

1. Requested Motion

Meeting Date: October 21, 2013

Approve the Construction Manager at Risk Agreement RFQ-13-08-PR *MH Restoration Phase II*, Amendment No. 3 between the Town and Fowler Construction and Development (CM) to delete and clarify certain contract language.

Why the action is necessary:

Town Council authorization is required due to this action being associated with an Agreement that will expend in excess of \$25,000.00.

What the action accomplishes:

Provides clarification to the Mound House project documents.

2. Agenda:

- Consent
 Administrative

3. Requirement/Purpose:

- Resolution
 Ordinance
 Other

4. Submitter of Information:

- Council
 Town Staff-Public Works
 Town Attorney

5. Background:

Town Council approved the Construction Manager at Risk (CMAR) master contract at the September 16, 2013 meeting and subsequent Amendment Nos. 1 & 2. The project team identified certain provisions within the CMAR Agreement and Amendments that would benefit from language changes to improve the management of the contract.

One of the language modifications is associated with the processing time for progress payments. Pursuant to the State prompt payment provision, Municipalities' may take up to 30 days in which to make a payment. During all Town projects staff reduces that time as much as possible due to the need to make payment to the sub-contractors, which are working on any given project, are paid, in a timely manner. The CM expressed concern that based on the 30 day provision that the sub-contractors may not receive their payments for 30 or more days.

The other relates to the timing for the issuance of the notice to proceed. Amendment No. 2 provided that the Notice to Proceed would be issued when the project building permits are received. The CM is concerned that should the building permit issuance exceed 30 days, they may be unable to hold their prices which are those prices that establish the project Guaranteed Maximum Price.

Attached is Amendment No. 3 for review.

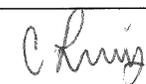
6. Alternative Action:

Take no action.

7. Management Recommendations:

Approve the amendment as presented.

8. Recommended Approval:

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Parks & Recreation Director	Town Clerk
						

9. Council Action:

- Approved Denied Deferred Other

AMENDMENT NO. 3
CONSTRUCTION MANAGER AT RISK AGREEMENT

This AMENDMENT TO THAT CERTAIN CONSTRUCTION MANAGER AT RISK AGREEMENT between the parties hereto, dated September 6, 2013, is made this 25TH day of OCTOBER, 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 Fowler Construction and Development a Florida corporation (hereafter FIRM).

WITNESSETH:

WHEREAS, the Town of Fort Myers Beach, is the governing board of the Fort Myers Beach and Fowler Construction and Development has been contracted to furnish efficient business administration and superintendence and use its best efforts to complete the Project in the best and soundest way, and in the most expeditious and economical manner of the Mound House Restoration, Phase II and,

WHEREAS, the Phase I – Pre-Construction Services have been completed and accepted in accordance with the Contract Documents and,

WHEREAS, the TOWN and FIRM have previously amended said Agreement to include the Phase II – Construction Services; and

WHEREAS, the parties desire to further amend said Agreement with respect to certain provisions therein.

NOW THEREFORE, in consideration of the foregoing, and the mutual covenants and conditions hereinafter set forth, the TOWN and FIRM, intending to be legally bound, hereby agree to this Amendment No. 3 to the Construction Manager at Risk Agreement as follows:

1. ARTICLE 9 – Payments to the Construction Manager, Section 9.1 Monthly Statements shall be amended to include the following paragraph:

FIRM shall requisition payments, using Exhibit I – Estimate and Requisition for Payment of the CMAR Agreement, dated September 6, 2013 for Work completed during the project at intervals of not more than once a month. The FIRM'S requisition shall use a Schedule of Values format, which will show a breakdown of the project components, together with a certification by the FIRM that the FIRM has disbursed to all subcontractors and suppliers their pro-rata shares of the payment out of previous progress payment received by the FIRM for all work completed and materials furnished in the previous period, and all other supporting documentation pursuant to Article 9, Section 9.1. Each requisition shall be submitted in duplicate to the TOWN for approval, with a copy provided directly to the Architect; TOWN shall have twenty (20) calendar days to approve and issue payment or disapprove the requisition. If the requisition is not approved, the reasons therefore shall be stated with particularity and provided to the FIRM. Should the Town disapprove the payment requisition, the Town shall issue payment within ten (10) days of receipt from the FIRM of adjustments or corrections to the requisition that had been required by the Town.

In the event of any conflict between the provisions in Article 9 of the original Agreement and the foregoing paragraph, the provisions of the foregoing paragraph shall control.

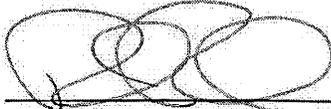
2. CMAR Agreement, Amendment No. 2, Item No. 6 is deleted in its entirety.
3. The Notice to Proceed shall be issued upon receipt of the TOWN's Building Permits, which shall occur within thirty (30) days from the date of this Amendment.

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

TOWN OF FORT MYERS BEACH

FOWLER CONSTRUCTION AND DEVELOPMENT

Terrance Stewart, Town Manager



Robert B. Fowler

ATTEST:

WITNESS:

Michelle Mayher, Town Clerk



John R. Pasterore / Project Coordinator
Print Name & Title

LEGAL REVIEW

Fowler, White Boggs, Town Attorney