

## **RESOLUTION NUMBER 25-93**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA, APPROVING AN AGREEMENT FOR DEMOLITION SERVICES WITH HONC DESTRUCTION, BASED ON PRICING COMPETITIVELY PROCURED BY THE CITY OF BONITA SPRINGS, 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 Bonita Springs and Honc Destruction (“Contractor”) entered into a contract for demolition services on or about February 3, 2025 (hereinafter the “Contract”); and

**WHEREAS**, pursuant to the Contract, the Contractor has agreed to provide the City of Bonita Springs 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 Bonita Springs RFB-24-16 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 Bonita Springs; 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 Bonita Springs, 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 7<sup>th</sup> day of April 2025, by the Town Council of the Town of Fort Myers Beach, Florida.

**FORT MYERS BEACH TOWN COUNCIL**

*Dan Allers*

Dan Allers (Apr 16, 2025 12:47 EDT)

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Dan Allers, Mayor

**ATTEST:**

*Amy Baker*

Amy Baker (Apr 22, 2025 09:14 EDT)

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Amy Baker, Town Clerk

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

*Nancy Stuparich*

Nancy Stuparich (Apr 15, 2025 18:22 EDT)

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Vose Law Firm, Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 16<sup>th</sup> day of April 2025.

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

**THIS AGREEMENT** is made and entered into this 7th day of April, 2025, by and between the Town of Fort Myers Beach, Florida (the “Town”), a Florida municipal corporation whose principal place of business is 2731 Oak Street, Ft. Myers Beach, FL 33391 and Honc Destruction, a Florida corporation authorized to do business in the State of Florida, (“Contractor”) whose principal place of business is 4630 Elevation Way, Fort Myers, FL 33905 (“Agreement”). The Town and the Contractor may also be referred to collectively as the “Parties.”

**WHEREAS**, the City of Bonita Springs, Florida competitively procured a contract for demolition services (“RFB24-16 or RFP”) and thereafter awarded and executed the Agreement for Demolition Services to the City of Bonita Springs (“Agreement”) to Contractor on February 3, 2025; and

**WHEREAS**, the Agreement has a term of 5 years with optional renewals; and

**WHEREAS**, the Town is in immediate need of general demolition services and 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 BONITA SPRINGS.** 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**  
[andy@fmbgov.com](mailto:andy@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.

Contractor agrees that, to the extent that it may "act on behalf" of the Town 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**  
**2731 OAK STREET**  
**FORT MYERS BEACH, FL. 33931**  
**(239)765-0202**  
**[FMBPUBLICRECORDS@FMBGOV.COM](mailto:FMBPUBLICRECORDS@FMBGOV.COM)**

- g. **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.
- h. **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.
- i. **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.
- j. **E-Verify Compliance.** 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

register with and use 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 the Town as a result of the termination of this Agreement in accordance with this paragraph. Contractor affirmatively states, under penalty of perjury, that in accordance with Section 448.095, Florida Statutes, 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, Florida Statutes.

- k. **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.

1. **Disclosure Requirements for “Foreign Countries of Concern.”** Contractor shall comply with the disclosure requirements set forth in Section 286.101(3)(a), Florida Statutes, which requires “Any entity that applies to a state agency or political subdivision for a grant or proposes having a contract value of \$100,000 or more shall disclose to the state agency or political subdivision any current or prior interest of, any contract with, or any grant or gift received from a “foreign country of concern” if such interest, contract, grant or gift received from a “foreign country of concern” if such interest, contract, grant or gift has a value of \$50,000 or more and such interest existed at any time or such contract, grant or gift was received or in force at any time during the previous five (5) years. Such disclosure shall contain the name and mailing address of the disclosing entity, the amount of the gift or the value of the interest disclosed, the applicable “foreign country of concern” and, if applicable the date of termination of the contract or interest, the date of receipt of the grant or gift and the name of the agent or controlled entity that is the source or interest holder. Within one (1) year before applying for any grant or proposing any contract, such entity must provide a copy of such disclosure to the Department of Financial Services”. Pursuant to section 268.101(7), Florida Statutes: “In addition to any fine assessed under [section 286.101(7)(a), Florida Statutes], a final order determining a third or subsequent violation by an entity other than a state agency or political subdivision shall automatically disqualify the entity from eligibility for any grant or contract funded by a state agency or any political subdivision until such ineligibility is lifted by the Administration Commission for good cause.”
- m. **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 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. Both parties waive any right to file an action, suit or proceeding in Federal Court or remove any action, suit or proceeding to Federal Court.
- n. **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’ fees and costs.

- o. **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.
  
- p. **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.
  
- q. **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.
  
- r. **Taxes.** The Town shall not be liable for any taxes and assessments imposed by a federal, state or local governmental agency to the extent that the Town is exempt from same by Florida law, including but not limited to any sales or use tax.
  
- s. **No coercion for labor or services.** The Contractor swears under penalty of perjury that the Contractor does not use coercion for labor or services as defined as follows:

“Coercion” means:

- 1. Using or threatening to use physical force against any person;
- 2. Restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will;
- 3. Using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined;

4. Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person;
  5. Causing or threatening to cause financial harm to any person;
  6. Enticing or luring any person by fraud or deceit; or
  7. Providing a controlled substance as outlined in Schedule I or Schedule II of Sec. 893.03, Fla. Stat. to any person for the purpose of exploitation of that person.
- t. **Force Majeure.** The Town reserves the right to suspend, modify or terminate this contract in the event of an act of god or act of man beyond the control of the parties, including but not limited to a hurricane, tropical storm, tornado, or other destructive weather event, flooding, pandemic, plague, war, armed conflict, domestic or foreign terrorism, riot, labor condition, state or federal governmental action, and catastrophic internet disturbance, making performance inadvisable, economically impracticable, illegal, or impossible

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

**TOWN OF FORT MYERS BEACH:**

**CONTRACTOR:**

*Dan Allers*

Dan Allers (Apr 16, 2025 12:47 EDT)

Dan Allers, Fort Myers Beach Mayor

*David Mulicka*

Print Name: DAVID MULICKA

Print Title: PRESIDENT

**ATTEST:**

*Amy Baker*

Amy Baker (Apr 22, 2025 09:14 EDT)

Amy Baker, Town Clerk

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

*Nancy Stuparich*

Nancy Stuparich (Apr 15, 2025 18:22 EDT)

Vose Law Firm, Town Attorney