

RESOLUTION NUMBER 23-171

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, RATIFYING APPROVAL OF AN AGREEMENT WITH JACOBS PROJECT MANAGEMENT, CO. AUTHORIZING THE TOWN MANAGER TO EXECUTE AN ADDENDUM TO THE AGREEMENT; 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, the Town of Fort Myers Beach has been working diligently to review and approve incoming permits and maintain timely building inspections after Hurricane Ian; and

WHEREAS, it is in the best interest of the Town residents for the Town to contract with Jacobs Management Group, Co. to assist the Town with building inspection services, as needed.

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

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

Section 2. This Resolution memorializes, ratifies, and approves the actions of the Town Manager to contract with Jacobs Management Group, Co., and authorizes the Town Manager to sign the related addendum.

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 King, 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 4th day of December 2023 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH


Dan Allers (Feb 9, 2024 16:45 EST)

Dan Allers, Mayor

ATTEST:


Amy Baker (Feb 16, 2024 08:54 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:**


Gretchen R.H. Vose (Feb 8, 2024 17:50 EST)

Vose Law Firm, LLP, Town Attorney

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

TOWN OF FORT MYERS BEACH, FLORIDA
CONTRACT ADDENDUM – JACOBS PROJECT MANAGEMENT CO.

THIS CONTRACT ADDENDUM is made and entered into this 4th day of December, 2023, by and between the TOWN OF FORT MYERS BEACH, a Florida municipality, hereinafter referred to as the “Town”, and Jacobs Project Management Co., as “Contractor”, concerning that certain Agreement for Professional Services dated the 27th day of October, 2023 (“Agreement”).

WITNESSETH:C

WHEREAS, Section 448.095, Fla. Stat., imposes certain obligations on public agencies with regard to the use of the E-Verify system by their contractors and subcontractors and required contract language has been recently amended by the Florida Legislature; and

WHEREAS, additional terms consistent with Sections 282.3185(5) and (6) related to data management and Section 287.05701 related to social government and corporate activism are also added by virtue of this Addendum as well as removal of inapplicable terms; and

WHEREAS, approval of this Addendum is in the best interest of the Town to facilitate and expedite building inspection services to its residents and those who do business in the Town.

NOW, THEREFORE, in consideration of the covenants set forth herein, the parties agree to this addendum as follows:

1. Amendment. This Addendum hereby amends and supplements the terms of the Agreement. In the event of a conflict between the terms of the Agreement and terms of the Addendum, the terms of the Addendum shall prevail.

2. E-Verify Compliance. Paragraph 12 is amended for consistency current Florida law as follows: By entering into this Agreement, the Contractor is obligated to comply with the provisions of Section 448.095, Florida Statutes “Employment Eligibility,” as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees, and requiring all subcontractors to provide an affidavit to Contractor attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Contractor agrees to maintain a copy of such affidavit for the duration of this Agreement. Failure to comply with this paragraph will result in the termination of this Agreement as provided in Section 448.095, Florida Statutes, as amended and Contractor will not be awarded a public contract for at least one (1) year after the date on which the Agreement was terminated. Contractor will also be liable for any additional costs to City incurred as a result of the termination of this Agreement in accordance with this section. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or

subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Fla. Stat.

3. Public Entities Crime or Convicted Vendor List. Contractor agrees and assumes a continuous duty to disclose to the Town if the Contractor or any of its affiliates as defined by Section 287.133(1)(a), Florida Statutes are placed on the Convicted Vendor List or the Antitrust Violator Vendor List maintained by the Florida Department of Management Services.

4. Data Management; Notice of Breach. Contractor shall cooperate with the Town and provide timely incident reporting, response activities/fact gathering, public and agency notification, severity level assessment, after-action reports etc, which the Town must report in accordance with Sections 282.3185(5) & (6), Florida Statutes in the event of a data breach.

5. Environmental and Social Government and Corporate Activism. The Town has not given preference or requested documentation from the Contractor based on Contractor's social, political or ideological interest. Contractor agrees to similarly not request documentation or give preference to any subcontractor based on the subcontractor's social, political or ideological interests.

6. Additional Terms. Notwithstanding any other provisions to the contrary, the parties further agree as follows:

A. Appendix B – Compensation, Paragraph 1 is revised to read as follows:

1. Contractor shall provide the Services as described in Appendix A on an annual lump sum basis.

Year One lump sum price is \$538,535 (Five Hundred Thirty-Eight Thousand Five Hundred Thirty-Five Dollars). ~~INCORRECT ASSUMPTION FROM B VOSE.~~

B. Paragraph 6.3 related to OSHA Compliance is deleted as not applicable.

C. Paragraph 7.13 is deleted in its entirety and the following sentence shall be included: Ownership of work products and intellectual property shall be determined in accordance with Florida law.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this instrument on the days and year indicated below and the signatories below to bind the parties set forth herein.

Contractor:

Print Name: _____

Title: _____

Company: _____

ATTEST:

Town of Fort Myers Beach


Amy Baker (Feb 16, 2024 08:54 EST)


Andrew Hyatt (Feb 9, 2024 07:31 EST)

Amy Baker, Town Clerk

Andrew Hyatt, Town Manager

APPROVED AS TO FORM


Gretchen R.H. Vose (Feb 8, 2024 17:50 EST)

Gretchen R. H. "Becky" Vose, Town Attorney

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement for Professional Services (the "Agreement") is made and entered into this 27th day of October, 2023 (the "Effective Date") by and between Jacobs Project Management Co., a Delaware corporation ("Contractor"), whose address for formal notice is 6312 S. Fiddlers Green Circle, Suite 300N, Greenwood Village, CO 80111 and the Town of Fort Myers Beach, Florida ("Owner" or "Town"), whose address for formal notice is 2525 Estero Boulevard, Fort Myers Beach, FL 33931, who collectively shall be referred to as the "Parties."

The Parties agree to enter into this Agreement for certain services that Contractor is to perform for the benefit of Owner, subject to the terms and conditions set forth below:

1. SCOPE OF SERVICES

Contractor will perform building permit inspections on a Time and Materials basis commencing on the effective date consistent with the terms of this agreement. The Owner and Contractor will mutually agree to the date the scope of services set forth in Appendix A of this Agreement ("the Services") will be provided. Contractor shall perform the Services with the degree of skill and diligence normally employed by similarly situated personnel performing the same or similar services and within the design capacity and capability of Owner's facilities, when applicable.

2. TERM AND TERMINATION

- 2.1 The initial term of this Agreement shall be for a period of five (5) years, commencing on the Effective Date. Upon conclusion of the initial term, this Agreement shall renew on an annual basis, unless terminated by either party with ninety (90) days prior written notice.
- 2.2 This Agreement may have the end date revised by Contractor or Owner for either of the Parties' convenience on ninety (90) calendar days' written notice; or by either party for cause upon thirty (30) calendar days' written notice to the other party, if either party fails to substantially perform through no fault of the other and does not commence correction of such nonperformance within five (5) calendar days of written notice and diligently complete the correction thereafter. Upon early completion of this Agreement or termination, Contractor shall be paid for all authorized work performed up to the termination date.

3. COMPENSATION

Owner will compensate Contractor as set forth in Appendix B. Monthly invoices will be issued by Contractor for all work performed under this Agreement. Work performed under this Agreement may be performed using labor from affiliated companies of Contractor. Such labor will be billed to Owner under the same billing terms applicable to Contractor's employees.

4. INVOICES AND TERMS OF PAYMENT

- 4.1 Contractor will submit invoices on a monthly basis to Owner each month. Each invoice will be prepared on Contractor's standard form and supported by documentation according to Contractor's standard practice. No invoice shall be for an amount in excess of 1/12 of the total annual lump sum price, unless Contractor has provided additional services at the Town Manager's direction in writing. Additional services will be invoiced on a Time & Materials basis and denoted on a separate line item within a monthly invoice.
- 4.2 Invoices are due and payable on receipt. Interest at a rate of 1-1/2 percent per month, or the maximum permitted by law if less, will be charged on all past-due amounts starting thirty (30) calendar days after date of invoice receipt. Payments will first be credited to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested shall be withheld from payment, and the undisputed portion shall be paid. Interest shall accrue on any contested portion of the billing and shall be immediately payable if the contested billing is resolved in favor of Contractor. No interest will be due on any disputed portion of the billing if the dispute is ultimately mutually resolved.
- 4.3 If Owner fails to make payment in full within thirty (30) calendar days of the date due for any undisputed billing, Contractor may, after giving seven (7) calendar days' written notice to Owner, suspend services under this Agreement until paid in full, including interest. In the event of suspension of services, Contractor will have no liability to Owner for delays or damages caused by Owner because of such suspension.

5. OBLIGATIONS OF CONTRACTOR

5.1 Standard of Care

The standard of care applicable to Services is the degree of skill and diligence normally employed by those performing similar services at the time Services are performed. If Contractor delivers services, reports or documents based on information provided by others, Contractor does not warrant their accuracy, and is not responsible for any errors or omissions that have been incorporated into such documents by others. Owner's sole remedy for Contractor's breach of this standard of care is the re-performance of those Services directly related to such breach up to the limit of remedy set forth in this Agreement.

5.2 Contractor's Insurance

Contractor will maintain throughout this Agreement the following insurance:

- a. Worker's compensation and employer's liability insurance as required by the state where the work is performed.
- b. Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, non-owned, or hired vehicles, with \$1,000,000 combined single limits.
- c. Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of Contractor or of any of its employees,

agents, or subcontractors, with \$1,000,000 per occurrence and in the aggregate.

- d. Owner will be named as an additional insured with respect to Contractor's liabilities hereunder in insurance coverages identified above (except with respect to worker's compensation and employer's liability insurance).

5.3 Warranties and Completion

- 5.3.1 Contractor warrants that all materials and equipment furnished under this Agreement will be new, unless otherwise specified, of good quality and free from defective workmanship and materials. Warranties shall commence on the date of Completion as determined by Contractor.
- 5.3.2 If applicable, Contractor will pass through to Owner the warranty extended by the manufacturer for all products, equipment, systems or materials. There are no warranties that extend beyond the description on the face thereof.
- 5.3.3 All other warranties, express or implied, including any warranty of merchantability and any warranty of fitness for a particular purpose are expressly disclaimed.
- 5.3.4 CONTRACTOR MAKES NO WARRANTIES OR GUARANTEES ON THE SERVICES OR MATERIALS SUPPLIED BY CONTRACTORS. NO OTHER REPRESENTATION, GUARANTEE OR WARRANTY, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, IS INTENDED IN OR BY THIS AGREEMENT.

5.4 Independent Contractor; Subcontracts

- 5.4.1 Contractor represents that it is an independent contractor and will perform services as an independent contractor and not as an agent or employee of Owner.
- 5.4.2 Contractor may retain such other subconsultants or subcontractors as it may deem desirable for proper and timely performance of services. Contractor shall be responsible for the management of the subcontractors and subconsultants in the performance of their work.
- 5.4.3 The Services performed by Contractor under this Agreement shall be considered advisory only. Owner shall solely be responsible for the management and direction of its employees in following Contractor's advice and recommendations. No provision in this Agreement shall be construed to confer any managerial or supervisory authority on Contractor. Contractor shall have no responsibility in supervising, managing or directing Owner's employees and shall not be liable for the actions of Owner's employees in carrying out recommendations provided for by Contractor.

5.5 Access to Records

Contractor will maintain accounting records, in accordance with generally accepted accounting principles. Records relating to services will be available to Owner during Contractor's normal business hours for a period of one (1) year after Contractor's final invoice under this Agreement for examination to the extent required to verify the direct costs (excluding established or standard allowances and rates) incurred hereunder, but excluding proprietary and confidential financial information. Only audit cost-reimbursable items will be subject to audit.

6. OBLIGATIONS OF OWNER

6.1 Owner-Furnished Data

Owner will provide to Contractor all data in Owner's possession, including copies of all applicable project requirements, design criteria or constraints, design and construction details or standards, previous reports, surveys, process descriptions, material balance sheets, process and instrumentation diagrams, permits issued by state, federal or local authorities relating to the operation of the project, and other information required or relating to Contractor's services on the project. Contractor will reasonably rely upon the accuracy, timeliness, and completeness of the information provided by Owner. This is including, but not limited to, the installation of iWorQ or other program the Owner uses or may elect to use in the future for building permit review and inspection documentation on Contractor's devices for both training and scope delivery purposes.

6.2 Access to Facilities and Property

Owner will make its facilities accessible to Contractor as required for Contractor's performance of its services and will provide labor and safety equipment as required by Contractor for such access. Owner will perform, at no cost to Contractor, such tests of equipment, machinery, pipelines, and other components of Owner's facilities as may be required in connection with Contractor's services.

6.3 OSHA Compliance

Owner shall have the sole responsibility for identifying and performing any current or future improvements which may be required at the Project to bring the facilities within OSHA compliance.

6.4 Operations Assistance and Services

Owner authorizes Contractor to operate, modify, inspect and otherwise physically manipulate equipment, furnishings, property and other elements associated with the Services. Owner authorizes Contractor to take such actions in these respects as Contractor considers necessary to meet the objectives of the work.

6.5 Advertisements, Permits, and Access

Unless otherwise agreed to in the Agreement, Owner will and has the sole responsibility for obtaining, renewing, arranging, and paying for all advertisements for bids; permits and licenses required by local, state, or federal authorities (including those required for the operation of the project); and land, easements, rights-of-way, and access necessary for Contractor's Services.

6.6 Timely Review

Owner will examine Contractor's studies, reports, sketches, drawings, specifications, proposals, and other documents; obtain advice of an attorney, insurance counselor,

accountant, auditor, bond and financial advisors, and other consultants as Owner deems appropriate; and render in writing decisions required by Owner in a timely manner.

6.7 Prompt Notice

Owner will give prompt written notice to Contractor whenever Owner observes or becomes aware of any development that affects the scope or timing of Contractor's Services, or of any defect in the work of Contractor. Owner will give Contractor prompt notice when it is unable to follow the directives and advice of Contractor in any way related to the Services or promptly upon discovery that the directives or advice of Contractor has not been followed in relation to the Services being performed.

6.8 Asbestos or Hazardous Substances

6.8.1. If asbestos or hazardous substances in any form are encountered or suspected while performing the Services, Contractor will stop its own work in the affected portions of the Project to permit testing and evaluation.

6.8.2. If asbestos is suspected, Contractor will, if requested, manage the asbestos remediation activities using a qualified subcontractor at an additional fee and contract terms to be negotiated.

6.8.3. If applicable, if hazardous substances other than asbestos are suspected, Contractor will, if requested, conduct tests to determine the extent of the problem and will perform the necessary studies and recommend the necessary remedial measures at an additional fee and contract terms to be negotiated.

6.8.4. Owner recognizes that Contractor assumes no risk and/or liability for a waste or hazardous waste site originated by other than Contractor.

6.9 Owner's Insurance

6.9.1. Owner will maintain property insurance on all facilities and property used by Contractor or associated in any way with the project.

6.9.2. Owner will provide for a waiver of subrogation as to all Owner-carried property damage insurance, in favor of Contractor, Contractor's officers, employees, affiliates, and subcontractors.

6.10. Litigation Assistance

The Services to be performed under this Agreement do not include costs of Contractor for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by Owner. All such Services required or requested of Contractor by Owner, except for suits or claims between the parties to this Agreement, will be reimbursed as mutually agreed.

6.11. Changes

Owner may request changes to the Services. If such changes affect Contractor's cost or time required for performance of the Services, an equitable adjustment will be made through an amendment to this Agreement. All requested changes will be made in writing and are subject to acceptance by Contractor.

7. GENERAL LEGAL PROVISIONS

- 7.1. Authorization to Proceed
Execution of this Agreement by Owner will be authorization for Contractor to proceed with the work, unless otherwise provided for in this Agreement.
- 7.2. Force Majeure
Contractor is not responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, governmental action, pandemics or other events beyond the control of Contractor. In any such event, Contractor's agreement price and schedule shall be equitably adjusted.
- 7.3. Fines and Civil Penalties
Contractor shall not be liable for any fines or civil penalties which may be imposed by a regulatory or enforcement agency for violations occurring on or after the commencement date of this Agreement, as a result of the failure to comply with the terms and conditions of any duly authorized permit, court order, administrative order, law, statute, or ordinance or that result from violations that occurred prior to the commencement date of this Agreement.
- 7.4. Limitation of Liability
Contractor's liability for Owner's damages, in the aggregate, shall not exceed the total compensation received by Contractor from Owner for services provided under this Agreement for the year of the Agreement in which the liability was incurred. Contractor's liability to Owner under this Agreement specifically excludes any and all indirect or consequential damages arising from the Work contemplated under this Agreement. Contractor shall not be liable for fines or civil penalties, which may be imposed by a regulatory agency, which are occasioned by the provision of services under this Agreement. The limitations of liability shall apply whether Contractor's liability arises under breach of contract or warranty; tort, including negligence; strict liability; statutory liability; or any other cause, except the limitations shall not apply to willful misconduct or gross negligence. Said limitations shall apply to Contractor's officers, affiliated corporations, employees, and subcontractors.
- 7.5. Indemnification
Subject to the provisions of Sec. 768.28, Fla. Stat., and to the maximum extent permitted by law, the Parties agree to defend, indemnify and hold each other harmless from liability for claims, damages, costs and attorneys' fees arising from property damage, injury or death to a person, including their employees, caused by the negligent acts or omissions or willful misconduct of the indemnifying Party or any other party for whom the indemnifying Party is legally liable. Neither Party must indemnify the other against liability or damages arising out of death or bodily injury to persons or damage to property to the extent caused by the negligence of the indemnified Party.
- 7.6. Consequential Damages
To the maximum extent permitted by law, Contractor and Contractor's affiliated corporations, officers, employees, and subcontractors shall not be liable for Owner's special, indirect, or consequential damages, whether such damages arise out of breach of contract or warranty, tort including negligence, strict or statutory liability, or any other cause of action. In order to protect Contractor against indirect liability or third-party proceedings, and subject to the provisions of Sec. 768.28, Fla. Stat., Owner will indemnify Contractor for any such damages.
- 7.7. Severability and Survival

If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability, indemnities and other express representations shall survive termination of this Agreement.

7.8. No Conflict of Interest for Future Work

The scope of Services performed by Contractor under this Agreement does not preclude Contractor from proposing on or providing such services to Owner in the future. Information and knowledge gained by Contractor in providing services under this Agreement shall not constitute a conflict of interest in proposing on or providing full contract operations, full contract maintenance, or full contract utility management.

7.9. Jurisdiction

The law of the State where the scope of Services is being performed shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it.

7.10. Third Party Beneficiaries and Scope of Services

This Agreement gives no rights or benefits to anyone other than Owner and Contractor and has no third-party beneficiaries. The Work to be performed for Owner by Contractor is defined solely by this Agreement, and not by any other contract or agreement that may be associated with the Work.

7.11. Assignments

This is a bilateral Agreement for professional services. Neither party shall have the power to or will assign any of the duties or rights or any claim arising out of or related to this Agreement, whether arising in tort, contract or otherwise, without the written consent of the other party. Any unauthorized assignment is void and unenforceable. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

7.12. Dispute Resolution

The parties will use their best efforts to resolve amicably any dispute, including use of alternative dispute resolution options.

7.13. Ownership of Work Products and Intellectual Property

All of the Work products of Contractor in executing this Project (including all the rights related to such Work Products) shall be the sole property of Contractor, subject to the rights of the Owner, as the case may be. All reports, data, information, documents, specifications, flow-charts, discoveries, know-how, inventions, processes, firmware, computer software, source and object code, and software documentation as well as any resulting intellectual property, including but not limited to, invention disclosures, provisional patent applications, regular patent applications, patents, trade secrets, proprietary information, copyrights, trademarks, service marks, domain names, trade dress, and moral rights developed during the course of, or as a result of, the Project shall be the sole property of Contractor, subject to the rights of the Owner, as the case may be.

7.14. Non-Solicitation of Contractor Employees

In the event that Owner recruits and procures the services of Contractor employees to provide a similar function for Owner, Owner shall pay to Contractor the sum of: (1) 100% of staff compensation for staff with annual salaries above \$75,000 plus

reimbursement of Contractor costs associated with training for Contractor Employees and the cost of replacing the position within Contractor's organizational structure.

8. PUBLIC RECORDS COMPLIANCE.

Contractor agrees that, to the extent that it may "act on behalf" of the Town ("public agency") within the meaning of Section 119.0701(1)(a), Florida Statutes in providing its services under this Agreement, it shall:

- (a) Keep and maintain public records required by the public agency to perform the service.
- (b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (c) 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 term and following completion of the contract if the contractor does not transfer the records to the public agency.
- (d) Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the Contractor transfers all public records to the public agency upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the Town's custodian of public records, in a format that is compatible with the information technology systems of the Town.
- (e) Pursuant to Section 119.0701(2)(a), Fla. Stat., **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 AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**TOWN HALL
2525 Estero Boulevard
Fort Myers Beach, FL 33931
AMY@FMBGOV.COM**

- 9. Public Records Compliance Indemnification.** Contractor agrees to indemnify and hold the Town harmless against any and all claims, damage awards, and causes of action arising from the Contractor's failure to comply with the public records disclosure requirements of Section 119.07(1), Florida Statutes, or by Contractor's failure to maintain public records that are exempt or confidential and exempt from the public records disclosure requirements, including, but not limited to, any third party claims or awards for attorneys' fees and costs arising therefrom. Contractor authorizes the public agency to seek declaratory, injunctive, or other appropriate relief against Contractor in Lee County Circuit Court on an expedited basis to enforce the requirements of this section.

- 10. Compliance/Consistency with Section 768.28, Fla. Stat.** Any indemnification or agreement to defend or hold harmless by Town specified in the Agreement shall not be construed as a waiver of Town's sovereign immunity, and shall be limited to such indemnification and liability limits consistent with the requirements of Section 768.28, Fla. Stat. and subject to the procedural requirements set forth therein. Any other purported indemnification by Town in the Agreement in derogation hereof shall be void and of no force or effect.

- 11. Non-appropriation.** Town's performance and obligation to pay under this Agreement is contingent upon an appropriation during the Town's annual budget approval process. If funds are not appropriated for a fiscal year, then the Contractor shall be notified as soon as is practical by memorandum from the Town Manager or designee that funds have not been appropriated for continuation of the Agreement, and the Agreement shall expire at the end of the fiscal year for which funding has been appropriated. The termination of the Agreement at fiscal year end shall be without penalty or expense to the Town subject to the Town paying all invoices for services rendered during the period the Agreement was funded by appropriations.

- 12. E-Verify Compliance.** Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Fla. Stat., Contractor is registered with and uses the E-Verify system to verify the work authorization status of all newly hired employees, that in accordance with such statute, Contractor requires from each of its subcontractors an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien, and that Contractor is otherwise in compliance with Sections 448.09 and 448.095, Fla. Stat.

- 13. Compliance/Consistency with Scrutinized Companies Provisions of Florida Statutes.** Section 287.135(2)(a), Florida Statutes, prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services of any amount if, at the time of contracting or renewal, the company is on the Scrutinized Companies that

Boycott Israel List, created pursuant to section 215.4725, Florida Statutes, or is engaged in a boycott of Israel. Section 287.135(2)(b), Florida Statutes, further prohibits a company from bidding on, submitting a proposal for, or entering into or renewing a contract for goods or services over one million dollars (\$1,000,000) if, at the time of contracting or renewal, the company is on either the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, both created pursuant to section 215.473, Florida Statutes, or the company is engaged in business operations in Cuba or Syria. Contractor hereby certifies that Contractor is not listed on any of the following: (i) the Scrutinized Companies that Boycott Israel List, (ii) Scrutinized Companies with Activities in Sudan List, or (iii) the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List. Contractor further hereby certifies that Contractor is not engaged in a boycott of Israel or engaged in business operations in Cuba or Syria. Contractor understands that pursuant to section 287.135, Florida Statutes, the submission of a false certification may subject Contractor to civil penalties, attorney's fees, and/or costs. Contractor further understands that any contract with Town for goods or services of any amount may be terminated at the option of Town if Contractor (i) is found to have submitted a false certification, (ii) has been placed on the Scrutinized Companies that Boycott Israel List, or (iii) is engaged in a boycott of Israel. And, in addition to the foregoing, if the amount of the contract is one million dollars (\$1,000,000) or more, the contract may be terminated at the option of Town if the company is found to have submitted a false certification, has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria.

14. **Venue and Jurisdiction.** Notwithstanding any of other provision to the contrary, this Agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of Florida, without reference to conflict of law principles. As a material condition of this Agreement, each Party hereby irrevocably and unconditionally: i) consents to submit and does submit to the jurisdiction of the Circuit Court in and for Lee County, Florida for any actions, suits or proceedings arising out of or relating to this Agreement; and ii) waives any right to file any action, suits or proceedings in, or remove any action to, Federal Court.
15. **Attorneys' Fees and Costs.** Notwithstanding any of other provision to the contrary, if litigation ensues regarding this Agreement, each party hereto shall bear its own attorneys' fee and costs.

16. APPENDICES AND SIGNATURES

This Agreement, including its Appendices, constitutes the entire Agreement, supersedes all prior written or oral understandings, and may only be changed by a written amendment executed by both parties. The following Appendices and schedules are hereby made a part of this Agreement:

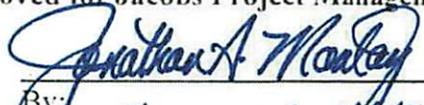
- Appendix A—Scope of Services
- Appendix B—Compensation

IN WITNESS WHEREOF, the parties execute below:

Approved for Owner


By: Andrew Hyatt
Name: Town Manager
Title: 10/27/23
Date

Approved for Jacobs Project Management Co.


By: JONATHAN A. MANTAY
Name: VICE PRESIDENT
Title: 10/27/2023
Date

APPENDIX A – SCOPE OF SERVICES

SCOPE OF SERVICES

The purpose of this scope is to authorize Contractor to provide Owner with staffing personnel to support building plan review and permitting requirements.

Services under this Agreement will be executed at the direction of Owner. While services may change or be modified by Owner, the general scope of services to be provided by Contractor includes the following scope items:

1. Contractor will provide the equivalent of four (4) full-time positions to provide Owner with Chief Building Official and three (3) permit technicians;
2. Contractor's Chief Building Official will be assigned to Owner full-time. This position will be responsible for fulfilling the role as defined in the job description section of this Appendix and will also be responsible for plans review and the delegation of plans review to that position within this scope;
3. The Plans Reviewer position will be utilized when needed and will be at the direction of the Chief Building Official and to be used after written notice has been provided by the Town Manager. This position will not be assigned to the project full-time as Contractor may utilize multiple employees to provide this service;
4. Contractor staff will provide services based upon a 40-hour work week.

SERVICES TO BE PROVIDED

1. One Chief Building Official, and three permit technicians (as described below) will be provided on-site in Town Hall by Contractor for 40 hours per week (for a total of 160 person hours per week). Contractor may provide qualified substitutes for such positions when the assigned personnel are not in attendance at work due to vacation, illness, injury, or other cause.
2. Computers and software for permit entry and tracking will be provided by Owner.
3. Vehicles will be provided by Owner with such vehicles only being used for Town business.
4. Additional building permit plan review or building permit inspections, if specifically requested in writing by the Town Manager, will be provided at the rate of \$127.00 per hour, and fees therefor will be invoiced separately.
5. The Town has an existing contract with a third-party firm to provide building inspection services.
6. As this Agreement does not create a relationship between Contractor's Chief Building Official and other third-party contractors responsible for building inspection services, Contractor's responsibilities as related to said third-party inspections are limited to only those as required by Chapter 553 of the Florida Statutes.
7. Contractor will reasonably rely upon the accuracy and completeness of the information/data provided by Owner and other third parties.
8. Barring any statutory requirements, Contractor is not responsible for the means and methods by which Owner personnel or third-party contractors complete or fail to complete their respective job duties.

JOB DESCRIPTIONS

Chief Building Official – Florida Licensed

The Chief Building Official manages and directs the programs and activities of the Building Division that includes permit processing and plan review functions to ensure compliance with adopted local and state codes, including the Florida Building, Florida Accessibility Code, and federal/state/local ordinances, standards, policies, and laws. The Chief Building Official manages a division that utilizes external plan reviewers when needed and third-party inspectors. It is the responsibility of the Chief Building Official to ensure submitted plans are efficiently processed, permitted, inspected, and ultimately brought into service of the Town.

- Performs and manages the review of all building permits for compliance with building codes, and all other state and local regulations.
- As required by Florida statute, coordinate, enforce and provide specialized assistance for inspection of all work authorized by permit on residential and non-residential facilities to assure conformity to approved plans and applicable ordinances, codes, laws and procedures.
- Determine completeness and accuracy of building permit applications and review for code and standards conformance.
- Authorize the issuance of Building Permits upon review by other Town departments, as applicable.
- Coordinate technical reviews and serve as the Building Department liaison to the Town and their third-party firms.
- Respond to field emergencies and coordinate appropriate response.
- Issue and authorize “Stop Work” orders and “Unsafe for Occupation” notices.
- Conduct pre-application and pre-construction meetings, as necessary.
- Review and approve proposed alternative materials and methods of construction.
- Regularly review computer database records to maintain an efficient flow of work to the Building Plan Reviewers (as applicable); ensure software systems are being used properly and to the best of their ability.
- Work with attorneys representing the Town and other staff on difficult code compliance and interpretations.
- Receive complaints and inquiries from the Town and citizens relative to construction conditions or activities in the community.
- Gather pertinent data, evaluate the facts of situations, and attempt to handle complaints and inquiries at first contact.
- Interpret and enforce the latest adopted Florida Building Codes, Florida Accessibility Code, and federal/state/local ordinances, standards, policies and laws.
- Knowledge of and ability to interpret Federal Emergency Management Agency (FEMA) and local flood regulations and ordinances.
- Represent the Town at building code conferences and informational meetings.
- Provide a seamless building and construction review process which provides quick turnaround and a clear approval process and forms (not including a policy analysis).

-

Basic Qualifications

- Bachelor's degree in Engineering, Architecture, Construction Technology or related field, or a high school diploma or equivalent and 10 years of building, architecture or construction experience in lieu of the degree.
- Three (3) years of supervisory experience.
- Current Building Official License from the State of Florida.
- Experience in construction practices, the latest adopted Florida Building Codes and current national electric code.
- Possess a valid Florida driver's license with a clean driving record with no major infractions.

Preferred Qualifications

- Ten (10) years of experience in building inspection / plans review, engineering, architecture or construction.
- Experience with – electronic plan review and permitting software – CityWorks preferred
- Excellent communication skills to deal effectively with developers, architects, engineers, and other design professionals.

Permit Technicians

The Permit Technicians will provide advanced, responsible, customer service work. The employee is responsible for providing assistance and information to the general public. Knowledge in the areas of building plans review, permit issuance and planning and zoning is desired but not required. Work may vary in complexity and responsibility.

- Enters information from permit applications into permitting system to determine types of reviews necessary for the projects and to determine when projects are scheduled for review, status of projects, number of dates for review, cost of review, permit number and issue date.
- Follows the Town's "how to create a permit" process.
- Files plans for residential and commercial projects and enters appropriate data.
- Receives permit applications from customers, reviews and enters relevant data and forwards to plans reviewers.
- Verifies permits issued and compares with permit application.
- Verifies contractors' business license and insurance coverage.
- Answers all technical questions regarding requirements for submitting applications for all types of permits.
- Assists builders, contractors, and the general public in making applications for various permits and advises applicants of requirements.
- Answers questions pertaining to the progress of permits and advises applicants of data and submittals needed to have requirements met.

- Receives applications/plans and reviews items for completeness.
- Assures that permit applicants have obtained all pre-approvals, i.e., Solid Waste, Utilities, Driveway permits, etc.
- Reviews permit application forms for completeness and assures that submittals are attached.
- Determines and calculates various permit fees. Calculates and collects plan review fees.
- Processes all applications/plans and re-submittals that are received by electronically, in-person, and mail.
- Answers emails
- Answers phone calls
- Performs related work as required.

Education, Experience, Licensing

Requires any combination of education and experience equivalent to graduation from High School and two years of customer service experience.

Knowledge, Skills and Abilities

- Ability to deal with the general public in a prompt, professional, and courteous manner.
- Ability to perform basic mathematical skills in determining square footage, linear feet, etc.
- Ability to learn associated computer systems applicable to permitting, such as GIS, iWorq, etc.

Plans Examiner – services will be provided on a T&M basis with Town Manager approval

- Performs highly advanced technical review of residential and commercial construction documents for compliance with the Florida Building, Florida Accessibility Code, and federal/state/local ordinances, standards, policies, and laws.
- Completes permit reviews in a timely manner.
- Assists with inter/intra-department reviews prior to the issuance of permits.
- Engages in communications between the public, architects, engineers, contractor, Town staff and officials to explain codes and resolve code issues related to construction plans.
- Verifies code compliance of construction drawings prior to approval of drawings necessary for issuance of permits.
- Attends preconstruction and predevelopment meetings with contractors, developers, owners, architects, engineers and Town staff.
- Educates, trains, directs, and provides technical leadership or guidance to both design consultants and Town staff.
- Performs other duties as assigned, including cross training with the Building Official.

Basic Qualifications

- High school diploma or equivalent and ICC Plans Examiner Certification

- Minimum of four (4) years as a building inspector, contractor, or plans examiner that includes one (1) or more years performing commercial or educational plans review, or completion of one (1) year of training to perform advanced commercial examiner tasks.
- Knowledge of and ability to apply applicable standards of the Florida Building Code and Florida Accessibility Code.
- Experience reviewing construction, plumbing, electrical and mechanical plans with related regulations.
- Knowledge of the methods and practices involved in the construction of educational facilities and related standard testing methods.
- Ability to read and interpret complex building drawings and related documents to recognize code violations, solve problems and recommend solutions.
- Ability to communicate accurate and understandable construction design information relating to codes with architects, engineers, contractors, and school district staff.
- Ability to establish and maintain effective working relationships with contractors, builders, Town staff, city and county officials and the general public.

Preferred Qualifications

- State of Florida Commercial Plans Examiner licenses to review all plans associated with new residential and commercial construction and any manner of remodel or retrofit.
- Experience with the electronic plans software; iWorQ permitting software package and digital plan review platforms.
- Knowledge of and ability to interpret Federal Emergency Management Agency (FEMA) and local flood regulations and ordinances.

APPENDIX B – COMPENSATION

Compensation by Owner to Contractor will be as follows:

1. Contractor shall provide the Services as described in Appendix A on an annual lump sum basis.

Year One lump sum price is **\$538,535** (Five Hundred Thirty-Eight Thousand Five Hundred Thirty-Five Dollars). INCORRECT ASSUMPTION FROM B. VOSE

2. The Parties agree that good faith negotiations resulting in mutual agreement on an annual lump sum adjustment is the preferred methodology.
3. In the event Contractor and Owner fail to agree thirty (30) days prior to the annual renewal date of this Agreement, the lump sum compensation amount will be adjusted according to the adjustment formula denoted below:

$$AF = [((ECI) \times .70) + ((CPI) \times .30)] + 1.0$$

AF - Adjustment Formula

CPI = The twelve-month percent change (from June of the prior year to June of the current year) in the Consumer Price Index for All Urban Consumers, Not Seasonally Adjusted as published by U.S. Department of Labor, Bureau of Labor Statistics in the CPI Detailed Report Series Id: CUUR000SA0.

ECI = The twelve-month percent change (from the second quarter of the prior year to the second quarter in the current year) in the Employment Cost Index for Total Compensation for Civilians Workers, Not Seasonally Adjusted as published by U.S. Department of Labor, Bureau of Labor Statistics in the Detailed Report Series Id: CIU1010000000000A.

4. Upon each Agreement year renegotiation, Contractor shall continue to invoice Owner at the previous amount until the new Agreement year price is agreed upon or determined by the adjustment formula. Upon written agreement of the Parties as to the new Agreement year price, Contractor shall issue an invoice retroactively adjusting the previous lump sum price.
5. Additional permit reviews or other services provided under this Agreement shall be provided on a Time & Materials basis and invoiced monthly as the services may occur, but only if requested in writing by the Town Manager.