

RESOLUTION NUMBER 24-93

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT FOR DEMOLITION SERVICES WITH SOUTHWEST BUILDERS INC., BASED ON PRICING COMPETITIVELY PROCURED BY THE CITY OF FORT MYERS, FLORIDA THROUGH AN AGREEMENT; AUTHORIZING THE MAYOR OR TOWN MANAGER TO SIGN 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, 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 City of Fort Myers and Southwest Builders, Inc., (“Contractor”) entered into a contract for demolition services on or about July 10, 2021 (hereinafter the “Contract”); and

WHEREAS, pursuant to the Contract, the Contractor has agreed to provide the City of Fort Myers with demolition services; and

WHEREAS, Section 163.01, Florida Statutes, also referred to as the Florida Interlocal Cooperation Act, permits local governments to cooperate with other localities, including governmental units outside the State of Florida on the basis of mutual advantage; and

WHEREAS, Section 2-480(f) of the Town’s Code of Ordinances provides that when it is in the best interest of the Town, it may cooperatively purchase goods or services from any other government agency, which has competitively bid and awarded a contract for any product or service at the awarded price, if the original bid specifications and award allow it and if the other governmental agency’s procurement complies with the Town’s competitive bid policy; and

WHEREAS, the Town Council finds the City of Fort Myers RFQ 0006-21 and the resulting Contract were competitively bid with procedural guarantees of fairness and competitiveness equivalent to those of the Town and the Contractor has agreed to allow the Town to “piggyback” on the competitive pricing provided to the City of Fort Myers; and

WHEREAS, it is in the best interests of the residents of the Town of Fort Myers Beach to execute an agreement with the Contractor containing similar terms and conditions as contained in the Contract.

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

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

Section 2. The Town Council hereby approves the Agreement to Piggyback a Contract for Demolition Services Procured by the City of Fort Myers, and authorizes the Mayor or Town Manager to execute the Agreement, which is attached hereto as Exhibit "A."

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

Dan Allers, Mayor	Aye
Jim Atterholt, Vice Mayor	Aye
John R. King, Council Member	Aye
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 6th day of May 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

FORT MYERS BEACH TOWN COUNCIL

Dan Allers
Dan Allers (Jun 22, 2024 11:33 EDT)

Dan Allers, Mayor

ATTEST: Amy Baker

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 (Jun 22, 2024 21:43 EDT)

Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on the 21st day of June 2024.

**AGREEMENT TO PIGGYBACK A CONTRACT FOR
DEMOLITION SERVICES COMPETITIVELY PROCURED BY
THE CITY OF FORT MYERS, FLORIDA**

THIS AGREEMENT is made and entered into this 31 day of May, 2024, by and between the Town of Fort Myers Beach, Florida (the "Town"), a Florida municipal corporation whose principal place of business is 2525 Estero Blvd., Ft. Myers Beach, FL 33391 and Southwest Builders, Inc., a Florida corporation authorized to do business in the State of Florida, ("Contractor") whose principal place of business is 11997 Princess Grace Ct, Cape Coral, Florida 33991 ("Agreement"). The Town and the Contractor may also be referred to collectively as the "Parties."

WHEREAS, the City of Fort Myers, Florida competitively procured a contract for demolition services ("RFQ 0006-21 or RFP") and thereafter awarded and executed the Agreement for Demolition Services to the City of Fort Myers ("Agreement") to Contractor on July 10, 2021; and

WHEREAS, the Agreement has a term of 4 years with optional renewals; and

WHEREAS, the Town is in immediate need of demolition services to remove privately owned buildings and structures, which have been determined to be unsafe by the Fort Myers Beach Building Official pursuant to Division 3, of Article 1 of Chapter 6 "Maintenance Codes, Building Codes and Coastal Regulations," due to a lack of repair or demolition following Hurricane Ian; and

WHEREAS, the Town desires Contractor provide needed demolition services, and under the Town Code, the purchase of 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, the finance department director has made such a written determination and the Contractor is willing to provide demolition services to the Town, subject to the terms and conditions of the Agreement, with the specific modifications set forth herein; and

WHEREAS, approval of this Agreement is in the best interest of the health, safety and welfare of the residents of the Town.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties do mutually agree as follows:

1. **INCORPORATION OF THE CITY OF FORT MYERS.** This Agreement incorporates by reference, the Agreement, a true and accurate copy of which is attached hereto as Exhibit "A."
2. **SCOPE OF SERVICES.** During the Term of this Agreement, the Contractor will provide demolition services as requested by the Town.

3. **PRICING.** The Town will pay Contractor for such services as provided in the Agreement. This sum will be the Contractor's sole compensation for the services provided by Contractor under this Agreement.
4. **DURATION OF THE AGREEMENT.** The Term of this Agreement shall begin on the last signed by a party and continue for the duration of the term, and any renewals, specified in the Agreement and agreed to by the parties.
5. **DESIGNATED REPRESENTATIVE.** The Town Manager, or designee, shall be the Town's Designated Representative in matters arising under this Agreement.

TOWN MANAGER
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL 33931
andv@fmbgov.com

6. **MODIFICATIONS TO AGREEMENT.** Notwithstanding the incorporation of the Agreement into this Agreement as referenced, the Parties hereby agree to certain modifications to the Agreement, as follows:
 - a. All references in the Agreement to terms such as "City" will be deemed to refer to the Town. In addition, all references within the Agreement 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 Agreement, will be deemed to refer to the equivalent Town officers/departments/divisions, and Town locations, as hereafter designated by the Town's Designated Representative. The Town shall be added as an additional insured to Contractor's Certificate of Insurance.
 - b. The Town's performance and obligation to pay under the Agreement 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 Agreement, 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 Agreement.
 - d. This section serves as notice to the Contractor regarding the requirements of §448.095, Fla. Stat., specifically sub-paragraph (2)(c), and the Town's obligation to terminate the Agreement 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 Agreement, in accordance with the requirements of §§287.135 and 215.473, Fla. Stat., the Contractor certifies that the Contractor is not participating in a boycott of Israel. The Contractor further certifies that the 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 this Agreement. The Town shall provide notice, in writing, to the Contractor of the Town's determination concerning the false certification. The 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 Agreement term, the 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 the 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 Agreement 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. The Contractor shall keep and maintain public records required by the Town to perform the services required under this Agreement. Upon request from Town's custodian of public records, the Contractor shall provide the 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. The 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 Agreement's term and following completion of the Agreement if Contractor does not transfer the public records to the Town. Upon completion of the Agreement, the Contractor may transfer, at no cost, to the Town all public records in possession of the Contractor or keep and maintain public records required by the Town to perform the services required under the Agreement. If the Contractor transfers all public records to the Town upon completion of the Agreement, 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 Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to

the Town, upon request from the Town's custodian of public records, in a format that is compatible with the Town's information technology systems. Contractor's failure 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, THAT PARTY MAY CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

**CUSTODIAN OF PUBLIC RECORDS
2525 ESTERO BOULEVARD
FORT MYERS BEACH, FLORIDA 33931
(239) 765-0202
FMBPUBLICRECORDS@FMBGOV.COM**

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

TOWN OF FORT MYERS BEACH:

CONTRACTOR:

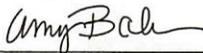

Dan Allers (Jun 4, 2024 11:11 EDT)

Dan Allers, Fort Myers Beach Mayor



Print Name: Maureen A. Fatouee
Print Title: president

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:**


Becky Vose (Jun 3, 2024 12:13 EDT)

Vose Law Firm, Town Attorney