

RESOLUTION NUMBER 21-56

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA APPROVING A PIGGYBACK CONTRACT WITH SCOTT COMMERCIAL CONTRACTING, LLC AND APPROPRIATING AND ALLOCATING FUNDING FOR THE DESIGN AND CONSTRUCTION OF NEW SIDEWALKS IN THE INSTITUTIONAL ZONING DISTRICT, PROVIDING FOR SEVERABILITY AND 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 wishes to design and construct new sidewalks to provide for pedestrian connectivity between Fort Myers Elementary School, Bay Oaks Park, and associated playground equipment (“Project”); and

WHEREAS, under the Town Code, the purchase of goods 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, Lee County and Scott Commercial Contracting, LLC (“Scott Contracting”) have entered into a competitively procured contract for concrete flatwork, sidewalks, curbs and gutters, and the Town’s finance director has determined that piggybacking on this contract is financially advantageous to the Town; and

WHEREAS, the Town wants to enter into a piggyback contract with Scott Contracting for the Project.

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

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

Section 2. The piggyback contract between the Town and Scott Construction for the Project attached as Exhibit “A” is approved. The Town Manager is authorized to execute the contract on behalf of the Town and expend appropriated funds.

Section 3. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

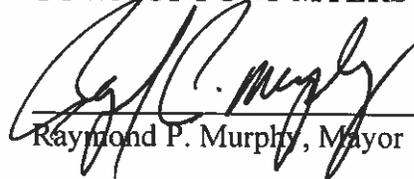
Section 4. This resolution shall take effect immediately upon its adoption.

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

Raymond P. Murphy, Mayor	aye
Rexann Hosafros, Vice Mayor	aye
Dan Allers, Council Member	aye
Jim Atterholt, Council Member	aye
Bill Veach, Council Member	aye

ADOPTED this 18th day of October 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH



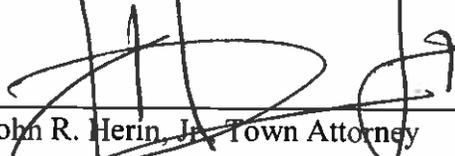
Raymond P. Murphy, Mayor

ATTEST:



Amy Baker, Town Clerk

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



John R. Herin, Jr., Town Attorney

This Resolution was filed in the Office of the Town Clerk on this 21 day of October 2021.

**AGREEMENT TO PIGGYBACK A CONTRACT FOR GOODS AND SERVICES
COMPETITIVELY PROCURED BY ANOTHER GOVERNMENTAL ENTITY**

THIS AGREEMENT is made and entered into this 16 day of October, 2021, by and between the Town of Fort Myers Beach, Florida ("Town"), a Florida municipal corporation whose principal place of business is 2525 Estero Blvd., Ft. Myers Beach, FL 33391 and Scott Commercial Contracting, LLC, a Florida corporation, ("Contractor") whose principal place of business is 4028 Edison Ave., Fort Myers, FL 33916 ("Contract"). Town and Contractor may also be referred collectively as the "Parties."

WHEREAS, Contractor and Lee County, Florida entered into a competitively procured contract known as Contract B190074JJB - Concrete Flat Work, Sidewalks, Curbs, Gutters, and other Related Items, as amended ("County Contract"); and

WHEREAS, Town needs construction services for new sidewalks to provide for pedestrian connectivity between Fort Myers Elementary School and Bay Oaks Park ("Project"); and

WHEREAS, the Town desires to have Contractor construct the Project; and

WHEREAS, under the Town Code, the purchase of goods and 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, Contractor is willing to construct the Project, subject to the terms and conditions of the County Contract, with the specific modifications set forth herein; and

WHEREAS, the Town's finance department director has determined that piggybacking on the County Contract is financially advantageous to the Town.

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

1. **Incorporation of County Contract.** This Contract incorporates by reference, the Lee County Contract, which is attached as Exhibit A.
2. **Scope of Service.** During the Term of this Contract, Contractor will construct the Project.
3. **Pricing.** The Town will pay Contractor a sum not to exceed \$ 27,758.00 for the Project. This sum will be Contractor's sole compensation for the goods and services provided by Contractor under this Contract.
4. **Contract Term.** The Term of this Contract begins on the date set forth above and ends one hundred eighty (180) days thereafter. The Town has the option to renew this Contract up

to two (2) ninety (90) day periods with written notice to the Contractor at least thirty (30) days before the Contract expires.

5. Designated Representative. The Town's Public Works Director, or designee, shall be the Town's Designated Representative in matters arising under Contract.

Ms. Chelsea O'Riley, Public Works Director
Town of Fort Myers Beach
2525 Estero Boulevard
Fort Myers Beach, FL 33931
(Chelsea@fmbgov.com)

6. Modifications to County Contract. Notwithstanding the incorporation of the County Contract into this Contract as referenced, the Parties hereby agree to certain modifications to the County Contract, as follows:
- a. All references in the County Contract to terms such as "County" or "City" will be deemed to refer to the Town. In addition, all references within the County Contract 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 Contract, will be deemed to refer to the equivalent Town officers/departments/divisions, and Town locations, as hereafter designated by the Town's Designated Representative.
 - b. Town's performance and obligation to pay under the Contract 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 Contract, 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 Contract.
 - d. This section serves as notice to the Contractor regarding the requirements of §448.095, Fla. Stat., specifically sub-paragraph (2)(c)1, and the Town's obligation to terminate the Contract 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 Contract, in accordance with the requirements of §§287.135 and 215.473, Fla. Stat., Contractor certifies that Contractor is not participating in a boycott of Israel. Contractor further certifies that 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 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 Contract. The Town shall provide notice, in writing, to Contractor of the Town's determination concerning the false certification. 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 Contract term, 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 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 contract 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. Contractor shall keep and maintain public records required by the Town to perform the services required under this Contract. Upon request from Town's custodian of public records, Contractor shall provide 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. 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 Contract's term and following completion of the Contract if Contractor does not transfer the public records to Town. Upon completion of the Contract, Contractor may transfer, at no cost, to Town all public records in possession of Contractor or keep and maintain public records required by Town to perform the services required under the Contract. If Contractor transfers all public records to Town upon completion of the Contract, Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of the Contract, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Town, upon request from Town's custodian of public records, in a format that is compatible with Town's information technology systems.

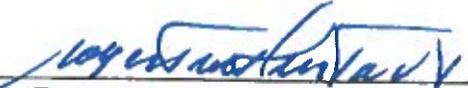
IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (239) 765-0202, FMBPUBLICRECORDS@FMBGOV.COM, 2525 ESTERO BOULEVARD, FORT MYERS BEACH, FLORIDA 33931.

[SIGNATURES ON FOLLOWING PAGE]

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

TOWN OF FORT MYERS BEACH CO

CONTRACTOR



Roger T. Hernstadt, Town Manager



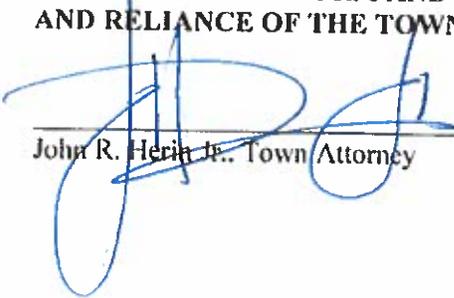
By: John Scott
Its: CFO

ATTEST:



Amy Baker, Town Clerk

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



John R. Herin Jr., Town Attorney