

1. Requested Motion:

Meeting Date: May 20, 2013

Approve Amendment No. 1 to the Service Provider Agreement between the Town of Fort Myers Beach and Estero Bay Hotel Company, dba Matanzas Inn to extend the term of the Agreement until September 15, 2013.

Why the action is necessary:

Council must approve all contract extensions.

What the action accomplishes:

The action provides for the continuation of the contract for upland services associated with the mooring field.

2. Agenda:

- Consent
- Administrative

3. Requirement/Purpose:

- Resolution
- Ordinance
- Other – Contract

4. Submitter of Information:

- Council
- Town Staff - Public Works
- Town Attorney

5. Background:

Town Council approved a contract with Estero Bay Hotel Company, dba Matanzas Inn, effective May 22, 2007. The Service Provider Agreement was placed for three years with the ability to extend the contract for an additional three years. Matanzas Inn provides the Town with upland services associated with the operations of the Town's municipal anchorage.

This extension does not include an increase to the original contract price.

Attached are a copy of the contract Amendment and the Service Provider Agreement, dated May 22, 2007.

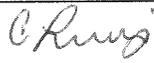
6. Alternative Action:

Do not approve the amendment.

7. Management Recommendations:

Approve the contract amendment.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
						

9. Council Action:

- Approved
- Denied
- Deferred
- Other

TOWN OF
FORT MYERS BEACH

MAY - 9 2013

Service Provider: RFP- 07-02
Estero Bay Hotel Company dba Matanzas Inn
Amendment #1

RECEIVED BY

**AMENDMENT NO. 1
SERVICE PROVIDER AGREEMENT**

This AMENDMENT TO THAT CERTAIN SERVICE PROVIDER AGREEMENT, entered into on May 22, 2007, is made this ___ day of _____, 2013, 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, dba Matanzas Inn, which is legally registered in the State of Florida (hereafter PROVIDER), to render services, as an independent contractor, to the TOWN as follows: Operational management and upland services, Town of Fort Myers Beach.

WITNESSETH:

WHEREAS, the Town of Fort Myers Beach, is the governing board of the Fort Myers Beach and Estero Bay Hotel Company, dba Matanzas Inn, has been contracted to provide operational management and upland services; and,

WHEREAS, the TOWN and PROVIDER desire to amend said Service Provider Agreement to extend the terms thereof;

NOW THEREFORE, in consideration of the forgoing, and the mutual covenants and conditions hereinafter set forth, the TOWN and PROVIDER, intending to be legally bound, hereby agree to this Amendment to the Service Provider Agreement as follows:

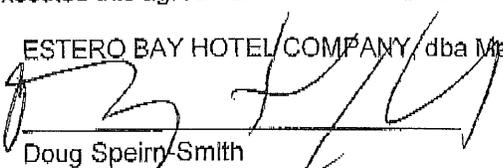
1. Exhibit "A" (2). Term is hereby amended by extending the term of the agreement for an additional (3) month ending on September 15, 2013.
2. All other terms and conditions of the Agreement dated May 22, 2007, are hereby extended by mutual agreement through the term of this Agreement.

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

TOWN OF FORT MYERS BEACH

ESTERO BAY HOTEL COMPANY, dba Matanzas Inn

Terry Stewart, Town Manager



Doug Speiry-Smith

ATTEST:

WITNESS:

Michelle Mayher, Town Clerk

LEGAL REVIEW

Print Name & Title

Fowler, White Boggs, Town Attorney

SERVICE PROVIDER AGREEMENT

This SERVICE PROVIDER AGREEMENT is entered into on this 22nd 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.

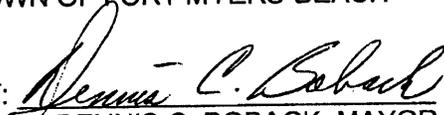
14. Miscellaneous Provisions.

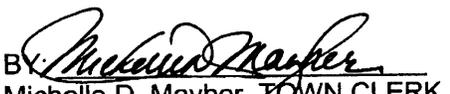
- a) Applicable Law. This Agreement shall be governed by the laws, rules and regulations of the State of Florida.
- b) Non-Discrimination. The Provider covenants that in the furnishing of services hereunder, no person on the grounds of race, color, national origin, handicap, or sex shall be excluded 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:

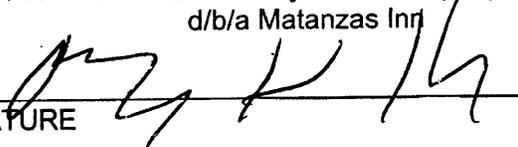
BY: 
DENNIS C. BOBACK, MAYOR

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 SPEER-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

ACORD CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 5/22/2007
PRODUCER (239)657-3614 Hendry Insurance, Bruce 711 West Main Street Innokales, FL 34142		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED ESTERO BAY HOTEL COMPANY 414-416 CRESCENT STREET FT MYERS BEACH, FL 33931 (239)765-8866 Ext.		INSURERS AFFORDING COVERAGE INSURER A: CENTURY SURETY COMPANY INSURER B: INSURER C: INSURER D: INSURER E:
		NAIC #

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSTR	ADDP	LTR	RSDC	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		X		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJ <input type="checkbox"/> LOC	CCP480989	04/22/2007	04/22/2008	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 2,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 1,000,000
				AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$
				GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
				EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/>
				WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER				E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

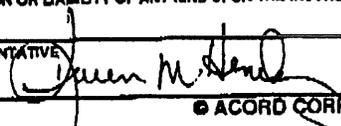
CERTIFICATE HOLDER ADDITIONAL INSURED TOWN OF FORT MYERS BEACH 2523 ESTERO BLVD FORT MYERS BEACH FL 33931	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
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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 15th 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

Matanzas Inn- Mooring Field Proposal: Page two of two:

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 provide 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

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.

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

M. Adams Esq

463-9258

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

**SWORN STATEMENT PURSUANT TO SECTION 287.133(3) (a),
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES**

**THIS FORM MUST BE SIGNED AND SWORN TO IN THE PRESENCE OF A NOTARY PUBLIC OR
OTHER OFFICIAL AUTHORIZED TO ADMINISTER OATHS.**

1. This sworn statement is submitted to Town of Fort Myers Beach
(print name of public entity)

by Douglas Spearman-Smith, President
(print individual's name and title)

for Espero Bay Hotel Company
(print name of entity submitting sworn statement)

whose business address is 416 Crescent St.
Fort Myers Beach, FL 33931

and (if applicable) its Federal Employer Identification Number (FEIN) is 65-0091-412
(If the entity has no FEIN, include the Social Security Number of individual signing this sworn statement: _____.)

2. I understand that a "public entity crime" as defined in Paragraph 287.233(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision of any other state or of the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.

3. I understand that "convicted" or "conviction" as defined in Paragraph 287.233 (1) (b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without an adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.

4. I understand that an "affiliate" as defined in Paragraph 287.133 (1) (a), Florida Statutes, means:
1. A predecessor or successor of a person convicted of a public entity crime; or
2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a pooling of equipment or income among persons when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate

5. I understand that a "person" as defined in Paragraph 287.133 (1) (e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies

to transact business with public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

6. Based on information and belief, the statement, which I have marked below, is true in relation to the entity submitting this sworn statement. (Indicate which statement applies.)

Neither the entity submitting this sworn statement, nor any of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, nor any affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989.

The entity submitting this sworn statement, or one or more of its officers, directors, executives, partners, shareholders, employees, members, or agents who are active in the management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989. However, there has been a subsequent proceeding before a Hearing Officer of the State of Florida, Division of Administrative Hearings and the Final Order entered by the Hearing Officer determined that it was not in the public interest to place the entity submitting this sworn statement on the convicted vendor list. (Attach a copy of the final order)

I UNDERSTAND THAT THE SUBMISSION OF THIS FORM TO THE CONTRACTING OFFICER FOR THE PUBLIC ENTITY IDENTIFIED IN PARAGRAPH 1 (ONE) ABOVE IS FOR THAT PUBLIC ENTITY ONLY AND, THAT THIS FORM IS VALID THROUGH DECEMBER 31 OF THE CALENDAR YEAR IN WHICH IT IS FILED. I ALSO UNDERSTAND THAT I AM REQUIRED TO INFORM THE PUBLIC ENTITY PRIOR TO ENTERING INTO A CONTRACT IN EXCESS OF THE THRESHOLD AMOUNT PROVIDED IN SECTION 287.017, FLORIDA STATUTES FOR CATEGORY TWO OF ANY CHANGE IN THE INFORMATION CONTAINED IN THIS FORM.


(Signature)

Sworn to and subscribed before me this 24th day of April, 2007

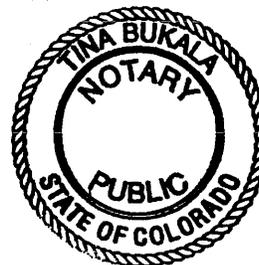
Personally know _____

OR Produced Identification CO DRIVERS LICENSE

(Type of Identification)

Notary Public - State of COLORADO, BOULDER COUNTY
My Commission expires 10/05/09


(Printed typed or stamped commissioned name of notary public)



NON-COLLUSIVE AFFIDAVIT

State of COLORADO

County of BOULDER

DOUGLAS SPEIRN-SMITH being first duly sworn, deposes and says that: (Owner, Partner, Officer)

- (1) He/she is the CO-OWNER / OFFICER Representative or Agent) of ESTERD MAY HOTEL COMPANY, the Respondent that has submitted the attached Proposal;
- (2) He/she is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;
- (3) Such Proposal is genuine and is not a collusive or sham Proposal;
- (4) Neither the said Respondent nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Responder, firm, or person to submit a collusive or sham Proposal in connection with the Work for which the attached Proposal has been submitted; or to refrain from Responding in connection with such Work; or have in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with any Responder, firm, or person to fix the price or prices in the attached Proposal or of any other Responder, or to fix any overhead, profit, or cost elements of the Proposal price or the Proposal price of any other Responder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed Work;
- (5) The price or prices quoted in the attached Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Responder or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

Signed, sealed and delivered in the presence of:

By: [Signature]
DOUGLAS SPEIRN-SMITH
(Printed Name)

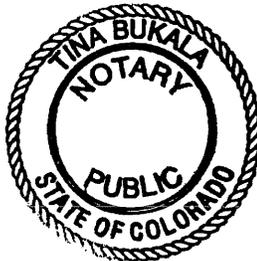
ACKNOWLEDGEMENT

State of COLORADO

County of BOULDER

The foregoing instrument was acknowledged before me this 24 day of APRIL 2007, by DOUGLAS SPEIRN-SMITH who is personally known to me or who has produced COLORADO DRIV. LIC. as identification and who did (did not) take an oath.

WITNESS my hand and official seal
Tina Bukala
NOTARY PUBLIC



My Commission Expires 10/05/2009