

**RESOLUTION NUMBER 21-60**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A PIGGYBACK PURCHASE CONTRACT BETWEEN THE TOWN AND SWARTZ ASSOCIATES INC., FOR THE PURCHASE AND INSTALLATION OF PLAYGROUND EQUIPMENT AT FORT MYERS BEACH ELEMENTARY SCHOOL AND BAY OAKS RECREATIONAL CAMPUS, AND APPROPRIATING AND ALLOCATING FUNDING, PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

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

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

**WHEREAS**, the Town wishes to contract for the purchase and installation of playground equipment for the Fort Myers Beach Elementary School and Bay Oaks Recreational Campus (“Project”); 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**, the School District of Manatee County and Swartz Associates Inc., (“Swartz”) have entered into a competitively procured contract for park and playground equipment, and the Town’s Finance Director has determined that piggybacking on this contract is financially advantageous to the Town; and

**WHEREAS**, the Town wants to appropriate and allocate funding as approved in the current fiscal year’s budget to be utilized for the Project.

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

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

Section 2. The piggyback contract between the Town and Swartz, for the Project attached as Exhibit "A" is approved. The Town Manager is authorized to execute the contract and expend appropriated funds on behalf of the Town.

Section 3. The Town appropriates and allocates Community Enhancement funding in the amount of \$320,280 for the Project and authorizes the Town Manager make the appropriate budgetary adjustments to reflect this budget appropriation.

Section 4. 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.

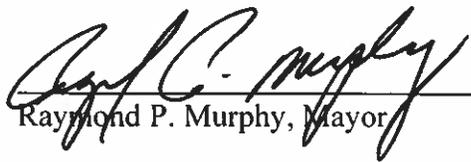
Section 5. This resolution shall take effect immediately upon its adoption.

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

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

ADOPTED this 10<sup>th</sup> day of January 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:**

 VIKTOR SANABRIA  
ON BEHALF OF JOHN HERIN  
John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 24 day of January 2022.

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

**THIS AGREEMENT** is made and entered into this \_\_\_ day of January, 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 Swartz Associates Inc., a Florida corporation, ("Contractor") whose principal place of business is P.O. Box 112783, Naples FL. 34108 ("Contract"). Town and Contractor may also be referred collectively as the "Parties."

**WHEREAS**, Contractor and Manatee County School District, Florida entered into a competitively procured contract known as 21-0053-MR Park and Playground Equipment, as amended ("County Contract"); and

**WHEREAS**, Town needs fencing services to implement portions of the Interlocal Agreement between the Town and the Lee County School Board regarding the shared use of Fort Myers Elementary School and Bay Oaks Recreational Campus ("Project"); and

**WHEREAS**, the Town desires to have Contractor construct the Project; 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 construct the Project, subject to the terms and conditions of the County Contract, with the specific modifications set forth herein; and

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

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

1. Incorporation of County Contract. This Contract incorporates by reference, the Manatee County School District Contract, which is attached as Exhibit A.
2. Scope of Service. During the Term of this Contract, Contractor will construct the Project.
3. Pricing. The Town will pay Contractor a sum not to exceed \$320,280 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 one hundred eighty (180) 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 Public Works Director, or designee, shall be the Town's Designated Representative in matters arising under Contract.

Ms. Chelsea O'Riley, Public Works Director  
Town of Fort Myers Beach  
2525 Estero Boulevard  
Fort Myers Beach, FL. 33931  
([Chelsea@fmbgov.com](mailto:Chelsea@fmbgov.com))

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

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

in the Iran Petroleum Energy Sector List, or has Contractor been engaged in business operations in 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.

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

[SIGNATURES ON FOLLOWING PAGE]

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

**TOWN OF FORT MYERS BEACH**

**CONTRACTOR**

\_\_\_\_\_  
Roger T. Hernstadt, Town Manager

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**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