormwater Fund generated revenues sufficient to cover the costs of operations as noted in the graphs below:



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REQUIRED COMMUNICATIONS

**The Auditor's Responsibility Under *Government Auditing Standards*
and Auditing Standards Generally Accepted in the United States of America**

Our audit of the financial statements of the Town of Fort Myers Beach, Florida (the "Town") for the year ended September 30, 2021, was conducted in accordance with auditing standards generally accepted in the United States of America and *Government Auditing Standards* issued by the Comptroller General of the United States. Those standards require we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether caused by error, fraudulent financial reporting or misappropriation of assets. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. Accordingly, the audit was designed to obtain reasonable, rather than absolute, assurance about the financial statements. We believe our audit accomplishes that objective.

In accordance with *Government Auditing Standards*, we have also performed tests of controls and compliance with laws and regulations that contribute to the evidence supporting our opinion on the financial statements. However, they do not provide a basis for opining on the Town's internal control or compliance with laws and regulations.

Accounting Policies

Management has the ultimate responsibility for the appropriateness of the accounting policies used by the Town. There are several new accounting standards which will be required to be implemented in the coming years. These are discussed later in this document.

In considering the qualitative aspects of the Town's accounting policies, we did not identify any significant or unusual transactions or significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus. The Town's policies relative to the timing of recording of transactions are consistent with GAAP and typical government organizations.

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Management Judgments and Accounting Estimates

Accounting estimates are an integral part of the preparation of financial statements and are based upon management's current judgment. The process used by management encompasses their knowledge and experience about past and current events and certain assumptions about future events. Management has informed us they used all the relevant facts available to them at the time to make the best judgments about accounting estimates and we considered this information in the scope of our audit. We considered this information and the qualitative aspects of management's calculations in evaluating the Town's significant accounting policies. Estimates significant to the financial statements include such items as the estimated lives of depreciable assets, the estimated allowance for uncollectible accounts, and the assumptions used in the actuarial valuations for the other post-employment benefit plans and pension actuarial reports.

Financial Statement Disclosures

The footnote disclosures to the financial statements are also an integral part of the financial statements. The process used by management to accumulate the information included in the disclosures was the same process used in accumulating the financial statements, and the accounting policies described above are included in those disclosures. The overall neutrality, consistency and clarity of the disclosures were considered as part of our audit and in forming our opinion on the financial statements.

Significant Difficulties Encountered in Performing the Audit

We encountered no difficulties in dealing with management relating to the performance of the audit.

Audit Adjustments

During our audit of the Town's basic financial statements as of and for the year ended September 30, 2021, there were several adjustments made to the financial statements of the Town. These adjustments have been given to the Town and have been posted.

Uncorrected Misstatements

We had no passed adjustments.

Disagreements with Management

We encountered no disagreements with management over the application of significant accounting principles, the basis for management's judgments on significant matters, the scope of the audit, or significant disclosures to be included in the financial statements.

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Representations from Management

We requested written representations from management relating to the accuracy of information included in the financial statements and the completeness and accuracy of various information requested by us, during the audit. Management provided those written representations without delay and in an organized manner.

Management's Consultations with Other Accountants

We are not aware of any consultations management had with other accountants about accounting or auditing matters.

Significant Issues Discussed with Management

There were no significant issues discussed with management related to business conditions, plans or strategies that may have affected the risk of material misstatement of the financial statements. No major issues were discussed with management prior to our retention to perform the aforementioned audit.

Independence

We are independent of the Town in accordance with auditing standards promulgated by the American Institute of Certified Public Accountants and *Government Auditing Standards*, issued by the Comptroller General of the United States.

Other Information in Documents Containing Audited Financial Statements

We are not aware of any other documents that contain the audited basic financial statements. If such documents were to be published, we would have a responsibility to determine that such financial information was not materially inconsistent with the audited statements of the Town.

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ACCOUNTING RELATED MATTERS

During our audit of the financial statements as of and for the year ended September 30, 2021, we noted areas within the accounting and internal control systems that we believe can be improved. Additionally, we noted certain items management should consider as part of its decision making process. Our recommendations are presented in the following paragraphs. We believe consideration of these recommendations will help provide proper control over financial activities, and add effectiveness and efficiency to overall operations.

2021-001 Proprietary Funds Capital Assets and Project Loans Payable (Material Weakness)

Criteria: Enterprise funds are required to be maintained on the full accrual basis of accounting. As such, capital outlays should be capitalized and depreciated and loans obtained should be recorded as long-term liabilities.

Condition: As of September 30, 2021, the Town did not properly record its capital outlays and loans payable in relation to its ongoing water and stormwater projects.

Context: During our review of the Town's Water and Stormwater trial balances, we noted these activities had been recorded through the income statement instead of properly capitalizing the capital outlays and recorded loans payable.

Effect: Adjustments were needed in both enterprise funds to properly report capital assets and loans payable as of September 30, 2021. These adjustments included increasing accrued liabilities and loans payable by \$437,680; increasing revenues by \$396,364; increasing capital asset accounts including construction in progress by \$6,380,972; increasing due from other governments by \$1,384,435; and reducing expenditures by \$6,931,363.

Cause: Town personnel were recording these transactions throughout the year against budgeted revenues and expenses versus in accordance with GAAP.

Recommendation: We recommend the Town adjust these balances at least as of year-end on a GAAP basis versus a budgetary basis to ensure the proper reporting of all capital asset additions as well as debt draw downs.

2021-002 Accounts Payable (Material Weakness)

Criteria: Internal controls should be in place to provide reasonable assurance that all transactions are recorded in accordance with accounting principles generally accepted in the United States of America. As part of the audit process, we identified the need for significant adjustments to accounts payable for the Town to properly obtain an appropriate cutoff as of September 30, 2021.

Condition: We identified issues with the Town's accounts payable balances as of year-end.

Effect: Adjustments were needed within various funds to correct the Town's accounts payable balances and to properly record all payables where goods had been received or services had been

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performed by September 30, 2021. Additionally an adjustment was needed to correct for proper revenue recognition. These adjustments decreased expenses by \$18,552; decreased revenues by \$1,766,648; increased unearned revenues by \$1,776,528; and decreased accounts payable by \$28,432 as of September 30, 2021.

Cause: Differences were caused mostly by system issues and turnover within the accounting department.

Recommendation: We recommend that responsible Town personnel review and properly record any adjustments to the proper period and review all disbursements at year-end and subsequent to ensure a proper cutoff of accounts payable as of year-end. These adjustments and accounts payable postings should then be reviewed by a responsible official to ensure accuracy and appropriateness.

2021-003 Accounts Receivable (Material Weakness)

Criteria: Internal controls should be in place to provide reasonable assurance that all transactions are recorded in accordance with accounting principles generally accepted in the United States of America. As part of the audit process, we identified the need for adjustments to accounts receivable for the Town to properly obtain an appropriate cutoff as of September 30, 2021.

Condition: We identified issues with the Town's accounts receivable balances as of year-end.

Effect: Adjustments were needed within various funds to correct the Town's accounts receivable balances and to properly record all revenues in accordance with GAAP as of September 30, 2021. These adjustments increased expenses by \$125,112; decreased revenues by \$698,798; increased deferred inflows by \$196,020; and decreased accounts receivable and due from other governments by \$627,890 as of September 30, 2021.

Cause: Differences were caused mostly by system issues and turnover within the accounting department.

Recommendation: We recommend that responsible Town personnel review and properly record any adjustments to the proper period and review all subsequent collections to ensure a proper cutoff of accounts receivable as of year-end. These adjustments and accounts receivable postings should then be reviewed by a responsible official to ensure accuracy and appropriateness.

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**OTHER MATTERS FOR COMMUNICATION TO THE COMMISSION
AND MANAGEMENT**

During our audit of the financial statements as of and for the year ended September 30, 2021, we noted other matters which we wish to communicate to you in an effort to keep the Town abreast of accounting matters that could present challenges in financial reporting in future periods.

**Looking Forward: New Governmental
Accounting Standard Board (GASB)
Standards and Pronouncements**



As has been the case for the past ten years, GASB has issued several other new pronouncements which will be effective in future years. The following is a brief summary of the new standards:

- a) **Statement No. 87, *Leases*** was issued in June 2017 and is effective for the first reporting period beginning after December 15, 2019. However, in light of the COVID-19 pandemic, in May 2020 the GASB issued Statement No. 95 (*Postponement of the Effective Dates of Certain Authoritative Guidance*) which changed the effective date of Statement No. 87 to fiscal years beginning after June 15, 2021.

This statement increases the usefulness of governments' financial statements by requiring recognition of certain lease assets and liabilities for leases that previously were classified as operating leases and recognized as inflows of resources or outflows of resources based on the payment provisions of the contract. It establishes a single model for lease accounting based on the principle that a lease is the financing of the right to use an underlying asset.

Under this statement, a lessee is required to recognize a lease liability and an intangible right-to-use lease asset, and a lessor is required to recognize a lease receivable and a deferred inflow of resources, thereby enhancing the relevance and consistency of information about governments' leasing activities.

Definition of a Lease: A lease is defined as a contract that conveys control of the right to use another entity's nonfinancial asset (the underlying asset) as specified in the contract for a period of time in an exchange or exchange-like transaction. Examples of nonfinancial assets include buildings, land, vehicles, and equipment. Any contract that meets this definition should be accounted for under the leases guidance, unless specifically excluded in this statement.

Lease Term: The lease term is defined as the period during which a lessee has a non-cancelable right to use an underlying asset, plus the following periods, if applicable:

- Periods covered by a lessee's option to extend the lease if it is reasonably certain, based on all relevant factors, that the lessee will exercise that option.

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- Periods covered by a lessee's option to terminate the lease if it is reasonably certain, based on all relevant factors, that the lessee will not exercise that option.
- Periods covered by a lessor's option to extend the lease if it is reasonably certain, based on all relevant factors, that the lessor will exercise that option.
- Periods covered by a lessor's option to terminate the lease if it is reasonably certain, based on all relevant factors, that the lessor will not exercise that option.

A fiscal funding or cancellation clause should affect the lease term only when it is reasonably certain that the clause will be exercised. Lessees and lessors should reassess the lease term only if one or more of the following occur:

- The lessee or lessor elects to exercise an option even though it was previously determined that it was reasonably certain that the lessee or lessor would not exercise that option.
- The lessee or lessor elects not to exercise an option even though it was previously determined that it was reasonably certain that the lessee or lessor would exercise that option.
- An event specified in the lease contract that requires an extension or termination of the lease takes place.

Short-Term Leases: A short-term lease is defined as a lease that, at the commencement of the lease term, has a maximum possible term under the lease contract of 12 months (or less), including any options to extend, regardless of their probability of being exercised. Lessees and lessors should recognize short-term lease payments as outflows of resources or inflows of resources, respectively, based on the payment provisions of the lease contract.

Lessee Accounting: A lessee should recognize a lease liability and a lease asset at the commencement of the lease term, unless the lease is a short-term lease or it transfers ownership of the underlying asset. The lease liability should be measured at the present value of payments expected to be made during the lease term (less any lease incentives). The lease asset should be measured at the amount of the initial measurement of the lease liability, plus any payments made to the lessor at or before the commencement of the lease term and certain direct costs.

A lessee should reduce the lease liability as payments are made and recognize an outflow of resources (for example, expense) for interest on the liability. The lessee should amortize the lease asset in a systematic and rational manner over the shorter of the lease term or the useful life of the underlying asset. The notes to financial statements should include a description of leasing arrangements, the amount of lease assets recognized, and a schedule of future lease payments to be made.

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Lessor Accounting: A *lessor* should recognize a lease receivable and a deferred inflow of resources at the commencement of the lease term, with certain exceptions for leases of assets held as investments, certain regulated leases, short-term leases, and leases that transfer ownership of the underlying asset. A lessor should not derecognize the asset underlying the lease. The lease receivable should be measured at the present value of lease payments expected to be received during the lease term. The deferred inflow of resources should be measured at the value of the lease receivable plus any payments received at or before the commencement of the lease term that relate to future periods.

A lessor should recognize interest revenue on the lease receivable and an inflow of resources (for example, revenue) from the deferred inflows of resources in a systematic and rational manner over the term of the lease. The notes to financial statements should include a description of leasing arrangements and the total amount of inflows of resources recognized from leases.

Contracts with Multiple Components and Contract Combinations: Generally, a government should account for the lease and non-lease components of a lease as separate contracts. If a lease involves multiple underlying assets, lessees and lessors in certain cases should account for each underlying asset as a separate lease contract. To allocate the contract price to different components, lessees and lessors should use contract prices for individual components as long as they do not appear to be unreasonable based on professional judgment, or use professional judgment to determine their best estimate if there are no stated prices or if stated prices appear to be unreasonable. If determining a best estimate is not practicable, multiple components in a lease contract should be accounted for as a single lease unit. Contracts that are entered into at or near the same time with the same counterparty and that meet certain criteria should be considered part of the same lease contract and should be evaluated in accordance with the guidance for contracts with multiple components.

Lease Modifications and Terminations: An *amendment* to a lease contract should be considered a lease modification, unless the lessee's right to use the underlying asset decreases, in which case it would be a partial or full lease termination. A lease termination should be accounted for by reducing the carrying values of the lease liability and lease asset by a lessee, or the lease receivable and deferred inflows of resources by the lessor, with any difference being recognized as a gain or loss. A lease modification that does not qualify as a separate lease should be accounted for by re-measuring the lease liability and adjusting the related lease asset by a lessee and re-measuring the lease receivable and adjusting the related deferred inflows of resources by a lessor.

Subleases and Leaseback Transactions: Subleases should be treated as transactions separate from the original lease. The original lessee that becomes the lessor in a sublease should account for the original lease and the sublease as separate transactions, as a lessee and lessor, respectively.

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A transaction qualifies for sale-leaseback accounting only if it includes a sale. Otherwise, it is a borrowing. The sale and lease portions of a transaction should be accounted for as separate sale and lease transactions, except that any difference between the carrying value of the capital asset that was sold and the net proceeds from the sale should be reported as a deferred inflow of resources or a deferred outflow of resources and recognized over the term of the lease. A lease-leaseback transaction should be accounted for as a net transaction. The gross amounts of each portion of the transaction should be disclosed.

- b) **Statement No. 91, *Conduit Debt Obligations*** was issued in May 2019 and is effective for the first reporting period beginning after December 15, 2020, meaning for those with year-ends of December 31, 2021 and beyond. However, in light of the COVID-19 pandemic, in May 2020 the GASB issued Statement No. 95 (*Postponement of the Effective Dates of Certain Authoritative Guidance*) which changed the effective date of Statement No. 91 to reporting periods beginning after December 15, 2021.

The primary objectives of this statement are to provide a single method of reporting conduit debt obligations by issuers and eliminate diversity in practice associated with: (1) commitments extended by issuers, (2) arrangements associated with conduit debt obligations, and (3) related note disclosures. This statement achieves those objectives by clarifying the existing definition of a conduit debt obligation; establishing that a conduit debt obligation is not a liability of the issuer; establishing standards for accounting and financial reporting of additional commitments and voluntary commitments extended by issuers and arrangements associated with conduit debt obligations; and improving required note disclosures.

A conduit debt obligation is defined as a debt instrument meeting **all** of the following characteristics:

- There are at least three parties involved: (1) an issuer, (2) a third-party obligor, and (3) a debt holder (or a debt trustee).
- The issuer and the third-party obligor are not within the same financial reporting entity.
- The debt obligation is not a parity bond of the issuer, nor is it cross-collateralized with other debt of the issuer.
- The third-party obligor (or its agent), not the issuer, ultimately receives the proceeds from the debt issuance.
- The third-party obligor, not the issuer, is primarily obligated for the payment of all amounts associated with the debt obligation (debt service payments).

All conduit debt obligations involve the issuer making a limited commitment. Some issuers extend additional commitments or voluntary commitments to support debt service in the event the third party is, or will be, unable to do so.

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An issuer should not recognize a conduit debt obligation as a liability. However, an issuer should recognize a liability associated with an additional commitment or a voluntary commitment to support debt service if certain recognition criteria are met. As long as a conduit debt obligation is outstanding, an issuer that has made an additional commitment should evaluate at least annually whether those criteria are met. An issuer that has made only a limited commitment should evaluate whether those criteria are met when an event occurs that causes the issuer to reevaluate its willingness or ability to support the obligor's debt service through a voluntary commitment.

This statement also addresses arrangements – often characterized as leases – that are associated with conduit debt obligations. In those arrangements, capital assets are constructed or acquired with the proceeds of a conduit debt obligation and used by third-party obligors in the course of their activities. Payments from third-party obligors are intended to cover and coincide with debt service payments. During those arrangements, issuers retain the titles to the capital assets. Those titles may or may not pass to the obligors at the end of the arrangements.

Issuers should not report those arrangements as leases, nor should they recognize a liability for the related conduit debt obligations or a receivable for the payments related to those arrangements. In addition, the following provisions apply:

- If the title passes to the third-party obligor at the end of the arrangement, an issuer should **not** recognize a capital asset.
- If the title does not pass to the third-party obligor and the third party has exclusive use of the entire capital asset during the arrangement, the issuer should **not** recognize a capital asset until the arrangement ends.
- If the title does not pass to the third-party obligor and the third party has exclusive use of only portions of the capital asset during the arrangement, the issuer should recognize the entire capital asset and a deferred inflow of resources at the inception of the arrangement. The deferred inflow of resources should be reduced, and an inflow recognized, in a systematic and rational manner over the term of the arrangement.

This statement requires issuers to disclose general information about their conduit debt obligations, organized by type of commitment, including the aggregate outstanding principal amount of the issuers' conduit debt obligations and a description of each type of commitment. Issuers that recognize liabilities related to supporting the debt service of conduit debt obligations also should disclose information about the amount recognized and how the liabilities changed during the reporting period.

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c) **Statement No. 92, *Omnibus 2020*** was issued in January 2020 and because it is an omnibus standard, contains several different effective dates as follows (as amended by Statement No. 95 issued in May 2020):

- For fiscal years beginning after June 15, 2021 relative to the requirements related to intra-entity transfers of assets and those related to the applicability of Statements 73 and 74.
- For reporting periods beginning after June 15, 2021 relative to the requirements related to application of Statement 84 to post-employment benefit arrangements and those related to nonrecurring fair value measurements of assets or liabilities.
- For government acquisitions occurring in reporting periods beginning after June 15, 2021. The requirements related to the measurement of liabilities (and assets, if any) associated with AROs in a government acquisition.
- Other items addressed by this omnibus statement (requirements related to Statement No. 87 and Implementation Guide 2019-3, reinsurance recoveries, and terminology used to refer to derivative instruments) were effective upon issuance.

The objectives of this statement are to enhance comparability in accounting and financial reporting and to improve the consistency of authoritative literature by addressing practice issues that have been identified during implementation and application of certain GASB Statements. This statement addresses a variety of topics and includes specific provisions about the following:

- The effective date of Statement No. 87, Leases, and Implementation Guide No. 2019-3, Leases, for interim financial reports.
- Reporting of intra-entity transfers of assets between a primary government employer and a component unit defined benefit pension plan or defined benefit other post-employment benefit (OPEB) plan.
- The applicability of Statements No. 73, Accounting and Financial Reporting for Pensions and Related Assets That Are Not within the Scope of GASB Statement 68, and Amendments to Certain Provisions of GASB Statements 67 and 68, as amended, and No. 74, Financial Reporting for Post-Employment Benefit Plans Other Than Pension Plans, as amended, to reporting assets accumulated for post-employment benefits.
- The applicability of certain requirements of Statement No. 84, Fiduciary Activities, to post-employment benefit arrangements.
- Measurement of liabilities (and assets, if any) related to asset retirement obligations (AROs) in a government acquisition.
- Reporting by public entity risk pools for amounts that are recoverable from reinsurers or excess insurers.
- Reference to nonrecurring fair value measurements of assets or liabilities in authoritative literature.
- Terminology used to refer to derivative instruments.

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- d) **Statement No. 93, *Replacement of Interbank Offered Rates*** was issued in March 2020 and contains two different effective dates. The removal of LIBOR as an appropriate benchmark interest rate is effective for reporting periods ending after December 31, 2021. All other requirements of this statement are effective for reporting periods beginning after June 15, 2020.

As a result of global reference rate reform, the London Interbank Offered Rate ("LIBOR") is expected to cease to exist in its current form at the end of 2021, prompting governments to amend or replace financial instruments for the purpose of replacing LIBOR with other reference rates, by either changing the reference rate or adding or changing fallback provisions related to the reference rate.

The objective of this statement is to address those and other accounting and financial reporting implications that result from the replacement of an IBOR. This statement achieves that objective by:

- Providing exceptions for certain hedging derivative instruments to the hedge accounting termination provisions when an IBOR is replaced as the reference rate of the hedging derivative instrument's variable payment.
 - Clarifying the hedge accounting termination provisions when a hedged item is amended to replace the reference rate.
 - Clarifying that the uncertainty related to the continued availability of IBORs does not, by itself, affect the assessment of whether the occurrence of a hedged expected transaction is probable.
 - Removing LIBOR as an appropriate benchmark interest rate for the qualitative evaluation of the effectiveness of an interest rate swap.
 - Identifying a Secured Overnight Financing Rate and the Effective Federal Funds Rate as appropriate benchmark interest rates for the qualitative evaluation of the effectiveness of an interest rate swap.
 - Clarifying the definition of reference rate, as it is used in Statement 53, as amended.
- e) **Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*** was issued in March 2020 and is effective for fiscal years beginning after June 15, 2022 which means year-ends of June 30, 2023 and following.

This statement was issued by the GASB to address a gap in generally accepted accounting principles: how do we account for these type arrangements that do not meet the definition of a service concession arrangement (SCA) covered by GASB Statement No. 60.

Statement No. 94 requires that Public-Private Partnerships and Public-Public Partnerships ("PPPs") that meet the definition of a lease apply the guidance in Statement No. 87, *Leases* if: (a) existing assets of the transferor are the only underlying PPP assets, (b) improvements are not required to be made by the operator to those existing assets as part of the PPP arrangement, and (c) the PPP does not meet the definition of an SCA. All other PPPs that

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will not apply the guidance in Statement No. 87 will generally use the accounting guidance contained in Statement No. 60 which was superseded by this new Standard.

Statement No. 94 also establishes accounting and financial reporting requirements for availability payment arrangements (APAs). As defined in this statement, an APA is an arrangement in which a government compensates an operator for services that may include designing, constructing, financing, maintaining, or operating an underlying nonfinancial asset for a period of time in an exchange or exchange-like transaction. An APA that is related to designing, constructing, and financing a nonfinancial asset in which ownership of the asset transfers by the end of the contract should be accounted for by the government as a financed purchase of the underlying asset.

- f) **Statement No. 96, *Subscription-Based Information Technology Arrangements*** was issued in May 2020 and is effective for fiscal years beginning after June 15, 2022 which means year-ends of June 30, 2023 and following.

This statement provides guidance on the accounting and financial reporting for subscription-based information technology arrangements (SBITAs) for government end users (governments). This statement: (1) defines a SBITA; (2) establishes that a SBITA results in a right-to-use subscription asset – an intangible asset – and a corresponding subscription liability; (3) provides the capitalization criteria for outlays other than subscription payments, including implementation costs of a SBITA; and (4) requires note disclosures regarding a SBITA. To the extent relevant, the standards for SBITAs are based on the standards established in Statement No. 87, *Leases*, as amended.

A SBITA is defined as a contract that conveys control of the right to use another party's (a SBITA vendor's) information technology (IT) software, alone or in combination with tangible capital assets (the underlying IT assets), as specified in the contract for a period of time in an exchange or exchange-like transaction.

The subscription term includes the period during which a government has a noncancellable right to use the underlying IT assets. The subscription term also includes periods covered by an option to extend (if it is reasonably certain that the government or SBITA vendor will exercise that option) or to terminate (if it is reasonably certain that the government or SBITA vendor will not exercise that option).

Under this statement, a government generally should recognize a right-to-use subscription asset – an intangible asset – and a corresponding subscription liability. A government should recognize the subscription liability at the commencement of the subscription term, which is when the subscription asset is placed into service. The subscription liability should be initially measured at the present value of subscription payments expected to be made during the subscription term. Future subscription payments should be discounted using the interest rate the SBITA vendor charges the government, which may be implicit, or the government's incremental borrowing rate if the interest rate is not readily determinable. A government

TOWN OF FORT MYERS BEACH, FLORIDA
AUDITOR'S DISCUSSION AND ANALYSIS
SEPTEMBER 30, 2021

should recognize amortization of the discount on the subscription liability as an outflow of resources (for example, interest expense) in subsequent financial reporting periods.

The subscription asset should be initially measured as the sum of: (1) the initial subscription liability amount, (2) payments made to the SBITA vendor before commencement of the subscription term, and (3) capitalizable implementation costs, less any incentives received from the SBITA vendor at or before the commencement of the subscription term. A government should recognize amortization of the subscription asset as an outflow of resources over the subscription term.

Activities associated with a SBITA, other than making subscription payments, should be grouped into the following three stages, and their costs should be accounted for accordingly:

- Preliminary Project Stage: including activities such as evaluating alternatives, determining needed technology, and selecting a SBITA vendor. Outlays in this stage should be expensed as incurred.
- Initial Implementation Stage: including all ancillary charges necessary to place the subscription asset into service. Outlays in this stage generally should be capitalized as an addition to the subscription asset.
- Operation and Additional Implementation Stage: including activities such as subsequent implementation activities, maintenance, and other activities for a government's ongoing operations related to a SBITA. Outlays in this stage should be expensed as incurred unless they meet specific capitalization criteria.

In classifying certain outlays into the appropriate stage, the nature of the activity should be the determining factor. Training costs should be expensed as incurred, regardless of the stage in which they are incurred.

- g) **Statement No. 97, *Certain Component Unit Criteria, and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans*** was issued in June 2020 and is effective for fiscal years beginning after June 15, 2021 (year-ends of June 30, 2022 and following).

The primary objectives of this statement are to: (1) increase consistency and comparability related to the reporting of fiduciary component units in circumstances in which a potential component unit does not have a governing board and the primary government performs the duties that a governing board typically would perform; (2) mitigate costs associated with the reporting of certain defined contribution pension plans, defined contribution other post-employment benefit (OPEB) plans, and employee benefit plans other than pension plans or OPEB plans (other employee benefit plans) as fiduciary component units in fiduciary fund financial statements; and (3) enhance the relevance, consistency, and comparability of the accounting and financial reporting for Internal Revenue Code (IRC) Section 457 deferred compensation plans (Section 457 plans) that meet the definition of a pension plan and for benefits provided through those plans.

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AUDITOR'S DISCUSSION AND ANALYSIS
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This statement requires that for purposes of determining whether a primary government is financially accountable for a potential component unit, except for a potential component unit that is a defined contribution pension plan, a defined contribution OPEB plan, or an other employee benefit plan (for example, certain Section 457 plans), the absence of a governing board should be treated the same as the appointment of a voting majority of a governing board if the primary government performs the duties that a governing board typically would perform. This statement also requires that the financial burden criterion in paragraph 7 of Statement No. 84, *Fiduciary Activities*, be applicable to only defined benefit pension plans and defined benefit OPEB plans that are administered through trusts.

This statement: (1) requires that a Section 457 plan be classified as either a pension plan or an other employee benefit plan depending on whether the plan meets the definition of a pension plan, and (2) clarifies that Statement 84, as amended, should be applied to all arrangements organized under IRC Section 457 to determine whether those arrangements should be reported as fiduciary activities.

h) Other Pending or Current GASB Projects. As noted by the numerous pronouncements issued by GASB over the past decade, the GASB continues to research various projects of interest to governmental units. Subjects of note include:

- **Re-Examination of the Financial Reporting Model.** GASB has added this project to its technical agenda to make improvements to the existing financial reporting model (established via GASB 34). Improvements are meant to enhance the effectiveness of the model in providing information for decision-making and assessing a government's accountability. GASB anticipates issuance of a final standard in mid-2022.
- **Revenue and Expense Recognition** is another long-term project where the GASB is working to develop a comprehensive application model for recognition of revenues and expenses from non-exchange, exchange, and exchange-like transactions. The final standard is expected in late 2024/early 2025.
- **Compensated Absences** is a technical topic being examined by the GASB currently due to significant changes in benefits offered by governmental employers. Current GAAP does not address certain items such as paid time-off (PTO) and there is a wide divergence in practice when it comes to the accounting treatment afforded the different types of paid leave. A final standard on this topic is expected by the end of 2021.
- **Prior-Period Adjustments, Accounting Changes, and Error Corrections** is a technical topic being examined by the GASB due to a wide diversity in practice regarding required presentation on the face of the financial statements, disclosures, etc. A final standard on this topic is expected by mid-2022.

**COMPLIMENTARY CONTINUING EDUCATION
AND NEWSLETTERS FOR GOVERNMENTAL CLIENTS**

Complimentary Continuing Education. We provide complimentary continuing education for all of our governmental clients. Annually, we pick a couple of significant topics tailored to be of interest to governmental entities. We provide these complimentary services typically in the summer months over a two day period and typically see 40 to 50 people. We obtain the input and services of experienced outside speakers along with providing the instruction utilizing our in-house professionals. We hope City staff and officials will be able to participate in this opportunity in future events. Examples of subjects addressed in the past include:

- Accounting for Debt Issuances
- Achieving Excellence in Financial Reporting
- Best Budgeting Practices, Policies and Processes
- ACFR Preparation (several times including a two day hands-on course)
- Capital Asset Accounting Processes and Controls
- Component Units
- Cybersecurity Risk Management
- Evaluating Financial and Non-Financial Health of a Local Government
- Financial Report Card – Where Does Your Government Stand?
- Financial Reporting Model Improvements
- GASB No. 84, Fiduciary Activities
- GASB No. 87, Leases
- GASB Projects & Updates (ongoing and several sessions)
- Grants (Accounting and Auditing)
- Human Capital Management
- Information Technology (IT) Risk Management
- Internal Controls Over Accounts Payable, Payroll and Cash Disbursements
- Internal Controls Over Receivables & the Revenue Cycle
- Internal Revenue Service (IRS) Compliance Issues, Primarily Payroll Matters
- Legal Considerations for Debt Issuances & Disclosure Requirements
- Policies and Procedures Manuals
- Presenting Financial Information to Non-Financial People
- Procurement Card Red Flags
- Risk, Efficiency, & Effectiveness in Governments
- Segregation of Duties
- Single Audits for Auditees
- Uniform Grant Guidance

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Governmental Newsletters. We produce newsletters tailored to meet the needs of governments. The newsletters have addressed a variety of subjects and are intended to be timely in their subject matter. The newsletters are authored by Mauldin & Jenkins partners and managers, and are not purchased from an outside agency. The newsletters are produced and delivered periodically (approximately six times per year), and are intended to keep you informed of current developments in the government finance environment.

Communication. In an effort to better communicate our complimentary continuing education plans and newsletters, please email Paige Vercoe at pvercoe@mjcpa.com and provide to her individual names, mailing addresses, email addresses, and phone numbers of anyone you wish to participate and be included in our database.

CLOSING

We believe the implementation of these suggestions will enhance both the control environment and the financial reporting process, making both more effective. We also believe these recommendations can be easily implemented. If you have any questions regarding any comments, suggestions or recommendations set forth in this memorandum, we will be pleased to discuss it with you at your convenience.

This information is intended solely for the use of the Town's management, and others within the Town's organization and is not intended to be and should not be used by anyone other than these specified parties.

We appreciate the opportunity to serve the Town of Fort Myers Beach, Florida and look forward to serving the Town in the future. Thank you.

1. **Requested Motion:**

Meeting Date: June 6, 2022

Approve Resolution 22-24 establishing the Town's Tentative Millage rate for Fiscal Year 2022-2023

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

ADMINISTRATIVE AGENDA

3. **Requirement/Purpose:**

4. **Submitter of Information:**

5. **Background:**

Pursuant to state law, the Tentative Millage Rate must be adopted by the Town Council prior to August 1st and submitted to the County Property Appraiser prior to August 4th. Once the preliminary millage rate has been set, it cannot be increased, only reduced.

Currently, the Town staff is developing the General Fund Operating Budget. The FY2022 millage rate of .95 per \$1,000 of property value was based on maintaining the level of services budget a .87 millage rate PLUS .08 millage rate for Town Council approved Community Capital Initiatives in 2020.

In FY2023, staff estimates that an additional \$1,988,900 will be available for new initiatives.

This is comprised of \$353,000 in one-time revenues and \$1,255,000 in recurring revenues. To the extent that any new Town Council initiatives are recurring, in order to maintain a structurally balanced budget, a millage rate increase or fee rate increase to support them on an ongoing basis is warranted.

In FY2022, Town Council proposed a .99 millage rate to provide an adequate ceiling for deliberations during the summer, culminating in two public hearings in September.

The County will release the Final Property Values for FY2022 on or before July 1. FY2022 financial reports throughout the first 7 fiscal months have been distributed to the Town Council.

In addition, preliminary staffing and equipment data was provided at the May 5, 2022 Management & Planning session. Lastly, the LPA reviewed the 5 year CIP at their May 31, 2022 meeting.

Attachments:

1. Resolution 22-24 Tentative Millage Rate
2. Attachment A

Financial Impact:

6. **Alternative Action**

Adjust millage rate in accordance with Town Council consensus.

7. **Management Recommendations:**

8. **Recommended Approval:**

Cheri Russ, Accounting Manager

John R Herin Jr, Town Attorney

Amy Baker, Town Clerk

Roger Hernstadt, Town Manager

Created/Initiated - 5/31/2022

Approved - 5/31/2022

Approved - 5/31/2022

Final Approval - 5/31/2022

RESOLUTION NUMBER 22-24

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, ADOPTING THE TENTATIVE OPERATING AD VALOREM MILLAGE RATE OF .9500 MILLS FOR FISCAL YEAR 2022-2023 OF THE TOWN OF FORT MYERS BEACH; ESTABLISHING THE DATE, TIME AND PLACE FOR HEARINGS TO ADOPT THE FINAL OPERATING AD VALOREM MILLAGE RATE AND BUDGET FOR THE FISCAL YEAR 2022-2023; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, 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, Section 200.065, *Florida Statutes*, establishes the method for determining and levying an ad valorem millage rate and adopting a budget for all taxing authorities in the State of Florida; and

WHEREAS, the Town of Fort Myers Beach, by and through its Town Council, hereby determines it is in the best interest of the Town and orderly governmental process to hold public hearings as required by Section 200.065, *Florida Statutes*; and

WHEREAS, it is in the best interest of the health, safety and welfare of the residents and visitors of Fort Myers Beach that the Town Council set the tentative operating millage rate as set forth herein and take the other actions set forth herein; and

WHEREAS, the gross taxable value for operating purposes not exempt from taxation within the Town of Fort Myers Beach, Lee County, Florida has been preliminary certified by the Lee County Property Appraiser to the Town of Fort Myers Beach estimated as \$4,426,441,000 as documented on Attachment "A"; and

WHEREAS, in addition, the Town of Fort Myers Beach received American Rescue Plan Act funding from the United States Government and designated the spending priorities pursuant to Resolution 22-03, and such amounts are appropriated accordingly.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE TOWN COUNCIL OF 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 tentative ad valorem operating millage rate for Fiscal Year 2022-2023, is hereby adopted at .9500 mills, which equals \$950 per \$100,000 dollars of property value.

Section 3. Public meetings and hearings will be held in compliance with Florida Property Tax Truth In Millage (TRIM) Process at Town Hall, 2525 Estero Boulevard, Fort Myers Beach, Florida, to consider and adopt the final millage rate and to consider and adopt the Town budget for Fiscal Year 2022-2023 as set forth in Section 200.0654, et seq., *Florida Statutes*.

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

The foregoing Resolution was adopted by the Town Council upon a motion by Vice Mayor Hosafros and seconded by Council Member Veach 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
Jim Atterholt, Council Member	nay
Bill Veach, Council Member	aye

ADOPTED this 6th day of June 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 June 2022.

FY22 Estimated Tax Roll

FY21 Final Assessed Value from LCPA	3,886,776,743.00
FY22 Estimated Assessed Value	4,426,441,000.00

FY22 AdValorem Revenue

0.9500	3,692,437.91	*.96=	\$ 3,544,740.39
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Estimated FY23 AdValorem Taxes

0.9500	\$ 4,205,118.95	*.96=	\$ 4,036,914.19
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Additional Revenue
over FY22

492,173.80

1. Requested Motion:

Meeting Date: June 6, 2022

Waive the Town's purchasing policies and procedures for an emergency purchase at the request of the Lee County School District and approve an Agreement with Conidaris Builders to serve as the project manager/general contractor to obtain all required permits for the installation of playground equipment and accessory items at Fort Myers Beach Elementary in an amount not to exceed \$117,992.00 (existing piggyback agreement will be amended and lowered \$68,000).

Why the action is necessary:

Lee County School District requires any work done on District property be by a licensed General Contractor and mandates Performance and Construction Bonds.

What the action accomplishes:

Swartz and Associates is not a General Contractor. Conidaris Builders is a General Contractor and will be the project manager and installer of the playground equipment.

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

Other

4. Submitter of Information:

Chelsea O'Riley, Public Works
Director

5. Background:

In January, Town Council approved the piggyback agreement with Swartz Associates for the purchase of playground equipment for both Fort Myers Beach Elementary School and Bay Oaks.

The Town was recently informed by the Lee County School District that the Bay Oaks playground equipment project requires a General Contractor to pull permits and bond the Project as needed to meet the District's requirements.

To minimize disruption to school operations, it is best to install the equipment during the summer before the new school year begins. Putting the work out to bid is not possible if the Town and School District desire to complete the project before the new school year. Therefore, the Town Manager declares a purchasing emergency and recommends waiving the Town's purchasing policies and procedures and entering into an agreement with Conidaris because it is available and willing to serve as project manager and installer of the playground equipment and is qualified for site work for the Town under the RFQ-19-22-UT. The previously approved piggyback agreement with Swartz will be amended to only purchase the equipment with a price reduction from \$249,960.00 to \$181,960.00. The difference in price of \$68,000 will be put towards this agreement for the playground installation.

Attachments:

1. SPA CONIDARIS
2. Town of Fort Myers Beach Proposal #1818

Financial Impact:

6. Alternative Action

Do not approve.

7. **Management Recommendations:**

Approve the Agreement.

8. **Recommended Approval:**

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

Created/Initiated - 5/25/2022
Approved - 5/25/2022
Approved - 5/25/2022
Approved - 5/31/2022
Approved - 5/31/2022
Final Approval - 5/31/2022

SERVICE PROVIDER AGREEMENT

This SERVICE PROVIDER AGREEMENT is entered into on this ____ day of _____ 2022, by and between the Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931, a chartered municipality of the State of Florida (hereafter "Town"), and **CONIDARIS BUILDERS & GENERAL CONTRACTOR, INC** with an address of **15645 Pine Ridge Road, Fort Myers, FL 33908** (hereafter "Provider").

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

1. **Scope of Services.** Provider will perform all services and work necessary as set forth in "Scope of Services" attached as Exhibit "A". Provider warrants and represents that it is qualified, willing and able to provide and perform all services in accordance with the terms of this Agreement. The parties have the ability to modify the Scope of Services by mutual written agreement, except that the Town has the unilateral right to exclude specified services hereunder for any reason upon prior written notice to Provider and Provider will not be entitled to compensation for such excluded services unless those services have already been performed by Provider.
2. **Term.** The term of this Agreement is _____ commencing on _____ and terminating on _____.
3. **Payment Obligation.** The Town will pay for all requested and authorized services rendered hereunder by the Provider and completed in accordance with this Agreement, as set forth in attached Exhibit "B". The Provider's invoice statements must contain a breakdown of charges, description of services and work provided or performed, and, where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in this Agreement. In the event of a dispute as to the Town's payment obligation, the Town will pay the undisputed amount, if any, within 30 days of the date of the invoice.
4. **Provider's Obligations.** The Provider's obligations include, but are not limited to, the following:
 - a) **Licensure.** The Provider will maintain all licenses and certifications required by governmental agencies responsible for regulating and licensing the services provided and performed by the Provider.
 - b) **Provision of Services.** The Provider will perform all services pursuant to this Agreement in accordance with generally accepted standards of professional practice and in accordance with the laws, statutes, ordinances, codes, rules, regulations and requirements of governmental agencies that regulate or have jurisdiction over the services to be provided or performed by the Provider. All personnel assigned by Provider hereunder will be qualified to perform such duties. Provider will designate one person as the point of contact for the Town regarding its duties hereunder. Provider is solely responsible for all taxes incurred by Provider and will make all deductions required of employers by state, federal and local laws.
 - c) **Non-Waiver.** Neither review, approval, nor acceptance by Town of data, studies,

reports, memoranda, and incidental professional services, work and materials furnished hereunder by the Provider will in any way relieve Provider of responsibility for the adequacy, completeness and accuracy of its services, work and materials.

- d) Indemnity and Hold Harmless. The Provider agrees to indemnify and hold harmless the Town, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Provider and persons employed or utilized by Provider in providing services under this Agreement.
 - e) Non-Public Information. The Provider agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without the Town's prior written consent, or unless incident to the proper performance of Provider's obligations hereunder, or as provided for or required by law, any non-public information concerning the services to be rendered by Provider. Provider will require all of its employees and agents to comply with the provisions of this paragraph.
 - f) Statutory Duties. The duties and obligations imposed upon the Provider by this Agreement and the rights and remedies available to the Town hereunder will be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.
 - g) Disclosure. The Provider warrants it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift or other compensation contingent upon or resulting from the award or making of this Agreement.
5. Commencement and Completion of Work. The Town will provide written notice to the Provider regarding commencement of services under this Agreement. Time is of the essence in the performance of this Agreement. The Provider agrees to commence work promptly and carry on all services and work as may be required in a timely and diligent manner to completion. Should the Provider fail to commence, provide, perform, and complete any of the services and work required hereunder in a timely and diligent manner, the Town may terminate this Agreement, in addition to any other remedies the Town may have.
6. Insurance. The Provider will have, and maintain, during the entire period of this Agreement, all such insurance (or self-insurance) as set forth on Exhibit "C". Each Certificate of Insurance must include the name and type of policy and coverages provided; the amount or limit applicable to each coverage provided; the date of expiration of coverage; the designation of the Town of Fort Myers Beach as additional insured and as certificate holder, except as to Professional Liability Insurance and Workers' Compensation Insurance. Should any of these policies be cancelled before the expiration date thereof, Provider will instruct the issuing company to mail 30 days written notice to the Town of such cancellation.

7. Inclusion of Additional Documents. Any request for bids and/or request for proposal, along with all exhibits or other attachments thereto as issued by the Town, are hereby incorporated by reference. In addition, the following Exhibits are attached hereto and hereby incorporated by reference: Exhibit "A"; Exhibit "B"; Exhibit "C"; Attachment "A".
8. Termination of Agreement. Either party may terminate this Agreement without cause upon 30 calendar days' prior written notice to the other, in which case the Town will compensate the Provider for all services performed prior to the effective date of termination and reimbursable expenses then due.
9. Assignment, Transfer and Subcontracts. The Provider may not assign or transfer any of its rights, benefits, or obligations hereunder, except for transfers that result from the merger or consolidation of Provider with a third party. The Provider has the right, subject to the Town's prior written approval, to employ other persons and firms to serve as subcontractors to Provider in connection with its performance of services and work pursuant to this Agreement.
10. Maintenance of Records. The Provider will keep and maintain adequate records and supporting documentation applicable to all the services, work, information, expense, costs, invoices and materials provided and performed pursuant to this Agreement. Said records and documentation will be retained by the Provider for a minimum of three years from the date of termination of this Agreement, or for such period as required by law. The Town and its authorized agents will, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the Town deems necessary during the term of this Agreement and the next succeeding three years.
11. Public Records. 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 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, FMBPUBLICRECORDS@FMBGOV.COM, 2525 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.

12. References to Town. All references to "the Town" or "the Town of Fort Myers Beach" are deemed to include its employees, agents, and authorized representatives.
13. Modification. Except as set forth in Paragraph 1 above, modifications to this Agreement will be valid only when made in writing and signed by both parties. In the event of a conflict between the requirements, provisions, or terms of this Agreement and any subsequent written modification hereto, the most recently executed document will take precedence.
14. E-Verify. ***As a condition precedent to entering into this AGREEMENT***, and in compliance with Section 448.095, Fla. Stat., Contractor, and its subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.
 - a. Contractor shall require each of its subcontractors to provide Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this AGREEMENT.
 - b. Town, Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.
 - c. Town, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but Contractor otherwise complied, shall promptly notify Contractor and Contractor shall immediately terminate the contract with the subcontractor.
 - d. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. Contractor acknowledges that upon termination of this AGREEMENT by the Town for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that Contractor is liable for any additional costs incurred by the Town as a result of termination of any contract for a violation of this section.
 - e. *Subcontracts.* Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in

this section.

15. Prohibition Against Contracting with Scrutinized Companies. 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.

16. Miscellaneous Provisions.

- a) Applicable Law. This Agreement is governed by the laws of the State of Florida.
- b) Non-Discrimination. The Provider covenants that in the furnishing of services hereunder, no person on the grounds of race, color, national origin, handicap, or sex will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- c) Headings. The headings of the Articles, Sections, Exhibits, and Attachments in this Agreement are for the purpose of convenience only and may not be deemed to expand, limit or change the provisions contained in such Articles, Section, Exhibits and Attachments.
- d) Entire Agreement. This Agreement, including any Exhibits, constitutes the entire Agreement between the parties and supersedes all prior agreements or understandings, written or oral, relating to the matters set forth herein.
- e) Notices. All notices required under this Agreement must be in writing and sent via U.S. Postal Service, first class mail, to the other party's address as listed at the beginning of this Agreement. Either party may change its address by prior written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.

TOWN OF FORT MYERS BEACH

ATTEST:

BY: _____
Roger Hernstadt, TOWN MANAGER

BY: _____
Amy Baker, TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

BY: _____
Town Attorney

PROVIDER: CONIDARIS BUILDERS & GENERAL CONTRACTOR, INC

BY: _____
Signature

Witness Signature

Printed name of person signing

Printed name of witness

Title (printed)

EXHIBIT "A"

TO THE SERVICE PROVIDER CONTRACT DATED THIS ____ day of _____, 20____
BETWEEN THE TOWN AND **CONIDARIS BUILDERS & GENERAL CONTRACTOR, INC**
PROVIDER.

1. **SCOPE OF SERVICES**: The Provider will perform the following services under this Agreement:

Please see attachment 1

EXHIBIT "B"

TO THE SERVICE PROVIDER CONTRACT DATED THIS _____ DAY OF _____,
2022, BETWEEN THE TOWN AND **CONIDARIS BUILDERS & GENERAL CONTRACTOR,**
INC PROVIDER.

PAYMENT OBLIGATION

1. The Town will pay the Provider as follows for all services listed in Exhibit "A":

\$117,992

2. Provider will receive reimbursement for out-of-pocket expenses from the Town as follows:

None

EXHIBIT "C"

INSURANCE: The Provider shall obtain and maintain the following insurance coverages:

- a) Workers Compensation Coverage to comply for all employees for Statutory Limits in compliance with the applicable State and Federal laws;
- b) Employer's Liability with a minimum limit per accident in accordance with statutory requirements;
- c) Commercial General Liability Insurance with minimum limits of \$500,000 per occurrence and \$500,000 aggregate for Bodily Injury Liability and a minimum limit of \$500,000 for Property Damage Liability, or a minimum combined single limit of \$1,000,000.
- d) Business Automobile Liability Insurance with minimum limits of \$500,000 per person and \$500,000 per accident for Bodily Injury Liability and a minimum limit of \$500,000 for Property Damage Liability, or a minimum combined single limit of \$500,000, with coverage including owned vehicles, hired and non-owned vehicles, and employee non-ownership.

CONIDARIS BUILDERS & GENERAL CONTRACTOR, INC.

15645 Pine Ridge Road
Fort Myers, FL 33908

Phone# 239-415-2886

Fax# 239-415-7671

E-mail ConidarBuilders@aol.com

PROPOSAL

Proposal Date: 5/12/2022

Proposal #: 1818

Name/Address

Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach, FL 33931

Job Location

Playground Bay Oaks
Attn: Jason Freeman

Description	Est. Hours/Qty.	U/M	Rate	Total
-Oversight and Supervision for the site work, playground equipment, & installation of playground equipment at Fort Myers Beach Elementary School. Includes all Permitting through lee county school district. Includes all excavation work, site preparation with concrete boarder system. Off-loading, assembly, & installation of playground equipment. Henerderson Recreation: #B504133R2 Modular Structure w/ 5" O.D. Posts #SW360/361 (3) 8' arch swing w/ 8 belt seats #TE031 Orbiter #TE045 Stand up spinner #TE066 Sit down spinner Forestry Resources: 470 Playsafe plus-B IPEMA Mulch (Measured in Cubic Yards) 5 Weed Barrier (6' x 300' Roll) Labor and Parts			117,992.00	117,992.00
Due to any unforeseeable conditions all extra will be at cost plus basis. Excluded All permits and Fees			Total \$117,992.00	

All material is guaranteed to be as specified. All work to be completed in a workman like manner according to standard practices. Any alteration of deviation from above specification involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Acceptance Signature: _____ Date _____

This Proposal may be withdrawn by us, if not
accepted within _____ days

Date of Acceptance: the above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified.

Payment will be made as outlined above,

CONIDARIS BUILDERS & GENERAL CONTRACTOR, INC.

15645 Pine Ridge Road
Fort Myers, FL 33908

Phone# 239-415-2886

Fax# 239-415-7671

E-mail ConidarisBuilders@aol.com

PROPOSAL

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Town of Fort Myers Beach 2525 Estero Blvd. Fort Myers Beach, FL 33931

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Total \$117,992.00

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Acceptance Signature: _____ Date _____

This Proposal may be withdrawn by us, if not
accepted within _____ days

Date of Acceptance: the above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified.

Payment will be made as outlined above,

1. Requested Motion:

Meeting Date: June 6, 2022

Awarding the mooring field expansion bid to Dock Marine Construction Corporation, as the low, responsive and responsible bidder, in response to ITB-22-11-PW Matanzas Pass Mooring Field Expansion Construction in the amount not to exceed \$269,454.00 (Town's share is up to \$138,939 which includes a \$67,430 grant match) for up to ten double anchor mooring systems and nine single anchor mooring systems and authorize the Town Manager to negotiate the number and size of systems to be installed, negotiate a final and best offer, and execute a construction agreement with Dock Marine Construction Corporation.

Why the action is necessary:

To enter into a contract with Dock and Marine Construction Corporation to install the 19 new mooring systems to expand the mooring field.

What the action accomplishes:

Approves and authorizes the Town Manager to execute contract documents once the size and number of mooring systems is determined.

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

4. Submitter of Information:

Chelsea O'Riley, Public Works
Director

5. Background:

ITB-22-11-PW was issued and properly advertised on March 15, 2022 for Matanzas Pass Mooring Field Expansion Construction. Bids were due by May 13, 2022. The bid resulted in two on-time submittals, one from Dock and Marine Construction Corporation and the other from Kelly Brothers (a third bid was received after the deadline and remains unopened).

The Town executed a grant agreement with the Florida Fish and Wildlife Conservation Commission earlier this year to have FWC fund the expansion up to \$130,515 with the Town's cost share of a minimum of 34.07% (\$67,430 if full grant amount is used).

The Town has planned on adding 19 additional mooring systems to the field with double anchors to accommodate larger sized vessels than the current maximum of 50 feet in length. The bid results exceeded the grant amount/Town share ratio. The grant money will partially fund the project, but the Town will have to appropriate the remaining amount of \$71,509.00 (which could be advanced from FY2023 revenues). If funds are not available at this time to completely fund the project in its entirety, it may be an option to modify the project scope to reduce the cost.

The project as bid includes ten double anchor moorings designed for vessels up to 90 feet and nine single anchor moorings for vessels from 45 to 65 feet. The unit price for each in the bid from DMCC was \$16,462.00 and \$8,552.00, respectively.

An alternative action would be to install all 19 moorings as a single anchor system. By using the information from the Schedule of Values provided in the bid, the total cost would be reduced from \$269,454 to \$190,354. This would build out the mooring field as intended to a capacity of 19 vessels; however, the maximum vessel size would be reduced from 90 to 65 feet.

Attachments:

1. ITB-22-11-PW TFMB Mooring Field Expansion CEC Bid Recommendation 20220524
2. Bid Opening Tabulation sheet ITB-22-11-PW
3. Dock and Marine- ITB-22-11-PW- Matanzas Pass Mooring Field Expansion Construction - BID

Financial Impact:

Grant funding with Town match.

6. Alternative Action

Do not approve.

7. Management Recommendations:

Approve and authorizes the Town Manager to execute contract documents once the size and number of mooring systems is determined.

8. Recommended Approval:

Jason Freeman, Public Works Manager
Jason Freeman, Public Works Manager
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 5/26/2022
Approved - 5/26/2022
Approved - 5/31/2022
Approved - 5/31/2022
Final Approval - 5/31/2022



Coastal and Marine Engineering
Environmental and Geological Services
Land and Marine Survey and Mapping
Website: www.coastalengineering.com

May 24, 2022

Mr. Jason Freeman
Public Works Manager
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, Florida 33931

**Re: Matanzas Pass Mooring Field Expansion Construction
Bid Review Summary, ITB-22-11-PW
CEC File No. 22.052**

Dear Jason:

Pursuant to the Town's request and within our contracted scope, CEC reviewed the apparent low bid as you tabulated and provided to us. This bid was submitted by Dock and Marine Construction Corporation (DMCC) and our review was to determine if they meet the requirements for the above referenced Project. CEC reviewed the submitted bid forms and attachments.

Based upon our review of the bid submittal, it is our opinion that they have the experience to construct this project within the construction time window. Further, DMCC has successfully completed numerous mooring field projects of a similar magnitude in Florida.

Therefore, our recommendation of contract award is to DMCC.

We appreciate the opportunity to be of service. If you have any questions, please do not hesitate to call me at (239) 260-3776 or via email at mkincaid@cecifl.com.

Respectfully submitted,
COASTAL ENGINEERING CONSULTANTS, INC.

A handwritten signature in black ink, appearing to read "Mark Kincaid", with a large, stylized loop at the end.

Mark Kincaid
Vice President of Engineering

ITB-22-11-PW

Staff Present:

2VA SPYCHALSK1 - SK



TOWN of FORT MYERS BEACH

BID NO. ITB-22-11-PW

PART D
FMB:003 - OFFICIAL BID FORM
(1 of 5 Pages)

FOR

MATANZAS PASS MOORING FIELD EXPANSION CONSTRUCTION
ITB-22-11-PW

Bids are to be submitted by

MAY 13, 2022 @ 2:00 P.M. EST,

to:

TOWN OF FORT MYERS BEACH
TOWN HALL
2525 ESTERO BOULEVARD
FORT MYERS BEACH, FL 33931

BID OPENING:

LOCATION: Council Chambers
2525 Estero Boulevard
Fort Myers Beach, FL. 33931

Friday, MAY 13, 2022 @ 2:15 P.M. EST

TOWN COUNCIL FORT MYERS BEACH
LEE COUNTY, FLORIDA

BIDDER: **Dock and Marine Construction Corp / Glen Larosn**
(Individual or Firm Name)



TOWN of FORT MYERS BEACH

BID NO. ITB-22-11-PW

PART D
FMB:003 - OFFICIAL BID FORM
(2 of 5 Pages)

Friday, May 13, 2022
(DATE)

2:00 P.M. EST
(TIME)

Town of Fort Myers Beach
2525 Estero Blvd.
Fort Myers Beach, FL 33931

1. ATTENTION: BIDS WILL ONLY BE CONSIDERED FROM THOSE BIDDERS WHO HAVE OBTAINED THESE CONTRACT DOCUMENTS DIRECTLY FROM THE TOWN
2. The Undersigned, hereinafter called "BIDDER", having visited the site of the proposed project and having become familiar with the local conditions, nature and extent of the work, and having examined carefully the Agreement Form, General Conditions, Supplementary Conditions, Plans and Specifications and other Contract Documents, and having fulfilled their requirements as well as the Bonding requirements herein, proposes to furnish all labor, materials, equipment and other items, facilities and services for the proper execution and completion of the:

MATANZAS PASS MOORING FIELD EXPANSION CONSTRUCTION
ITB-22-11-PW

in full accordance with the drawings and specifications prepared in accordance with the Town's Advertisement for Bids, Instruction to Bidders, Construction Contract and all other documents related thereto on file with Town of Fort Myers Beach, and if awarded the contract, to complete the said work within the time limits specified for the following bid price:



**SCHEDULE OF VALUES
TOWN OF FORT MYERS BEACH
MATANZAS PASS MOORING FIELD EXPANSION CONSTRUCTION**

ITEMS	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	Cost
1	Mobilization/Demobilization (<5%)	5%	LS	\$13,471.00	\$13,471.00
2	Performance, Payment, and Maintenance Bond Premiums and Insurance	1%	LS	\$2,695.00	\$2,695.00
3	Mooring System Installation				
3.1	Double Anchor (#1 – 10)	10	EA	\$16,462.00	\$164,620.00
3.2	Single Anchor (#11 – 19)	9	EA	\$8,552.00	\$76,968.00
4	Yellow Special Purpose Buoy Installation	4	EA	\$1,700.00	\$6,800.00
5	Environmental Protection Measures	1	LS	\$2,900.00	\$2,900.00
6	Helical Anchor Load Test	1	LS	\$2,000.00	\$2,000.00
		Total		\$269,454.00	

Total Bid Amount (Written): Two hundred and sixty nine thousand, four hundred and fifty four dollars.

3. The BIDDER hereby agrees that:

- (a) The above proposal shall remain in full force and effect for a period of 90 calendar days after the time of the opening of this proposal and it shall not be revoked, withdrawn or canceled within that time frame, except that the TOWN may in its sole discretion, release any Bid and return the Bid security prior to that date. Once the bidder has been notified that its bid has been awarded by the Town of Fort Myers Beach, within the above time frame the price proposed as submitted shall constitute the contract price and a formal contract for that amount shall be executed within the time frames established by these documents.
- (b) In the event the award is made to this BIDDER, the BIDDER will enter into a formal written agreement with the TOWN in accordance with the accepted bid, will execute the contract contained within these documents, and provide a Public Construction Bond from a Surety in good standing with the Florida Department of State who is licensed to do business in Florida and acceptable to the OWNER. The Public Construction Bond shall be in the amount of one hundred percent (100%) of the accepted bid amount. The BIDDER shall, at the time the Contract is executed, submit the required Certificates of Insurance. The BIDDER further agrees that in the event of the BIDDER'S default of breach of any of the agreements of this proposal, the bid security shall be forfeited.



PART D

FMB:003 - OFFICIAL BID FORM

(4 of 5 Pages)

4. Acknowledgment is hereby made of receipt of the following Addenda issued during the bidding period.

Addendum No. 1 Dated: March 29, 2022 Addendum No. 3 Dated May 6, 2022

Addendum No. 2 Dated: April 27, 2022 Addendum No. Dated

5. If awarded this construction contract, the BIDDER agrees to complete the work covered by this contract as follows:

- (a) Substantially complete in 90 consecutive calendar days from date of Official Notice to Proceed.
- (b) Final completion in 120 consecutive calendar days from the date of Official Notice to Proceed.

6. Neither the undersigned nor any other person, firm or corporation named herein, nor anyone else to the knowledge of the undersigned, have themselves solicited or employed anyone else to solicit favorable action for this proposal by the TOWN, also that no head of any department or employee therein, or any officer of Fort Myers Beach, Florida is directly interested therein.

This proposal is genuine and not collusive or a sham; the person, firm or corporation named herein has not colluded, conspired, connived or agreed directly or indirectly with any bidder or person, firm or corporation, to put in a sham proposal, or that such other person, firm or corporation, shall refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person, firm or corporation, to fix the unit prices of said proposal or proposals of any other bidder, or to secure any advantage against the TOWN or any person, firm or corporation interested in the proposed contract; all statements contained in the proposal or proposals described above are true; and further, neither the undersigned, nor the person, firm or corporation named herein, has directly or indirectly submitted said proposal or the contents thereto, to any association or to any member or agent thereof.



PART D
FMB:003 - OFFICIAL BID FORM
(5 of 5 Pages)

7. The below signed BIDDER agrees to comply with all applicable provisions as set forth in the Anti-Discrimination requirements included as part of the General Conditions of this document. The BIDDER further agrees to hold harmless, defend and indemnify the TOWN and its agents for any losses, including attorney's fees, incurred as a result of its failure to abide by the applicable Anti-Discrimination laws.

Glen Larson

CGC1521069 / E 410

(Name of License Holder)

(State Certificate No.)

7162688 Miami Dade County

CGC1521069 / E 410

Business Tax Receipt No. (Specify jurisdiction)

(State Registration No.)

In witness whereof, the BIDDER has hereunto set its signature and affixed its seal this
11 day of May, 2022.

Glen Larson

By: Printed

By: Signature

TITLE: President

Company Name

Dock and Marine Construction Corp

Mailing Address

752 NE 79th St Miami, FL 33138

City, State, and Zip

Contact Person

Glen Larson

E-mail / Contact Person

glarson@dockandmarine.net

Telephone Number

305-751-9911

Fax Number

ATTEST:

Secretary

(Seal)



REMITTER: DOCK & MARINE CONSTRUCTION CORP

DATE 05/11/2022

3100365
63-436/660

PAY TO THE ORDER OF TOWN OF FT. MEYERS BEACH

\$ 13,472.70

**** Thirteen Thousand Four Hundred Seventy Two and 70/100****

MEMO:

CASHIER'S CHECK

CUSTOMER COPY

NON - NEGOTIABLE

THIS CHECK IS PROTECTED BY A VOID PANTOGRAPH, MICROPRINT SIGNATURE LINE AND A HEAT SENSITIVE PADLOCK ICON. ADDITIONAL SECURITY FEATURES ARE LISTED ON BACK.

NOTICE TO CUSTOMERS

The issuance of a "Declaration of Loss" under oath statement will be required before this check will be replaced or refunded in the event it is lost, misplaced, or stolen.



3100365
63-436/660

REMITTER: DOCK & MARINE CONSTRUCTION CORP

DATE 05/11/2022

PAY TO THE ORDER OF TOWN OF FT. MEYERS BEACH

\$ 13,472.70

**** Thirteen Thousand Four Hundred Seventy Two and 70/100****

MEMO:

CASHIER'S CHECK



3100365 0660043671 1500000050



PART D
FMB:001 - BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we _____ as Principal, and
(BIDDER'S Name)

_____ a Corporation licensed to do
(Surety's Name)

business under the laws of the State of Florida as a Surety, are held and firmly bound unto TOWN OF FORT MYERS BEACH TOWN COUNCIL, LEE COUNTY, FLORIDA, a Political Subdivision of the State of Florida,
in the SUM OF \$ _____

for the payment whereof, well and truly to be made, we bind ourselves, our heirs, successors, personal representatives and assigns, jointly and severally, firmly, by these presents.

SIGNED AND SEALED this _____ day of _____, 20____

WHEREAS, said Principal is herewith submitting a Bid Proposal for the construction of:

MATANZAS PASS MOORING FIELD EXPANSION CONSTRUCTION
ITB-22-11-PW

NOW, THEREFORE, the condition of the above obligation is such that if said Principal shall be awarded the Contract upon said Proposal within the specified time and shall enter into a written Contract, satisfactory in form, provide an acceptable Public Construction Bond from a Surety acceptable to the TOWN and provide other Insurance as may be required to the TOWN within such time period as the TOWN may allow, then this obligation shall be null and void; otherwise said Principal and Surety shall pay to said TOWN in money the difference between the amount of the Bid of said Principal and the amount for which said TOWN may legally contract with another party to perform said work, if the latter amount be in excess of the former, together with any expenses and reasonable attorney's fees incurred by said TOWN if suit be brought hereon, but in no event shall said Surety's liability exceed the penal sum hereof plus such expenses and attorney's fees. The liability of the Surety shall not exceed the penal sum of the bid bond.

Witness as to Principal

(SEAL)

By: Witness Signature

Principal

Witness as to Surety

(SEAL)

By: Witness Signature

Surety's Name

By: As-Attorney-in-Fact, Surety

Affix Corporate Seals and attach proper Power of Attorney for Surety.



TOWN of FORT MYERS BEACH
PART D
FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE
(1 of 7 Pages)

BID NO. ITB-22-11-PW

THIS FORM MUST BE ON FILE WITH TOWN OF FORT MYERS BEACH, 2525 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931, AND BE CURRENT WITHIN TWELVE (12) CALENDAR MONTHS OR COMPLETED AND SUBMITTED WITH THIS BID PACKAGE. ANY CHANGES WHICH AFFECT THE ORGANIZATIONAL STRUCTURE, QUALIFICATIONS OR LICENSES SHALL BE REPORTED IMMEDIATELY TO THE TOWN. FAILURE TO UPDATE CHANGES WHICH MAY AFFECT THE CONTRACTOR RESPONSIBILITY MAY BE GROUNDS FOR THE CONTRACTOR TO BE DECLARED NOT A RESPONSIBLE CONTRACTOR FOR THIS BID OR FUTURE BIDS WITH TOWN OF FORT MYERS BEACH.

Submitted By: Dock and Marine Construction Corp

☒ CORPORATION - Date of Incorporation: 2000 State of Florida
Incorporation: 2000

If Out of State Corporation, currently authorized to do business in Florida,
give date of such authorization: _____

☐ PARTNERSHIP - Date of Organization: _____ Nature of Partnership: General ☐
Limited ☐
Association ☐

☐ INDIVIDUAL - Name and Address of Owner _____

☐ JOINT VENTURE - Between _____
Name Title
And _____
Name Title
Date of Agreement _____

☐ OTHER - Explain _____

Parent Company Office Address (if any): 752 NE 79th St Miami, FL 33138

Principal Office Address: _____

Name of Project (if applicable): _____

Person to Contact: Glen Larson

Title: President

Telephone
No.: 3057519911



PART D
FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE
(2 of 7 Pages)

Type of Work (file separate form FMB:004 for each classification of work):

The signee of this questionnaire guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of all statements and of all answers to interrogatories hereinafter made.

The undersigned hereby authorizes and requests any public official, engineer, architect, surety company, bank depository, material or equipment manufacturer or distributor or any person, firm or corporation to furnish any pertinent information requested by the Town of Fort Myers Beach deemed necessary by the Town to verify the statements made in this application or regarding the standing and general reputation of the Bidder.

1. How many years has your organization been in business as a General Contractor under your present name?

22 years

2. Under what other or former names has your organization operated?

n/a

3. List below your organizations Officers, Owners or Partners:

NAME	TITLE	ADDRESS	DATE ASSUMING POSITION
Glen Larson	President	752 NE 79th St Miami, FL 33138	2000



PART D
FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE
(3 of 7 Pages)

4. List jurisdictions and trade categories in which your organization is legally qualified to do business and indicate registration or license numbers, if applicable:

JURISDICTION	TRADE	STATE CERT. NO.	TOWN'S COMP. NO.	STATE REG. NO.	TOWN'S OCC. LIC. NO.	STATE PERMIT	EXPIRE DATE
State of FL	General Contracto	CGC1521069	E-410				

5. List jurisdictions in which your organization's partnership or trade name is filed:

State of Florida

6. If the answer to any of the questions below is YES, please attach details. Reference sheets to question number.

6.1 Has your organization ever failed to complete any work awarded to it?

YES ☐ NO ☒

See Sheet No. _____

6.2 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization or its officers?

YES ☐ NO ☒

See Sheet No. _____

6.3 Has your organization filed any law suits or requested arbitration with regard to construction contracts within the last five (5) years?

YES ☐ NO ☒

See Sheet No. _____

7. Has any Officer or Partner of your organization ever failed to complete a construction contract handled in his own name or as a qualifier for another?

YES ☐ NO ☒

If so, state the name of the individual, name of owner, when, where, and the reason therefore:

8. Has any Officer or Partner of your organization ever been as Officer or Partner of some other organization that failed to complete a construction project?

YES ☐ NO ☒

If so, state the name of the individual, other organization, when, where and the reason therefore:



PART D
FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE
(4 of 7 Pages)

9. Has your organization ever been refused registration by a Federal, State or Municipal Agency as a Pre-qualified Bidder or Qualified Bidder for construction contracts? YES ☐ NO ☒
- If so, for what type of work? _____
- Give details and reason: _____
10. Give below any information which would indicate the size and capacity of your organization, including the number of permanent employees engaged in estimating, purchasing, expediting, detailing and engineering, field supervision, field engineering and layout:
- 32 Permanent Employees, (5) estimating and purchasing, (2) Expediting , (1) Engineer (3) Field Supervision
- (use extension sheet if necessary and reference sheet number herein: 0)
11. Attach resumes of key personnel, including superintendents for field management. The resumes shall include the following information:
- 11.1 Name and present position or capacity
 - 11.2 Years of construction experience, type of work, position or capacity and cost range
 - 11.3 Years of related construction experience, type of work, position or capacity and cost range
 - 11.4 Brief education and professional registrations
12. List of type of work normally provided by your own work forces:
- Marine Construction, Engineering, permit processing.
13. Indicate type of contracting undertaken by your organization and number of years experience:
- As General Contractor 22 Years Marine Type
- As Sub-Contractor _____ Years _____ Type
14. Attach the prime construction contracts your organization has underway on this date 5/11/2022
- The list shall include the following information:* (reference sheet numbers herein: 1)
- 14.1 Project Title and Location
 - 14.2 Contractor or Sub-Contractor
 - 14.3 Contract Amount and Date of Contract
 - 14.4 Percent of Project Constructed by Sub-Contractors
 - 14.5 Percent Complete
 - 14.5 Project Manager or Superintendent
 - 14.6 Required Completion Date
 - 14.7 Name, Address and Telephone Number of Owner
 - 14.8 Designing Architect/Engineer and Address

Job Name	Start	Contract Price	Change	Adjusted Contract Price	Estimated Cost	Gross Profit	COST ACCORDING TO WHAT WAS SENT		COST ACCORDING TO QUICKBOOKS		DIFFERENCE	% Complete	BILLINGS ACCORDING TO WHAT WAS SENT			Revenue reconciled	Revenue realized	Billing in excess of cost of billing	Cost in excess of billing
			Orders	Price	Cost		TO WHAT WAS SENT	TO QUICKBOOKS	TO WHAT WAS SENT	TO QUICKBOOKS			TO WHAT WAS SENT	TO QUICKBOOKS					
3300 Moorings Way		\$ 195,000.00	\$ 15,000.00	\$ 210,000.00	\$ 130,000.00	\$ 80,000.00	\$ 121,500.00	\$ 121,637.00	\$ 180,000.00	\$ 177,821.00	\$ 137.00	93.46%	\$ 180,000.00	\$ 177,821.00	\$ 2,179.00	\$ 68,500.00	\$ 74,769.23		\$ 6,269.23
3575 Stuart Ave		\$ 386,574.00		\$ 386,574.00	\$ 195,000.00	\$ 191,574.00	\$ 158,911.00	\$ 158,911.00	\$ 280,000.00	\$ 268,646.00	\$ 11,354.00	81.43%	\$ 280,000.00	\$ 268,646.00	\$ 11,354.00	\$ 121,089.00	\$ 156,119.06		\$ 35,030.06
9590 Journeys End Marina		\$ 1,052,121.00	\$ 388,913.00	\$ 1,441,034.00	\$ 955,000.00	\$ 486,034.00	\$ 1,211,167.00	\$ 1,031,883.00	\$ 1,441,034.00	\$ 1,323,489.00	\$ 117,545.00	126.82%	\$ 1,441,034.00	\$ 1,323,489.00	\$ 117,545.00	\$ 229,867.00	\$ 616,406.64		\$ 386,539.64
Jensen Beach Moorings		\$ 248,780.00		\$ 248,780.00	\$ 215,000.00	\$ 33,780.00	\$ 214,343.00	\$ 180,499.20	\$ 214,342.80		\$ 33,843.80	0.00%	\$ 214,342.80			\$ (0.20)	\$ 33,676.77		\$ 33,676.97
Miami Beach Marina moorin		\$ 99,620.00		\$ 99,620.00	\$ 67,870.00	\$ 31,750.00					\$ -					\$ -			
Miami Beach Marina Lifts		\$ 238,672.00		\$ 238,672.00	\$ 149,000.00	\$ 89,672.00	\$ 70,000.00	\$ 70,000.00	\$ 80,000.00	\$ 80,000.00	\$ -	46.98%	\$ 80,000.00	\$ 80,000.00	\$ -	\$ 10,000.00	\$ 42,127.79	\$ (32,127.79)	
Watson Island Moorings		\$ 630,806.00		\$ 630,806.00	\$ 450,000.00	\$ 180,806.00	\$ 197,074.64	\$ 203,352.76	-		\$ 6,278.12	43.79%				\$ (197,074.64)	\$ 79,182.84		\$ 276,257.48
		\$ 2,851,573.00	\$ 403,913.00	\$ 3,255,486.00	\$ 2,161,870.00	\$ 1,093,616.00	\$ 1,972,995.64	\$ 1,766,282.96	\$ 2,205,376.80		\$ (206,712.68)	4.92%	\$ 2,205,376.80			\$ 232,381.16	\$ 1,002,282.33	\$ (32,127.79)	\$ 737,773.38

Glen Larson

752 N.E. 79th Street ♦ Miami, FL 33138 ♦ (305)751-9911 ♦ glarson@dockandmarine.net

Objective

Complete difficult construction projects, in a timely manner. Implement environmental strategies for marine construction. Implement safety techniques with new marine construction methods

Skills Summary

- | | | |
|---------------------------|--------------------|-------------------------------------|
| ♦Environmental Permitting | ♦Licensed GC | ♦Capitaons License |
| ♦Engineering | ♦Customer Service | ♦Equipment modification and repairs |
| ♦Turbidity controls | ♦Scheduling | ♦Field operations |
| ♦Licenssed Crane Operator | ♦Marketing & Sales | ♦TWICK Card |

Professional Experience

FIELD WORK FOR MARINE CONSTRUCTION

- ♦FPL Venetian Crossing- Provided marine services and equipment rentals, troubleshooting, environmental serices, clean up, marine support , industrial diving, excavation and pile driving.
- ♦Derelict Vessel removal contract, removal of derelict vesssels for, the City of Miami, Miami Dade County, State Of Florida, Florida Fish and Wildlife, City of Miami Beach
- ♦Sarasota Mooring field Phase 1 and Phase 2, Provided Design build mooring field for the City of Sarasota, after previous installation failed due to difficult soil conditions. Dock and Marine Proposed a method to deal with soils similar to those found in Biscayne bay, and had 100 percent success
- ♦Miami International Boatshow: In water contractor install 3 miles of floating dock includes 800 individual dock units install 575 greenheart pilings, install fire system and power and full water service. Manage electrical contractors , tent contractors, freight delivery, exhibit setupo, water taxi setup and operation.
- ♦Tampa Boat show, install an annual boat show in Tampa Hislborough river basin, under strict time constraints.
- ♦Mast Capital Seawall consisting of entire concrete seawall replacement
- ♦Miami Beach Marina- replaced over 500 mooing piling and performed various emergency repairs
- ♦Sunset Harbor Yacht Club: Provided marine construction services and consulting – Replacement of E Dock
- ♦6000 Indian Creek – New Marina Personally oversaw the installation and operation
- ♦Seagrass Planting, provided hands on, on site means and methods to install seagrass sediment tubes and fill in prop scours for The city of Key Biscayne, National Parks service, City of Miami, and Miami Dade County.

Edwrd Riviera

2775 NW 171 Terrace ♦ Miami, FL 33056 ♦ (305) 790-9757

Objective

Contruction Manager for Dock and Marine Construction

Skills Summary

- | | | |
|----------------------------|---------------------|--------------------------------------|
| ♦ Construction Management | ♦ Customer Service | ♦ Equipment modification and repairs |
| ♦ Licenesed Crane Operator | ♦ Scheduling | ♦ Field operations |
| | ♦ Marketing & Sales | |

Professional Experience

PROJECT MANAGEMENT FOR MARINE CONSTRUCTION

- ♦ FPL Venetian Crossing- Provided project management for marine services and equipment rentals, troubleshooting, environemental serices, clean up, marine support , industrial diving, excavation and pile driving.
- ♦ Derelict Vessel removal contract Provde Management of removal of derelict vesssels for, the City of Miami, Miami Dade County, State Of Florida, Florida Fish and Wildlife, City of Miami Beach
- ♦ Sarasota Mooring field Phase 1 and Phase 2, Provided Design build mooring field for the City of Sarasoto.
- ♦ Miami International Boatshow: Project management for the install of 3 miles of floating dock includes 800 individual dock units install 575 greenheart pilings, install fire system and power and full water service. Manage electrical contractors , tent contractors, freight delivery, exhibit setupo, water taxi setup and operation.
- ♦ Tampa Boat show: Provide Construction management for the install an annual boat show in Tampa Hislborough river basin, under strict time constraints.
- ♦ Coral Reef Yacht Club: Provided construction management for the replacement of Marina for the Coral Reef Yacht club consisting of removal of entire concrete marina and piling, and installing a new concrete marina, piling, electrical, plumbing and fire, while keeping 50% of the marina in full operation
- ♦ Miami Beach Marina-Construction management for the replacement of over 500 mooing piling and performed various emergency repairs
- ♦ Sunset Harbor Yacht Club: Provided management for the Replacement of E Dock



PART D
FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE
(5 of 7 Pages)

15. Attach a list of the no fewer than five (5) prime construction contracts involving marine construction, including seawall construction and dune walkover/handicap accessible ramps, completed in the past five (5) years by your organization.

The list shall include the following information: (reference sheet numbers herein: 1)

15.1 Project Title, Location, and Brief Description of Work Performed

15.2 Contractor or Sub-Contractor

15.3 Contract Amount and Date of Contract

15.4 Percent of Project Constructed by Sub-Contractors

15.5 Date Complete

15.6 Project Manager or Superintendent

15.7 Required Completion Date

15.8 **Name, Address and Telephone Number of Owner**

15.9 Designing Architect/Engineer and Address

16. Attach any construction contracts your organization has contracted with Town of Fort Myers Beach that are either underway or completed.

The list shall include the following information: (reference sheet numbers herein: 0)

16.1 Project Title and Location

16.2 Contractor or Sub-Contractor

16.3 Original Contract Amount and Date

16.4 Final Contract Amount

16.5 Percent of Project Constructed by Sub-Contractors

16.6 Project Manager or Superintendent

16.7 Required Completion Date

16.8 **Name, Address and Telephone Number of Owner**

16.9 Town Sponsoring Department

Experience for Bidder
Business /Corporation

Project	Scope	Key Personnel Role
City of Miami- Dinner Key North Mooring Field	<i>Construction</i> <i>Administration</i>	Glen Larson General Contractor Manager
Furnished all equipment, labor and materials for the installation of 25 helical marine embedment anchors, buoys and down line systems, buoy layout and survey as well as 18 regulatory anchor buoys with lights and down lines	Contact: Andrew Schimmel City of Miami aschimmel@miamigov.com 954-649-6920 7/16/19-1/9/20 Final Cost: \$ 198,396.00	

Project	Scope	Key Personnel Role
Jensen Beach Mooring Field - Martin County	<i>Construction</i> <i>Administration</i>	Glen Larson General Contractor Manager
Furnished all equipment, labor, materials for the installation of 56 helical marine embedment anchors, buoys and down line systems, regulatory buoys systems and as built	Kim McLaughlin kmclaugh@martin.fl.us 772-288-5777 8/3/20-9/17/20 Final Cost \$ 248.780.00	

Project	Scope	Key Personnel Role
Miami Dade Mooring Buoy Project Expansion/Maintenance	<i>Construction</i> <i>Administration</i>	Glen Larson General Contractor Manager
Furnish all equipment, labor , materials to install marine embedment anchors down lines and buoys at multiple dive sites offshore in Miami Dade County	Contact : Sara Thanner Miami Dade County 305-372-6259 134,376.00 April 2020-April 2022	

Project	Scope	Key Personnel Role
Coconut Grove Sailing Club	<i>Construction</i> <i>Administration</i>	Glen Larson General Contractor Manager
Furnish all equipment, labor , materials to install marine embedment anchors down lines and buoys at multiple dive sites offshore in Miami Dade County	Contact :Paul Van Puffelen paulvp@cgscc@gmail.com Final Cost: \$ 461,494.00 5/15/15-8/7/15	

Project	Scope	Key Personnel Role
Sarasota Mooring Field Phase 1 & 2	<i>Construction</i> <i>Administration</i>	Glen Larson General Contractor Manager
Furnish all equipment, labor and materials for the installation of marine embedment anchors, buoys and down lines for the Sarasota Mooring Field at Marina Jacks.	Contact Tim Blankenship/ Moffatt & Nicol tblankenship@moffatnichol.com Final Cost: \$514,000.00 2015	



PART D
FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE
(6 of 7 Pages)

17. If General Contractor, list one or more of the following subcontractors who have been associated with you on any of the projects listed above:

SUB-CONTRACTOR (Name and Address)

17.1 Carpentry

N/A

17.2 Structural

N/A

17.3 Hardware

American Underwater Contractors

Decks and Docks 2920 SW 4th Ave Ft Lauderdale, FL 33155

17.4 Three (3) other major subcontractors:

N/A

18. List below the name of the bonding companies you use for construction project and the name, address and telephone number of your agent:

Matson Charlton Surety Group /Duff Matson 700 South Dixie HWY Suite 100 Coral Gables, FL 305-662-3852

19. List no less than three (3) and preferably five (5) financial references:

City National Bank

TD Bank Zoilia Cortes 8690 SW 24th St Miami, FL 33155

Decks and Docks Doug Dykstra 2920 SW 4th Ave Ft Lauderdale, FL 33315 954-686-2286

PART D
FMB:004 - CONTRACTOR QUALIFICATION QUESTIONNAIRE
(7 of 7 Pages)

20. What is the largest contract (dollar cost) ever performed by your organization?
6 Million

21. What is the dollar value of the largest project you consider your organization is qualified to undertake?

Dated at 1:30pm this 11TH day of May 2012022

Dock and Marine Construction Corp

Name of Organization

BY:

President

Title of Person Signing

(if Corporation Affix Corporate Seal)

STATE OF FLORIDA)
COUNTY OF LEE)

SWORN TO AND SUBSCRIBED BEFORE ME, on this 11 day of May,

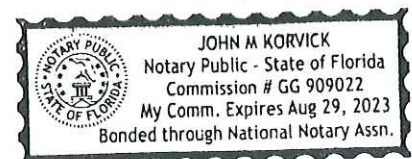
20 22, by means of (☒) physical presence or () online notarization, personally appeared _____

John Carson as _____ of Dock and Marine Court.

(X) who personally known to me of () who has produced _____ as identification.

NOTARY PUBLIC – State of Florida

My commission expires:





TOWN of FORT MYERS BEACH
PART D

BID NO. ITB-22-11-PW

FMB:005 – DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

NOTE: This form must be signed by the person who will sign, or has signed the Bid Form. This form will become a part of the contract documents.

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE ☐/MINORITY ☐/WOMEN ☐ (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: _____

SUBCONTRACTOR'S
NAME: _____
EST. DOLLAR VALUE OF PROPOSED
WORK: _____

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE ☐/MINORITY ☐/WOMEN ☐ (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: _____

SUBCONTRACTOR'S NAME: _____
EST. DOLLAR VALUE OF PROPOSED WORK: _____

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE ☐/MINORITY ☐/WOMEN ☐ (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: _____

SUBCONTRACTOR'S NAME: _____
EST. DOLLAR VALUE OF PROPOSED WORK: _____

DIVISION OF EQUAL OPPORTUNITY CERTIFIED DBE ☐/MINORITY ☐/WOMEN ☐ (CHECK APPROPRIATE DESIGNATION):

DESCRIPTION OF WORK: _____

SUBCONTRACTOR'S NAME: _____
EST. DOLLAR VALUE OF PROPOSED WORK: _____

TOTAL VALUE OF ALL DBE/MINORITY/WOMEN SUBCONTRACT WORK: \$ _____

ESTIMATED TOTAL PERCENT (%) TO BE UTILIZED: _____ %

Dock and Marine Construction Corp / Glen Larosh

CONTRACTOR NAME

SIGNATURE

May 11 2022

DATE



PART D
FMB:019 – PUBLIC ENTITIES CRIME FORM
(1 of 2 Pages)

SWORN STATEMENT PURSUANT TO SECTION 287.133(3) (a), FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted to Dock and Marine Construction Corp
(Print name of public entity)
by GLen Larson President
(Print individual's name and title)
for Dock and Marine Construction Corp
(Print name of entity submitting sworn statement)
whose business address is 752 NE 79th St Miami, FI 33138

and (if applicable) its Federal Employer Identification Number (FEIN) is 61 - 1704697
(If the entity has no FEIN, include the Social Security Number of individual signing this sworn statement:
____ - ____ - ____.)

2. I understand that a "public entity crime" as defined in Paragraph 287.133(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 of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
3. I understand that "convicted" or "conviction" as defined in Paragraph 287.133 (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 a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
4. I understand that an "affiliate" as defined in Paragraph 287.133 (1) (a), Florida Statutes, means:
- A. A predecessor or successor of a person convicted of a public entity crime; or

An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person.



TOWN of FORT MYERS BEACH

BID NO. ITB-22-11-PW

PART D

FMB:019 – PUBLIC ENTITIES CRIME FORM

(2 of 2 Pages)

- B. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.
5. I understand that a "person" as defined in Paragraph 287.133 (1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.
6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

☒ Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

☐ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

☐ The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.

(Signature)

STATE OF FLORIDA)
COUNTY OF LEE)

SWORN TO AND SUBSCRIBED BEFORE ME, on this 11 day of May, 2022, by means of (x) physical presence or () online notarization, personally appeared Glen Larson as _____ of Dock and Marine Construction Corp,

(x) who personally known to me of () who has produced _____ as identification.

NOTARY PUBLIC – State of Florida

My commission expires:

D-17





PART D
FMB:021 – NON-COLLUSION AFFIDAVIT

State of FL)County of Miami Dade County)Glen Larson

being first duly sworn, deposes and says that:

- 1) He/she is the Owner, (Owner, Partner, Officer, Representative or Agent) of Dock and Marine Construction Corp, the Bidder that has submitted the attached Bid;
- 2) He/she is fully informed respecting the preparation and contents of the attached Bid and of all pertinent circumstances respecting such Bid;
- 3) Such Bid is genuine and is not a collusive or sham Bid;
- 4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Responder, firm, or person to submit a collusive or sham Bid in connection with the Work for which the attached Bid has been submitted; or to refrain from Responding in connection with such Work; or have in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with any Responder, firm, or person to fix the price or prices in the attached Bid or of any other Responder, or to fix any overhead, profit, or cost elements of the Bid price or the Bid price of any other Responder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed Work;
- 5) The price or prices quoted in the attached Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Responder or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

Signed, sealed and delivered in the presence of:

By:

Glen Larson

(Printed Name)

ACKNOWLEDGEMENT

STATE OF FLORIDA)

COUNTY OF LEE)

SWORN TO AND SUBSCRIBED BEFORE ME, on this 11TH day of May, 2022, by means

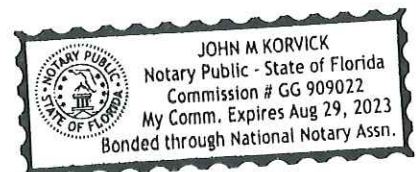
of (X) physical presence or () online notarization, personally appeared _____ as

Glen Larson of Dock and Marine Construction Corp,

(X) who personally known to me of () who has produced _____ as identification.

NOTARY PUBLIC – State of Florida

My commission expires:





PART D
FMB:022 – TRENCH SAFETY AFFIDAVIT
(When Applicable)

Trench excavations on this Project are expected to be in excess of 5 feet deep. The Occupational Safety and Health Administration excavation safety standards, 29 CFR 1926.650 Subpart P trench safety standards will be in effect during the period of construction of the Project.

Bidder acknowledges that included in the Bid Price are costs for complying with the Florida Trench Safety Act (90-096, Laws of FL) effective October 1, 1990, and hereby gives assurance that, if awarded the Contract, the Contractor or Subcontractor performing trench excavation work on the Project will comply with the applicable trench safety standards. The Bidder further identifies the costs as follows:

Trench Safety Item: N/A
(Description)
N/A
(Cost written in words)

TOTAL \$ _____

FAILURE TO COMPLETE THE ABOVE SHALL RESULT IN THE BID BEING DECLARED NON-RESPONSIVE

COMPANY NAME: Dock and Marine Construction Corp

DATE: May 11 2022

BY: [Signature]
(Signature)

Glen Larson
(Print Name)



PART D
FMB:023 – MATERIALS MANUFACTURERS LIST

The Bidder is required to state below, material manufacturers it proposes to utilize on this project. No change will be allowed after submittal of Bid. If substitute material proposed and listed below is not approved by TOWN, Bidder shall furnish the manufacturer named in the TOWN'S specification. Acceptance of this Bid does not constitute acceptance of material proposed on this list.

THIS LIST MUST BE COMPLETED OR BID MAY BE DEEMED NON-RESPONSIVE. (Attach additional sheets as needed).

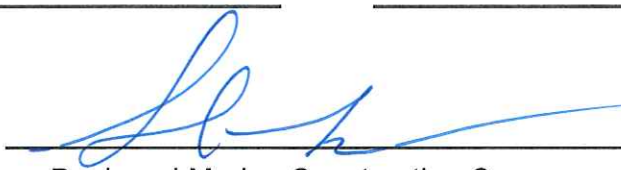
BIDDER'S STATEMENT OF PROPOSED MANUFACTURER FOR

The bidder lists the following manufacturers of the major equipment (LIST)

<u>MATERIAL</u>	<u>MANUFACTURER</u>
1. Shackles / Rope	Miami Cordage
2. Speciality Shackles	Columbus McKinnon
3. Elastic Mooring Down Line System	Storm Soft/AUC
4. Synthetic Thimble	SeaDog
5. _____	_____
6. _____	_____

Signed

Name of Bidder


Dock and Marine Construction Corp



PART D
FMB:024 - LIST OF SUB-CONTRACTORS

The undersigned states that the following is a full and complete list of the proposed subcontractors on this Project and the class of work to be performed by each, and that such list will not be added to nor altered without written consent of the TOWN. The undersigned further acknowledges its responsibility for ensuring that the subcontractors listed herein meet all legal requirements applicable to and necessitated by this Agreement, including, but not limited to proper licenses, qualifications, certifications, registrations and insurance coverage. The TOWN reserves the right to disqualify any bidder who includes non-compliant or non-qualified subcontractors in his/her bid offer. Further, the TOWN may direct the bidder/contractor to remove/replace any subcontractor that is found to be non-compliant with this requirement subsequent to award of the contract at no additional cost to the TOWN. THIS LIST MUST BE COMPLETED OR BID WILL BE DEEMED NON-RESPONSIVE. (Attach additional sheets as needed).

BIDDER'S STATEMENT OF PROPOSED SUBCONTRACTOR FOR:

No subcontractors will be used

The bidder identifies the following firm as the proposed installation subcontractor of the:

No subcontractors will be used

Name of Firm: N/A

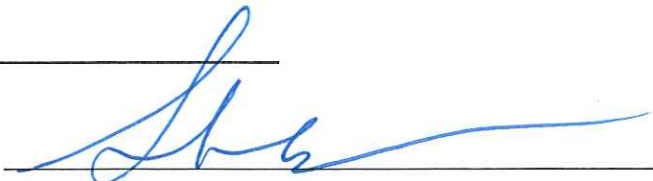
Address and Phone: N/A

Contact Person: N/A

<u>Other Subcontractor and Address</u>	<u>Specialty</u>
1. <u></u>	<u></u>
<u></u>	
2. <u></u>	<u></u>
<u></u>	
3. <u></u>	<u></u>
<u></u>	

Signed

Name of Bidder


Glen Larson / Dock and Marine Construction



TOWN of FORT MYERS BEACH

BID NO. ITB-22-11-PW

PART D
FMB:100 – CERTIFICATION IMMIGRATION LAWS AFFIDAVIT

BID NO: ITB-22-11-PW

PROJECT NAME: MATANZAS PASS MOORING FIELD EXPANSION CONSTRUCTION

TOWN OF FORT MYERS BEACH WILL NOT INTENTIONALLY AWARD TOWN CONTRACTS TO ANY CONTRACTOR WHO KNOWINGLY EMPLOYS UNAUTHORIZED ALIEN WORKERS, CONSTITUTING A VIOLATION OF THE EMPLOYMENT PROVISIONS CONTAINED IN 8 U.S.C. SECTION 1324 a(e) SECTION 274A(e) OF THE IMMIGRATION AND NATIONALITY ACT ("INA").

TOWN OF FORT MYERS BEACH SHALL CONSIDER THE EMPLOYMENT BY ANY CONTRACTOR OF UNAUTHORIZED ALIENS A VIOLATION OF SECTION 274A (e) OF THE INA. **SUCH VIOLATION BY THE RECIPIENT OF THE EMPLOYMENT PROVISIONS CONTAINED IN SECTION 274A (e) OF THE INA SHALL BE GROUNDS FOR UNILATERAL CANCELLATION OF THE CONTRACT BY TOWN OF FORT MYERS BEACH.**

BIDDER ATTESTS THAT THEY ARE FULLY COMPLIANT WITH ALL APPLICABLE IMMIGRATION LAWS (SPECIFICALLY TO THE 1986 IMMIGRATION ACT AND SUBSEQUENT AMENDMENTS).

Company Name: Dock and Marine Construction Corp

(Signature) President 5/11/2022
 (Title) (Date)

STATE OF FLORIDA)
 COUNTY OF LEE)

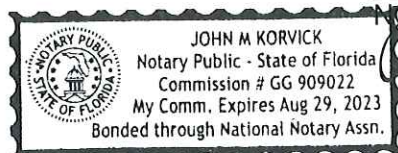
SWORN TO AND SUBSCRIBED BEFORE ME, on this 11TH day of May, 2022, by means

of (☒) physical presence or () online notarization, personally appeared Glen Larson
as

of Dock and Marine Construction Corp,

(☒) who personally known to me of () who has produced _____ as identification.

My commission expires:



NOTARY PUBLIC – State of Florida

The signee of this Affidavit guarantee, as evidenced by the sworn affidavit required herein, the truth and accuracy of this affidavit to interrogatories hereinafter made. **TOWN OF FORT MYERS BEACH RESERVES THE RIGHT TO REQUEST SUPPORTING DOCUMENTATION, AS EVIDENCE OF SERVICES PROVIDED, AT ANY TIME**



ADDENDUM TO CONTRACT DOCUMENTS

ITB-22-11-PW

Addendum No.: 1

CONTRACT/PROJECT NAME: Matanzas Pass Mooring Field Expansion Construction

DATE OF ISSUE: March 29, 2022

The following information shall be included in the Contract documents and is hereby made part of the project documents in the form of clarification, addition, deletion or revision to the contract requirements, specifications and/or drawings.

QUESTIONS

The following questions were received via email:

Q: " Could you please advise if there is an estimated budget for this project?"

A: Yes there is an estimated budget.

Q: " I am wondering if you have an estimated budget and start date for the Matanzas Pass Mooring Field Expansion Construction project (# 22-11-PW)".

A: Yes, there is an estimated budget. Refer to schedule in ITB.

Please Print Dock and Marine Construction Corp 305-751-9911

Company Name & Phone Number


Signature

Jason Freeman, Contracts Manager
bids@fmbgov.com
239-765-0202



ADDENDUM TO CONTRACT DOCUMENTS

ITB-22-11-PW

Addendum No.: 2

CONTRACT/PROJECT NAME: Matanzas Pass Mooring Field Expansion Construction

DATE OF ISSUE: April 27, 2022

The following information shall be included in the Contract documents and is hereby made part of the project documents in the form of clarification, addition, deletion or revision to the contract requirements, specifications and/or drawings.

QUESTIONS

The following questions were received via email:

Q1: "What provisions are available to ensure contractor does not incur price increases for material?"

A: The Town anticipates issuing the Notice to Proceed to the selected contractor the week of June 15, 2022. The contractor is encouraged to take all measures to lock-in prices upon execution of contract. In the event of a material cost increase beyond the control of the contractor, detailed cost information shall be provided to the Town's satisfaction including vendor substantiation. Cost documentation shall be presented and approved by the Town prior to project commencement. Materials purchased prior to execution of the contract are not eligible for a price adjustment.

Q2: "The material specified is a proprietary product only available from two distributors. There may be an issue with materials being available within a timely manner."

A: All bidders will be impacted equally. Please bid materials as specified. If there is an extended lead time associated with acquiring a material, state as such in bid.

To simplify procurement of the components required at Moorings 1 – 10 the specifications shall now require a Helmken Double Anchor Shallow Water Mooring Beam. Refer to Addendum 2, Item 16.

Q3. Do the helical piling locations have to be staked by a Florida licensed professional surveyor?

A. **No. Refer to TS-7.8.4 for helical anchor installation tolerances. Any helical anchor installed that does not meet specifications shall be removed and reinstalled to meet the specifications.**

Q4. Is the Town of Fort Myers Beach going to request Jones Act and USL&H insurance for this project?

A. **Yes, an endorsement for US Longshoremen and Harbor Workers and Jones Act is required.**

Q5. What options are available if the helical pilings make contact with limestone rock and cannot progress deeper?

A. **During the 2004 construction of the existing 70 slip mooring field, helical anchors were installed between 12 to 38 feet below the mudline. No impenetrable rock layers were encountered during that project.**

The contractor is responsible for installing the helical anchor to meet the specified holding capacity. Alternative helical anchor types may be required in the event the contractor encounters an impenetrable rock layer.

A jet probe survey was conducted at each of the mooring locations. Please refer to TS – 5.0 Character of Bottom Materials.

Q6. Is there a specific torque capacity requirement for helical piling installation?

A. **There is no specific torque capacity requirement, only a minimum holding capacity. Refer to the Construction Plans for minimum holding capacities.**

Q7. Does the Town of Fort Myers Beach require that helical piling installation be monitored by licensed geotechnical engineer to verify tension capacities and installation depth?

A. **No, however the contractor is required to provide detailed installation records for each helical anchor in accordance with TS-7.9.1.**

Q8. Drawing 3 shows 4 each caution shoal signs and 2 each Matanzas mooring field information signs. Are these signs part of the scope. If yes in which item of schedule of value we should price them in. Please provide detailed specification and drawings of the signs.

A. **Refer to Addendum 2, Item 9.**

Q9. Technical specification TS-1.0 mentions day markers in the second paragraph. How many day markers are in the scope and what are the specifications and detailed drawings.

A. **No signage or day markers included in this project scope.**

TS-1.1 General Description, second paragraph reads as follows:

The Work covered by this section consists of furnishing all labor, equipment, supplies, materials, transportation, fuel, power and water, and performing all operations in connection with installing the anchoring systems, buoys, signage, day markers, and providing environmental protection measures to meet the requirements of the technical specifications and permits.

Is modified and now shall read as follows:

The Work covered by this section consists of furnishing all labor, equipment, supplies, materials, transportation, fuel, power and water, and performing all operations in connection with installing the anchoring systems, buoys, and providing environmental protection measures to meet the requirements of the technical specifications and permits.

Q10. General condition say: 6.25.4 ALL RISK BUILDERS RISK OR INSTALLATION FLOATER (If Applicable) Is all risk builders risk or installation floater applicable to this bid?

A. **Not applicable**

Q11. Sheet 5 of the drawings shows Mooring system detail (Mooring #11-19) for single anchor mooring. Please provide detail for double anchor mooring (#1-10).

A. **Refer to Addendum 2, Item 16.**

Q12. Per Addendum 1 estimated budget is included into ITB. I cannot find it. Can you please refer to specific page or paragraph?

A. **Addendum 1 referred the estimated budget and project schedule. The does not intend to publish the estimated budget. Refer to page A-2 for the project schedule.**

Q13. What is the Town's budget for the Matanzas Pass Mooring Field Expansion, ITB-22-11-PW, project?

A. **The Town does not intend to publish the estimated budget.**

CLARIFICATIONS

14. **TS-4.3 Yellow Special Purpose Buoy Installation** reads as follows:
Payment shall be made for materials and Work specified in connection with the installation of the helical anchors, StormSoft elastic downlines, yellow special purpose buoys, and associated hardware; and, all other appropriate costs in connection therewith or incidental thereto this Work, shall be included in the applicable CONTRACT unit pricing for Bid Item "Yellow Special Purpose Buoy Installation."

Is modified and now shall read as follows:

Payment shall be made for materials and Work specified in connection with the installation of the helical anchors, StormSoft elastic downlines, yellow special purpose buoys, and associated hardware; and, all other appropriate costs in connection therewith or incidental thereto this Work, shall be included in the applicable CONTRACT unit pricing for Bid Item "Yellow Special Purpose Buoy Installation." The Town will purchase and provide the contractor with the required four (4) Sealite SL-B700 buoys.

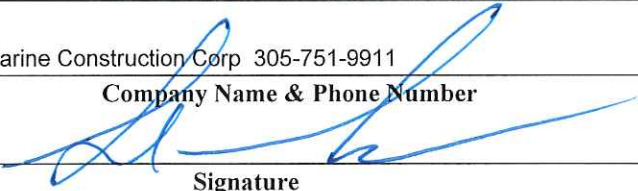
15. **Construction Plans Sheet 5, Yellow Special Purpose Buoy Detail** – Please delete the B980R Ocean Spar Buoys. The contractor will be provided with four (4) Sealite SL-B700 buoys to be purchased by the Town. The contractor shall be responsible for purchasing/installing the anchors, downlines and required hardware for the buoys provided by the Town.
16. **Construction Plans Sheet 5, Mooring System Detail (Moorings #1 – 10):**
- Anchors shall be secured to a beam or plate to equally distribute load
 - A yoke shall be secured to beam or plate and be allowed to move parallel or toggle relative the beam or plate
 - Yoke must remain connected to beam or plate if toggle connection fails

Is modified and now shall read as follows:

- Anchors shall be secured to a Helmken Double Anchor Shallow Water Mooring Beam

Please Print Dock and Marine Construction Corp 305-751-9911

Company Name & Phone Number


Signature

Yadzia Roa, Contracts Manager

bids@fmbgov.com
239-765-0202



ADDENDUM TO CONTRACT DOCUMENTS

ITB-22-11-PW

Addendum No.: 3

CONTRACT/PROJECT NAME: Matanzas Pass Mooring Field Expansion Construction

DATE OF ISSUE: May 06, 2022

The following information shall be included in the Contract documents and is hereby made part of the project documents in the form of clarification, addition, deletion or revision to the contract requirements, specifications and/or drawings.

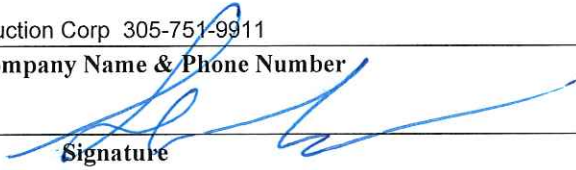
QUESTIONS

The following questions were received via email:

- Q. We are having trouble finding any Helmken Helical Anchor information/suppliers. Can you please provide a contact for the Helmken material you are specing.
- A: The Florida Distributor is American Underwater Contractors, 17536 SE Conch Bar Avenue Jupiter, FL 33469, (561) 575-5538.
- Q. Will a different helical anchor manufacturer be acceptable?
- A: Different anchor manufacturers may be approved as an equivalent if they meet or exceed all specifications and are compatible with the specified anchor head.

Please Print Dock and Marine Construction Corp 305-751-9911

Company Name & Phone Number


Signature

Yadzia Roa, Contracts Manager
bids@fmbgov.com
239-765-0202

1. Requested Motion:

Meeting Date: June 6, 2022

Authorize the Town Manger to waive the Town's procurement policies and procedures and to negotiate a best and final offer and execute a sole source agreement with Civic Smart in the amount of \$119,688.00 (with a recurring monthly fee of \$1320.00), for a parking app and installation of individual parking space sensors.

Why the action is necessary:

Only Civic Smart provides the parking app and sensors that best suit the Town's parking needs.

What the action accomplishes:

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

4. Submitter of Information:

5. Background:

Out of four companies that responded, only one firm could provide the pole mounted sensors. The other companies would require surface mounted sensors, which would entail paving every parking space. After researching the available products, our Parking Manager found that the pole mounted sensors were superior, and therefore, it is appropriate for the Town to waive its procurement policies and procedures and enter into negotiations and execute a sole source procurement agreement with Civic Smart.

Attachments:

1. Parking Sensors and Phone App

Financial Impact:

6. Alternative Action

7. Management Recommendations:

8. Recommended Approval:

Patty Prevost, Code Supervisor/STR Coordinator
Daphnie Bercher, Community Services Administrator
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 5/26/2022
Approved - 5/26/2022
Approved - 5/31/2022
Approved - 5/31/2022
Final Approval - 5/31/2022

Parking Sensors and Phone Application

After reaching out to several companies, four companies responded.

CivicSmart has sensors that can mount on the existing parking space poles. The first-year cost is \$119,688., thereafter \$15,840 per year. The parking app is included in the cost. They provide sensors for the Florida Department of Transportation.

Parking Guidance Systems have sensors that must be surface mounted, which would require all spaces to be on pavement. Their system will be phased out in 7 years by the manufacturer. Our cost is \$155,000.00.

SmartParking Systems have sensors that must be surface mounted, which would require all spaces to be on pavement.

PNI Sensor only sells the sensors, everything else would need to be farmed out.

Ft Myers Beach, FL

Duncan Parking Technologies, Inc.



Prepared for:	Doug Molloy	Ship-to Region:	FL
Quote ID:	28 09 21 321p - Updated 5/12/22	Prepared Date:	5/12/2022
Sales Rep:	Miskell	Expiry Date:	6/30/2022
Product ID	Description	Price per Space	Qty
1. Single Space Pole Mounted Radar Sensors			
CS-RAD-SEN	Pole mounted radar sensors	\$ 249.00	400
58883	Spare Rechargeable Sensor Batteries	\$ 59.00	8
CS-COM-GTW	Communications Gateway	\$ 400.00	20
CS-MOB-WF	FMB mobile way-finding application	\$ N/C	1
CS-MOB-INT	Configuration and 3rd party integration	\$ 2,500.00	1
CS-OPS-INSTL	Installation, commissioning, travel, lodging 1 technician	\$ 15.00	400
PROJ-MGMT-TRAIN	Training support and customer-specific space and back office configuration (locations, numbering, hours, rates, payment vendors, permit(s) integration(s), cell service), systems testing and implementation. PEMS Remote training session for project staff including maintenance, enforcement, finance and management.	\$ 3,116.00	1
FREIGHT	Shipping and handling to be added to the final invoice.	TBD	TBD
GRAND TOTAL	Not including TBD items		\$ 119,688.00
2. Recurring Fees			
CC-RAD-POL	Monthly communication fee per sensor per month	\$ 3.00	400
CC-GTW-COM	Monthly communication fee per gateway per month	\$ 6.00	20
Subtotal			\$ 1,320.00
3. EXT-WARR (5)			
EXT-WARR (5)	Optional extended warranty on sensor battery years 2 thru 5	\$ 40.00	400
Subtotal			\$ 16,000.00
4. Additional Requirements			
Sales Tax, if applicable, has not been included			
Equipment is covered by a 1-year standard manufacturer's warranty.			
Shipping Terms FOB Origin. Freight is an estimate based on shipper tariffs. Freight will be prepaid and added to the invoice.			
Lead-Time approx. 3 weeks after receipt of order (to be confirmed at the time of order). Please add 7-10 days for international air freight.			
Payment terms: 50% Due Upon Order; 50% Due Before Shipping.			
Quotation subject to Duncan Parking Technologies, Inc. Standard Terms and Conditions. Please see attached.			
*Training may be remote training due to Covid-19 restrictions			
Please Send Purchase Order To:			
Duncan Parking Technologies, Inc.			
Attn: Meigan Lindholm			
PO BOX 2081			
Milwaukee, WI 53201-2081			
Ph: (414) 534-8066 Fax: (870) 741-6806			
mlindholm@civicsmart.com			
I hereby certify that the products and services referenced above have been requested and that by signing below I am confirming the order and agree to the terms and conditions presented in this quotation			
Authorized Signature		Date	
Print or Type Name		Print or Type Title	
Email Address		Phone Number	
Bill To Address:		Ship To Address:	

Ft Myers Beach, FL

Duncan Parking Technologies, Inc.



Prepared for:	Doug Molloy	Ship-to Region:	FL	
Quote ID:	28 09 21 321p - Updated5/12/11	Prepared Date:	5/12/2022	
Sales Rep:	Miskell	Expiry Date:	6/30/2022	
Product ID	Description	Price per Space	Qty	Extended Price

1. Requested Motion:

Meeting Date: June 6, 2022

Approve Resolution No. 22-26, authorizing the Town Manager to enter into a piggyback contract with Charge Point, Inc. to install Level 3 dual EV charging stations at Times Square-Center St., and Level 2 Dual EV charging stations at Newton Park and Town Hall in an amount not to exceed \$122,139.75

Why the action is necessary:

To allow for the installation of EV chargers at Times Square, the Mound House and Town Hall.

What the action accomplishes:

Authorizes the Town Manager to execute a contract with Charge Point/Optimus Energy Solutions, LLC, and expend appropriated funds.

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

4. Submitter of Information:

5. Background:

Sourcewell (p/k/a, the National Joint Powers Alliance), a purchasing service cooperative created by the Minnesota legislature, entered into a competitively bid contract with Charge Point, Inc., ("ChargePoint") to provide EV charging stations and related services to local governments nation-wide, and the Town's Finance Director has determined that piggybacking on this contract is financially advantageous to the Town.

Attachments:

1. 22-26, Resolution 22-26 re Approving Piggyback Contract for EV charging stations
2. EV Back up
3. piggyback EV Charging Stations
4. Ev Rates charge rates

Financial Impact:

6. Alternative Action

7. Management Recommendations:

8. Recommended Approval:

Patty Prevost, Code Supervisor/STR Coordinator
Daphnie Bercher, Community Services Administrator
John R Herin Jr, Town Attorney
Amy Baker, Town Clerk
Roger Hernstadt, Town Manager

Created/Initiated - 5/31/2022
Approved - 5/31/2022
Approved - 5/31/2022
Approved - 5/31/2022
Final Approval - 5/31/2022

RESOLUTION NUMBER 22-26

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A PIGGYBACK CONTRACT BETWEEN THE TOWN AND CHARGE POINT, INC. TO PROVIDE EV CHARGING STATIONS IN AN AMOUNT NOT TO EXCEED \$70,000.00, UTILIZING THE SOURCEWELL CONTRACT #051017, AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT, EXPEND BUDGETED FUNDS, AND TAKE ALL APPROPRIATE ACTIONS TO HAVE EV CHARGERS INSTALLED AT TIMES SQUARE, THE MOUND HOUSE, AND TOWN HALL; 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 EV charging stations at Times Square-Center St., Newton Park and Town Hall; 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, Sourcewell (p/k/a, the National Joint Powers Alliance), a purchasing service cooperative created by the Minnesota legislature and Charge Point, Inc., (“ChargePoint”) entered into a competitively procured contract to provide EV charging stations and related services to local governments nation-wide, 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 Charge Point for EV charging stations.

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 ChargePoint, 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 have EV chargers installed at Times Square, the Mound House, and Town Hall.

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 6th day of June 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 June 2022.

Optimus Energy Solutions, LLC

Accessible, Renewal Energy Solutions

1107 Robie Ave

Mount Dora, FL 32757

Phone: 314-503-1230

benp@optimusenergysolutions.com

Fort Myers Beach Sourcewell ID #136730

PROPOSAL

Date: 5/25/2022
 Agreement: FMB - DC Fast
 For: CPE250 DC Fast Chargers
 Location: City of Fort Myers Beach
 Final Location TBD
 C/O Doug Malloy

1	ChargePoint Express 250 Station (62.5 kW) - includes Express 250 Station, 2x Power Modules, 1x CCS1 200A cable, 1x CHAdEMO cable, North America Modem/SIM, cUL and UL listed, requires CPE250-CMT-IMPERIAL in US, CPE250-CMT-METRIC in Canada. CPE250-CMT-IMPERIAL/METRIC not included. (Sourcewell Published Pricing Effective 02/01/2022)	1	\$41,861.75
2	5 years Prepaid Enterprise Cloud Plan. Prepaid Enterprise Cloud Plan subscription with advanced station management features such as: Station Activation, Custom Video uploads, and Automatic Software Updates, driver and fleet management features including: Access Control and Pricing & Automatic Payment Collection, as well as advanced energy and power management features which include: Time of Use Power Sharing and Energy Management APIs. Real-time dashboards and reports provided for applicable features including 15 min meter data readings and associated advanced energy reports. (Sourcewell Published Pricing Effective 02/01/2022)	1	\$3,485
3	5 years prepaid ChargePoint Assure for CPE250 station. Includes Parts and Labor Warranty, Remote Technical Support, On-Site Repairs, Unlimited Configuration Changes, and Reporting. Fully warrantied stations from manufacturer as service provider. (Sourcewell Published Pricing Effective 02/01/2022)	1	\$16,275
4	CPE250-COMMISSIONING - on-site validation of electrical capacity, transformers, panels, breakers, wiring, cellular coverage so that the station meets all ChargePoint and local code requirements. In addition to verifying and testing the installation, Commissioning also ensures the station is connected to the ChargePoint network, completing software updates and pairing configuration if applicable. In parallel, the ChargePoint Activations team will configure the station and apply policies according to the customer specifications.	1	\$900
5	Initial Station Activation & Configuration Service includes activation of cloud services and configuration of radio groups, custom groups, connections, access control, visibility control, pricing, reports and alerts. One time initial service per station.	1	\$0.00
6	Electrical work TBD for 480V power service	1	TBD
Thank you for the Opportunity to Submit this Information. Please contact me via phone or email with any questions or to discuss. Sincerely, Ben Pauluhn. Upon signed acceptance and receipt of 50% deposit, equipment is ordered. 50% final balance due upon station installation and commissioning. Valid for 60 days from date of issuance at top of proposal. 4 month lead time on hardware orders.		SUBTOTAL	\$62,521.75
		SALES TAX	Exempt
		SHIPPING	\$900
		TOTAL	\$63,421.75

Signed: _____
 Ben Pauluhn - Optimus Energy Solutions

Signed: _____
 Fort Myers Beach Authorized Representative



Optimus Energy Solutions, LLC

Sourcewell

FMB Sourcewell: #136730

ChargePoint Vendor Sourcewell: #051017-CPI

1107 Robie Ave.

Mount Dora, FL 32757

Phone: 314-503-1230

(Optimus is Certified ChargePoint Installer and Signature Partner, required for sourcewell pricing and compliance.)

Date: 1/7/2022

Proposal #: 5256

Location Fort Myers Beach
2525 Estero
Fort Myers Beach, FL 33931
Proposal Valid for orders
through 01/28/2022

	DESCRIPTION	QTY	AMOUNT
1	CT4021-GW1/2 - CT 4021 Dual-Port Charging Station with 18' foot chords - (Sourcewell)	1	\$5,768
2	CPCLD-COMMERCIAL-5 - 5-Year Network Connectivity (24/7 driver support, software upgrades and user reports, power management, access control) - <u>Drivers call ChargePoint for issues, not your team.</u> (Sourcewell)	2	\$2,638
3	CT4000-ASSURE5 - 5-Year Assure Program (Parts AND Labor, pro-active monitoring, site activation, system setup, site validation, system management support) - <u>Ensures your team has no O&M costs or troubleshooting time on EV charging.</u> (Sourcewell)	2	\$2,495
4	Installation and commissioning of stations including Install new single phase 240V feeders in conduit through drop ceiling to outside wall from main panel in hallway adjacent to elevator. Run down exterior wall, under ADA ramp to nearest two parking space. Cut and re-pour concrete for conduit. Mount charger on existing sidewalk (room for ADA clearance). Install bollard for safety. Commission station, process all warranty paperwork with manufacturer. Paint, signage included per page 2.	1	\$12,995
		SUBTOTAL	\$23,896
		LOGISTICS	\$577
		FREIGHT	\$320
		TOTAL	\$24,793

Please contact me via phone or email with any questions. 25% of Total due upon receipt of station, with 75% due upon station installation and activation.
Sincerely, Ben Pauluhn

Signed: _____
Fort Myers Beach Authorized Representative

Signed: _____
Ben Pauluhn, President, Optimus Energy

Implementation Details for FMB and OES Coordination:

- + Upon receipt of signed agreement OS will order stations, with ~3-week lead time to receipt of hardware. Upon receipt of hardware, OS will provide pictorial proof of stations in FL warehouse, and issue a 25% invoice to FMB. Should OS not perform on the PO / contracted work, the 25% payment will be returned to CFX in the form of a check.
- + Site work in item 5 above to include painting as per image below.
- + Paperwork signatures and authorization may be required from client, and client agrees to provide appropriate contact person / decision-maker to execute for items such as new electrical meter, ChargePoint portal control, etc.
- + Sidewalk to be closed 1-2 days in this area for safety
- + Underground utility maps to be provided to Optimus by client

**Exclusions:**

- We intend to complete all work in accordance with local & national electrical codes for the work described above. Repairs to existing wiring and systems that do not comply with codes or regulations are excluded unless otherwise noted herewith.
- Repairs to existing inoperable equipment are excluded unless otherwise noted herewith.

Optimus Energy Solutions, LLC

Sourcewell

FMB Sourcewell: #136730

ChargePoint Vendor Sourcewell: #051017-CPI

1107 Robie Ave.

Mount Dora, FL 32757

Phone: 314-503-1230

(Optimus is Certified ChargePoint Installer and Signature Partner, required for sourcewell pricing and compliance.)

Date: 1/7/2022

Proposal #: 5257

Location Fort Myers Beach
4560 Estero - Newton House
Fort Myers Beach, FL 33931
Proposal Valid for orders
through 01/28/2022

	DESCRIPTION	QTY	AMOUNT
1	CT4021-GW1/2 - CT 4021 Dual-Port Charging Station with 18' foot chords - (Sourcewell)	1	\$5,768
2	CPCLD-COMMERCIAL-5 - 5-Year Network Connectivity (24/7 driver support, software upgrades and user reports, power management, access control) - <u>Drivers call ChargePoint for issues, not your team.</u> (Sourcewell)	2	\$2,638
3	CT4000-ASSURE5 - 5-Year Assure Program (Parts AND Labor, pro-active monitoring, site activation, system setup, site validation, system management support) - <u>Ensures your team has no O&M costs or troubleshooting time on EV charging.</u> (Sourcewell)	1	\$2,495
4	Installation and commissioning of stations including Trench and Install new single phase 240V 100A feeders in conduit from existing panel location on left side of building approximately 90' from EV charger. Install new 100A subpanel at charger location. Charger location is first two parking spaces closest to where gravel trail adjoins parking lot. Install and wire feeders to station. Pour concrete pad for charger. Install bollard for safety. Commission station, process all warranty paperwork with manufacturer. Paint, signage included per page 2.	1	\$14,127
Please contact me via phone or email with any questions. 25% of Total due upon receipt of station, with 75% due upon station installation and activation. Sincerely, Ben Pauluhn		SUBTOTAL	\$25,028
		LOGISTICS	\$577
		FREIGHT	\$320
		TOTAL	\$25,925

Signed: _____
Fort Myers Beach Authorized Representative

Signed: _____
Ben Pauluhn, President, Optimus Energy

Implementation Details for FMB and OES Coordination:

- + Upon receipt of signed agreement OS will order stations, with ~3-week lead time to receipt of hardware. Upon receipt of hardware, OS will provide pictorial proof of stations in FL warehouse, and issue a 25% invoice to FMB. Should OS not perform on the PO / contracted work, the 25% payment will be returned to CFX in the form of a check.
- + Site work in item 5 above to include painting as per image below.
- + Paperwork signatures and authorization may be required from client, and client agrees to provide appropriate contact person / decision-maker to execute for items such as new electrical meter, ChargePoint portal control, etc.
- + Sidewalk to be closed 1-2 days in this area for safety
- + Underground utility maps to be provided to Optimus by client

**Exclusions:**

- We intend to complete all work in accordance with local & national electrical codes for the work described above. Repairs to existing wiring and systems that do not comply with codes or regulations are excluded unless otherwise noted herewith.
- Repairs to existing inoperable equipment are excluded unless otherwise noted herewith.

- We guarantee our work to be free from defects for one year from completion. Repairs to defective workmanship or materials within this period will be made at no cost. This warranty excludes: unauthorized service, misuse, negligent care, improper maintenance, reused products, items furnished by others (ChargePoint units covered under separate manufacturer warranty), unusual wear and tear, vandalism, obsolescence, weather damage or other cause beyond OES control.
- OES has made no provisions for additional cost and time incurred for accessing or modifying existing underground connection point(s) for existing utilities which are not installed per electrical code, minimum required depth, depths exceeding industry standard, depths requiring supported excavation applications, unforeseen underground conditions which were not disclosed or existing utilities not identified which come in conflict with our work.
- OES has no provisions for any well point extraction in this proposal.

Schedule:

- OES agrees to furnish a sufficient number of qualified workers to perform the work in sequence with a mutual schedule. No provisions have been included for overtime, multiple shifts, weekend or holiday work unless otherwise stated. If a power shutdown is required, OES has made provision for one such after-hours shutdown, presuming a mutually-agreed upon date and time.
- We anticipate a duration of approximately TBD working days or our scope of work during the overall schedule of the project. We will rely upon the work of utility companies to be completed in a timely manner prior to our follow-on work.

Customer Responsibilities:

- For OES to properly perform the work, the customer shall:
 - o Provide a safe work environment.
 - o Allow access to the work site and use of building services including but not limited to: parking, water, restrooms and storage areas.
- Provide OES with work rules and special instructions prior to the performance of the work.
- Remove obstacles from the work area(s) and keep areas clear of equipment, supplies and materials.
- Allow adequate time/phasing for the work and not impede or delay the performance of work.
- Provide information in the customer's possession that may aid the performance of the work such as: O&M manuals, operation instructions, as-built drawings, maintenance logs, utility records, etc.
- Promptly notify OES of any unusual operation conditions.
- Allow OES to stop, start, shutdown, turn-off and turn-on equipment as necessary to perform the work as mutually agreed.
- Provide waste disposal facilities. OES will remove packaging, trash and waste generated in the performance of this work and place in the customer's waste containers.

- We guarantee our work to be free from defects for one year from completion. Repairs to defective workmanship or materials within this period will be made at no cost. This warranty excludes: unauthorized service, misuse, negligent care, improper maintenance, reused products, items furnished by others (ChargePoint units covered under separate manufacturer warranty), unusual wear and tear, vandalism, obsolescence, weather damage or other cause beyond OES control.
- OES has made no provisions for additional cost and time incurred for accessing or modifying existing underground connection point(s) for existing utilities which are not installed per electrical code, minimum required depth, depths exceeding industry standard, depths requiring supported excavation applications, unforeseen underground conditions which were not disclosed or existing utilities not identified which come in conflict with our work.
- OES has no provisions for any well point extraction in this proposal.

Schedule:

- OES agrees to furnish a sufficient number of qualified workers to perform the work in sequence with a mutual schedule. No provisions have been included for overtime, multiple shifts, weekend or holiday work unless otherwise stated. If a power shutdown is required, OES has made provision for one such after-hours shutdown, presuming a mutually-agreed upon date and time.
- We anticipate a duration of approximately TBD working days or our scope of work during the overall schedule of the project. We will rely upon the work of utility companies to be completed in a timely manner prior to our follow-on work.

Customer Responsibilities:

- For OES to properly perform the work, the customer shall:
 - o Provide a safe work environment.
 - o Allow access to the work site and use of building services including but not limited to: parking, water, restrooms and storage areas.
- Provide OES with work rules and special instructions prior to the performance of the work.
- Remove obstacles from the work area(s) and keep areas clear of equipment, supplies and materials.
- Allow adequate time/phasing for the work and not impede or delay the performance of work.
- Provide information in the customer's possession that may aid the performance of the work such as: O&M manuals, operation instructions, as-built drawings, maintenance logs, utility records, etc.
- Promptly notify OES of any unusual operation conditions.
- Allow OES to stop, start, shutdown, turn-off and turn-on equipment as necessary to perform the work as mutually agreed.
- Provide waste disposal facilities. OES will remove packaging, trash and waste generated in the performance of this work and place in the customer's waste containers.

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

THIS AGREEMENT is made and entered into this ___ day of _____, 2022, by and between the Town of Fort Myers Beach, Florida (“Town”), a Florida municipal corporation whose principal place of business is 2525 Estero Blvd., Ft. Myers Beach, FL 33391 and **ChargePoint/ Optimus Energy Solutions, LLC**, a Florida corporation, (“Contractor”) whose principal place of business is **1107 Robie Ave Mount Dora, FL 32757** (“Contract”). Town and Contractor may also be referred collectively as the “Parties.”

WHEREAS, Contractor and Sourcewell, Florida entered into a competitively procured contract known as Electric Vehicle Supply Equipment and Related Services contract, as amended (“Sourcewell Contract”); and

WHEREAS, Town needs installation of the EV Charging Stations; and

WHEREAS, the Town desires to have **ChargePoint/ Optimus Energy Solutions, LLC**. (installing EV charging stations); 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 (install EV charging stations), subject to the terms and conditions of the County Contract, with the specific modifications set forth herein; and

WHEREAS, the Town’s finance department director has determined that piggybacking on the Sourcewell 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 Sourcewell Contract. This Contract incorporates by reference, the Sourcewell Contract, which is attached as Exhibit A.
2. Scope of Service. During the Term of this Contract, Contractor will install EV charging stations in accordance with the Service Provider Agreement in Exhibit B.
3. Pricing. The Town will pay Contractor a sum not to exceed \$_____ for the Project. 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 365 days thereafter. The Town has the option to renew this Contract up to two (2) ninety (90)

day periods with written notice to the Contractor at least thirty (30) days before the Contract expires.

5. Designated Representative. The Town's Doug Molloy, or designee, shall be the Town's Designated Representative in matters arising under Contract.

Doug Molloy, Beach and Street Supervisor II
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL. 33931
(doug@fmbgov.com)

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

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

in the Iran Petroleum Energy Sector List, or has Contractor been engaged in business operations in Cuba or Syria. Subject to limited exceptions provided in state law, the Town will not contract for the provision of goods or services with any scrutinized company referred to above. Submitting a false certification shall be deemed a material breach of Contract. The Town shall provide notice, in writing, to Contractor of the Town's determination concerning the false certification. Contractor shall have five (5) days from receipt of notice to refute the false certification allegation. If such false certification is discovered during the active Contract term, Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination of false certification was made in error. If Contractor does not demonstrate that the Town's determination of false certification was made in error then the Town shall have the right to terminate the contract and seek civil remedies pursuant to §287.135, Fla. Stat., as amended from time to time.

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

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

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

EXCEPTIONS TO PROPOSAL, TERMS, CONDITIONS,
AND SOLUTIONS REQUEST



Company Name: ChargePoint, Inc.

Any exceptions to the terms, conditions, specifications, or proposal forms contained in this RFP must be noted in writing and included with the Proposer's response. The Proposer acknowledges that the exceptions listed may or may not be accepted by NJPA or included in the final contract. NJPA will make reasonable efforts to accommodate the listed exceptions and may clarify the exceptions in the appropriate section below.

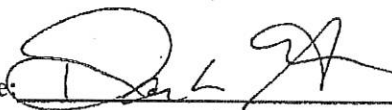
Section/page	Term, Condition, or Specification	Exceptio	NJPA ACCEPTS
3.17.1.2	"and installation"	ChargePoint does not provide for installation or site preparation. ChargePoint will need to utilize subcontractors to provide this service.	Clarification See Below.
3.35	Addition of the following language after the first sentence.	The warranty provided shall be ChargePoint assure.	Clarification-See Below
5.35.1	Addition of the following language in red.	NJPA expects Vendors to propose their very best prices for similar scope and volume purchases and anticipates price reductions that are due to advancement in technology and marketplace efficiencies. To the extent the Vendor decreases its standard prices for similar scope and volume purchases, Vendor shall provide this same discount under the Program.	Clarification-See Below
6.13	Addition of the following language at the end of the paragraph.	To the extent any equipment is requested, the Member must sign and accept terms of the Vendor's Loaner Agreement.	Accepted
6.19.2	Addition of the following language at the end of the paragraph.	Such marketing plan is dependent on NJPA's provisioning of necessary information to Proposer to implement Proposer's marketing plan.	Accepted.
6.19.3	Addition of the following language in red.	Proposers are expected to be receptive to NJPA trainings. Awarded Vendors must provide an appropriate training venue for both Vendor's management and the sales force.	Accepted.

6.19.4	Addition of the following language in red.	Proposers should identify both the appropriate levels of sales management and sales force that will need to understand the value of the NJPA contract, as well as the internal procedures needed to deliver the appropriate messaging, as determined by the Vendor, to NJPA members.	Accepted.
6.19.5	Addition of the following language at the end of the paragraph.	Proposer has identified the marketing efforts it will engage in if awarded this Contract.	Accepted.
6.19.6.2	Comment	ChargePoint finds this sentence ambiguous. ChargePoint would submit to NJPA a proof, write-up, and logo to be provided in NJPA's online category. ChargePoint would need the print and/or online specifications that NJPA requires in order to provide the requested information.	Accepted.
6.19.6.3	Addition of the following language in red.	Proposers should outline in the marketing plan their anticipated contract announcements, advertisements in the industry periodicals, if any, and other direct or indirect marketing activities promoting the awarded NJPA contract.	Accepted.
6.20	Comment on the following sentence "Proposer should further express their commitment to capturing sufficient member information as it is deemed necessary by NJPA."	Proposer shall identify their commitment to develop a sales/communications process to facilitate NJPA membership in participating in the program and establish status of current and potential agencies/members. Proposer should further express their commitment to capturing sufficient member information as is deemed necessary by NJPA. The terms of the Marketing Plan will be mutually agreed upon between Vendor and NJPA.	Accepted.
6.20	Addition of the following language in red.	Proposer shall identify their commitment to develop a sales/communications process to facilitate NJPA membership in participating in the program and establish status of current and potential agencies/members. Proposer should further express their commitment to capturing sufficient member information as is deemed necessary by NJPA. The obligations imposed on the Vendor will be identified in the Vendor's Marketing Plan and as may be fully agreed upon between the parties.	Clarification-See Below.
6.21	Addition of the following language at the end of the paragraph.	After providing the COI, NJPA must request any change to the COI or the underlying insurance within fifteen (15) days of receipt.	Not accepted-See below.

6.27	Removal of the language "provided that such terms or conditions must not be less favorable to NJPA's Members	ChargePoint cannot make this representation. ChargePoint has thousands of contracts and cannot represent that the terms offered are more favorable or less. There is no independent review of these contracts from an audit perspective.	Not Accepted.
7.5	Removal of the Performance Bond.	ChargePoint is adequately insured and thus does not provide performance bonds.	Not accepted.
7.12	Addition of the following language in red.	After an order is placed, the Vendor must immediately notify NJPA Members...	Accepted.
7.13	Addition of the following language in red.	Prior to shipment of an applicable order by a Member, NJPA reserves the right...	Accepted.
7.13.3	Addition of the following language in red.	NJPA reasonably believes that the Vendor will not or cannot perform to the requirements or expectations of the Contract, NJPA issues a request for assurance, and the Vendor fails to respond within a reasonable timeframe;	Accepted.
7.13.6	Addition of the following language in red.	The Vendor fails to properly report quarterly sales pursuant to this Program;	Accepted.
7.13.6	Comment	ChargePoint will only report the total dollar volume of sales under the Program	Accepted
7.13.7	Addition of the following language in red and deletion of the language in strikethrough.	The Vendor fails to actively market this Contract within the guidelines provided in this RFP and as agreed to provide by Vendor defined in the NJPA contract launch.	Not Accepted.

8.1	Addition of the following language in red and deletion of the language in strikethrough.	Once the award is made, a Vendor is expected to advertise make known the awarded Contract to both current and potential NJPA Members. Such marketing plan shall be at Proposer's discretion.	Clarification.
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Proposer's Signature: _____

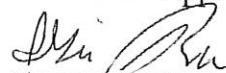


Date: Oct 18, 2017

NJPA's clarification on exceptions listed above:

Clarifications: Accepted as per ChargePoint's response to RFP #051017

Review and Approved:

 10/20/17
NJPA Legal Department

Contract Award
RFP #051017

FORM D



Formal Offering of Proposal

(To be completed only by the Proposer)

ELECTRIC VEHICLE SUPPLY EQUIPMENT AND RELATED SERVICES

In compliance with the Request for Proposal (RFP) for ELECTRIC VEHICLE SUPPLY EQUIPMENT AND RELATED SERVICES, the undersigned warrants that the Proposer has examined this RFP and, being familiar with all of the instructions, terms and conditions, general and technical specifications, sales and service expectations, and any special terms, agrees to furnish the defined products and related services in full compliance with all terms and conditions of this RFP, any applicable amendments of this RFP, and all Proposer's response documentation. The Proposer further understands that it accepts the full responsibility as the sole source of solutions proposed in this RFP response and that the Proposer accepts responsibility for any subcontractors used to fulfill this proposal.

Company Name: ChargePoint, Inc. Date: May 8, 2017

Company Address: 254 East Hacienda Avenue

City: Campbell State: CA Zip: 95008

Contact Person: Tony Carro Title: COO

Authorized Signature: [Signature] (Name printed or typed)

FORM E**CONTRACT ACCEPTANCE AND AWARD**

Reviewed by Legal

Signature: 

Date: 8-22-17



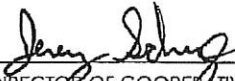
(Top portion of this form will be completed by NJPA if the vendor is awarded a contract. The vendor should complete the vendor authorized signatures as part of the RFP response.)

NJPA Contract #: 051017-CPI

Proposer's full legal name: ChargePoint, Inc.

Based on NJPA's evaluation of your proposal, you have been awarded a contract. As an awarded vendor, you agree to provide the products and services contained in your proposal and to meet all of the terms and conditions set forth in this RFP, in any amendments to this RFP, and in any exceptions that are accepted by NJPA.

The effective date of the Contract will be July 25, 2017 and will expire on July 25, 2021 (no later than the later of four years from the expiration date of the currently awarded contract or four years from the date that the NJPA Chief Procurement Officer awards the Contract). This Contract may be extended for a fifth year at NJPA's discretion.

NJPA Authorized Signatures:NJPA DIRECTOR OF COOPERATIVE CONTRACTS
AND PROCUREMENT/CPO SIGNATUREJeremy Schwartz
(NAME PRINTED OR TYPED)

NJPA EXECUTIVE DIRECTOR/CEO SIGNATURE

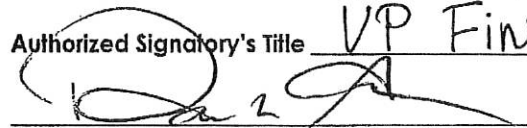
Chad Coauette
(NAME PRINTED OR TYPED)

Awarded on July 24, 2017

NJPA Contract # 051017-CPI

Vendor Authorized Signatures:

The Vendor hereby accepts this Contract award, including all accepted exceptions and amendments.

Vendor Name ChargePoint, Inc.Authorized Signatory's Title VP Finance

VENDOR AUTHORIZED SIGNATURE

Dave Adams

(NAME PRINTED OR TYPED)

Executed on Aug 22, 2017

NJPA Contract # 051017-CPI

PROPOSER ASSURANCE OF COMPLIANCE



Proposal Affidavit Signature Page

PROPOSER'S AFFIDAVIT

The undersigned, authorized representative of the entity submitting the foregoing proposal (the "Proposer"), swears that the following statements are true to the best of his or her knowledge.

1. The Proposer is submitting its proposal under its true and correct name, the Proposer has been properly originated and legally exists in good standing in its state of residence, the Proposer possesses, or will possess before delivering any products and related services, all applicable licenses necessary for such delivery to NJPA members agencies. The undersigned affirms that he or she is authorized to act on behalf of, and to legally bind the Proposer to the terms in this Contract.
2. The Proposer, or any person representing the Proposer, has not directly or indirectly entered into any agreement or arrangement with any other vendor or supplier, any official or employee of NJPA, or any person, firm, or corporation under contract with NJPA, in an effort to influence the pricing, terms, or conditions relating to this RFP in any way that adversely affects the free and open competition for a Contract award under this RFP.
3. The Proposer has examined and understands the terms, conditions, scope, contract opportunity, specifications request, and other documents in this solicitation and affirms that any and all exceptions have been noted in writing and have been included with the Proposer's RFP response.
4. The Proposer will, if awarded a Contract, provide to NJPA Members the /products and services in accordance with the terms, conditions, and scope of this RFP, with the Proposer-offered specifications, and with the other documents in this solicitation.
5. The Proposer agrees to deliver products and services through valid contracts, purchase orders, or means that are acceptable to NJPA Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to NJPA Members under an awarded Contract.
6. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.
7. The Proposer understands that NJPA will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statute §13.591, Subd. 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals generally become public data. Minnesota Statute §13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.
8. The Proposer understands that it is the Proposer's duty to protect information that it considers nonpublic, and it agrees to defend and indemnify NJPA for reasonable measures that NJPA takes to uphold such a data designation.

[The rest of this page has been left intentionally blank. Signature page below]

By signing below, Proposer is acknowledging that he or she has read, understands, and agrees to comply with the terms and conditions specified above.

Company Name: ChargePoint, Inc.

Address: 254 East Hacienda Avenue

City/State/Zip: Campbell, CA 95008

Telephone Number: 408-841-4500

E-mail Address: sales@chargepoint.com

Authorized Signature: _____

Authorized Name (printed): ANTONIO CANO

Title: COO

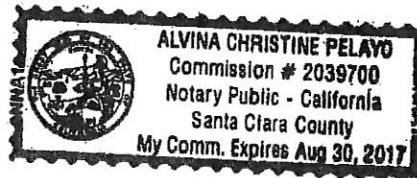
Date: 5/2/17

Subscribed and sworn to before me this 8th day of May, 20 17

Notary Public in and for the County of Santa Clara State of CA

My commission expires: 8-30-17

Signature: _____





PROPOSER QUESTIONNAIRE

Payment Terms, Warranty, Products and Services, Pricing and Delivery, and Industry-Specific Questions

Proposer Name: ChargePoint, Inc.

Questionnaire completed by: Peter Feroli

Payment Terms and Financing Options

- 1) What are your payment terms (e.g., net 10, net 30)?

Net 30

- 2) Do you provide leasing or financing options, especially those options that schools and governmental entities may need to use in order to make certain acquisitions?

Yes. ChargePoint offers a financing solution for our CT4000 family.

- 3) Briefly describe your proposed order process. Please include enough detail to support your ability to report quarterly sales to NJPA. For example, indicate whether your dealer network is included in your response and whether each dealer (or some other entity) will process the NJPA Members' purchase orders.

Depending on NJPA member needs, ChargePoint would either process orders directly with the NJPA member or pass that order opportunity to a local channel partner. The channel partner would process an order with the NJPA member and an upstream order with ChargePoint for the associated products and services. In either case the NJPA member would pay at or below the contract price and ChargePoint would track order details for quarterly payment of the administration fee on any products purchased from ChargePoint.

- 4) Do you accept the P-card procurement and payment process? If so, is there any additional cost to NJPA Members for using this process?

No. We do not accept the P-card procurement and payment process.

Warranty

- 5) Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may include in your response a copy of your warranties, but at a minimum please also answer the following questions.

ChargePoint Assure Terms and Conditions of Service attached below.

- Do your warranties cover all products, parts, and labor?

ChargePoint Assure covers all charging stations offered within this proposal following installation and a successful Site Validation. Assure covers parts and labor for defect and labor for non-cosmetic station damage. ChargePoint Assure Terms and Conditions of Service below.

- Do your warranties impose usage restrictions or other limitations that adversely affect coverage?

Yes. See ChargePoint Assure Terms and Conditions of Service attached below.

- Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?

Yes.

- Are there any geographic regions of the United States for which you cannot provide a certified technician to perform warranty repairs? How will NJPA Members in these regions be provided service for warranty repair?

No. ChargePoint Assure is available throughout the US and Canada.

- Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?

ChargePoint Assure covers all charging stations offered within this proposal following a successful Site Validation.

What are your proposed exchange and return programs and policies?

All sales are final. ChargePoint and its channel partners strive to avoid any situation where improper products are purchased and returns or exchanges are requested. On a case by case basis ChargePoint may allow returns or exchanges with payment of a 20% restocking fee and payment of any required freight charges to correct the problem.

- 6) Describe any service contract options for the items included in your proposal.

ChargePoint Assure is a full service maintenance and support program. It covers all the products offered within this proposal. Please see the detailed ChargePoint Assure Terms and Conditions below.

CHARGEPOINT ASSURE

TERMS AND CONDITIONS OF SERVICE

Welcome to ChargePoint Assure. ChargePoint Assure is a full service maintenance and support program designed specifically for ChargePoint customers.

1. **WHAT IS COVERED:** With ChargePoint Assure, ChargePoint agrees to do each of the following:
 - a. Ensure that all parts are provided and labor is performed, on-site if necessary, to correct any defect in the materials or workmanship of electric vehicle charging stations purchased from ChargePoint, Inc., or its representatives ("Charging Stations") in a prompt and professional manner.
 - b. Provide remote, automated monitoring of your Charging Stations.
 - c. Perform triage with respect to any Charging Station that may be defective.
 - d. Coordinate all repairs necessary to have your Charging Station back up and running.
 - e. Ensure that you are provided response no later than one business day from the date ChargePoint becomes aware of an issue.
 - f. Begin onsite repairs within one business day from the delivery of any parts required to fix your Charging Station.
 - g. ChargePoint will provide software moves, adds and changes at no additional cost
 - h. ChargePoint guarantees a 98% annual station uptime with a prorated refund of up to the annual station Assure maintenance fee for outages caused by station hardware or software failures in excess of 2% annually
 - i. ChargePoint will provide standard monthly summary and quarterly detailed station usage and performance metrics.
 - j. ChargePoint will cover the labor portion of non-cosmetic station repairs caused by vandalism, auto accidents or excessive wear and tear.
2. **WHAT IS NOT COVERED:** ChargePoint undertakes no responsibility with respect to repairing, replacing, monitoring or servicing anything other than your Charging Stations. This means, for example, that ChargePoint is not responsible for the physical mounting and electrical wiring of your Charging Stations or for the performance of any cellular or Wi-Fi repeaters or other devices installed in connection with your Charging Stations.
3. **CUSTOMER RESPONSIBILITIES:** In order to perform its obligations under ChargePoint Assure, ChargePoint needs your cooperation. Specifically, you agree to:
 - a. Provide reasonable access to ChargePoint or its designee as necessary for the performance of ChargePoint's obligations.
 - b. Permit ChargePoint to access the Charging Stations remotely by maintaining a separately purchased Cloud Services subscription necessary for remote access.
 - c. Maintain your premises in accordance with all applicable laws, rules and regulations.
 - d. Keep the areas in which Charging Stations are located in a clean, safe and orderly condition, to at least the same standard as you customarily use to maintain the remainder of your premises.
 - e. Promptly notify ChargePoint of any suspected defect with a Charging Station.
4. **WHO IS ELIGIBLE FOR CHARGEPOINT ASSURE?:** ChargePoint Assure is only available to purchasers of Charging Stations who either: 1) use a ChargePoint Operations and Maintenance Partner ("O&M Partner") to install their Charging Stations or 2) successfully complete a site validation as described below.
 - a. **ChargePoint O&M Partner Installation.** For information on how to contact a ChargePoint O&M Partner, please contact your ChargePoint sales representative or authorized ChargePoint reseller for more details.

70-001012-01-2

ChargePoint, Inc. | 11992 Del Amo | Campbell, CA 95008-8901 USA
408.841.4500 or toll free 877.370.3902 | info@chargepoint.com | www.chargepoint.com

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CHARGEPOINT is a U.S. registered trademark/service mark. All other products or services mentioned are the trademarks, service marks, registered trademarks or registered service marks of their respective owners.

- b. **Site Validation:** If you do not use an O&M Partner to install your Charging Station, you still will be eligible for ChargePoint Assure after your installation has been validated by ChargePoint or an authorized third party. The purpose of the site validation is to ensure that your Charging Stations were installed correctly, in accordance with ChargePoint's recommended specifications and operational requirements. Site validations require the payment of ChargePoint's then current fee, charged on a "per site" basis. For these purposes, a "site" is defined as any group of Charging Stations whose circuits are terminated at the same power panel.
5. **EXCLUSIONS FROM COVERAGE:** ChargePoint's obligations under ChargePoint Assure shall not apply to defects or service repairs resulting from the following:
- Cosmetic damage such as scratches and dents.
 - Normal aging.
 - Except as provided in 1(j) above, abuse, vandalism, damage or other problems caused by accidents or negligence (including but not limited to physical damage from being struck by a vehicle), or use of the Charging Station in a way other than as specified in the applicable Charge Point documentation.
 - Installation, alteration, modification or relocation of the Charging Station that was not approved in writing by ChargePoint, performed by an O&M Partner or validated in the manner described above.
 - Use of the Charging Station with software, interfacing, parts or supplies not supplied by ChargePoint.
 - Damage as a result of extreme power surge, extreme electromagnetic field or any other acts of nature.
- In addition ChargePoint's obligations under ChargePoint Assure shall not apply to any Charging Station that was not installed by a ChargePoint O&M Partner or a ChargePoint certified installer pursuant to the provisions of Section 4 of these Terms and Conditions.
6. **CONTACT INFORMATION:** If at any time during the term of your coverage of ChargePoint Assure you believe you have a defective Charging Station, contact Customer Service at 1-877-850-4562 or support@chargepoint.com.
7. **SERVICE TERM:** If you comply with the installation requirements described in Section 4, you will receive, at no-cost, ChargePoint Assure coverage that will replace your standard ChargePoint Warranty and will last for the remainder of the standard Warranty period, if any. You may purchase extensions to your ChargePoint Assure coverage. The extension period will begin on the date your standard Exchange Warranty expires or, if applicable, the date that any extensions to ChargePoint Assure coverage that you have previously purchased expire. Please contact your ChargePoint sales representative or authorized ChargePoint reseller for more details.
8. **PAYMENTS:** ChargePoint will send you an invoice for any extended ChargePoint Assure coverage that you order. Payment is due within thirty (30) days of the invoice date. If you have purchased extended ChargePoint Assure and have chosen the annual payment option, ChargePoint will invoice each annual payment on the anniversary date of your Assure coverage. All payments shall be made in U.S. Dollars and may be made by check, wire transfer, ACH payment system or other means approved by ChargePoint. Customer may not offset any amounts due to ChargePoint hereunder against amounts due to Customer under this Agreement or any other agreement. Fees payable to ChargePoint do not include any Taxes, and Subscriber is responsible for any and all such Taxes. All payment obligations under this Agreement are non-cancelable and non-refundable. Late payments shall be subject to a charge equal to the lesser of (i) one and one-half percent (1.5%) per month or (ii) the maximum rate permitted by law. Customer will reimburse ChargePoint for attorneys' fees and other expenses reasonably incurred by ChargePoint in the collection of any late payments. If any amount owing by you under this Agreement is more than thirty (30) days overdue, ChargePoint may, without otherwise limiting ChargePoint's rights or remedies, (a) terminate this Agreement and (b) refuse to provide ChargePoint Assure coverage until ChargePoint has received payment in full.
9. **TRANSFERS:** Your ChargePoint Assure coverage applies only to the Charging Stations and installation site for which it was purchased. If you sell or otherwise transfer your Charging Stations, your ChargePoint Assure coverage may not be transferred without ChargePoint's prior written consent.

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10. **REPLACEMENT PARTS AND STATIONS:** Replacement parts or charging stations provided by ChargePoint under ChargePoint Assure may be remanufactured or reconditioned parts or Charging Stations or, if the exact Charging Station is no longer manufactured by ChargePoint, a Charging Station with substantially similar functionality. All replaced parts and Charging Stations, whether under warranty or not, become the property of ChargePoint. Any replacement parts or Charging Stations so furnished will be covered by ChargePoint Assure for the remainder of your ChargePoint Assure coverage or ninety (90) days from the date of delivery of such replacement parts or Charging Stations, whichever is later.
11. **LIMITS ON LIABILITY:** This section limits ChargePoint's liability under ChargePoint Assure. Please read it carefully.
 - a. CHARGEPOINT IS NOT LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOST BUSINESS, LOST DATA, LOSS OF USE, OR COST OF COVER INCURRED BY YOU ARISING OUT OF OR RELATED TO YOUR PURCHASE OR USE OF, OR INABILITY TO USE, THE CHARGING STATION, UNDER ANY THEORY OF LIABILITY, WHETHER IN AN ACTION IN CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL OR EQUITABLE THEORY, EVEN IF CHARGEPOINT KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, THE CUMULATIVE LIABILITY OF CHARGEPOINT FOR ALL CLAIMS WHATSOEVER RELATED TO PERFORMANCE BY CHARGEPOINT OF ITS OBLIGATIONS UNDER CHARGEPOINT ASSURE WILL NOT EXCEED THE PRICE YOU PAID FOR CHARGEPOINT ASSURE. THE LIMITATIONS SET FORTH HEREIN ARE INTENDED TO LIMIT THE LIABILITY OF CHARGEPOINT AND SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.
 - b. Some states or jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.
12. **ARBITRATION:** These ChargePoint Assure Terms and Conditions of Service are to be construed according to the laws of the State of California, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods and any conflict of law provisions that would require application of another choice of law. Any dispute arising from or relating to these ChargePoint Assure Terms and Conditions of Service shall be arbitrated in Santa Clara, California. The arbitration shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. If the parties agree, a mediator may be consulted prior to arbitration. All claims shall be brought in the parties' individual capacities, and not as a plaintiff or class member in any purported class or representative proceeding.
13. **AMENDMENT OR MODIFICATION:** These ChargePoint Assure Terms and Conditions of Service may not be amended or modified except pursuant to a writing executed by each of the parties.
14. **WAIVER:** The failure of either Party at any time to enforce any provision of this Agreement shall not be construed to be a waiver of the right of such Party to thereafter enforce that provision or any other provision or right.
15. **FORCE MAJEURE:** ChargePoint will not be liable for failure to perform any of its obligations hereunder due to causes beyond its reasonable control and occurring without its fault or negligence, including but not limited to fire, flood, earthquake or other natural disaster (irrespective of ChargePoint's condition of any preparedness therefore); war, embargo; riot; strike; labor action; any lawful order, decree, or other directive of any government authority that prohibits ChargePoint from performing its obligations under this Agreement; material shortages; shortage of transport; and failures of suppliers to deliver material or components in accordance with the terms of their contracts.
16. **SEVERABILITY.** Except as otherwise specifically provided herein, if any term or condition of this Agreement or the application thereof to either Party will to any extent be determined jointly by the Parties or by any judicial, governmental or similar authority, to be invalid or unenforceable, the remainder of this Agreement, or the application

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of such term or provision to this Agreement, the Parties or circumstances other than those as to which it is determined to be invalid or unenforceable, will not be affected thereby.

17. **ASSIGNMENT.** You may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of ChargePoint. In the event of any purported assignment in breach of this Section 17, ChargePoint shall be entitled, at its sole discretion, to terminate these ChargePoint Assure Terms and Conditions of Service by providing written notice to you. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. ChargePoint may assign its rights and obligations under this Agreement.
18. **ENTIRE AGREEMENT.** This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes and cancels all previous and contemporaneous agreements, negotiations, commitments, understandings, representations and writings. To the extent of any conflict or inconsistency between these ChargePoint Assure Terms and Conditions of Service and any purchase order, the Agreement shall prevail.
19. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute but one and the same document.

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Pricing, Delivery, Audits, and Administrative Fee

- 7) Provide a general narrative description of the equipment/products and related services you are offering in your proposal.

ChargePoint is offering an assortment of our Level 2 and DC fast Charging Stations, Network Services, and Assure maintenance plans and Accessories. We are offering the CPF25 family and associated configurations for use in Fleet charging applications. With CPF25 we are offering our Connect, Data and Fleet Network services plans with 1-3 year subscription options. The Network Services plans are described in the more detail in the pricing sheet. In addition, with CPF25 we are offering our Assure warranty and maintenance service with 1-5 year prepaid term options. We are offering the CT4000 family and associated configurations for use in most any other commercial charging application. With CT4000 we are offering our Commercial and Enterprise Network Services plans with 1-3 year subscription options. With CT4000 we are offering our Assure warranty and maintenance service with 1-5 year prepaid term options. We are offering our CPE100 - 24 KW, CPE200 – 50 KW, and CPE250 50 KW DC Fast Chargers. Each of the CPE stations are offered with our DC Commercial and DC Enterprise Network Services plans with 1-3 year subscription options. The CPE stations are also offered with our Assure warranty and maintenance service with 1-3 year prepaid term options. Lastly, we are offering a number of Accessories and Services including Site Validation which is required to enable Assure maintenance plans and CT4000 Power Management Kits which allow for infrastructure managed installations of the CT4000 family of stations. This does not include every item listed in our pricing proposal but simply provides a generic overview of the products and services therein.

- 8) Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the NJPA discounted price) on all of the items that you want NJPA to consider as part of your RFP response. Provide a SKU for each item in your proposal. (Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract. See the body of the RFP and the Price and Product Change Request Form for more detail.)

ChargePoint has provided a detailed line-item price book showing list price, proposed contract price, and freight costs if applicable. This book is broken into distinct product categories to simplify review. Those categories are Charging Stations, Network Services, Assure Maintenance Plans, and Accessories. Notes are also provided to guide reviewers to creating estimated project pricing.

- 9) Please quantify the discount range presented in this response. For example, indicate that the pricing in your response represents is a 50% percent discount from the MSRP or your published list.

Discounts range from 0-30% off MSRP.

- 10) The pricing offered in this proposal is

- _____ a. the same as the Proposer typically offers to an individual municipality, university, or school district.
- _____ b. the same as the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.
- _____ c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.
- ___X___ d. other than what the Proposer typically offers (please describe).

The pricing offered is the same as we would offer other entities for the same anticipated scope, volume, and product types.

- 11) Describe any quantity or volume discounts or rebate programs that you offer.

The pricing provided takes into account an assumption of volume created by purchasing across the NJPA membership. However, on a case by case basis ChargePoint may consider providing improved pricing to individual members who intend to purchase large volumes in single orders.

- 12) Propose a method of facilitating “sourced” products or related services, which may be referred to as “open market” items or “nonstandard options”. For example, you may supply such items “at cost” or “at cost plus a percentage,” or you may supply a quote for each such request.

ChargePoint would consider any installation services including materials and labor beyond the scope of our Install-Valid service listed in our pricing proposal to be “Open Market” options. In many cases government entities prefer to use previously contracted vendors or employed tradespeople to perform the site preparation for charging station installation. Install-Valid service then allows these entities to purchase just the somewhat specialized charging station assembly, mounting and testing directly from ChargePoint. However, in instances where an NJPA member would prefer to procure complete installation services from one vendor ChargePoint would coordinate scoping by an appropriate channel or O&M partner who would then provide a quote for these services to the NJPA member. ChargePoint would facilitate this sourcing but would not be directly involved with any financial transactions between the member and ChargePoint partner for those services. Furthermore, ChargePoint would not intend to track quarterly or pay Administrative fee on these services.

- 13) Identify any total cost of acquisition costs that are **NOT** included in the pricing submitted with your response. This cost includes all additional charges that are not directly identified as freight or shipping charges. For example, list costs for items like installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.

As described in question 12 above, ANY installation services including materials and labor beyond the scope of our Install-Valid service is not included in our pricing proposal. In many cases government entities prefer to use previously contracted vendors or employed tradespeople to perform the site preparation for charging station installation. Install-Valid service then allows these entities to purchase just the somewhat specialized charging station assembly, mounting and testing directly from ChargePoint. However, in instances where an NJPA member would prefer to procure complete installation services from one vendor ChargePoint would coordinate scoping by an appropriate channel or O&M partner who would then provide a quote for these services to the NJPA member. ChargePoint would facilitate this sourcing but would not be directly involved with any financial transactions between the NJPA member and ChargePoint partner for those services.

- 14) If delivery or shipping is an additional cost to the NJPA Member, describe in detail the complete shipping and delivery program.

Freight costs are an additional line item cost listed for hardware products. Freight costs for the US and Canada have been included in the pricing proposal for most items requiring shipment. For those items listed as “Request Cost”

ChargePoint will provide pricing upon request via FedEx. In addition, if NJPA members are able to require their own shipping carrier upon purchase.

- 15) Specifically describe those shipping and delivery programs for Alaska, Hawaii, Canada, or any offshore delivery.

Line item freight costs have been provided for delivery to Alaska, Hawaii and Canada.

- 16) Describe any unique distribution and/or delivery methods or options offered in your proposal.

No unique distribution and/or delivery methods or options offered in your proposal.

- 17) Please specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with NJPA. This process includes ensuring that NJPA Members obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to NJPA.

ChargePoint is well experienced with offering contracted pricing to various public and private entities across the globe. In addition we operate our business on a world class CRM platform with the ability to easily meet these needs. Upon award, we will leverage our CRM tools to tag any NJPA opportunities appropriately so they receive the contract pricing and terms. If these leads are required to pass through a channel or O&M partner we will ensure the partner is conforming to any contract requirements as well. As sales are made and shipments are processed all NJPA tagged orders will be archived in our CRM system which can easily be queried quarterly for itemized reporting of products and revenue. From this report the NJPA administrative fee can be easily calculated and paid.

- 18) Identify a proposed administrative fee that you will pay to NJPA for facilitating, managing, and promoting the NJPA Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See RFP Section 6.29 and following for details.)

In the event ChargePoint is awarded a Contract, ChargePoint will pay an administrative fee to NJPA of 2% of sales under the Contract for orders of Charging Stations, Network Services, Activation Services, Assure Maintenance Plans, Validation Services and Accessories explicitly priced in this pricing sheet of this proposal. ChargePoint will not pay administrative fee on installation services sold by channel or O&M partners, freight costs, Network Services renewals or Assure renewals.

Industry-Specific Questions

- 19) Identify the subcategory or subcategories that best describe your solutions: hardware manufacturer or distributor, network service provider, or both. If the subcategory that best describes your solutions is not identified, provide the subcategory title(s) that best describes what you are offering in your response.

ChargePoint meets all the categories: manufacturer, network provider, installation, professional services, support and maintenance.

- 20) Describe the features of your proposed solution(s) that address serviceability (maintenance, repairs, support, etc.) and which you believe are "vendor differentiators."

High-quality service and support start with high-quality products, site preparation and installation, but these elements alone aren't enough. ChargePoint's EV charging stations are the most advanced and reliable in the world, but site conditions can change, wear and tear occurs and accidents or equipment failures can happen. That's why ChargePoint offers the best and most comprehensive support, maintenance and warranty program in the industry—ChargePoint Assure. Assure covers everything you need to keep your ChargePoint station up and running, including unlimited changes to station policies, as well as parts and labor to fix any hardware issues.

Stay on Top of Operations with Proactive Monitoring

- Find out about problems before your drivers do with remote monitoring

- Get 98% annual station uptime with a non-performance penalty for outages caused by station hardware or software failures
- Keep your stations up and running with proactive troubleshooting and dispatch services
- Fix problems with on-site labor that ChargePoint dispatches
- Station owner support - Call us during business hours (5 AM – 6 PM Pacific)
- Driver support 24/7/365

Count On a Fast Fix with One-Business-Day Response Time

- We respond to all issues within one business day
- ChargePoint certified technicians will be onsite to repair your station within one business day of receiving any required parts
- U.S.-based support specialists coordinate all repairs

Rest Easy with the Industry's Leading Parts and Labor Warranty

- We offer the EV charging industry's first and most comprehensive warranty for parts and on-site labor
- We cover labor to repair issues that often aren't covered under warranty, such as vandalism, auto accidents and excessive wear and tear

21) Hardware providers, respond to a., b., c., and d. below:

- a. identify the product(s)/services being proposed by placing an "X" in the applicable box or boxes.

	Installation	Mount Type		Hardware		Port	
		Wall	Pedestal	Non-Network	Network	Single	Dual +
Level 1	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Level 2	X	X	X	N/A	X	X	X
DC Fast Charge	X	X	X	N/A	X	X	X

- b. If applicable, describe your process for site assessment, site prep, and installation and describe your installation network.

A successful application we need to have a clear understanding of the NJPA members needs so we can determine the appropriate application. Once we understand the application and know the station model and station count we will work the NJPA's member to coordinate a site assessment to determine installation approach and associated costs.

General guidelines for site assessment include:

- 1) Evaluation of existing electrical infrastructure to determine if sufficient existing utility service and electrical panel capacity exist and to identify costs for any necessary upgrades and/or a new dedicated electrical panel.
- 2) For installation of dedicated EV electrical panel, choose panel location in close proximity to existing electrical supply.

- 3) Identify parking spaces for EV charging that are in close proximity to an electrical room with common area electrical panel; reduce distance for conduit runs and electrical wiring from electrical panel to all proposed EV parking spaces.
- 4) If possible, avoid or minimize trenching requirements, especially more costly trenching to run conduit under asphalt surfaces.
- 5) Choose adjacent parking spaces in an area with adequate lighting and identify suitable locations with flat surface for wall mount stations or suitable surface for pedestal mount stations.
- 6) Use dual-port pedestal mount stations where possible in open areas for adjacent or tandem parking spaces.
- 7) Determine optimum conduit layout to minimize linear conduit costs to multiple EV parking spaces and size all conduit and electrical wiring in accordance with National Electric Code requirements.
- 8) Measure cellular signal levels for 3G Verizon and 3G AT&T carriers and identify optimum location for placement of ChargePoint gateway devices.
- 9) For below ground-level or enclosed parking garages, installation of a cellular signal booster often is required with indoor antenna located near EV parking spaces and outdoor antenna typically located at the garage entrance ceiling or on the rooftop where cellular signal levels are optimum.
- 10) Determine cost budget options for make-ready electrical infrastructure to satisfy current needs and future needs. Prioritize locations for installation of charging stations based upon immediate and future needs, construction timelines, and costs.

At the completion of the site assessment a scope of work will be created that will define everything necessary to prepare the site so the charging stations can be installed. This scope of work will include new transformers and electrical panels if required, distances from electrical panels to station locations, whether concrete pads will be needed or if the stations will be mounted on the wall, paths of the conduit runs, areas where they will have to trench, etc.

It is important to note if the NJPA member has pre-existing infrastructure or are using their own preferred electrical contractor, a Site Validation by our national partner will be required to certify compliance with electrical specification requirements and to ensure reliable charging services to EV drivers.

After electrical work is completed, The ChargePoint Activations team and our partner will work with the NJPA member to determine preferred station configuration such as pricing and access policies strategies.

ChargePoint has a network of over 2,000 certified installers and 13 O&M (Operations & Maintenance) partners located through the United States and Canada who are qualified to perform site assessments, engineering, permitting, and installation services for any EVSE application.

- c. Is your equipment Open Charge Point Protocol (OCPP) compliant at the charger level?

ChargePoint will be fully compliant with OCPP 1.6 at both the charger and cloud level by September 2017. Stations that are already installed will be automatically upgraded over-the-air (OTA) to add support for OCPP 1.6.

- d. Describe the ability of your hardware solutions to be integrated with network service providers and

identify those network service providers with which your hardware solutions integrate.
Response from another RFP:

All ChargePoint stations operate natively on the ChargePoint network, but should individual station owners decide not to renew with ChargePoint the stations may be moved to an OCPP network of their choosing. The process to move to another network will be documented and made available to customers that choose this path.

22) Network service providers, respond to a., b., c., d., and e. below:

- a. identify the products and/or services being proposed by placing an "X" in the applicable box or boxes.

Network Service Providers	Communication Type			Station Access			
	Cellular	Wi-Fi	Ethernet	RFID	App Based	Credit Card	On-Site Keypad
Level 2	X	NA	NA	X	X	X	NA
DC Fast Charge	X	NA	NA	X	X	X	NA

- b. Describe your data security practices for payment processing and user information.

ChargePoint is PCI Certified as both a Service Provider and Merchant and audited by 3rd party QSA. The ChargePoint Network undergoes regular PCI-DSS compliance certification testing from a third-party auditor. The current Attestation of Compliance is available to customers under NDA.

ChargePoint commercial charging stations connect to the ChargePoint cloud over a private, encrypted M2M VPN connection using the cellular data network. M2M VPN cellular networking is more secure and completely isolates the charging stations from the local IT infrastructure, which is strongly recommended by the Payment Card Industry (PCI).

ChargePoint has an internal IT process for all employees to follow if job responsibilities involve working with user personal, sensitive information. Employees go through yearly compliance training also.

Tier 1 service providers host ChargePoint's data centers. All data centers are SSAE16 compliant. The hosted data center has physical security in place and prevents any access to servers by unauthorized parties, and undergoes independent physical security audits as part of their own PCI certification process. The ChargePoint Network is running in two physically independent (hundreds of miles apart) secure hosted data centers, providing fail-over capabilities for disaster recovery and business continuity.

This security documentation is available to NJPA members, some information may require an NDA.

- c. Describe the ability of your proposed solution to accommodate multiple user groups (e.g., fleet, public, employees, etc.) as related to access control and pricing structures.

ChargePoint has hardware and network services/software designed to meet the unique needs of every application an NJPA member has - workplace, fleet and public charging. To ensure success, each application needs a charging solution designed for that specific need. ChargePoint is unique in that we have a dedicated fleet solution, a workplace solution and the world's largest EV driver

network to maximize utilization at public stations. ChargePoint stations can also be set up as mixed use so they can be used across multiple applications. Through a single software platform, NJPA members will be able to manage their portfolio of stations across each application and analyze data by each driver group (employees, fleet, public).

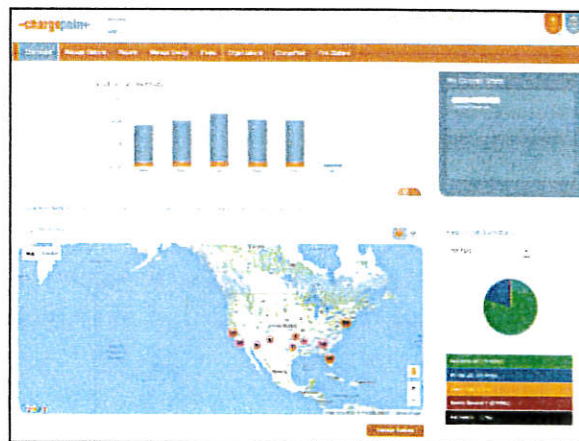
The NJPA member is in complete control of the charging station policies and ChargePoint will work closely to configure and design our software platform to meet the needs of the desired application. The station will apply appropriate policies (access control, pricing, etc.) based on the driver account (employee, fleet, public) that activates a charging session.

ChargePoint's access control features allow NJPA members the ability to restrict station usage for employee, fleet or public. ChargePoint stations also allow for scheduled access controls. For example stations can be restricted to employee use during business hours and opened to the public on evenings or weekends. This may be desirable for locations that are near amenities to help promote EV adoption in the community and as a way to increase the utilization of the stations without impacting employee access.

ChargePoint flexible pricing policy options allow workplace site hosts to implement unique pricing rules for employees, fleets, and the general public. Pricing rates may include energy (kWh) rates and/or parking rates (\$/hour) that vary by length of time the vehicle is plugged in or rates that vary by time of day. To promote efficient use of charging ports, site hosts can set up pricing policies with "taxi-style" pricing rates as a financial incentive for EV drivers to move their vehicle promptly and make charging ports available for other users. For example, a workplace site host may want to establish an escalated pricing policy for employees where the fee goes up after 3 hours to encourage turnover and make efficient use of charging ports by all employees with EVs. As with scheduled access controls described earlier, scheduled pricing is also available that will allow pricing to vary by time of day and/or day of week.

- d. Describe the reporting capabilities of your proposed solution, including the types of data collected, methods of user access to reports, and report customization options. Provide a sample report from your proposed solution demonstrating its data collection capabilities.

ChargePoint provides extensive monitoring and reporting capabilities in a user-friendly and highly flexible web interface. The NJPA member would have access to the web portal and the standard set of reports is included in the network service plan at no additional cost.

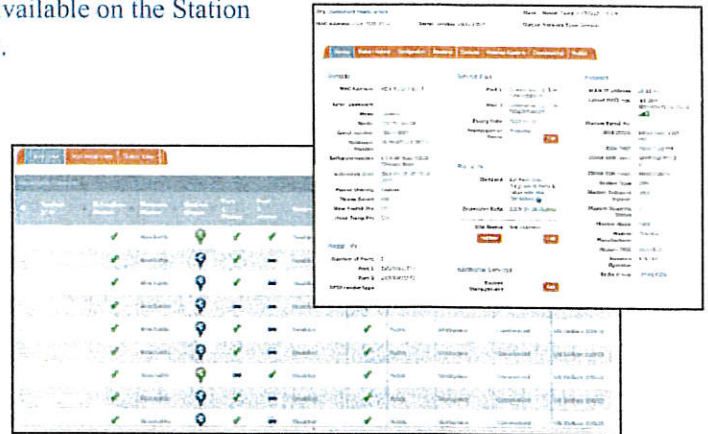


The ChargePoint web portal provides the tools necessary to actively monitor and manage all stations, including real-time status for each port; making it easy to view important information in a clear and concise table format.

Detailed real-time status for individual stations is available on the Station Properties page, including active charging sessions.

Administrators have the ability to:

- Get live status, including network connectivity and port status
- Reboot the station
- View live charging sessions
- View a history of charging sessions



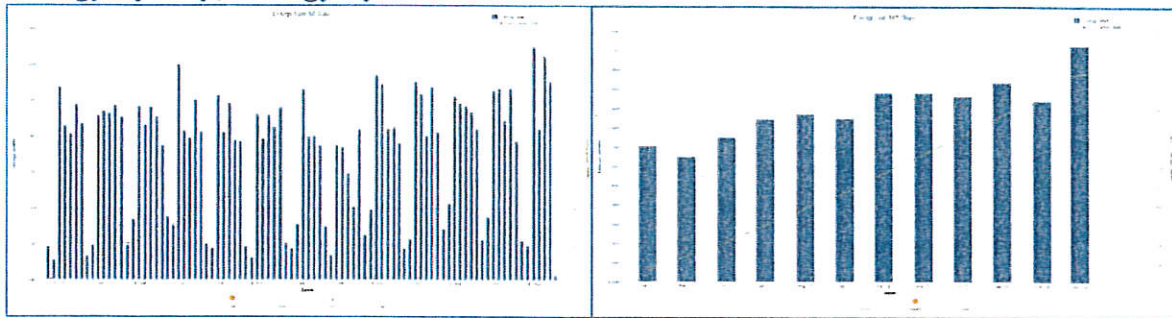
All reports may be exported to Excel or CSV format from the reports page directly. Alternatively, data may be retrieved using the ChargePoint Web Services API.

The categories of reporting available on ChargePoint include:

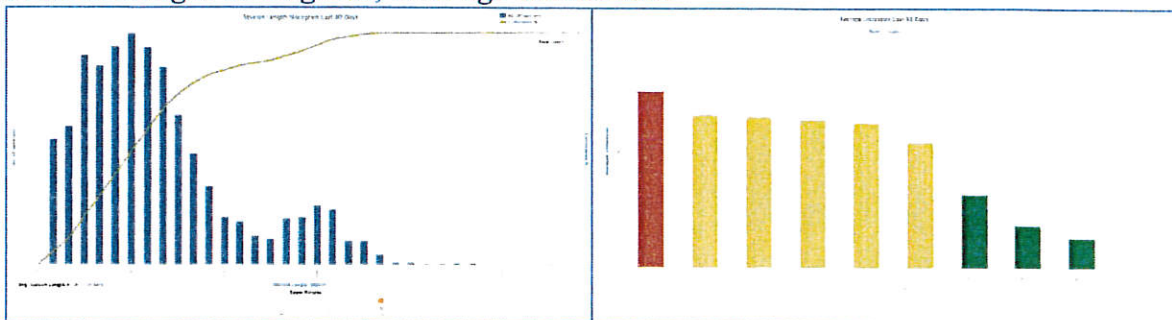
- Port Utilization Chart:** This is a view of station utilization during common business hours.
You can use this information to determine if updates need to be made to pricing / access policies or if stations should be added.
- Session Start Distribution Chart:** This is a view (by day) of what times drivers start sessions.
You can use this information to fine tune time of day pricing policy rules.
- Station / Port Count:** In order to be counted, a station must have the "Assure" entitlement applied.
This is the number of stations / ports that currently have the "Assure" entitlement.
- Total Revenue:** This is the sum of session fees generated by your "Assure" stations minus the ChargePoint service fee (10%).
This data point can be useful in generating financial reports and budget justification.
- Energy (kWh):** All energy dispensed through your "Assure" stations.
This data point can be useful in reconciling station energy against energy bills.
- GHG Savings (kg):** All the green house gasses (95% CO2) that would have been released had the miles provided by your stations come from gasoline.
This data point can be useful in sustainability reporting.
- Unique Drivers:** The number of unique drivers that used your stations this month (a driver would be counted only once even if they used different RFID cards).
An understanding of the number of unique drivers visiting may be useful in creating station messaging / video ads.
- Gasoline (Gal) Saved:** All the gasoline that would have been burned had the miles provided by your stations come from gasoline.
This data point can be useful in sustainability reporting.
- ChargePoint Response SL:** Percentage of tickets to which ChargePoint responded within Service Level (1 business day).
ChargePoint holds itself accountable to our Service Level commitment.
- Uptime:** Percentage of time that your ports were capable of dispensing power.
ChargePoint is committed to keeping your ports dispensing power 99% of the time or better.
- Sessions:** Total session count.
An understanding of the number of times your stations authorize a session can be useful creating station messaging / video ads.
- Average Session Duration:** Average amount of time drivers occupy your stations.
This data point can be useful in fine tuning length of stay pricing policy rules.
- Average Charging Time:** Average amount of time per session energy is flowing.
This data point can be useful in fine tuning length of stay pricing policy rules.
- Average Session Energy:** Average amount of energy dispensed.
This data point can be useful in fine tuning price per kW pricing policy rules.
- Average Session Revenue:** Average session fee - 10%.
This data point can be useful in fine tuning minimum & maximum values for pricing policy rules.
- Total Hours Occupied:** Sum of all session durations.
This is used in part to determine utilization.
- Total Hours Charging:** Sum of all session charging durations.
This is used in part to determine utilization.
- New Service Tickets:** Count of trouble tickets tracking issues with a "Assure" station created this month.
This will help in keeping track of station fault issues raised with ChargePoint Support.

Sample Reports:

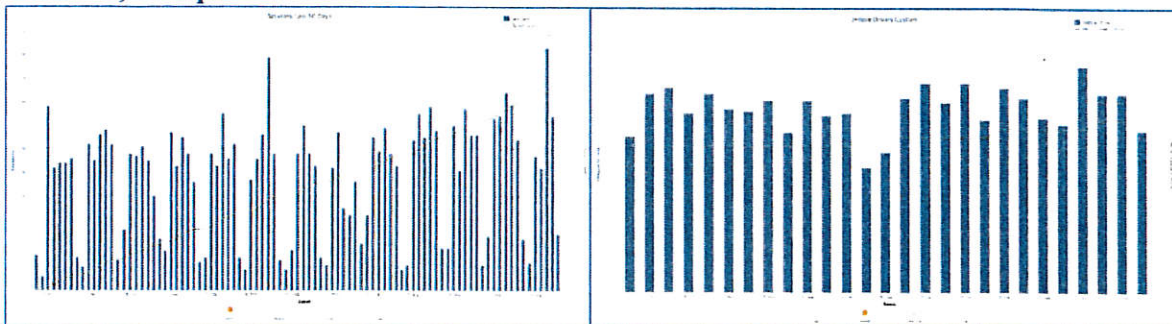
Energy by Day, Energy by Month:



Session Length Histogram, Average Utilization:



Sessions, Unique Drivers:



Below is an example of our most popular report, *Session Details Report*, it provides all the details for each session on each port.



ChargePoint
Session-Details-Report

- e. If applicable, identify the other fleet and/or building management software programs with which

your proposed solutions integrate, and describe your experiences with such integration.

Fleet Card Partnerships

ChargePoint has partnered with US Bank (Voyager Fleet Card) and WEX to offer customers the convenience of paying for and tracking electric fuel with their existing fleet cards. Customers simply register their WEX or US Bank Voyager account with ChargePoint to enable this functionality across the entire fleet or just a portion of it. Now all EV fueling transactions appear on WEX and US Bank statements and dashboards providing fleets with a comprehensive view of fueling activity across the entire fleet. More functionality will be added as we deepen our relationship with these companies, and we expect to add more fleet card providers.

Telematics Partnerships

ChargePoint is actively partnering with vehicle telematics companies to provide fleets with functionality that delivers operational value. ChargePoint's partnership with FleetCarma – the leading provider of EV telematics in North America – provides two primary benefits:

- Fuel theft detection and prevention:
 - By cross-referencing vehicle side and charging station side activity, we are able to detect if someone is fraudulently charging.
 - For example, an employee using a fleet account to charge a personal EV would be detected.
 - Managers can configure responses in their ChargePoint fleet dashboard, such as shut off charging send notification to the manager.
 - Battery State-of-Charge (SOC) optimization
 - Managers can view battery SOC in real-time in the ChargePoint fleet dashboard.
 - This can be used for real-time monitoring or for EV charging planning
 - Real-time battery SOC can be combined with energy management to provide the most optimal charging configuration
- ChargePoint is actively pursuing partnerships with other telematics providers to enhance coverage for fleets.

Fleet Management Information Systems (FMIS)

ChargePoint is in active (confidential) discussion with several FMIS providers to provide fleet managers with a comprehensive dashboard for all charging station assets and fueling activity. These pending partnerships cannot be disclosed at this time.

Building Management Software

ChargePoint has partnered with Kisensum, a company that aggregates and manages a diversity of site electrical loads, including buildings and fleets. Kisensum also provides the ability for customers to participate in utility programs and provide grid services.

The ChargePoint network supports a server to server exchange or an API (application programming interface) interface. It is developed using the WebServices SOAP/XML protocol, an industry standard. We also support OpenADR 2.0 for utility/smartgrid integration. Any building management software that uses these protocols will have access to all features and functionality of our network. Our latest, ChargePoint Web Services API Programmer's Reference Guide, is available upon request.

A sample of our business partners using our API/OpenADR 2.0 include: SDG&E, SCE, Georgia Power, NREL, Google, VMWare, Alameda County, and Envision Solar.

NJPA members have access to our API at no cost and ChargePoint assistance with their integration.

Signature: _____

Date: _____

5/8/17

**NATIONAL JOINT POWERS ALLIANCE (NJPA) AWARDED VENDOR
REQUIRED FEDERAL CONTRACT PROVISIONS CERTIFICATION**

When a National Joint Powers Alliance (NJPA) Member seeks to procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law and local rule. This includes, but is not limited to, the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 CFR Part 200 (also referred to as the "Uniform Guidance" or "EDGAR").

NJPA awarded Vendors must complete this certification regarding Vendor's willingness and ability to comply with certain requirements which may be applicable to specific NJPA Member purchases using federal grant or contract dollars. NJPA Members may also require Vendors to enter into ancillary agreements, in addition to the NJPA contract's general terms and conditions, to address the Member's specific contractual needs, including contract requirements for a procurement using federal grants or contracts. NJPA reserves the right at any time within a contract term to require an awarded Vendor to reaffirm or resubmit proper documentation relating to these requirements.

Note: The numbering and identification contained herein is only for reference purposes and does not identify any actual Federal designation or location of the rule. Rules are located in 2 CFR Part 200.

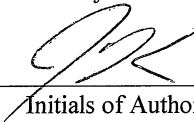
Appendix II to Part 200 Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Pursuant to Rule (A) above, National Joint Powers Alliance reserves all rights and privileges under the applicable laws and regulations with respect to this procurement process in the event of breach of contract by either party.

yes

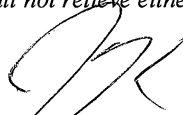
Vendor Agrees (YES or NO)



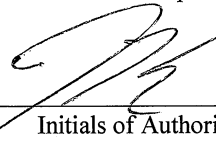
Initials of Authorized Representative

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

Pursuant to Rule (B) above, National Joint Powers Alliance reserves the right to terminate any agreement resulting from this procurement process pursuant to National Joint Powers Alliance RFP sections 7.13 and 7.17. Prior to any termination for cause, the NJPA will provide written notice to the Vendor, opportunity to respond and opportunity to cure. National Joint Powers Alliance reserves the right to terminate any agreement resulting from this procurement process without cause with a required 60-day written notice of termination. Termination of Contract shall not relieve either party of financial, product or service obligations incurred or accrued prior to termination.



Vendor Agrees (YES or NO)



Initials of Authorized Representative

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375,

"Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." This provision is hereby incorporated by reference into all applicable contracts.

Pursuant to Rule (C) above, the equal opportunity clause is incorporated by reference herein.

Yes

Vendor Agrees (YES or NO)



Initials of Authorized Representative

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. This provision is hereby incorporated by reference into all applicable contracts.

Pursuant to Rule (D) above, Vendor will be in compliance with all applicable Davis-Bacon Act provisions.

Yes

Vendor Agrees (YES or NO)



Initials of Authorized Representative

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into all applicable contracts.

Pursuant to Rule (E) above, Vendor certifies that Vendor will be in compliance with all applicable provisions of the Contract Work Hours and Safety Standards Act during the term of an award for all contracts by National Joint Powers Alliance resulting from this procurement process.

Yes

Vendor Agrees (YES or NO)



Initials of Authorized Representative

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small

business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

Pursuant to Rule (F) above, Vendor certifies that during the term of an award for all contracts by National Joint Powers Alliance resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in Rule (F) above.

Yes
Vendor Agrees (YES or NO) JK
Initials of Authorized Representative

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387) Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non- Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). This provision is hereby incorporated by reference into all applicable contracts.

Pursuant to Rule (G) above, Vendor certifies that during the term of an award for all contracts by National Joint Powers Alliance resulting from this procurement process, Vendor agrees to comply with all applicable requirements as referenced in Rule (G) above.

Yes
Vendor Agrees (YES or NO) JK
Initials of Authorized Representative

(H) Debarment and Suspension (Executive Orders 12549 and 12689) A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Rule (H) above, Vendor certifies that during the term of an award for all contracts by National Joint Powers Alliance resulting from this procurement process, Vendor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

Yes
Vendor Agrees (YES or NO) JK
Initials of Authorized Representative

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

Pursuant to Rule (I) above, as applicable, Vendor agrees to file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 USC 1352).

Yes
Vendor Agrees (YES or NO)

[Signature]
Initials of Authorized Representative

Record Retention Requirements

Vendor certifies that during the term of an award for all contracts by National Joint Powers Alliance resulting from this procurement process, Vendor will comply with the record retention requirements detailed in 2 CFR § 200.333. The Vendor further certifies that Vendor will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

Yes
Vendor Agrees (YES or NO)

[Signature]
Initials of Authorized Representative

Energy Policy and Conservation Act Compliance

To the extent applicable, Vendor certifies that during the term of an award for all contracts by National Joint Powers Alliance resulting from this procurement process, Vendor will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

Yes
Vendor Agrees (YES or NO)

[Signature]
Initials of Authorized Representative

Buy American Provisions Compliance

To the extent Vendor has agreed to comply with applicable provisions of the Buy American Act with a particular public entity, Vendor certifies that Vendor is in compliance with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act shall follow the applicable procurement rules calling for free and open competition.

Yes
Vendor Agrees (YES or NO)

[Signature]
Initials of Authorized Representative

Access to Records (2 C.F.R. § 200.336)

Vendor agrees that duly authorized representatives of the Agency shall have access to any books, documents, papers and records of Vendor that are directly pertinent to Vendor's discharge of its obligations under the Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Vendor's personnel for the purpose of interview and discussion relating to such documents.

Yes
Vendor Agrees (YES or NO)

[Signature]
Initials of Authorized Representative

Vendor agrees to comply with federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that Vendor certifies compliance with provisions, laws, acts, regulations, etc. as noted above.

This certification shall be effective through the term of the Vendor's NJPA awarded contract.

Vendor: ChargePoint, Inc.

Contract number: 051017 - CPI

Category: Electric Vehicle Supply Equipment and Related Services

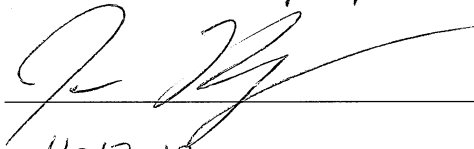
Maturity date: July 25, 2021

Address: 254 EAST Hacienda Ave

City, state, zip code: Campbell, CA 94041

Phone number: 877-370-3802

Printed name and title of authorized representative: Jonathan Kaplan, Secretary

Signature of authorized representative: 

Date: 11-17-18

SERVICE PROVIDER AGREEMENT

This SERVICE PROVIDER AGREEMENT is entered into on this ____ day of _____ 2022, by and between the Town of Fort Myers Beach, 2525 Estero Boulevard, Fort Myers Beach, FL 33931, a chartered municipality of the State of Florida (hereafter "Town"), and **ChargePoint/ Optimus Energy Solutions, LLC.** with an address of **1107 Robie Ave Mount Dora, FL 32757** (hereafter "Provider").

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

1. **Scope of Services.** Provider will perform all services and work necessary as set forth in "Scope of Services" attached as Exhibit "A". Provider warrants and represents that it is qualified, willing and able to provide and perform all services in accordance with the terms of this Agreement. The parties have the ability to modify the Scope of Services by mutual written agreement, except that the Town has the unilateral right to exclude specified services hereunder for any reason upon prior written notice to Provider and Provider will not be entitled to compensation for such excluded services unless those services have already been performed by Provider.
2. **Term.** The term of this Agreement is ____commencing on _____ and terminating on _____.
3. **Payment Obligation.** The Town will pay for all requested and authorized services rendered hereunder by the Provider and completed in accordance with this Agreement, as set forth in attached Exhibit "B". The Provider's invoice statements must contain a breakdown of charges, description of services and work provided or performed, and, where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in this Agreement. In the event of a dispute as to the Town's payment obligation, the Town will pay the undisputed amount, if any, within 30 days of the date of the invoice.
4. **Provider's Obligations.** The Provider's obligations include, but are not limited to, the following:
 - a) **Licensure.** The Provider will maintain all licenses and certifications required by governmental agencies responsible for regulating and licensing the services provided and performed by the Provider.
 - b) **Provision of Services.** The Provider will perform all services pursuant to this Agreement in accordance with generally accepted standards of professional practice and in accordance with the laws, statutes, ordinances, codes, rules, regulations and requirements of governmental agencies that regulate or have jurisdiction over the services to be provided or performed by the Provider. All personnel assigned by Provider hereunder will be qualified to perform such duties. Provider will designate one person as the point of contact for the Town regarding its duties hereunder. Provider is solely responsible for all taxes incurred by Provider and will make all deductions required of employers by state, federal and local laws.
 - c) **Non-Waiver.** Neither review, approval, nor acceptance by Town of data, studies,

reports, memoranda, and incidental professional services, work and materials furnished hereunder by the Provider will in any way relieve Provider of responsibility for the adequacy, completeness and accuracy of its services, work and materials.

- d) Indemnity and Hold Harmless. The Provider agrees to indemnify and hold harmless the Town, its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of Provider and persons employed or utilized by Provider in providing services under this Agreement.
 - e) Non-Public Information. The Provider agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without the Town's prior written consent, or unless incident to the proper performance of Provider's obligations hereunder, or as provided for or required by law, any non-public information concerning the services to be rendered by Provider. Provider will require all of its employees and agents to comply with the provisions of this paragraph.
 - f) Statutory Duties. The duties and obligations imposed upon the Provider by this Agreement and the rights and remedies available to the Town hereunder will be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.
 - g) Disclosure. The Provider warrants it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift or other compensation contingent upon or resulting from the award or making of this Agreement.
5. Commencement and Completion of Work. The Town will provide written notice to the Provider regarding commencement of services under this Agreement. Time is of the essence in the performance of this Agreement. The Provider agrees to commence work promptly and carry on all services and work as may be required in a timely and diligent manner to completion. Should the Provider fail to commence, provide, perform, and complete any of the services and work required hereunder in a timely and diligent manner, the Town may terminate this Agreement, in addition to any other remedies the Town may have.
6. Insurance. The Provider will have, and maintain, during the entire period of this Agreement, all such insurance (or self-insurance) as set forth on Exhibit "C". Each Certificate of Insurance must include the name and type of policy and coverages provided; the amount or limit applicable to each coverage provided; the date of expiration of coverage; the designation of the Town of Fort Myers Beach as additional insured and as certificate holder, except as to Professional Liability Insurance and Workers' Compensation Insurance. Should any of these policies be cancelled before the expiration date thereof, Provider will instruct the issuing company to mail 30 days written notice to the Town of such cancellation.

7. Inclusion of Additional Documents. Any request for bids and/or request for proposal, along with all exhibits or other attachments thereto as issued by the Town, are hereby incorporated by reference. In addition, the following Exhibits are attached hereto and hereby incorporated by reference: Exhibit "A"; Exhibit "B"; Exhibit "C"; Attachment "A".
8. Termination of Agreement. Either party may terminate this Agreement without cause upon 30 calendar days' prior written notice to the other, in which case the Town will compensate the Provider for all services performed prior to the effective date of termination and reimbursable expenses then due.
9. Assignment, Transfer and Subcontracts. The Provider may not assign or transfer any of its rights, benefits, or obligations hereunder, except for transfers that result from the merger or consolidation of Provider with a third party. The Provider has the right, subject to the Town's prior written approval, to employ other persons and firms to serve as subcontractors to Provider in connection with its performance of services and work pursuant to this Agreement.
10. Maintenance of Records. The Provider will keep and maintain adequate records and supporting documentation applicable to all the services, work, information, expense, costs, invoices and materials provided and performed pursuant to this Agreement. Said records and documentation will be retained by the Provider for a minimum of three years from the date of termination of this Agreement, or for such period as required by law. The Town and its authorized agents will, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the Town deems necessary during the term of this Agreement and the next succeeding three years.
11. Public Records. 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 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, FMBPUBLICRECORDS@FMBGOV.COM, 2525 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.

12. References to Town. All references to "the Town" or "the Town of Fort Myers Beach" are deemed to include its employees, agents, and authorized representatives.
13. Modification. Except as set forth in Paragraph 1 above, modifications to this Agreement will be valid only when made in writing and signed by both parties. In the event of a conflict between the requirements, provisions, or terms of this Agreement and any subsequent written modification hereto, the most recently executed document will take precedence.
14. E-Verify. ***As a condition precedent to entering into this AGREEMENT***, and in compliance with Section 448.095, Fla. Stat., Contractor, and its subcontractors shall, register with and use the E-Verify system to verify work authorization status of all employees hired after January 1, 2021.
 - a. Contractor shall require each of its subcontractors to provide Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of the subcontractor's affidavit as part of and pursuant to the records retention requirements of this AGREEMENT.
 - b. Town, Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Fla. Stat. or the provisions of this section shall terminate the contract with the person or entity.
 - c. Town, upon good faith belief that a subcontractor knowingly violated the provisions of this section, but Contractor otherwise complied, shall promptly notify Contractor and Contractor shall immediately terminate the contract with the subcontractor.
 - d. A contract terminated under the provisions of this section is not a breach of contract and may not be considered such. Any contract termination under the provisions of this section may be challenged pursuant to Section 448.095(2)(d), Fla. Stat. Contractor acknowledges that upon termination of this AGREEMENT by the Town for a violation of this section by Contractor, Contractor may not be awarded a public contract for at least one (1) year. Contractor further acknowledges that Contractor is liable for any additional costs incurred by the Town as a result of termination of any contract for a violation of this section.
 - e. *Subcontracts.* Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section, including this subsection, requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for

compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

15. Prohibition Against Contracting with Scrutinized Companies. 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.

16. Miscellaneous Provisions.

- a) Applicable Law. This Agreement is governed by the laws of the State of Florida.
- b) Non-Discrimination. The Provider covenants that in the furnishing of services hereunder, no person on the grounds of race, color, national origin, handicap, or sex will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- c) Headings. The headings of the Articles, Sections, Exhibits, and Attachments in this Agreement are for the purpose of convenience only and may not be deemed to expand, limit or change the provisions contained in such Articles, Section, Exhibits and Attachments.
- d) Entire Agreement. This Agreement, including any Exhibits, constitutes the entire Agreement between the parties and supersedes all prior agreements or understandings, written or oral, relating to the matters set forth herein.
- e) Notices. All notices required under this Agreement must be in writing and sent via U.S. Postal Service, first class mail, to the other party's address as listed at the beginning of this Agreement. Either party may change its address by prior written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.

TOWN OF FORT MYERS BEACH

ATTEST:

BY: _____
Roger Hernstadt, TOWN MANAGER

BY: _____
Amy Baker, TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

BY: _____
Town Attorney

PROVIDER: ChargePoint/ Optimus Energy Solutions, LLC

BY: _____
Signature

Witness Signature

Printed name of person signing

Printed name of witness

Title (printed)

EXHIBIT "A"

TO THE SERVICE PROVIDER CONTRACT DATED THIS ___st day of _____, 20___
BETWEEN THE TOWN AND **ChargePoint/ Optimus Energy Solutions, LLC** PROVIDER.

1. **SCOPE OF SERVICES:** The Provider will perform the following services under this Agreement:

Install Electric Vehicle Charging Stations

EXHIBIT "B"

TO THE SERVICE PROVIDER CONTRACT DATED THIS ____ DAY OF _____, 2022,
BETWEEN THE TOWN AND **ChargePoint/ Optimus Energy Solutions, LLC** PROVIDER.

PAYMENT OBLIGATION

1. The Town will pay the Provider as follows for all services listed in Exhibit "A":
2. Provider will receive reimbursement for out-of-pocket expenses from the Town as follows:

EXHIBIT "C"

INSURANCE: The Provider shall obtain and maintain the following insurance coverages:

- a) Workers Compensation Coverage to comply for all employees for Statutory Limits in compliance with the applicable State and Federal laws;
- b) Employer's Liability with a minimum limit per accident in accordance with statutory requirements;
- c) Commercial General Liability Insurance with minimum limits of \$500,000 per occurrence and \$500,000 aggregate for Bodily Injury Liability and a minimum limit of \$500,000 for Property Damage Liability, or a minimum combined single limit of \$1,000,000.
- d) Business Automobile Liability Insurance with minimum limits of \$500,000 per person and \$500,000 per accident for Bodily Injury Liability and a minimum limit of \$500,000 for Property Damage Liability, or a minimum combined single limit of \$500,000, with coverage including owned vehicles, hired and non-owned vehicles, and employee non-ownership.



CHARGE POINT EV CHARGER RATES

Charging Level	Level 3	Level 2	Level 2
Location	Times Square/Center St.	Town Hall	Newton
Per Hour for Charger	.50 Per Minute	\$1.25	\$1.25
\$5 Hr. + EV Charge	\$5 + .50 per minute	\$6.25	\$6.25
After 4 Hours	N/A - 2 Hour Limit	\$9.00	\$9.00

1. Requested Motion:

Meeting Date: June 6, 2022

Authorize the Town Manager to reject bids and solicit new bids for ITB-22-14-UT; Tier 1 Water and Stormwater Improvements pursuant to Section 2-480(a)(11) of the Town Code, which states: "An invitation for Bid may be cancelled, or any or all bids or proposals may be rejected in whole or in part, with or without cause".

Why the action is necessary:

What the action accomplishes:

2. Agenda:

ADMINISTRATIVE AGENDA

3. Requirement/Purpose:

4. Submitter of Information:

5. Background:

On April 14th, 2022, the Invitation To Bid was issued, advertised in the News-Press and emailed to a certified broadcast list of approved contractors for ITB-22-14-AD-UT; Tier 1 Water and Stormwater Improvements. That list comprised of 883 contacts. The bids were due on May 17th, 2022 and the Town only received one bid from Mitchell & Stark Construction Co., Inc. Furthermore, the proposed prices significantly exceeded the engineer's estimate. Additional bids are needed to evaluate the comparable impact of inflation.

Attachments:

1. Copy of MS BID SHEET-ITB-22-14-UT-0-2022 Submitted
2. Rejection Letter ITB-22-14-UT

Financial Impact:

6. Alternative Action

Do not reject bid ITB-22-14-UT; Tier 1 Water and Stormwater Improvements; and award the contract to Mitchell & Stark Construction Co. Inc.'s bid in the amount of \$20,858,854.04 which exceeds the engineers' estimated construction cost by approximately \$8,000,000. Furthermore, if the Council awards the contract to Mitchiell & Stark staff recommends the Town Council award an additional Supplemental Task Authorization to Angie Brewer & Associates in an amount NTE \$287,925 for compliance activities required by the SRF Funding Agreement with the State of Florida .

7. Management Recommendations:

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 - 5/27/2022
Approved - 5/27/2022
Approved - 5/31/2022
Approved - 5/31/2022
Final Approval - 5/31/2022

MITCHELL & STARK CONSTRUCTION CO., INC.
6001 SHIRLEY STREET, NAPLES FL 34109
PHONE: (239) 597-2165 EXT. 317
EMAIL: JDINA@MITCHELLSTARK.COM

BID FOR: TIER 1 WATER AND STORMWATER IMP
DATE: 5-17-22

BID TO: Town Ft Myers Beach
ATTENTION: Christy Cory

	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL
	Tier 1 Side Streets Water and Stormwater Improvements				
	General				
1	Mobilization/Demobilization	1.00	LS	\$320,000.00	\$320,000.00
2	General Requirements, Bonds, Permits	1.00	LS	\$800,000.00	\$800,000.00
3	Indemnification	1.00	LS	\$1,000.00	\$1,000.00
4	Pre- and Post-Construction Video	1.00	LS	\$12,850.00	\$12,850.00
5	Locate Utilities in Advance of Construction	1.00	LS	\$50,000.00	\$50,000.00
6	Survey & Layout and As-Built Survey	1.00	LS	\$362,030.00	\$362,030.00
7	Maintenance of Traffic	1.00	LS	\$110,000.00	\$110,000.00
8	Erosion and Sediment Control	1.00	LS	\$73,200.00	\$73,200.00
9	Replace Asphalt Pavement (Full Depth, Temporary Pavement)	7601.00	SY	\$94.72	\$719,943.92
10	Mill Existing Asphalt Pavement	33858.00	SY	\$8.64	\$292,363.83
11	Asphalt Pavement (SP-12.5)	4549.00	TN	\$178.87	\$813,679.63
12	Remove and Replace Concrete Curb/Gutter and Driveway	37969.00	SF	\$16.90	\$641,676.10
13	Remove & Replace Pavers Driveway	26889.00	SF	\$13.10	\$352,245.90
14	Remove & Replace Asphalt Driveway	2847.00	SF	\$18.00	\$51,246.00
15	Remove & Replace Unpaved Driveway	28148.00	SF	\$5.50	\$154,814.00
16	Clear and Grub	39758.00	SF	\$1.20	\$47,709.60
17	Restoration	17585.00	LF	\$11.20	\$196,952.00
18	Contingency Allowance	1.00	ALL	\$150,000.00	\$150,000.00
	Watermain				
19	Furnish and Install 8" C900 DR-14 PVC WM	17585.00	LF	\$262.92	\$4,623,448.20
20	Connection to Existing 8" Water Main	11.00	EA	\$5,950.00	\$65,450.00
21	Reconnect/Install New Water Meters	375.00	EA	\$330.00	\$123,750.00
22	1" Water Service (Short)	218.00	EA	\$1,144.00	\$249,392.00
23	1" Water Service (Long with Road Crossing)	156.00	EA	\$2,590.00	\$404,040.00
24	8" Wet Tap and Valve Assembly	9.00	EA	\$8,450.00	\$76,050.00
25	8" x 8" Tee/Wye	18.00	EA	\$1,190.00	\$21,420.00
26	8" x 6" Tee/Wye	7.00	EA	\$1,111.00	\$7,777.00
27	8"x10" Reducer	1.00	EA	\$1,010.00	\$1,010.00
28	8" Cap	11.00	EA	\$560.00	\$6,160.00
29	6" Cap	3.00	EA	\$509.00	\$1,527.00
30	8" Vertical Deflection	24.00	EA	\$6,960.00	\$167,040.00
31	8" Horizontal Deflection	13.00	EA	\$4,660.00	\$60,580.00
32	8" Gate Valve with Valve Box Assembly	33.00	EA	\$3,120.00	\$102,960.00
33	Fire Hydrant Assemblies	26.00	EA	\$9,120.00	\$237,120.00
34	Blowoff	3.00	EA	\$1,440.00	\$4,320.00
	Stormwater				
35	Tie into Existing Inlet (New pipe into existing structure)	9.00	EA	\$2,000.00	\$18,000.00
36	Clean Existing SD	5672.00	LF	\$30.00	\$170,160.00
37	Clean Existing Inlet	38.00	EA	\$200.00	\$7,600.00
38	12" SD Cross Drain	38.00	LF	\$233.70	\$8,880.60
39	15" SD Cross Drain	1006.00	LF	\$321.98	\$323,911.88
40	18" SD Cross Drain	270.00	LF	\$332.12	\$89,672.40
41	24" SD Cross Drain	1404.00	LF	\$353.12	\$495,780.48
42	30" SD Cross Drain	32.00	LF	\$505.15	\$16,164.80
43	6" SD Side Drain	4.00	LF	\$168.70	\$674.80
44	12" SD Side Drain	8.00	LF	\$185.70	\$1,485.60
45	12"x18" SD Side Drain	41.00	LF	\$271.33	\$11,124.53

	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL
46	15" SD Side Drain	1296.00	LF	\$237.70	\$308,059.20
47	18" SD Side Drain	1640.00	LF	\$245.70	\$402,948.00
48	24" SD Side Drain	4962.00	LF	\$278.70	\$1,382,909.40
49	Concrete Collar	39.00	EA	\$873.00	\$34,047.00
50	Type "C" Drainage Inlet	32.00	EA	\$5,200.00	\$166,400.00
51	Type "D" Drainage Inlet	1.00	EA	\$6,270.00	\$6,270.00
52	Type "E" Drainage Inlet	105.00	EA	\$6,950.00	\$729,750.00
53	Grate Inlet Skimmer	7.00	EA	\$10,140.00	\$70,980.00
54	Storm Manhole	1.00	EA	\$5,510.00	\$5,510.00
55	Yard Drain	1.00	EA	\$1,810.00	\$1,810.00
56	Mitered End Section	3.00	EA	\$3,260.00	\$9,780.00
57	Baffle Box (Pipe Diameters 18" or Less)	19	EA	\$69,230.00	\$1,315,370.00
58	Baffle Box (Pipe Diameters 24" and 30")	9	EA	\$83,090.00	\$747,810.00
59	Seawall Replacement/Installation	105	LF	\$3,952.00	\$414,960.00
60	Duckbill Backflow Prevention Valve	23	EA	\$22,840.00	\$525,320.00
61	In-Line Backflow Prevention Valve	13	EA	\$32,250.00	\$419,250.00
62	Swale Grading & Restoration	4724	LF	\$16.00	\$75,584.00
63	Rip Rap	83	TN	\$150.00	\$12,450.00
64	Dewatering	1	LS	\$400,000.00	\$400,000.00
Williams Drive Stormwater Improvements					
65	Replace Asphalt Pavement (Full Depth, Temporary Pavement)	910	SY	\$94.72	\$86,192.47
66	Mill Existing Asphalt Pavement	3183	SY	\$8.64	\$27,485.21
67	Asphalt Pavement (SP-12.5)	461	TN	\$178.87	\$82,459.07
68	Remove and Replace Concrete Curb/Gutter and Driveway	830	SF	\$16.90	\$14,027.00
69	Remove and Replace Pavers Driveway	620	SF	\$13.10	\$8,122.00
70	Remove & Replace Asphalt Driveway	1741	SF	\$18.00	\$31,338.00
71	Remove & Replace Unpaved Driveway	1229	SF	\$5.50	\$6,759.50
72	Clear and Grub	5717	SF	\$1.20	\$6,860.40
73	15" SD Cross Drain	99	LF	\$321.98	\$31,876.02
74	24" SD Cross Drain	120	LF	\$353.12	\$42,374.40
75	24" SD Side Drain	1143	LF	\$278.70	\$318,554.10
76	Type "C" Drainage Inlet	2	EA	\$5,020.00	\$10,040.00
77	Type "E" Drainage Inlet	10	EA	\$6,950.00	\$69,500.00
78	Yard Drain	1	EA	\$1,810.00	\$1,810.00
79	Baffle Box (Pipe Diameters 24" and 30")	2	EA	\$83,090.00	\$166,180.00
80	Seawall Replacement/Installation	10	LF	\$3,952.00	\$39,520.00
81	Duckbill Backflow Prevention Valve	2	EA	\$22,840.00	\$45,680.00
82	Swale Grading & Restoration	378	LF	\$16.00	\$6,048.00
83	Rip Rap	24	TN	\$150.00	\$3,600.00
Sanitary Sewer					
84	Conflict Manhole	5	EA	\$14,660.00	\$73,300.00
85	4" Sewer Service Lateral (Without Cleanout)	105	EA	\$1,860.00	\$195,300.00
86	Adjust Manhole Frame and Cover	61	EA	\$960.00	\$58,560.00
87	Cleanouts Complete	105	EA	\$570.00	\$59,850.00
TOTAL BASE BID				\$	\$20,859,854.04
Bid items shall follow section 01026 of the project Technical Specifications. Detail for steel sheet piling at outfalls is not included. All new seawall installations are bid as concrete seawall panels with tie-backs. All existing seawall refurbishments are bid as vinyl seawall panels.					
Contingency Allowance Items					
1	Furnish and Install 6" C900 DR-14 PVC WM		LF	\$245.08	\$0.00
2	Connection to Existing 6" Water Main		EA	\$7,560.00	\$0.00
3	6" Wet Tap and Valve Assembly		EA	\$8,510.00	\$0.00
4	10" Wet Tap and Valve Assembly		EA	\$9,830.00	\$0.00
5	12" Wet Tap and Valve Assembly		EA	\$11,040.00	\$0.00
6	16" Wet Tap and Valve Assembly		EA	\$17,360.00	\$0.00
7	8"x6" Reducer		EA	\$2,300.00	\$0.00
8	8"x8" Reducer		EA	\$2,420.00	\$0.00

	DESCRIPTION	QTY	UNIT	UNIT PRICE	TOTAL
9	6" Gate Valve with Valve Box Assembly		EA	\$4,210.00	\$0.00
10	Grout and Abandon Existing 16" Water Main		LF	\$45.00	\$0.00
11	Grout and Abandon Existing 12" Water Main		LF	\$30.00	\$0.00
12	Grout and Abandon Existing 8" Water Main		LF	\$20.00	\$0.00
13	Grout and Abandon Existing 6" Water Main		LF	\$16.00	\$0.00
15	Grout and Abandon Existing 3" Water Main		LF	\$10.00	\$0.00
16	Grout and Abandon Existing 2" Water Main		LF	\$8.00	\$0.00



May 26, 2022

Mitchell & Stark Construction Co., Inc.
6001 Shirley St.
Naples, FL 34109

This letter is to serve as required notification that "ITB-22-14-UT; Tier 1 Water and Stormwater Improvements" has been cancelled; therefore, all received proposals have been rejected. As outlined in Ordinance 17-01, Section 5, Sub-Section 11 *"An Invitation for Bid may be cancelled, or any or all bids or proposals may be rejected in whole or in part, with or without cause."*

We appreciated the interest received and the effort made by your firm. If the Town chooses to re-bid this project we welcome your proposal and hopes you will continue to respond to any future procurement needs as they may apply or arise.

Sincerely,

Christy Cory
Utilities Director

Cheri Russ
Finance Director



MEMORANDUM

Date: June 6, 2022
To: Town Council
From: Roger Hernstadt, Town Manager
Re: Improvements near Bayside Park

The Town Council is advised of the following improvements to the properties next to or near Bayside Park.

- The property owner has volunteered to construct an expansion of the dinghy docks under Matanzas Bridge to add no less than 11 additional slips and additional marginal docks in front of Bayside Park.
- Per LDC Sec. 34-992, the Town Council is advised that the commercial design provided in permit #210887, located at 645 Old San Carlos, is compliant with the LDC and CPD.



May 27, 2022

Department of Housing and Urban Development
Attn: Office of Community Planning and Development
Brickell Plaza Federal Building
909 SE First Avenue, Suite 500
Miami, FL 33131-3028

Dear Sir or Madame,

This letter of intent is to inform you that the Town of Ft. Myers Beach would like to rejoin the Urban County agreement with Lee County. The Town would like to participate in the Cooperative Agreement for the Fiscal Years 2023, 2024 and 2025. The Town does not meet the “metropolitan city” criteria.

Sincerely,

Roger T. Hernstadt
Town Manager



May 27, 2022

Lee County Human and Veteran Services' Office

Attn: Roger Mercado

2440 Thompson St.

Fort Myers, FL 33901

Dear Mr. Mercado,

This letter of intent is to inform you that the Town of Ft. Myers Beach would like to rejoin the Urban County agreement with Lee County. The Town would like to participate in the Cooperative Agreement for the Fiscal Years 2023, 2024 and 2025. The Town does not meet the "metropolitan city" criteria.

Sincerely,

Roger T. Hernstadt

Town Manager

Department Directors Proposed Fee Increases for FY23

	Current	Proposed
PWVL - Annual Renewal	170.00	1,200.00
PLV - Annual Renewal	170.00	1,200.00
Penalties/Fines per Statute 162.09		
Newton Cottage - Rentals	\$55/Hr	Same as Mound House
Mound House Fees	\$5 increase across the board	
Bay Oaks Fees	Average 14% increase	
Mooring Field	Under review by Anchorage Advisory Comm.	

Recurring Revenues

FY23 Short Term Rental Fee Increase - Available Funds

Renewals in FY22	1,643.00	
New Registrations renew in FY23 (assume 1/2 transfers)	100.00	
Total STR Registrations Projected for FY23	<u>1,743.00</u>	
Registration Fee	300.00	
Projected income	<u>522,900.00</u>	
Funds needed to maintain current level of service	<u>(142,000.00)</u>	
STR Available for TC Initiatives		\$ 380,900.00

Parking - Available Funds

Estimate FY22	2,000,000.00	
Budgeted Revenues	(1,400,000.00)	
Needed to cover expenses	(45,000.00)	
Cost for Inflation	<u>(84,000.00)</u>	
	\$ 471,000.00	
 Estimate FY23	 2,300,000.00	
Plus New Lot	<u>225,000.00</u>	
Total	2,525,000.00	
Minus FY22 Total Cost	(1,484,000.00)	
Cost for Inflation	<u>(133,560.00)</u>	
	\$ 907,440.00	
 Parking Revenue Available for TC Initiatives		 \$ 1,378,440.00

One Time Revenues

FY22 Projected Operating Savings	153,000.00	
Potential Laguna Shores Dredging Surplus	<u>200,000.00</u>	
		\$ 353,000.00
 Total Available for TC Initiatives		 \$ 2,112,340.00

Town Council Initiatives List

Estimate of funds available for new initiatives		\$ 2,112,340.00
Project List		Estimated Cost
Charging Stations (FY22 estimate) <i>Three Town owned locations</i>		\$ 115,000.00
Beach Renourishment <i>\$3.5M total cost</i> <i>- assumes additional allocation in 2024</i>		\$ 1,500,000.00
Amber Street lights for Estero Blvd		\$ 1,400,000.00
Workforce Housing <i>i.e. 6231 Estero Blvd purchase and renovation</i>	\$ 6,500,000.00 ??	
Bay Oaks Furniture, Fixtures & Equipment		\$ 500,000.00
Parking App <i>Annual fee after initial purchase</i>		\$ 125,000.00 \$ 15,000.00
Community Policing: \$250,000 - \$40,000 \$40,000 Special Detail - General Fund		\$ 210,000.00
Back of Building Remodel		\$ 250,000.00
Newton Park Swings		\$ 30,000.00
Strategic Plan Update		\$3,000/Mtg
Bay Oaks Personnel		\$ 175,000.00
Operations Manager	\$ 79,000.00	
Program Coordinator - Athletics	\$ 60,000.00	
Part-time Rec Aide	\$ 20,000.00	
Part-time Rec Aide	\$ 20,000.00	
Resiliency Study Consultant		\$ 50,000.00
Fishing Pier		\$ 75,000.00