

RESOLUTION NUMBER 24-284

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA, APPROVING GRANT AGREEMENT NUMBER D2125 WITH THE STATE OF FLORIDA, DEPARTMENT OF EMERGENCY MANAGEMENT IN THE AMOUNT OF \$7,547,805 FOR REVENUE REPLACEMENT; APPROVING A RELATED BUDGET ADJUSTMENT (#3); AUTHORIZING THE TOWN MANAGER TO SIGN ANY AND ALL NECESSARY DOCUMENTS TO ACQUIRE THE GRANT; AND PROVIDING FOR AN EFFECTIVE DATE.

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

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

WHEREAS, the Town of Fort Myers Beach, Florida sustained significant revenue losses in Fiscal Years 2023 and 2024 and is projected to sustain additional losses in Fiscal Year 2025 as a result of the economic impact of the catastrophic damage of Hurricane Ian; and

WHEREAS, the Town of Fort Myers Beach, Florida was awarded a grant by the Florida Legislature in the amount of \$7,547,805 under line 2699, Chapter 2024-231 Laws of Florida for “Fort Myers Beach – Revenue Loss”, and

WHEREAS, Florida Statutes s. 200.065 establishes the method for adoption of a budget for all taxing authorities in the State of Florida and Florida Statutes s. 166.241 requires the governing body of each municipality in Florida to adopt a budget via ordinance or resolution before the start of each fiscal year; and

WHEREAS, on September 23, 2024, the Town Council of the Town of Fort Myers Beach, following due public notice, adopted a final operating budget for fiscal year 2024-25, as set forth with greater specificity in Town Resolution 24-185; and

WHEREAS, Section 11.05 of Article XI of the Charter of the Town of Fort Myers Beach provides that the Town Manager will report to Town Council regarding any anticipated excess revenues; any reduction of appropriations and any request for transfers for the Town operating budget, including the estimated amount of such increase, decrease, remedial action(s) taken, and recommendations as to any other steps to be taken; and

WHEREAS, Section 11.05(a) of Article XI of the Town Charter further provides that if, during the fiscal year, the town manager certifies that there are available for appropriation revenues in excess of those estimated in the budget, the council, by resolution, may make supplemental appropriations for the year up to the amount of such excess, so long as a fiscally responsible reserve is maintained; and

WHEREAS, the Town finds that it is in the best interest of the residents of the Town to accept the grant award from the State of Florida, Department of Emergency Management for Revenue Replacement,

and approve Grant Agreement No. D2125; and

WHEREAS, the Town finds that in accordance with the purpose of the grant it is in the best interest of the residents of the Town to utilize the grant to fund the revenue losses in Fiscal Years 2023, 2024 and 2025 rather than the Bridge Loan, and to authorize the necessary adjustment to the Fiscal Year 2025 budget.

IT IS HEREBY RESOLVED by the Town Council of Fort Myers Beach, Florida as follows.

Section 1. The above recitals as set forth in the various “Whereas” clauses are hereby adopted by reference and incorporated into the body of this Resolution.

Section 2. The Town Council hereby approves and accepts the \$7,547,805 grant awarded under line 2699, Chapter 2024-231 Laws of Florida for revenue replacement administered through the Florida Department of Emergency Management, and authorizes the Town Manager to execute Grant Agreement No. D2125, a copy of which is attached as Exhibit A.

Section 3. The Town Council hereby approves the creation of the “Revenue Replacement Grant” fund for purposes of tracking use of this significant and unique award.

Section 4. The Town Council further finds that the supplemental appropriation of funds is as provided in this Section consistent with the requirements of Section 11.05 (a) of Article XI of the Town Charter, and hereby approves, adopts and accepts the following amendment to the Fiscal Year 2025 budget:

Budget Adjustment #3

34.19.519.33447	Rev Replacement: State LAP Grant	\$7,547,805
34.19.519.59122	Rev Replacement: Tfr to Bridge Loan-FY23 Lost Rev	\$3,085,209
34.19.519.59122	Rev Replacement: Tfr to Bridge Loan-FY24 Lost Rev	\$2,427,312
34.19.519.59122	Rev Replacement: Tfr to Bridge Loan-FY25 Lost Rev	\$2,035,284
35.19.519.38126	Bridge Loan: Tfr from Rev Replacemnt-FY23 Lost Rev	\$3,085,209
35.19.519.80000	Bridge Loan: Add back to Reserve-FY23 Lost Rev	\$3,085,209
35.19.519.38126	Bridge Loan: Tfr from Rev Replacemnt-FY24 Lost Rev	\$2,427,312
35.19.519.80000	Bridge Loan: Add back to Reserve-FY24 Lost Rev	\$2,427,312
35.19.519.38126	Bridge Loan: Tfr from Rev Replacemnt-FY25 Lost Rev	\$2,035,284
35.19.519.80000	Bridge Loan: Add back to Reserve-FY25 Lost Rev	\$2,035,284

Section 5. This resolution is effective immediately upon adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member Safford and seconded by Council Member Woodson, 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	Absent
Scott Safford, Council Member	Aye
Karen Woodson, Council Member	Aye

ADOPTED this 16th day of December 2024 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH


Dan Allers (Dec 18, 2024 15:29 EST)

Dan Allers, Mayor

ATTEST:


Amy Baker (Dec 20, 2024 08:43 EST)

Amy Baker, Town Clerk

APPROVED AS TO FORM:


Vose Law Firm (Dec 19, 2024 21:04 EST)

Vose Law Firm, Town Attorneys

This Resolution was filed in the Office of the Town Clerk on this 18th day of December 2024.

STATE-FUNDED LAP GRANT AGREEMENT

THIS AGREEMENT is entered into by the State of Florida, Division of Emergency Management, with headquarters in Tallahassee, Florida (hereinafter referred to as the "Division"), and **the Town of Fort Myers Beach**, Florida (hereinafter referred to as the "Recipient").

THIS AGREEMENT IS ENTERED INTO BASED ON THE FOLLOWING REPRESENTATIONS:

- A. The Recipient represents that it is fully qualified and eligible to receive these grant funds to provide the services identified herein; and
- B. The Division has received these grant funds from the State of Florida, and has the authority to subgrant these funds to the Recipient upon the terms and conditions below; and
- C. The Division has statutory authority to disburse the funds under this Agreement.

THEREFORE, the Division and the Recipient agree to the following:

(1) CONTACT

a. Any and all notices or other communications made pursuant to this Agreement shall be in writing and shall be deemed given if delivered by certified mail or electronic mail to the parties at the following addresses. In accordance with section 215.971(2), Florida Statutes, the Division's Grant Manager shall be responsible for enforcing performance of this Agreement's terms and conditions and shall serve as the Division's liaison with the Recipient. As part of his/her duties, the Grant Manager for the Division shall:

- i. Monitor and document Recipient performance; and,
- ii. Review and document all deliverables for which the Recipient requests

payment.

b. The Division's Grant Manager for this Agreement is:

Carly Miller, FPEM, FCCM
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399
Telephone: 850-559-7863
Email:

c. The name and address of the representative of the Recipient is:

Andrew Hyatt
2731 Oak Street
Fort Myers Beach, FL 33931
Telephone: (239)-313-0895
Email: andyhyatt@fmbgov.com

d. In the event that different representatives or addresses are designated by either party after execution of this Agreement, notice of the name, title and address of the new representative will be provided to the other party.

(2) TERMS AND CONDITIONS

This Agreement contains all the terms and conditions agreed upon by the parties.

(3) EXECUTION

This Agreement may be executed in any number of counterparts, any one of which may be taken as an original.

(4) MODIFICATION

Either party may request modification of the provisions of this Agreement. Changes which are agreed upon shall be valid only when in writing, signed by each of the parties, and attached to the original of this Agreement.

(5) PERIOD OF AGREEMENT

This Agreement shall begin upon execution by both parties and shall end upon the receipt of grant funds unless terminated earlier in accordance with the provisions of Paragraph (16) TERMINATION.

(6) FUNDING

a. This is a one-time grant Agreement, subject to the availability of legislatively appropriated funds.

b. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with either chapter 216, Florida Statutes, or the Florida Constitution.

(7) RECORDS

a. The Recipient shall maintain all records related to this Agreement for the period of time specified in the appropriate retention schedule published by the Florida Department of State. Information regarding retention schedules can be obtained at: <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/>.

b. The Recipient shall maintain all records for the Recipient and for all subcontractors or consultants to be paid from funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of the Budget and Scope of Work - Attachment A - and all other applicable laws and regulations.

IF THE RECIPIENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE RECIPIENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT,

CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: (850) 815-4156, Records@em.myflorida.com, or 2555 Shumard Oak Boulevard, Tallahassee, FL 32399.

(8) LIABILITY

For purposes of this Agreement, Recipient agrees that it is not an employee or agent of the Division but is an independent contractor.

b. Any Recipient which is a state agency or subdivision, as defined in section 768.28, Florida Statutes, agrees to be fully responsible for its negligent or tortious acts or omissions which result in claims or suits against the Division, and agrees to be liable for any damages proximately caused by the acts or omissions to the extent set forth in section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity applies. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter arising out of this agreement.

(9) REMEDIES

If either party is dissatisfied with the performance of this Agreement, they must first contact the other party using the contract information provided in paragraph 1. After having made a good faith effort to remedy the issue, the parties shall be entitled to exercise any right or remedy available to it either at law or in equity, subject to the choice of law and venue agreed herein.

If an Event of Default occurs, then the Division shall, after thirty (30) calendar days written notice to the Recipient and upon the Recipient's failure to cure within those thirty (30) days, exercise any one or more of the following remedies, either concurrently or consecutively:

a. Terminate this Agreement, provided that the Recipient is given at least thirty (30) days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address in paragraph (2) CONTACT herein;

b. Begin an appropriate legal or equitable action to enforce performance of this Agreement;

c. Withhold or suspend payment of all or any part of a request for payment;

d. Require that the Recipient refund to the Division any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.

e. Exercise any corrective or remedial actions, to include but not be limited to:

i. request additional information from the Recipient to determine the reasons for or the extent of non-compliance or lack of performance,

ii. issue a written warning to advise that more serious measures may be taken if the situation is not corrected,

iii. advise the Recipient to suspend, discontinue or refrain from incurring costs for any activities in question or

iv. require the Recipient to reimburse the Division for the amount of costs incurred for any items determined to be ineligible;

f. Exercise any other rights or remedies which may be available under law.

Pursuing any of the above remedies will not stop the Division from pursuing any other remedies in this Agreement or provided at law or in equity. If the Division waives any right or remedy in this Agreement or fails to insist on strict performance by the Recipient, it will not affect, extend or waive any other right or remedy of the Division, or affect the later exercise of the same right or remedy by the Division for any other default by the Recipient.

(10) TERMINATION.

a. The Division may terminate this Agreement for cause after thirty (30) days written notice. Cause can include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations, failure to perform on time, and refusal by the Recipient to permit public access to any document, paper, letter, or other material subject to disclosure under chapter 119, Florida Statutes., as amended.

b. The Division may terminate this Agreement for convenience or when it determines, in its sole discretion, that continuing the Agreement would not produce beneficial results in line with the further expenditure of funds, by providing the Recipient with thirty (30) calendar days prior written notice.

c. The parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of this Agreement.

d. In the event this Agreement is terminated, the Recipient will not incur new obligations for the terminated portion of this Agreement after the Recipient has received the notification of termination. The Recipient will cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. The Recipient shall not be relieved of liability to the Division because of any breach of this Agreement by the Recipient. The Division may, to the extent authorized by law, withhold payments to the Recipient for the purpose of set-off until the exact amount of damages due the Division from the Recipient is determined.

(11) ATTACHMENTS

a. All attachments to this Agreement are incorporated as if set out fully.

b. In the event of any inconsistencies or conflict between the language of this Agreement and the attachments, the language of the attachments shall control, but only to the extent of the conflict or inconsistency.

c. This Agreement has the following attachments:

Exhibit 1 - Funding Sources

Attachment A – Proposed Budget and Scope of Work

Attachment B – Appropriation Project Request

(12) PAYMENTS

a. If the necessary funds are not available to fund this Agreement as a result of action by the United States Congress, the federal Office of Management and Budgeting, or the State Chief Financial Officer, all obligations on the part of the Division to make any payment of funds shall terminate, and the Recipient shall submit its closeout report within thirty (30) days.

(13) REPAYMENTS

All refunds, repayments, or interest due to the Division under this Agreement are to be made payable to the order of "Division of Emergency Management," and mailed directly to the following address:

Division of Emergency Management
Cashier
2555 Shumard Oak Boulevard
Tallahassee FL 32399-2100

In accordance with section 215.34(2), Florida Statutes, if a check or other draft is returned to the Division for collection, Recipient shall pay the Division a service fee of \$15.00 or 5% of the face amount of the returned check or draft, whichever is greater.

(14) MANDATED CONDITIONS

a. This Agreement shall be construed under the laws of the State of Florida, and venue for any actions arising out of this Agreement shall be in the Circuit Court of Leon County. If any provision of this Agreement is in conflict with any applicable statute or rule, or is unenforceable, then the provision shall be null and void to the extent of the conflict, and shall be severable, but shall not invalidate any other provision of this Agreement.

b. Any power of approval or disapproval granted to the Division under the terms of this Agreement shall survive the term of this Agreement.

c. The State of Florida's performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Legislature, and subject to any modification in accordance with Chapter 216, Florida Statutes, or the Florida Constitution.

n. The Recipient is subject to Florida's Government in the Sunshine Law (Section 286.011, Florida Statutes) with respect to the meetings of the Recipient's governing board or the meetings of any subcommittee making recommendations to the governing board. All of these meetings shall be publicly noticed, open to the public, and the minutes of all the meetings shall be public records, available to the public in accordance with chapter 119, Florida Statutes.

(15) LOBBYING PROHIBITION

a. Section 216.347, Florida Statutes, prohibits “any disbursement of grants and aids appropriations pursuant to a contract or grant to any person or organization unless the terms of the grant or contract prohibit the expenditure of funds for the purpose of lobbying the Legislature, the judicial branch, or a state agency.”

b. No funds or other resources received from the Division under this Agreement may be used directly or indirectly to influence legislation or any other official action by the Florida Legislature or any state agency.

(16) LEGAL AUTHORIZATION.

The Recipient certifies that it has the legal authority to receive the funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Recipient also certifies that the undersigned person has the authority to legally execute and bind Recipient to the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

RECIPIENT:

By:  _____
Andrew Hyatt (Dec 18, 2024 15:07 EST)

Name and Title: Andrew Hyatt, Town Manager

Date: December 18, 2024

FID# 65-0632342

**STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT**

By: _____

Name and Title: Kevin **Guthrie, Director, or Authorized Representative.**

Date: _____

EXHIBIT - 1

STATE RESOURCES AWARDED TO THE RECIPIENT PURSUANT TO THIS AGREEMENT CONSIST OF THE FOLLOWING:

Notice and Disclaimer

This grant is authorized by section 6, line 2699, chapter 2024-231, Laws of Florida, and governed by section 252.373, Florida Statutes (2024). This grant is not subject to section 120.57(3), Florida Statutes, nor is it a purchase of services or commodities as governed by chapter 287, Florida Statutes.

CONTRACTED LEGAL SERVICES		
FROM ADMINISTRATIVE TRUST FUND . . .		500,000
2699 SPECIAL CATEGORIES		
GRANTS AND AIDS - EMERGENCY MANAGEMENT PROGRAMS		
FROM GENERAL REVENUE FUND	19,281,235	
FROM EMERGENCY MANAGEMENT PREPAREDNESS AND ASSISTANCE TRUST FUND		7,481,265
From the funds in Specific Appropriation 2699, \$19,281,235 of nonrecurring funds from the General Revenue Fund shall be allocated as follows:		
First Responders to Disasters - Global Empowerment Mission (HF 2850) (SF 1973)		500,000
Florida Severe Weather Mesonet (HF 1733) (SF 3031).....		738,000
Fort Myers Beach - Revenue Loss (HF 3094) (SF 3067).....		7,547,805
Hurricane Preparedness and Resilience - Jefferson County (HF 1629) (SF 3707).....		325,430
Sanibel - Operating Revenue Recovery Hurricane Ian (HF 3162) (SF 3551).....		9,920,000
Village of Key Biscayne - Emergency Management Planning, Training and Exercise (HF 1645) (SF 1611)		250,000

ATTACHMENT A

Proposed Budget and Scope of Work

I. PROPOSED BUDGET

Category	Anticipated Expenditure Amount
Loss of Revenue	\$7,547,805.00
Total Expenditures	\$7,547,805.00

II. BACKGROUND

This grant is authorized by section 6, line 2699, chapter 2024-231, Laws of Florida, and governed by section 252.373, Florida Statutes (2024) for the mitigation of revenue losses and operating deficits.

Loss of Revenue

The Town of Fort Myers Beach experienced a loss of revenue due to major Hurricane Ian and is awarded a one-time payment of \$7,547,805.00

III. SCOPE OF WORK

Funds have been allocated to the Recipient for loss of revenue due to major Hurricane Ian. Funds shall be utilized in accordance with local, state and federal procurement regulations, if applicable. Funds may be used for Recipient employee compensation and benefits only if deficiencies in Recipient employee compensation and benefits were due to a loss of revenue caused by Hurricanes Ian.

IV. FINANCIAL CONSEQUENCES

If Recipient fails to comply with any term of the grant, the Division shall take one or more of the following actions, as appropriate in the circumstances:

1. Temporarily withhold cash payments pending correction of the deficiency by the recipient;
2. Disallow all or part of the cost of the activity or action not in compliance;
3. Withhold further funding; or,
4. Take other remedies that may be legally available.

Attachment B
Appropriation Project Request
Fort Myers Beach – Revenue Loss