

**RESOLUTION NUMBER 23-183**

**A RESOLUTION OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AMENDMENT TO PERMISSIVE USE LICENSE AGREEMENT BETWEEN THE TOWN AND THE FORT MYERS BEACH FIRE CONTROL DISTRICT FOR THE USE OF PROPERTY OWNED BY THE FORT MYERS BEACH FIRE CONTROL DISTRICT AS A LOCATION FOR A TEMPORARY TOWN HALL; AUTHORIZING THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN; AUTHORIZING THE TOWN MANAGER TO EXPEND BUDGETED FUNDS ON BEHALF OF THE TOWN; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Article VIII, Section 2 of the State Constitution and Chapter 166 of the Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

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

**WHEREAS**, the Town entered into a Permissive Use License Agreement with the Fort Myers Beach Fire Control District (“District”) for the use of District property as a location for a temporary Town Hall because of the catastrophic damage caused by Hurricane Ian to the building in which Town Hall previously operated out of; and

**WHEREAS**, the Town Council deemed it to be in the best interests of the business owners, residents, and visitors of the Town to enter into the License Agreement with the District.

**WHEREAS**, the Town wishes to extend the expiration date of the agreement until January 31, 2024.

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

**Section 1.** The foregoing whereas clauses are ratified and confirmed as being true and correct, are the legislative and administrative findings of the Town Council and made a specific part of this Resolution.

**Section 2.** The Amendment to Permissive Use License Agreement between the Town and District, a copy of which is attached as Exhibit “A” is approved. The Mayor is authorized to execute the Amendment to Permissive Use License Agreement on behalf of the Town, and the Town Manager is authorized to expend budgeted funds on behalf of the Town to implement the amendment.

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

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

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King, Councilmember	Aye
Bill Veach, Councilmember	Aye
Karen Woodson, Councilmember	Aye

ADOPTED this 4<sup>th</sup> day of December 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

**TOWN OF FORT MYERS BEACH**

*Dan Allers*

Dan Allers (Dec 13, 2023 08:15 EST)

\_\_\_\_\_  
Dan Allers, Mayor

**ATTEST:**

*Amy Baker*

AMY BAKER (Dec 13, 2023 15:50 EST)

\_\_\_\_\_  
Amy Baker, Town Clerk

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

*Becky Vose*

Becky Vose (Dec 13, 2023 10:31 EST)

\_\_\_\_\_  
Vose Law Firm, LLP, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 8<sup>th</sup> day December 2023.

**AMENDMENT TO PERMISSIVE USE LICENSE AGREEMENT**

THIS AMENDMENT TO PERMISSIVE USE LICENSE AGREEMENT is made and entered into this 12 day of December, 2023, (“Amendment”), and is by and between Fort Myers Beach Fire Control District, an independent special district of Florida, whose mailing address is 100 Voorhis St, Fort Myers Beach, Florida 33931, hereinafter called “LICENSOR”, and Town of Fort Myers Beach, a Florida municipal corporation, whose mailing address is 2525 Estero Blvd., Fort Myers Beach, Florida 33931, hereinafter called “TOWN”, and amends that certain PERMISSIVE USE LICENSE AGREEMENT entered into on the 9<sup>th</sup> day of January, 2023 (“Agreement”); and

WHEREAS, LICENSOR is the owner of certain property in the Town of Fort Myers Beach, Lee County, Florida, located at 2545 and 2555 Estero Boulevard, Fort Myers Beach, Florida and being further identified as Strap #19-46-24-W3-00458.0000 and #19-46-24-W3-00458.0010 (collectively the “Parcel”); and

WHEREAS, TOWN is desirous of obtaining the continued permission to use, as provided in the Agreement, a portion of said Parcel of the LICENSOR for an additional two months; December 2023 and January 2024.

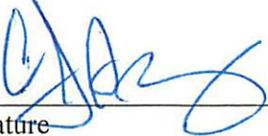
NOW, THEREFORE, in consideration of the covenants to be kept and performed by each of the parties hereto, and the sum of One Dollar (\$1.00) cash in hand paid by the TOWN to the LICENSOR, receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

1. USE AND TERM - LICENSOR, subject to the conditions herein expressed, does hereby grant unto the TOWN, the continued privilege and license to use the area indicated in Exhibit “A” of the Agreement (“Site Area”) for the continued placement and use of a temporary Town Hall for an additional two month period, beginning the 1<sup>st</sup> day of December, 2023 and ending the 31<sup>st</sup> day of January, 2024.
2. REMAINING TERMS – Other than the Term of the Agreement, which Term shall be extended for one additional month, all terms and conditions of the Agreement shall remain in force and effect.

IN WITNESS WHEREOF, the LICENSOR and TOWN have executed this Amendment to Agreement as of the date and year first above written.

WITNESSES:

LICENSOR:

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Scott Wirth, Fire Chief

CHRISTOPHER J. ARMIGER  
\_\_\_\_\_  
Name

  
\_\_\_\_\_  
Signature

Jennifer Campbell  
\_\_\_\_\_  
Name

TOWN:

Dan Allers  
\_\_\_\_\_  
Dan Allers (Dec 13, 2023 08:15 EST)  
\_\_\_\_\_  
Dan Allers, Mayor

ATTEST:

  
\_\_\_\_\_  
AMY BAKER (Dec 13, 2023 15:50 EST)  
\_\_\_\_\_  
Amy Baker, Town Clerk

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

Becky Vose  
\_\_\_\_\_  
Becky Vose (Dec 13, 2023 10:31 EST)  
\_\_\_\_\_  
Gretchen R.H. Vose, Town Attorney

**PERMISSIVE USE LICENSE AGREEMENT**

**THIS LICENSE** made and entered into this 9<sup>th</sup> day of January 2023 ("Agreement"), by and between Fort Myers Beach Fire Control District, an independent special district of Florida, whose mailing address is 100 Voorhis St, Fort Myers Beach, Florida 33931, hereinafter called "LICENSOR", and Town of Fort Myers Beach, a Florida municipal corporation, whose mailing address is 2525 Estero Blvd., Fort Myers Beach, Florida 33931, hereinafter called "TOWN", and

**WHEREAS, LICENSOR** is the owner of certain property in the Town of Fort Myers Beach, Lee County, Florida, located at 2545 and 2555 Estero Boulevard, Fort Myers Beach, Florida and being further identified as Strap #19-46-24-W3-00458.0000 and #19-46-24-W3-00458.0010 (collectively the "Parcel"); and

**WHEREAS, TOWN** is desirous of obtaining permission to use, as hereinafter provided, a portion of said Parcel of the LICENSOR.

**NOW, THEREFORE,** in consideration of the covenants to be kept and performed by each of the parties hereto, and the sum of One Dollar (\$1.00) cash in hand paid by the TOWN to the LICENSOR, receipt of which is hereby acknowledged, and further consideration as herein provided, it is agreed as follows:

1. **USE - LICENSOR**, subject to the conditions herein expressed, does hereby grant unto the TOWN, the privilege and license to use the area indicated in Exhibit "A" of the above-described Parcel ("Site Area") for the placement and use of a temporary Town Hall.
2. **TERM** - This License will commence *nun pro tunc* as of November 1, 2022 and terminate on or before November 30, 2023, unless extended by mutual written agreement of the parties.
3. **SITE AREA WORK** – Town will be responsible for preparing the Site Area for use as a temporary Town Hall and will make sure that all such work complies with, and approved by, the appropriate regulatory agencies through the term of this Agreement. TOWN will be responsible to restore said Site Area to as good or better condition than that which existed prior to its use.
4. **CONSIDERATION** - TOWN will pay as consideration for this Agreement One \$1.00 Dollar, net of any applicable tax, payable on or before the date of commencement of this Agreement, for said license and privilege.
5. **RESTRICTION** - The license and privilege granted TOWN under this AGREEMENT will be exercised only on the subject property of LICENSOR and upon no other property.
6. **TERMINATION OF LICENSE** - Either Party may, with or without cause, upon written notice, terminate this Agreement. Notice of termination must be given with no Less than ninety (90) days' prior written notice.
7. **INDEMNIFICATION** - TOWN agrees to indemnify and hold harmless LICENSOR, to the extent allowed under Section 768.28 of the Florida Statutes, as may be amended from time to time, from all claims, loss, damage, and expense, arising from the negligent acts or omissions

of TOWN, its officers, employees, and agents related to its performance under this Agreement. This provision does not constitute a waiver of the LICENSOR'S sovereign immunity under Section 768.28 of the Florida Statutes, as may be amended from time to time, or extend the TOWN'S liability beyond the limits established in Section 768.28 of the Florida Statutes, as may be amended from time to time. This indemnity and hold harmless agreement shall include indemnity against all costs and expenses, including attorney fees incurred in or in connection with any such claim or proceedings brought thereon and the defense thereof. The parties acknowledge that specific consideration has been given for this indemnification.

8. **LIENS** – TOWN will not incur any indebtedness giving right to a lien of any kind upon the LICENSOR'S interest in and to lands described herein. LICENSOR'S interest will not be subject to liens for improvements made by the TOWN on the lands described herein. In the event any liens are filed, due to improvements made by the TOWN, the TOWN will immediately discharge said lien by such manner as permitted by law.

9. **ENJOYMENT** - Nothing herein contained will be construed as limiting the LICENSOR from having the full use and enjoyment of its lands, save only as to the rights granted to the TOWN by the terms of this Agreement, and nothing herein contained will be construed or interpreted as granting anything to TOWN other than use of the property provided herein.

10. **BREACH** - In the event of any breach or non-performance of any of the covenants, agreements, terms, or conditions to be performed by TOWN, and said breach or non-performance continues for one day, LICENSOR has the right to declare this Agreement terminated and to re-enter the property and remove TOWN and its respective property therefrom, and TOWN agrees to peacefully vacate said property and pay all costs, including reasonable attorneys' fees, that may be incurred by LICENSOR in enforcing the covenants, agreements, terms and conditions of this License.

11. **RIGHTS AND PROPERTY INTEREST** - No rights or property interests are granted to or created in the TOWN by this Agreement except as otherwise provided herein. The granting of this Agreement is only as an accommodation to the TOWN.

12. **ENTIRE AGREEMENT** - It is understood and agreed that this Agreement sets forth all the covenants, agreements, terms, and conditions between the parties and that there are no other oral or written agreements between them.

13. **AMENDMENT** - It is further understood that no subsequent amendments, alterations, or additions to this Agreement will be binding upon the parties hereto unless reduced to writing and executed by said parties.

14. **GOVERNING LAW** - LICENSOR and TOWN agree that this Agreement will be governed by and construed under the laws of the State of Florida.

15. **ASSIGNMENT** - TOWN will not transfer or assign its interest or rights provided in this Agreement, nor attempt to grant any sub-license to any persons whom so-ever without the written

consent of the LICENSOR. The consent of the LICENSOR will be at the LICENSOR'S sole discretion.

16. **NOTICE** - All notices or request between the parties will be in writing and will be deemed to have been duly given or served by either personally delivered (deemed given same day), delivered via private local courier services (deemed given same day), sent via fed ex or other nationally recognized overnight delivery service (deemed given on the next business day after deposit with the service), or deposited in the United States Mail, Certified Mail, return receipt requested, postage prepaid (deemed given on the fourth business day after deposit in the mail) addressed as follows:

**TO THE TOWN:**

**TOWN OF FORT MYERS BEACH**  
Attn: Town Manager  
2525 Estero Blvd.  
Fort Myers Beach, FL 33931  
239-765-0202  
townmanager@fmbgov.com

**TO THE LICENSOR:**

**FORT MYERS BEACH FIRE CONTROL DISTRICT**  
Attn: Executive Assistant to Fire Chief Ron Martin  
100 Voorhis St.  
Fort Myers Beach, FL 33931  
239-590-4200  
rmartin@fmbfire.org

17. **BINDING EFFECT** -This Agreement and all its terms and conditions will extend to and be binding upon the parties hereto and upon their respective successors and assigns.

18. **SEVERABILITY** - The invalidation of any provision or clause in whole or in part by Judgment or court order will in no way affect any of the other provisions or clauses, which will remain in full force and effect.

19. **CONDITION** - It is understood between the parties hereto that the property has been inspected by the TOWN and that the property is being accepted in an "As Is" condition. TOWN acknowledges the lands being considered in this Agreement, as described in Section 1, are a portion of the land owned by the LICENSOR.

20. **ENVIRONMENTAL** - TOWN will not, and will ensure that others do not install, use, generate, store, locate, produce, process, treat, transport, incorporate, discharge, emit, release, deposit, or dispose of Hazardous Substances in, upon, under, over or onto the Property. If the LICENSOR has reason to believe a Hazardous Substance has been discharged, spilt, or released on the Property by TOWN or its contractors or consultants, then the LICENSOR has the right, but

not the obligation, to require TOWN, at TOWN'S sole cost and expense, to perform an environmental audit by an environmental consultant satisfactory to the LICENSOR. Such an investigation will be commenced within ten (10) days after the LICENSOR'S request, and thereafter be diligently prosecuted to completion. TOWN will provide the LICENSOR with an electronic copy of the environmental audit immediately after it is completed.

21. RELATIONSHIP - Nothing contained in this Agreement will be deemed to constitute or be construed to create the relationship of principal and agent, partnership, joint venture, or any other relationship between the parties hereto, other than the relationship of TOWN/LICENSOR.

22. PREVAILING PARTY - The prevailing party in any litigation brought to enforce rights hereunder will be entitled to reimbursement of all reasonable costs and expenses, including, but not limited to, court costs, fees, and attorneys' fees at all judicial levels.

23. MISCELLANEOUS - The TOWN will be responsible for the payment for any trash removal that may be required arising from its use of the Property under this Agreement. The TOWN is responsible for obtaining any required federal, state, or local permits for activities to be conducted on the LICENSOR'S property.

IN WITNESS WHEREOF, the LICENSOR and TOWN have executed this Agreement as of the date and year first above written.

WITNESSES:

  
\_\_\_\_\_  
Signature

Steve Poposki  
\_\_\_\_\_  
Name

  
\_\_\_\_\_  
Signature

Amy Baker  
\_\_\_\_\_  
Name

LICENSOR:

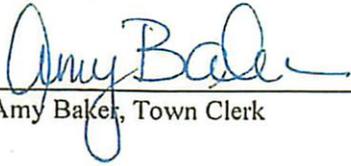
  
\_\_\_\_\_  
Ron Martin, Fire Chief

TOWN:

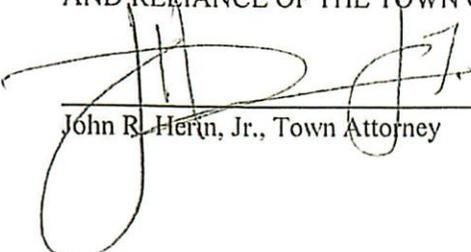


\_\_\_\_\_  
Dan Allers, Mayor

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