

**1. Discussion Objective:**

**Work Session Date: March 18, 2013**

Determine and provide direction to staff as to provisions to be included in the Upland Services Contract for the mooring field.

**2. Submitter of Information:**

- Council
- Town Staff – Public Works
- Town Attorney

**3. Estimated Time for this item:**

10 minutes

**5. Background:**

Town Council expressed a desire for staff to bring forward certain information associated with the Upland Services Contract prior to the Request for Proposals being advertised.

Attached for reference is a financial report from FY 12 and YTD FY 13 and the current Service Provider Agreement between the Town and Matanzas Inn.

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
			<i>Chris</i>			

**The Town of Fort Myers Beach  
Mooring Field Revenue/Expenses  
FY12 and FY13**

Account	Description	FY2012 Budget	YTD FY2012	FY2013 Budget	YTD FY2013 February 28, 2013
01.000.337.3910	WCIND Grant - Law Enforcement	54,120	31,815.00	54,120	-
01.000.337.3915	WCIND Grant-Mooring Field Maintenance	18,400	9,397.31	18,400	-
01.000.344.3503	Harborage User Fees	90,000	76,107.05	83,500	51,251.66
01.000.344.3504	Pump Out Services	500	1,095.00	500	435.00
	Total Revenue	163,020	118,414.36	156,520	51,686.66
01.190.543.5120	Mooring Field Salaries	31,200	30,412.50	31,824	12,886.43
01.190.543.5140	Overtime	-	601.89	-	304.10
01.190.543.5210	FICA Taxes	2,387	2,220.01	2,434	944.52
01.190.543.5220	Retirement	3,120	3,102.06	3,182	942.26
01.190.543.5238	Disability	10,952	8,821.00	8,839	3,086.63
01.190.543.5346	Maintenance	13,730	8,691.48	16,730	1,216.78
01.190.543.5410	Communications	450	345.48	450	93.13
01.190.543.5542	MLE Enforcement (Wages & Other)	47,500	55,060.00	50,000	11,100.00
01.190.543.5543	MLE Enforcement (fuel)	11,600	12,400.00	13,000	4,660.00
01.190.543.5545	Operations and Maintenance	65,000	60,574.66	65,000	15,412.96
01.190.543.5564	Capital - Boat Replacement/Equipment	13,000	16,982.45	16,000	19,612.00
01.190.543.5849	Sales Tax	3,900	3,561.02	3,900	2,355.02
	Total Expenses	202,839	202,772.55	211,359	72,613.83
	Revenues Over (Under) Expenses	(39,819)	(84,358.19)	(54,839)	(20,927.17)

SERVICE PROVIDER AGREEMENT

This SERVICE PROVIDER AGREEMENT is entered into on this 22<sup>nd</sup> day of May, 2007, by and between the Town of Fort Myers Beach, 2523 Estero Boulevard, Fort Myers Beach, FL 33931, a municipal corporation of the State of Florida (hereafter "Town"), and Estero Bay Hotel Company, d/b/a Matanzas Inn with an address of 416 Crescent Street, Fort Myers Beach, FL 33931, (hereafter "Provider"), for the Provider to render services on an independent contractor basis to the Town, as follows: Operational management and upland services to be provided for the Town of Fort Myers Beach Municipal Anchorage.

1. Scope of Services. Provider shall perform the services and work as set forth in "Scope of Services" which is attached hereto as Exhibit "A" and made a part of this Agreement. Provider warrants and represents that it is qualified, willing and able to provide and perform all such services in accordance with the terms of this Agreement. The parties shall have the ability to change the Scope of Services by mutual written agreement, except that the Town shall have the unilateral right to delete hereunder for any reason without compensation to Provider other than for services already performed.
2. Term. The term of this Agreement is set forth on Exhibit A.
3. Payment Obligation. The Town shall pay for all requested and authorized services rendered hereunder by the Provider and completed in accordance with this Agreement, as set forth in Exhibit "B," which is attached hereto and made a part of this Agreement. The Provider's invoice statements shall contain a breakdown of charges, description of service(s) and work provided and/or performed, and, where appropriate, supportive documentation of charges consistent with the basis of compensation set forth in this Agreement. In the event of a dispute as to the Town's payment obligation, the Town shall pay the undisputed amount, if any, within thirty (30) days.
4. Provider's Obligations. The Provider's obligations shall include, but are not limited to, the following:
  - a) Licensure. The Provider shall maintain all licenses and/or certifications required by any governmental agencies responsible for regulating and licensing the services provided and performed by the Provider.
  - b) Provision of Services. The Provider shall perform all services pursuant to this Agreement in accordance with generally accepted standards of professional practice and in accordance with the laws, statutes, ordinances, codes, rules, regulations and requirements of governmental agencies which regulate or have jurisdiction over the services to be provided and/or performed by the Provider. All personnel assigned by Provider hereunder will be qualified to perform such duties. Provider shall designate one (1) person as the point of contact for the Town regarding its duties hereunder. Provider is solely responsible for all taxes incurred by Provider and shall make all deductions required of employers by state, federal and local laws.
  - c) Local, State and Federal Taxes. The Provider shall be responsible for any and all local, state and/or federal tax requirements.
  - d) Non-Waiver. Neither review, approval, nor acceptance by Town of data, studies, reports, memoranda, and incidental professional services, work and materials furnished

hereunder by the Provider, shall in any way relieve Provider of responsibility for the adequacy, completeness and accuracy of its services, work and materials.

e) Indemnity and Hold Harmless. The Provider shall be liable and agrees to be liable for, and shall indemnify, defend and hold the Town harmless for any and all claims, suits, judgments or damages, losses and expenses including court costs, expert witness and professional consultation services, and attorneys' fees (including but not limited to appellate attorney fees) arising out of the Provider's errors, omissions, willful action(s) and/or negligence. The Provider shall not be liable to, nor be required to indemnify the Town for any portions of damages arising out of any error, omission, and/or negligence of the Town, its employees, agents, or representatives.

f) Non-Public Information. The Provider agrees, during the term of this Agreement, not to divulge, furnish or make available to any third person, firm, or organization, without the Town's prior written consent, or unless incident to the proper performance of Provider's obligations hereunder, or as provided for or required by law, any non-public information concerning the services to be rendered by Provider. Provider shall require all of its employees and subcontractor(s) to comply with the provisions of this paragraph.

g) Statutory Duties. The duties and obligations imposed upon the Provider by this Agreement and the rights and remedies available to the Town hereunder shall be in addition to, and not a limitation of, any otherwise imposed or available by law or statute.

h) Disclosure. The Provider warrants it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift or other compensation contingent upon or resulting from the award or making of this Agreement.

5. Commencement and Completion of Work. The Town shall provide written notice to the Provider that it is authorized to commence work. The Provider thereafter shall commence work promptly and shall carry on all such services and work as may be required in a timely and diligent manner to completion. Should the Provider fail to commence, provide, perform, and/or complete any of the services and work required hereunder in a timely and diligent manner, the Town may consider such failure as justifiable cause to terminate this Agreement, in addition to any other remedies the Town may have.
6. Criminal Background Investigations. The Provider shall be required to obtain and maintain criminal background investigations of all persons that will be employed, contracted or assigned by the Provider that will have involvement with the management or operation of the Anchorage.
7. Insurance. The Provider shall have, and maintain, during the entire period of this Agreement, all such insurance (or self-insurance) as set forth on Exhibit "A". Each Certificate of Insurance shall include the name and type of policy and coverage provided; the amount or limit applicable to each coverage provided and the deductible amount, if any; the date of expiration of coverage; the designation of the Town of Fort Myers Beach as additional insured and as certificate holder, with specific reference to this Agreement and the Project to which it pertains, except as to Professional Liability Insurance and for Workers' Compensation Insurance. The certificate shall also include the following statement:

Should any of these policies be cancelled before the expiration date thereof, the issuing company will endeavor to mail thirty (30) days written notice to the Town. The Provider shall be required to give written notice to the Town regarding any cancellation or expiration of any insurance required hereunder at least thirty (30) days prior to such event and shall furnish to the Town a renewal or replacement certificate no later than fifteen (15) days prior to the date of expiration. Failure to do so shall be a material breach of this agreement.

If any of the insurance coverage(s) required by this Agreement shall reach the date of expiration indicated on the approved Certificate(s) of Insurance without the Town having received satisfactory evidence of renewal or replacement, the Provider shall automatically and without further notice stop performing all previously authorized services and work. During any time period that the Provider's services or work is suspended for failure to comply with the insurance requirements set forth in the Agreement, the Provider shall not be entitled to any additional compensation or time to provide and perform the required services or work and the Town shall not be required to make payment on any invoices submitted by the Provider. Upon receipt and approval of renewal or replacement Certificates of Insurance, payment for any such invoices shall be made promptly by the Town.

8. Inclusion of Additional Documents. Any request for bids and/or request for proposal and all exhibits or other attachments thereto as issued by the Town are hereby incorporated by reference. In addition, the following Exhibits are attached hereto and hereby incorporated by reference: Exhibit "C" – Proposal. In the event of any conflict between any term or condition in any document, the following document(s) shall control, in this order: this Contract; Its Exhibits; the Request for Proposal; and the Proposal.
9. Termination of Agreement. Either party may terminate this Agreement without cause upon sixty (60) calendar days' prior written notice to the other, in which case the Town shall compensate the Provider for all services performed prior to the effective date of termination and reimbursable expenses then due. In addition, the Town shall have the ability to terminate this Agreement at any time for cause.
10. Assignment, Transfer and Subcontracts. The Provider shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfers that result from the merger or consolidation of Provider with a third party. The Provider shall have the right, subject to the Town's prior written approval, to employ other persons and/or firms to serve as subcontractors to Provider in connection with its performance of services and work pursuant to this Agreement.
11. Maintenance of Records. The Provider will keep and maintain adequate records and supporting documentation applicable to all of the services, work, information, expense, costs, invoices and materials provided and performed pursuant to this Agreement. Said records and documentation will be retained by the Provider for a minimum of two (2) years from the date of termination of this Agreement, or for such period as required by law. The Town and its authorized agents shall, with reasonable prior notice, have the right to audit, inspect and copy all such records and documentation as often as the Town deems necessary during this Agreement and the next succeeding two (2) years.
12. References to Town. All references to "the Town" or "the Town of Fort Myers Beach" shall be deemed to include its employees, agents, and/or authorized representatives.

13. Modification. Except as set forth in Paragraph 1 above, modifications to this Agreement shall only be valid when made in writing and signed by both parties. In the event of any conflict between the requirements, provisions, and/or terms of this Agreement and any subsequent written modification hereto, the most recently executed document shall take precedence.

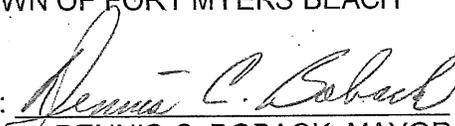
14. Miscellaneous Provisions.

- a) Applicable Law. This Agreement shall be governed by the laws, rules and regulations of the State of Florida.
- b) Non-Discrimination. The Provider covenants that in the furnishing of services hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination.
- c) Headings. The headings of the Articles, Sections, Exhibits, and Attachments in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions contained in such Articles, Section, Exhibits and Attachments.
- d) Entire Agreement. This Agreement, including any Exhibits, constitutes the entire Agreement between the parties and shall supersede all prior agreements or understandings, written or oral, relating to the matters set forth herein.
- e) Notices. All notices hereunder shall be in writing and shall be sent via U.S. Postal Service, first class mail, to the other party's address as listed at the beginning of this Agreement. Either party may change its address by prior written notice to the other party.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as set forth below.

TOWN OF FORT MYERS BEACH

ATTEST:

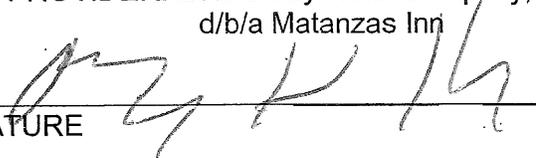
BY:   
DENNIS C. BOBACK, MAYOR

BY:   
Michelle D. Mayher, TOWN CLERK

APPROVED AS TO LEGAL FORM:

BY:   
ANNE DALTON, ESQUIRE,  
TOWN ATTORNEY

PROVIDER: Estero Bay Hotel Company,  
d/b/a Matanzas Inn

BY:   
SIGNATURE

PRINTED NAME: DOUGLAS SPELMAN-SMITH

TITLE: President

EXHIBIT "A"

TO THE SERVICE PROVIDER CONTRACT DATED May 22, 2007 BETWEEN THE TOWN AND Estero Bay Hotel Company, d/b/a Matanzas Inn, PROVIDER.

1. SCOPE OF SERVICES: The Provider shall perform the following services under this Agreement:

- 1 Responsible for the enforcement of the rules and regulations of the Matanzas Harbor Management Plan and all applicable DEP and COE Authorizations/ Sovereign Submerged Land Lease/ Permits.
- 2 Provider must have an office conveniently located near the Anchorage, within the incorporated limits of Fort Myers Beach.
- 3 Provider must have adequate upland services such as: dinghy docks, trash disposal, showers, laundry, and bathrooms at the location and shall be in compliance with all federal, state, and local law pertaining to such use.
- 4 Assist and consult with Town staff to transfer cash, checks, and credit card reports, financial and mooring field reports, and all other requested or required items. Assist and consult with any issues, concerns, or requests that can benefit the efficiency of the Anchorage.
- 5 Communicate with patrons, register and make sure all vessels using the Town's mooring are in good operational condition and meet the requirements of the rental agreement, and assign moorings. Schedule pump-out services with Town staff upon requests of occupants.
- 6 Provide and/or purchase office and computer equipment as required to perform the day to day operations of the Anchorage.
- 7 Must possess a fully functional VHF Channel Radio and be proficient on procedures to communicate with vessels. Channel 16 shall be available during normal business hours. Upon making contact the caller will be directed to channel 17 for further communication. In addition, telephone communication shall be available during normal business hours.
- 8 Collect and refund cash and credit card transactions upon registration or departure. Credit card authorization slips can be executed for vessel occupants who request this service. The Town will furnish the credit card machine.
- 9 Comply with all training and equipment requirements set forth in the Submerged Land Lease.
- 10 Meet regularly with the local Fish and Wildlife Conservation Commission, the U.S. Coast Guard, and the Town's emergency and law enforcement staff to participate in emergency and law enforcement issues involving the Anchorage.
- 11 Coordinates the Hurricane Preparation and Recovery Plan with the Town to ensure Plan is updated as needed and put into action when necessary.
- 12 Provide adequate dock space for the Town pump-out boat.
- 13 Additional duties and responsibilities as may be assigned by the Town from time to time.
- 14 The list of services required is representative of the tasks to be performed with this contract. The omission of an essential or inessential function does not preclude the Town's assigning duties not listed herein if such functions are a logical assignment to the position.

2. **TERM:** This Agreement shall commence on May 22, 2007 and continue for a period of 36 months, subject to the Town's ability to terminate the Agreement as set forth elsewhere. After

thirty-six (36) months there shall be an option of extending the agreement for three (3), one (1) year extensions or one (1), three (3) year extension at the Town's sole discretion.

3. **INSURANCE:** The Provider shall obtain and maintain the following insurance coverage and provide the Town with a Certificate of Insurance as required in Section 7 of this Agreement:

Workers Compensation Coverage for all employees to comply with Statutory Limits in compliance with the applicable State and Federal laws;

Commercial General Liability Insurance with minimum limits of \$3,000,000 each occurrence combined single limit or \$3,000,000 each occurrence/\$3,000,000 general aggregate

Business Automobile Liability Insurance with minimum limits of \$3,000,000 each occurrence Combined Single Limit or \$3,000,000 each occurrence/\$3,000,000 general aggregate.

Crime Coverage with minimum limits of \$1,000,000

EXHIBIT "B"

TO THE SERVICE PROVIDER CONTRACT DATED May 22, 2007 BETWEEN THE TOWN AND Estero Bay Hotel Company, d/b/a Matanzas Inn, PROVIDER.

PAYMENT OBLIGATION

1. The Town shall pay the Provider as follows: The Town will make a payment to Estero Bay Hotel Company, d/b/a Matanzas Inn, in the amount of 70% of the previous month's net revenue. Payment will be made by the Town on a monthly basis and shall be paid by the 15<sup>th</sup> of each month.

2. Provider shall receive reimbursement for out-of-pocket expenses from the Town as follows: Out-of-pocket expenses shall be mutually agreed upon by the Town and Provider in writing in advance.

EXHIBIT "C"

PROPOSAL

Estero Bay Hotel Company  
DBA Matanzas Inn  
416 Crescent Street  
Fort Myers Beach, Fla. 33931  
239-765-8866

May 1, 2007

Town of Fort Myers Beach  
Attention: Mr. Chad Spitznagle  
2523 Estero Blvd.  
Fort Myers Beach, Florida 33931

RE: RFP No. PW-07-02

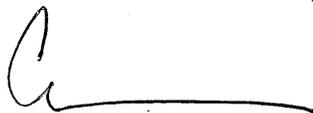
Dear Mr. Spitznagle and Town Staff,

We are pleased to include the attached proposal for Mooring Field Services. We would be pleased to provide any additional information the town may find useful.

Sincerely,

A handwritten signature in black ink, appearing to read 'DS/LS', written over a horizontal line.

Douglas Speirn-Smith  
President, Estero Bay Hotel Company

A handwritten signature in black ink, appearing to read 'CA', written over a horizontal line.

Chris Arnberg  
General Manager, Matanzas Inn

Re: Proposal For Town of Fort Myers Beach Mooring Field. 4/30/2007

**Submitted by:**

Estero Bay Hotel Company: DBA Matanzas Inn  
416 Crescent Street  
Fort Myers Beach, Florida 33931  
239-463-9258  
239-765-9258 (Fax)  
Attention: Chris Arnberg  
Chris@Matanzasinn.com  
Douglasss@comast.net

**Summary of Proposal**

The Matanzas Inn is interesting in continuing our Mooring Field Services to the Town and Mooring Field users under the terms and conditions outlined by the town in the RFP proposal PW-07-02 and as outlined within.

**Experience:**

We have operated and provided the Mooring Field Upland services since early November 2006. Without significant planning, we successfully established a smooth transition from the previous provider and without a loss of continuity to the Mooring Field customers and the Town. Prior to this new role, we have been operating the Matanzas Inn as owner/operators since 1984 with a broad range of resort services including Dockage within our waterfront facilities. Business references are included and we have no cancelled contracts for our services. Resort services is what we do everyday.

**Organizational Background:**

The Matanzas Inn Motel and Restaurant have been owned and operated since 1984 by Estero Bay Hotel Company. We have taken the rather modest and often marginally maintained facility through a number of improvements and changes to where today, the resort is well known to the entire Beach community and the Southwest Florida area. Our principals and employees are affiliated to the nearby Dockside Inn and the Beach Pierside Grill. The Matanzas Inn itself has several more redevelopment projects in place that will continue the recent history of facility improvements but will not affect our ability to provide mooring field services.

As a relatively small business, we ask our staff to focus on customer service and reliability to each other, our efforts and the community. Our goals include maintaining a positive image and we are supportive to community-wide efforts for the Beach area. We have a loyal relatively stable staff and our management team, both at the daily supervisory level and our key principals is experienced and available as required to provide the necessary leadership for this type of service.

Typical of a labor-intensive Southwest Florida resort business, we have a continuous need for employees and frequently reach out to hire minorities and qualified disadvantage persons. We remain committed to all employer available options for good employees.

We have a strong financial background and our CPA, Jeff Ledward of Fort Myers is available upon request at 239-489-1011 for details and a bank reference at Colonial Bank is Josh Harkness in Commercial Lending 239-938-3827. Businesses references include Bill Whitaker and John Richard.

**Amenities.**

Our on-site facilities include dockage, dingy dockage, laundry, bathrooms and showers and vending areas. We also provide trash services and have daily a resort front-desk operation from 7:30 am until 11 P.M. On an ancillary basis, we provide full customer service and the numerous kinds of information and support any visitor to our island may require.

On an interim basis due to the lack of facility planning time, we have shared facilities between Mooring Field users and our normal Resort customers. Given the fact that all resort business on the beach is seasonal and in effect, the Mooring Field is up to 70 additional daily customers, it is easy to under estimate

The daily services this requires during the business winter season. With a more permanent contract structure, we would like to suggest the following types of programs:

1. We will remodel a second bathroom with showers directly adjacent to our existing boaters bath.
2. We would establish a separate laundry area in the same area as these boaters' baths. This area could also include vending and ice machines for mooring field use if warranted.
3. We will review the need to expand our existing motel office and staff to provide daily support on a seasonal basis so we have the capability of providing superior resort experiences.
4. We will adopt marketing and promotional materials to help orient Mooring Field guests to our community. We are pleased to coordinate these with the Chamber and the Town.
5. We will work with the town and respective committees to help coordinate mooring field user automobile parking, bikes, pets and the other types of often-unique boater needs in these settings. Our designated Mooring Field support facilities will be beneficial in these regards,
6. We would like to review the fee structure and particularly whether it makes sense to have some nominal pump-out charge for short-time users rather than automatic services even if one night.
7. We are in the process of reviewing computerized resort reservation and billing systems. To the extent it makes sense, we will incorporate these information systems with the Mooring Field Management contract. At a minimum, we wish to revise the mooring field user rental agreement to facilitate length of stay changes that often are the norm and not the exception.
8. We remain open to required changes that can improve the services. We welcome the opportunity to coordinate fully with the Town and Advisory committees when needed. If projected revenues increase significantly, we remain open to a modified fee structure that will increase the fees allocated to the town assuming costs of land provided services are not significantly modified due to changing conditions.

#### Matanzas Inn- Organizational/Staff Summary for Mooring Field

General Manager: Matanzas Inn and Restaurant: Chris Arberg

Manager: Matanzas Inn Motel Jerry Nester; Primary Daily Contact

On-site Motel Office and support Staff: Seven Days per week—7:30 until 11 pm  
Secondary Daily Contact

Off-site/office/management Staff As needed. Normally: Monday – Friday 8-5 pm

#### Coordination Relating to Oil Spills:

As a long-term Estero Bay dock owner, we are a member of the local co-op that is in place to provided coordinated response to Estero Bay/Matanzas Harbour Oil Spills. We have staff certified in clean up and some equipment on-site. It is our intent to continue these relationships and to coordinate with the Town's Harbormaster staff as required to meet these needs of the mooring field.

#### Scope of Services for this proposal and qualifying statements

We agree to the scope of services and payments for services with a 70%-30% Applicant/town split as outlined in the RFB for the Mooring field. This is subject to the reasonable limitation that assuring all mooring field users vessels are in "good operational condition" is rather subjective and cannot be assured under the terms of this agreement except on a "good faith" basis. In addition, if required for insurance purposes, we reserve the right to provide such services through a wholly owned affiliate company. We will sign the appropriate documents relating to no collusion and Public Entity Crimes as part of the contract process.

**ADDENDUM NO. 1**

**CONTRACT DOCUMENTS  
FOR**

**RFP No. PW-07-02**

**TOWN OF FORT MYERS BEACH**

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To Prospective Bidders and Others concerned:

This addendum sets forth changes and additional information as referenced and is hereby made a part of and shall be attached to the Contract documents.

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**Clarifications**

1. Are the insurance provisions of a \$3 million liability policy flexible?

No, the insurance provisions for the insurance policy are not flexible. With the length and size of the contract, the limits will remain as stated.

2. Is the provision of providing full financial disclosure including three years audited financial statements flexible or necessary for this type of service?

The Town has decided to give all Respondents the option of submitting a Letter of Financial Condition from the Respondent's CPA or other outside financial consultant in lieu of providing three years of financial statements. The Town is ultimately looking to make sure the Respondent is financially sound and not overextended.

Please Print

*Estero Bay Hotel Company*

Company Name & Phone Number

*MICHELLE MAYHER*

*463-9258*

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Michelle Mayher  
Town Clerk  
Town of Fort Myers Beach  
2523 Estero Blvd.  
Fort Myers Beach, FL 33931  
239-765-0202