

RESOLUTION NUMBER 21-02

A RESOLUTION OF THE TOWN OF FORT MYERS BEACH APPROVING AN UPDATED MATANZAS MOORING FIELD MANAGEMENT PLAN (F/K/A THE FORT MYERS BEACH HARBOR MANAGEMENT PLAN); AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter of the Town of Fort Myers Beach (“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, in cooperation with the Town of Fort Myers Beach Anchorage Advisory Committee and the State of Florida Department of Environmental Protection, the Matanzas Mooring Field Management Plan (f/k/a the Fort Myers Beach Harbor Management Plan) has been updated to include the proposed expansion of the mooring field west of Matanzas Pass Bridge, and a name change; and

WHEREAS, the updated Matanzas Mooring Field Management Plan addresses issues and needs pursuant to the Sovereign Submerged Lands Lease with the State of Florida Department of Environmental Protection and the Corps of Engineers and as deemed necessary by the Town in order to appropriately manage the mooring field.

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

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

Section 2. The updated Matanzas Mooring Field Management Plan, attached as Exhibit “A”, is approved and adopted by the Town.

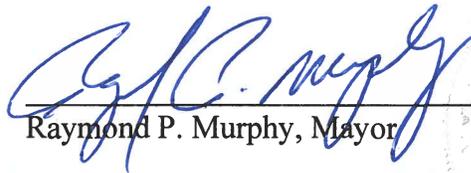
Section 3. This resolution shall take effect immediately upon its adoption.

The foregoing Resolution was adopted by the Town Council upon a motion by Vice Mayor Hosafros and seconded by Council Member Allers, 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
Bill Veach, Council Member	Aye
Jim Atterholt, Council Member	Aye

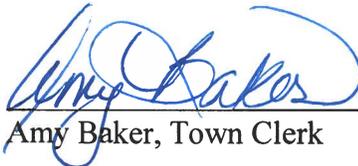
ADOPTED this 1st day of February, 2021 by the Town Council of the Town of Fort Myers Beach, Florida.

TOWN OF FORT MYERS BEACH

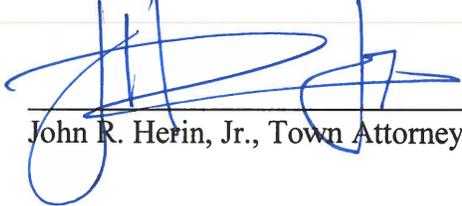

Raymond P. Murphy, Mayor



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 3 day of February 2021.

TOWN OF FORT MYERS BEACH
MATANZAS MOORING FIELD MANAGEMENT PLAN

Adopted

February 2018

Amended

February 2021

Prepared for

TOWN OF FORT MYERS BEACH TOWN COUNCIL
2525 ESTERO BLVD.
FORT MYERS BEACH, FLORIDA 33931

Prepared by

TOWN OF FORT MYERS BEACH
ANCHORAGE ADVISORY COMMITTEE

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I. INTRODUCTION

It is the intent of the Town of Fort Myers Beach (the “TOWN”) to provide a municipal mooring field (the “FACILITY”) and shore side amenities to accommodate the needs of as many responsible and considerate users of sailing or motor vessels while protecting environmental resources, navigational access, discouraging unregulated anchoring, and protecting the property of others. The TOWN further desires to provide a safe and environmentally sound mooring field while improving compliance with the Clean Vessel Act thereby improving the water quality and ecosystem health of Estero Bay.

It is the intent of this Matanzas Mooring Field Management Plan (hereinafter called "PLAN") to establish the Management Authority and to provide the Rules and Regulations for the operation of the FACILITY.

The TOWN is retaining harbormaster (the “HARBORMASTER”) duties and responsibilities, and will hire a SERVICE PROVIDER, that will work as an agent to the TOWN. The SERVICE PROVIDER will manage registration and upland services for the FACILITY on behalf of the TOWN.

This PLAN may be modified and changed as needed to address unanticipated issues and needs pursuant to the future authorizations with the State of Florida Department of Environmental Protection (the “DEP”), the U.S. Army Corps of Engineers (the “COE”), and the TOWN. It may also become necessary or desirable to expand or modify the FACILITY to provide additional moorings to accommodate future demand. This expansion or modification may include additional management issues and concerns, resulting in a modification of this PLAN. Before any PLAN modifications become effective they must be accepted by the DEP, the COE, and the TOWN.

II. RULES AND REGULATIONS FOR THE USE AND OPERATION OF THE TOWN OF FORT MYERS BEACH MATANZAS MOORING FIELD

A. HARBORMASTER

1. The TOWN will appoint a full time TOWN employee to act as the HARBORMASTER. For the purposes of this PLAN, the TOWN is acting through its designated HARBORMASTER or contracted SERVICE PROVIDER. Use of the term “HARBORMASTER” encompasses and includes the designated/contracted “SERVICE PROVIDER” unless otherwise clearly indicated. All or a portion of the duties attributable to the HARBORMASTER may be delegated to the SERVICE PROVIDER through an approved contract.

2. The HARBORMASTER is responsible for the enforcement of the rules and regulations for the FACILITY included in this PLAN and all applicable DEP and COE Authorizations/ Sovereign Submerged Lands Lease/ Permits (the “PERMITS”). The HARBORMASTER has the authority under this PLAN to order any vessel to vacate a mooring for violation of any rule or regulation provided in this PLAN relating to the FACILITY. The HARBORMASTER may grant the SERVICE PROVIDER the written authority to act under this provision.

3. The HARBORMASTER is authorized to conduct communications with patrons, register and inspect vessels, enter into rental agreements, assign moorings, and collect rental fees. The duties and responsibilities of the HARBORMASTER are presented in Appendix I attached to and made part of this PLAN.

4. The HARBORMASTER is authorized, but not required, to relocate vessels. A vessel may be relocated for the following reasons: safety purposes, emergency repairs, failure to vacate a mooring on termination of a rental agreement, the reassignment of a mooring, or for other reasons permitted under state or federal law. Before relocating a vessel the HARBORMASTER will make every reasonable effort to contact the vessel’s owner or authorized operator. In the event that the owner or authorized operator is not immediately available or can not be contacted, the HARBORMASTER is authorized to affect the necessary relocation, through towing at the owner’s or authorized operator’s expense, except for the relocation of a vessel due to a reassignment of a mooring. This authority will only be used when vessel relocation is an operational necessity, and then, exercised only with the utmost discretion and care.

B. SERVICE PROVIDER

1. The TOWN may contract with a SERVICE PROVIDER who will be responsible for providing certain upland services that will include, but are not limited to, communication with boaters, assignment of moorings, execution of mooring agreements, collection of rental fees, and performance of other duties as may be directed by the HARBORMASTER. The TOWN and the SERVICE PROVIDER will enter into a negotiated SERVICE PROVIDER AGREEMENT that sets forth the specific duties of the SERVICE PROVIDER, establishes compensation to the SERVICE PROVIDER, and provides for indemnification of the HARBORMASTER and Town while acting under the SERVICE PROVIDER AGREEMENT. The proposed SERVICE PROVIDER AGREEMENT is attached to this PLAN as appendix VIII.

2. If a SERVICE PROVIDER AGREEMENT is in place, certain duties and responsibilities of the HARBORMASTER, as described in this PLAN, may be delegated to the SERVICE PROVIDER. If a SERVICE PROVIDER AGREEMENT is not in place, then the duties and responsibilities of the HARBORMASTER, as described in this PLAN, remain in effect and are discharged by the HARBORMASTER.

C. VESSEL REGISTRATION

Vessel owners or authorized operators may contact the HARBORMASTER by radio or telephone to receive registration and mooring instructions before entering the FACILITY. Vessels that enter the FACILITY after business hours must register with the HARBORMASTER

first thing the next morning. Vessel owners or authorized operators desiring to moor in the FACILITY must notify the HARBORMASTER and execute a rental agreement within the first 24 hours of taking a mooring.

D. MOORING RENTAL AGREEMENT

Registration of a vessel includes the execution of a Mooring Rental Agreement (the "AGREEMENT") that will be provided to the vessel owner or authorized operator (the "RENTER") by the HARBORMASTER. The provisions of this AGREEMENT may be changed or modified from time to time as deemed necessary. The form AGREEMENT is set forth in Appendix II attached to this PLAN.

E. RULES AND REGULATIONS GOVERNING THE MOORING RENTAL AGREEMENT

1. PAYMENT TERMS: The RENTER must agree to pay to the TOWN the rental rate as provided by this PLAN and the Rental Rate Schedule (the "SCHEDULE"). Rental rates, as indicated on the SCHEDULE, are established by the TOWN. The SCHEDULE will be posted by the TOWN in a location readily accessible to RENTERS. Rental rates are based on length of stay. Length of stay categories are as follows:

- a. Transient – one to six nights: one day's rent for each night of use.
- b. Weekly – three weeks or less: one week's rental for each week of use.
- c. Monthly – four weeks to six months: one month's rent plus a refundable security in an amount equal to one month's rent.

All rental fees are payable in advance. Payments for monthly rentals are due before close of business on the first day of the month. If a rental payment is not paid in full by the close of business on the fifth day of the month, a late fee of \$5.00 per day will be assessed. If RENTER does not make full payment of all rent and fees due by close of business on the tenth day of the month, HARBORMASTER may terminate the AGREEMENT.

Security deposits, if applicable, are payable at the time the AGREEMENT is executed by the RENTER, and will be returned to the RENTER, minus appropriate deductions, upon the termination of the AGREEMENT. The HARBORMASTER has the authority to use any portion of the RENTER'S security deposit against any delinquent balance owed by the RENTER or to offset any damage attributed to the RENTER.

2. TERM OF AGREEMENT: The term of the Facility rental will be as provided in the AGREEMENT executed by the RENTER. Extension of rental periods will require written amendment of the AGREEMENT. The AGREEMENT term will continue unless sooner terminated in accordance with one of the following:

- a. By destruction of the facilities by fire, storm, or otherwise.
- b. By default in the payment of the established rent.
- c. Failure of renter to follow the established Mooring Field rules.

3. **RULES and REGULATIONS:** RENTER must agree to comply with all Rules and Regulations relating to the FACILITY including the AGREEMENT, this PLAN, the PERMITS, and all State, Federal, and local laws pertaining to marinas and boating. The RENTER acknowledges that any breach of the established Rules and Regulations may result in the immediate termination of the AGREEMENT by the HARBORMASTER. Copies of the PLAN and PERMITS are available for review in the TOWN's office and the Upland Service Provider's office. Upon observation of any non-compliance with the provisions of the PLAN or PERMITS, the HARBORMASTER will give a written or verbal "Caution" notice to the RENTER, informing them of the infraction. A second infraction will result in a written "Warning" notice to the RENTER. A third infraction will result in the immediate termination of the AGREEMENT, and the RENTER will be given 24 hours to remove the vessel from the FACILITY.

4. **NON-ASSIGNMENT:** RENTER is not permitted to assign or sublet FACILITY privileges provided by the AGREEMENT. No vessel other than the vessel described in the AGREEMENT may be moored in the FACILITY without prior coordination with the HARBORMASTER. In the event the vessel described in the AGREEMENT is sold, or otherwise permanently removed from the FACILITY, the RENTER must immediately notify the HARBORMASTER and provide intentions as to the future use of the mooring.

5. **DELINQUENT BALANCE:** By virtue of rental within the FACILITY, the HARBORMASTER holds a possessory lien on the moored vessel under Florida Statutes (FS) s. 328.17. Under FS s. 328.17; the HARBORMASTER has a right to place a lien against the vessel described in the AGREEMENT to recover unpaid sums due for use of a mooring in the FACILITY, for other services, materials and supplies charged to the RENTER's account, or for damages or injuries, including but not limited to fines, penalties, environmental restoration, or fuel spill clean-up, caused or contributed to by the RENTER, or any vessel owned or operated by the RENTER, or their authorized representatives or agents, to any property of the HARBORMASTER and FACILITY or any other person, property, or vessel at the FACILITY. THE REMEDIES PROVIDED IN FS s.328.17 FOR THE NON-JUDICIAL SALE OF A VESSEL FOR NON-PAYMENT OF DOCKAGE WILL BE SPECIFICALLY INCLUDED AND INCORPORATED INTO THE RENTAL AGREEMENT AS AN ADDITIONAL REMEDY AVAILABLE FOR THE HARBORMASTER; AND, THE RENTER MUST AGREE TO BE NOTIFIED AT THE POSTAL ADDRESS PROVIDED BY THE RENTER IN THE AGREEMENT IF ACTION UNDER FS S.328.17 BECOMES NECESSARY.

6. **FACILITIES:** The AGREEMENT covers mooring space, holding tank pump out, dinghy docks, shower and bathroom facilities, and use of garbage and recycling bins at authorized locations, and other services as determined consistent with the Service Provider Agreement

7. **SOLE RISK:** An assigned mooring space is to be used at the sole risk of the RENTER. The TOWN will not be liable for the care, protection or security of the vessel, its appurtenances or contents, or for any loss or damage of any kind or nature to the vessel, its appurtenances or contents, due to fire, theft, vandalism, collision, equipment failure, windstorm, hurricane, rains, casualties, or negligence by any person or other events. There is no warranty of any kind as to the condition of the piers, walks, gangways, ramps, mooring gear, or electrical and water service

and the TOWN will not be responsible for any injuries to persons or property occurring upon the FACILITY property for any reason.

8. HOLD HARMLESS: The RENTER must agree to hold the TOWN, harmless and to indemnify the TOWN from any loss, damage, or liability imposed by reason of any acts or omissions on the part of the RENTER, his agents, employees, or guests in the use of the facilities. The indemnification provided must include, but not be limited to, all costs, expenses and reasonable attorney's fees incurred by the TOWN in any action based on the foregoing, including, but not limited to, any action brought by the RENTER, crew, guests, heirs, assigns or subrogees.

9. FOUL WEATHER: In the event of a tropical storm or hurricane watch or warning, all vessels at the FACILITY should be properly secured for foul weather by the RENTER. It is the RENTER'S responsibility to be aware of such warnings and to make arrangements for the proper securing of the vessel or removal of the vessel to another location. The TOWN will not be held liable for any consequences in their attempt to protect life and property in the event of a tropical storm or hurricane including a warning or watch. In the event it becomes necessary to move a RENTER'S vessel, for safety purposes or otherwise, and the vessel is unattended, the HARBORMASTER is authorized but not required to effect the necessary move at RENTER'S expense, which costs will become a part of the rent for mooring of RENTER'S vessel. See Section IIA-3 above.

10. FAILURE TO VACATE: If a RENTER fails to vacate an assigned mooring space within seven days after receipt of a written Notice of Termination by the HARBORMASTER, the RENTER will be deemed to have granted the HARBORMASTER permission to board the RENTER'S vessel and move it under its own power, or to place it in tow and remove the vessel from its assigned mooring, to a location chosen pursuant to the HARBORMASTER'S sole discretion, at RENTER'S expense; and, the HARBORMASTER may take possession of the assigned mooring. See Section IIA-3 above.

11. ENFORCEMENT FEES: RENTER will be responsible for the payment of any and all reasonable attorney's fees, together with any costs and other charges incurred by the TOWN in the enforcement of any provision of the AGREEMENT.

12. SEVERABILITY: The mooring of vessels in the FACILITY is hereby declared to be a privilege and not a right, and all rentals are terminable with cause upon one week's written notice at the discretion of the HARBORMASTER.

13. DISPUTES: Disputes arising under the RENTAL AGREEMENT will be presented to the HARBORMASTER. The HARBORMASTER will resolve disputes arising out of the activity on the waters of the Town related to mooring and anchoring, subject to appeal to the ANCHORAGE ADVISORY COMMITTEE (AAC). Thereafter, in an appropriate instance, the recommendation of the AAC may be presented to Town Council for a final determination. RENTER may go to Town Hall in person or may phone the TOWN at (239) -765-0202 to present a dispute to the HARBORMASTER or appeal the HARBORMASTER'S determination to the AAC.

14. VESSEL REPAIRS: RENTER is required to notify the HARBORMASTER when work by an outside contractor is to be done on a RENTER'S vessel; the nature of the work; the name, address and phone number of the party doing the work; and, a copy of the insurance policies of the party doing the work.

15. ACKNOWLEDGEMENT: By signing the AGREEMENT, RENTER will be deemed to acknowledge that a copy of the Rules and Regulations have been made available to the RENTER by the HARBORMASTER.

16. INSURANCE: RENTER must provide current proof of liability insurance for the Vessel to be moored in the minimum of \$100,000/\$300,000. Failure to provide proof of insurance is sufficient grounds for denial of mooring rental.

F. RULES AND REGULATIONS GOVERNING MOORING AND OTHER ACTIVITIES IN THE MOORING FIELD

1. APPLICABLE RULES: The Rules and Regulations as provided by this PLAN, the AGREEMENT, the PERMITS, along with TOWN Code of Ordinances Sections 2-93 thru 2-113 (AAC provisions) and 32-19 thru 32-29 (vessel control provisions), as amended from time to time, apply to all RENTERS using the FACILITY insofar as applicable. Violations of these rules and regulations may result in the TOWN terminating the AGREEMENT and further, the violation may be reported to the appropriate law enforcement agency.

2. OPERATIONAL CONDITION: Only vessels deemed to be in compliance with the United States Coast Guard regulations and safety standards and FS Chapter 327 will be permitted to moor within the FACILITY. Only vessels in good operational condition, capable of maneuvering under their own power and with current registration and acceptable documentation will be allowed to moor within the FACILITY. The decision of whether a vessel is considered to be in good operational condition, and capable of maneuvering under its own power will be at the sole discretion of the HARBORMASTER. In the event of an emergency, such as, but not limited to, breakdown of bilge pump, leaks or bad lines, the HARBORMASTER is authorized to have the necessary repairs made, as economically as possible, and to charge the RENTER therefore, or, may relocate such vessel. See Section IIA-3 above.

3. VESSEL OPERATION WITHIN THE FACILITY: The Rules of the Road relating to vessels apply in and around the FACILITY. All vessels must observe the "idle speed/no wake" zone in and around the FACILITY.

4. TEMPORARY LEAVE OF MOORING: RENTERS with AGREEMENTS in effect who temporarily leave the Facility for more than three days must notify the HARBORMASTER of the anticipated departure and return dates. The HARBORMASTER reserves the right to rent the temporarily vacated moorings on a temporary basis to transient vessels. Transient vessels may be required to vacate the mooring within 24 hours of the RENTER'S anticipated return date. In the event the RENTER returns prior to the scheduled return date the HARBORMASTER will assign

RENTER a temporary mooring until the RENTER'S original mooring becomes available. All proceeds from temporary rentals to transients will be retained by the TOWN.

5. VESSEL INSPECTIONS: In order to ensure compliance with State and Federal safety and marine sanitation regulations, the HARBORMASTER may need to do periodic inspections of the vessel. The HARBORMASTER may contact the RENTER and request permission to conduct an inspection. No vessel inspections will be conducted by the HARBORMASTER without prior approval by the RENTER absent an emergency as determined by the HARBORMASTER. Denial of an inspection is grounds for termination of the AGREEMENT.

6. PEACEFUL USAGE: All RENTERS and their guests agree to peacefully use the FACILITY and may not cause, suffer or allow, whether individually or as part of a group, any act that may have the effect of disturbing the peace, inconveniencing or subjecting to physical jeopardy the FACILITY, facilities, employees, vessels moored in the FACILITY, or do anything which may impede, disrupt, or injure the orderly operation of the FACILITY.

7. NOISE: The TOWN'S Noise Ordinance is in effect in the FACILITY. Noise must be kept to a minimum so as not to create a nuisance or disturbance to other RENTERS in the FACILITY, particularly between the hours of 10 P.M. and 7 A.M. RENTERS will use discretion in operating engines, generators, radios, TVs, etc. Sailboat halyards and other lines must be tied off to prevent slapping against masts.

8. SOLICITATION: No person may solicit or loiter within the FACILITY.

9. ANCHORING: The use of an anchor in the FACILITY is strictly prohibited except in emergency situations when no other solution is available.

10. TROPICAL STORMS AND HURRICANES: In the event the National Weather Service issues a tropical storm or hurricane warning that includes Fort Myers Beach, the HARBORMASTER is authorized to open the FACILITY to vessels in transit seeking safe harbor of refuge. Such vessels are permitted to be secured in the FACILITY under the direction of the HARBORMASTER. No rental fees will be charged for the duration of the storm. However, registration with the HARBORMASTER is required. If conditions at the time of arrival preclude going ashore by dinghy to register, vessel operators must contact the HARBORMASTER by radio or cell phone to provide registration information. NOTE: This waiver should, in no way be construed as a recommendation that the FACILITY is the safest place to be in a storm.

11. GRAY WATER DISCHARGES: The use of shoreside shower and laundry facilities are encouraged to reduce the impacts associated with gray water discharges from vessels (increased phosphates, reduced dissolved oxygen, and other water quality problems). To this end, shower and bathroom facilities are included in the Rental fee. Coin operated laundry facilities are readily available.

G. ENFORCEMENT OF RULES AND REGULATIONS

1. **RESPONSIBILITY:** It is the responsibility of the HARBORMASTER to ensure compliance with this PLAN and PERMITS and all State, Federal and local laws pertaining to marinas and boating.
2. **NOTICE OF INFRACTIONS:** The procedure for notifying a RENTER of an observed infraction of the Rules and Regulations are provided in Section II, C- 4 above.
3. **RECORD OF INFRACTIONS:** Infractions do not have to be identical, and separate notices of violation are cumulative. All Caution, Warning and Termination Notices must be documented by the HARBORMASTER in a Log, including the reason for the infraction. Copies of all Notices of infraction must be maintained by the HARBORMASTER and made available to the TOWN and DEP upon request. Copies of Termination Notices resulting from violations of the PLAN or PERMITS will be forwarded to the DEP, Fort Myers office.
4. **NOTICES OF INFRACTION TO RENTERS:** A notice of an infraction to a RENTER may be given to RENTER aboard RENTER'S vessel. Prior to boarding the vessel, to give or leave a Notice, the HARBORMASTER will sound a horn three times and will voice call RENTER. Notice will be deemed hand delivered if RENTER or another person on RENTER'S vessel responds. If RENTER or other person on RENTER'S vessel does not respond or is not present, Notice will be posted in a conspicuous location on the exterior of the vessel, and Notice will be deemed given as of the time of posting on the vessel.
5. **LIABILITY:** The TOWN and HARBORMASTER reserve the right to identify any offender causing a violation within the FACILITY, and to name the offender in any enforcement action taken by competent authority. The TOWN and HARBORMASTER acknowledge they have the duty to monitor RENTERS and their guests to ensure compliance with this PLAN and PERMITS. Nothing herein may be construed to waive any defenses provided to the TOWN and HARBORMASTER in Chapters 403 and 376, Florida Statutes, in any enforcement action brought by the DEP.

III. FINANCIAL CONSIDERATIONS

Gross Rental Revenues are to be assessed as provided in accordance with Section II D-1 above. Gross Rental revenues are to be offset by the expenses of operation and maintenance of the FACILITY. The TOWN will deposit gross rental revenues in a General fund for the purpose of maintenance of the FACILITY.

IV. MOORING ALLOCATIONS

In order to maintain the character of Matanzas Harbor and accommodate both transient and longer term users, the FACILITY will be allocated as follows

- a. Overnight/Transient Rentals - 10% (9 Moorings)
- b. Flexible - 90% (80 Moorings)

V. AREAS OTHER THAN THE MOORING FIELD

Anchoring in navigation channels is prohibited. Anchoring in SEAGRASS PROTECTION areas is subject to the restrictions provided in Section VII F below. Vessels anchoring in other areas are subject to all applicable State and Federal laws, Rules and Regulations, this PLAN and applicable ordinances of the TOWN. Enforcement will be by the United States Coast Guard (USCG), the FWC and by Lee County Sheriff's Marine Division. The TOWN is not responsible for vessels anchored in other areas.

VI. COMMUNICATIONS

A. COMMUNICATION PROCEDURES WITH RENTERS

1. The TOWN or its Upland Services Provider must continuously monitor VHF Channel 16 during operating hours. Upon making contact, the caller will be directed to the FACILITY standby station for further communication.
2. The TOWN or its Upland Services Provider must be available via telephone during normal business hours.
3. The TOWN or its Upland Services Provider must provide avoicemail service to pick up telephone calls during non-operating hours. The TOWN or Upland Service Provider will respond to those calls at their earliest opportunity.
4. The TOWN or its Upland Services Provider may communicate with RENTERS alternatively as follows:
 - a. Mail correspondence
 - b. Lightly weighted Ziploc bag placed in the vessel's cockpit
 - c. Notice taped to vessel
 - d. Verbally

B. COMMUNICATION WITH OTHER JURISDICTIONAL AUTHORITIES

1. The TOWN or its Upland Services Provider will continuously monitor VHF Channel 16 during normal business hours and will report any emergency or other law enforcement issues in the FACILITY to the appropriate authority.
2. The TOWN will meet regularly with the local Florida Fish and Wildlife Conservation Commission, the U.S. Coast Guard, County, Ostego Bay Oil Spill Co-op, and the TOWN'S emergency and law enforcement staff to participate in emergency and law enforcement issues involving the Harbor (fuel spill, media, disabled vessel, etc.).

C. VHF RADIO PROCEDURES

1. All personnel operating radios at the FACILITY will use proper radio procedures.
2. A marine radio is on a port operations frequency and can be heard for some distance. The FACILITY is authorized to transmit on VHF Channels 16 and 17 ONLY.
3. Channel 16 is a calling and distress frequency only.
4. When receiving or calling a vessel, communications should first be established on Channel 16 and then shifted to Channel 17 for conversation.
5. All conversations should be kept to a minimum, brief and to the point.
6. It is illegal to advertise on VHF channels.

D. CALLS TO THE TOWN

1. Any incoming calls for FACILITY RENTERS and their guests, unless the caller states that an emergency exists, will be noted by the receptionist, and this message will be posted on the FACILITY bulletin board.
2. Emergency calls will be given immediate attention. The emergency should be clearly described (e.g., fire, heart attack, fall, fuel spill, sinking boat, etc.).
3. Use of TOWN telephones by RENTERS or their guests for personal calls is prohibited.

VII. ENVIRONMENTAL CONSIDERATIONS

A. ENVIRONMENTAL WARNING

Any Employee, Renter, Customer, or Outside Contractor violating the TOWN'S Matanzas Mooring Field Marine Sanitation and Pollution Rules, outlined below, will be expected to pay for cleanup, and may have mooring use privileges terminated.

B. MARINE SANITATION

Pursuant to the Clean Vessel Act of 1994, boaters are prohibited from discharging raw sewage into fresh water or within coastal saltwater limits. Coastal limits are nine nautical miles on the Gulf of Mexico and three nautical miles on the Atlantic Ocean.

The Florida Fish and Wildlife Conservation Commission (the "FWC") enforces the Clean Vessel Act and has the authority to board vessels to check for compliance with this Act, including inspecting for marine sanitation devices and holding tanks. The U.S. Coast Guard also regulates the installation and use of marine sanitation devices.

Florida Statutes s. 327.53 includes the requirements for marine sanitation devices (MSDs) and discharge of sewage. No waste may be discharged from MSD Types I, II, III or other marine sanitation devices into Florida waters. All such waste must be discharged into an approved sewage pump-out facility.

The TOWN'S marine sanitation Rules and Regulations are provided in attached Appendix III.

C. MARINE POLLUTION

Dumping plastic and trash in state and federal waters is against the laws enforced by the U.S. Coast Guard and the FWC. This type of debris is especially harmful to water fowl, sea turtles, fish, and other wildlife, and has been known to cause entanglement, strangulation, choking and mortality in these species. The U.S Coast Guard requires every boat greater than 26' in length operating in U.S. waters to have a sign or placard clearly visible that states:

"It is illegal for any vessel to dump plastic trash anywhere in the ocean or navigable waters of the United States. Annex V of the MARPOL (MARine POLLution) TREATY is an International Law for a cleaner, safer marine environment. Violation of these requirements may result in civil penalty up to \$25,000, fine and imprisonment".

Biodegradable litter may also be problematic in the FACILITY. Overboard dumping of food items, fish cleaning wastes, etc. increase bacteria, nutrient loading, odors, and biochemical oxygen demand and lower dissolved oxygen in the Facility.

The use of shoreside trash and recycling facilities are encouraged to reduce the impacts associated with litter from vessels. To this end, free use of these facilities, located at the Upland Services Provider or dinghy dock on Gulf Beach Road, will be given to Renters for their length of stay.

The TOWN'S marine pollution Rules and Regulations are provided in attached Appendix IV.

D. FUEL & OIL SPILLS

The U.S. Coast Guard, FWC, and the emergency response staff of the DEP regulatory office deal with oil spill containment and clean-up. The Ostego Bay Environmental Emergency Response Co-op located on San Carlos Island assists these agencies in the event of an oil spill in the harbor or surrounding waterways. The Harbormaster will contact appropriate authorities at Lee County, DEP, FWC, and U.S. Coast Guard, and the oil spill reporting hot line (1-800-424-8802) immediately, in the event of a spill

U.S. Law requires that every vessel greater than 26' in length and powered with an inboard engine have a sign by the bilge that states:

"Discharge of Oil Is Prohibited! The Federal Water Pollution Control Act prohibits the discharge of oil or oily waste into or upon the navigable waters and contiguous zone of the United States if such discharge causes a film or sheen upon, or discoloration of the surface of the water, or causes a sludge or emulsion beneath the surface of the water. Violators are subject to a penalty of \$5,000."

The TOWN and the oil spill reporting hot line (1-800-424-8802) will be contacted immediately when a spill is discovered. WARNING: There is a large fine if even minor spills aren't reported. Oil absorbent pads and pillows should be used to contain and remove a spill. Detergents should never be used to contain oil spills! The cause of the spill should be identified and measures taken to secure against spreading.

The TOWN'S fuel and oil spill control rules and regulations are provided in attached Appendix V.

E. MANATEES AND OTHER PROTECTED SPECIES

Matanzas Harbor, Estero Bay Aquatic Preserve, and surrounding waters are known to be home to the endangered West Indian Manatee. The FACILITY lies entirely within a year around Manatee speed zone. Local law enforcement strictly enforces the Manatee speed zones within the FACILITY.

The TOWN will make available relevant literature, such as publications and warnings regarding safe operation in waters frequented by manatees, to all RENTERS, and explain the rules, regulations, and safety precautions that apply to manatee protection in the Harbor and surrounding waters.

The TOWN'S protected species rules and regulations are provided in attached Appendix VI.

F. SEAGRASS PROTECTION AREA

The area immediately abutting and extending north of the Matanzas Pass Mooring Field is a **Seagrass Protection Area, and will be delineated by "CAUTION: SHOAL" warning signs as shown on the Plans in Appendix VIII. No mooring is allowed within this Area.**

The northern section of the west Mooring Field in Matanzas Harbor is a Seagrass Protection Area, and is **delineated by "CAUTION: SHOAL" warning signs as shown on the Plans in Appendix VIII. No mooring is allowed within this Area.**

VIII. APPENDICES

APPENDIX I

DUTIES AND RESPONSIBILITIES OF THE HARBORMASTER OR DESIGNEE

A. General Duties and Responsibilities

The HARBORMASTER, as an agent of the TOWN, has overall responsibility for the management for the FACILITY and the activities of the shore side amenities. Responsibilities include sales, collections, administration, security, and maintenance activities.

B. Specific Duties and Responsibilities

Enforces provisions of the PLAN and PERMITS.

Provides administration for the operation, maintenance, and security of the FACILITY and shore side amenities.

Assigns mooring spaces in the FACILITY, maintains records for the collection and disposition of applicable fees, and takes corrective actions for delinquent accounts.

Monitors and controls Mooring Field traffic to ensure adherence to established harbor rules, regulations and safe boating practices.

Provides overall assistance to the general public regarding the waterways in Matanzas Harbor, i.e. harbor rules and regulations, mooring fees, transient mooring, and safe boating practices.

Prepares and maintains various records or reports concerning Harbor activities; i.e. revenues and fees collected, maintenance and repair activities, materials/supplies purchases, operating budgets, and transient registrations.

Inspects boats, moorings, dinghy docks, and adjacent facilities for adherence to established safety regulations, and for the purpose of preventing accident or injury to personnel and patrons.

Observes conditions and schedules improvements to the mooring field, subject to TOWN direction and approval.

Oversees operations of the sales office; ensures accurate accounting and balancing of all monies processed; prepares and submits bank deposits.

Operates pump out boat as needed, and VHF radio equipment in communicating and responding to public mooring/boating needs.

Reports oil and hazardous materials spills; cooperates with local and state authorities for

containment according to established regulations.

Coordinates and oversees cleanup efforts after a storm with towing, salvage, and cleanup crews.

Coordinates operation of the FACILITY with the TOWN'S Hurricane Preparation and Recovery Plan and puts such plan into action when necessary.

Ensures all signage in the waterways of the FACILITY is proper and readable. Reports all discrepancies to the proper authorities.

Additional duties and responsibilities as may be assigned by the TOWN from time to time.

The list of essential functions, as outlined herein, is intended to be representative of the tasks performed within this classification. It is not necessarily descriptive of any one position in the class. The omission of an essential function does not preclude assigning duties not listed herein if such functions are a logical assignment to the position.

APPENDIX II

**TOWN OF FORT MYERS BEACH
MATANZAS MOORING FIELD
MOORING RENTAL AGREEMENT**

THIS MOORING RENTAL AGREEMENT, (the "AGREEMENT"), is made this _____ day of _____, 20 ____, by and between the Town of Fort Myers Beach, Florida (the "TOWN or HARBORMASTER") and _____ (the "RENTER") with respect to the vessel identified as follows:.

Mooring #:	Vessel Name:
Overall Length: _____ Beam: _____ Draft: _____	Power: _____ Sail: _____ Hull Color: _____
Vessel Make: _____ Year: _____	Liability Insurance Company: _____ Policy#: _____ Expiration Date: _____
Vessel Registration/Documentation: # _____ Owner: _____	Notice & Billing Address: _____ _____ _____
Marine Sanitation Device: Holding Tank _____ Deck Plate _____ Starboard _____ Port _____ Other _____	Email: _____ _____ Phone Number :() - _____ - _____ Emergency Contact Name: _____ Phone Number :() - _____ - _____
Rental Fee/Security Deposit : _____/_____ (As determined by Posted Rate Schedule)	Rental Type (Circle One): Daily Weekly Monthly

The TOWN operates the mooring facility (the "FACILITY") located in Matanzas Harbor, Fort. Myers Beach, Florida. The TOWN operates the FACILITY in accordance with the Matanzas Mooring Field Management Plan (the "PLAN").

1. PAYMENT TERMS: RENTER agrees to pay to TOWN the above stated rental rate. For monthly rentals, a refundable security deposit in an amount equal to one month's rent is required at the time rental agreement is executed. All rental fees are payable in advance. Payments for monthly leases are due before close of business on the first day of the month. If rent is not paid in full by close of business on the fifth day of the month, a late fee of \$5.00 per day will be assessed. If RENTER does not make full payment of all rent and fees by close of business on the tenth day of the month, TOWN may terminate this AGREEMENT.

Payment for daily and weekly rentals are due in full at the time the rental AGREEMENT is executed.

2. TERM OF AGREEMENT: This AGREEMENT begins on _____ and continues to _____, unless sooner terminated by either party in accordance with one of the following:

- (a) By destruction of the facilities by fire, storm, or otherwise;
- (b) By default in the payment of the required rent;
- (c) Failure of RENTER to follow established Mooring Field rules; or
- (d) Upon appropriate written notice from RENTER to the TOWN.

NOTE: Written notice is required by RENTER to TOWN to terminate this Agreement as follows: 24 hour notice for transient rentals or 72 hour notice for weekly/monthly rentals.

3. RULES AND REGULATIONS: RENTER agrees to comply with all rules and regulations relating to the FACILITY including the Matanzas Mooring Field Management Plan, applicable Permits, and State, Federal, and local laws pertaining to marinas and boating. RENTER acknowledges that a breach of any provision of this AGREEMENT or of any of the applicable rules and regulations may result in the immediate termination of the AGREEMENT. Copies of the Plan and Permits are available for review in the TOWN'S office and Upland Service Provider's office. Upon observation of any non-compliance with the provisions of the Plan or Permits, the Harbormaster will provide a written or verbal "Caution" notice to the RENTER, informing them of the infraction. A second infraction will result in a written "Warning" notice. A third infraction will result in the immediate termination of the AGREEMENT, and the RENTER will be given 24 hours to remove the vessel from the FACILITY.

4. NON-ASSIGNMENT: RENTER may not assign this AGREEMENT or sublet any privileges provided under this AGREEMENT. No vessel, other than the vessel described above, may be moored at the designated mooring without prior

coordination with the TOWN. In the event the above described vessel is sold, or otherwise permanently removed, the RENTER must immediately notify the TOWN and provide intentions as to the future use of the mooring.

5. DELINQUENT BALANCE: By virtue of rental within the FACILITY, the HARBORMASTER holds a possessory lien on the moored vessel under Florida Statutes (FS) s. 328.17. Under FS s. 328.17 the TOWN has the authority to place a lien against the above-described vessel, or any vessel hereafter, moored by RENTER at a rented mooring, including the appurtenances and contents thereof, in the event of any unpaid sums due for use of mooring facilities, other services, materials and supplies charged to the RENTER's account, or for damages or injuries, including but not limited to fines, penalties, environmental restoration, and fuel spill clean-up, caused or contributed to by the above described vessel or any vessel owned by the RENTER, or RENTER', representatives or agents, to any property of the HARBORMASTER and FACILITY or any other person, property, or vessel at the FACILITY. **THE REMEDIES PROVIDED IN FLORIDA STATUTES S. 328.17, FOR THE NON-JUDICIAL SALE OF A VESSEL FOR NON-PAYMENT OF DOCKAGE ARE SPECIFICALLY INCLUDED AND INCORPORATED INTO THIS RENTAL AGREEMENT AS AN ADDITIONAL REMEDY AVAILABLE FOR THE HARBORMASTER, AND THE RENTER AGREES TO BE NOTIFIED AT THE POSTAL ADDRESS PROVIDED BY THE RENTER IF ACTION UNDER FS s. 312.17 BECOMES NECESSARY.**

6. FACILITIES: This AGREEMENT is for mooring space, holding tank pump out, dinghy docks, shower and bathroom facilities, and use of garbage and recycling bins at authorized locations.

7. SOLE RISK: Mooring rental space is to be used at the sole risk of the RENTER, and the TOWN will not be liable for the care, protection or security of the vessel, appurtenances or contents, or for any loss or damage of any kind or nature to the vessel, appurtenances or contents, due to fire, theft, vandalism, collision, equipment failure, windstorm, hurricane, rains, or other casualties. There is no warranty of any kind as to the condition of the piers, walks, gangways, ramps, mooring gear, or electrical and water service and the TOWN will not be responsible for any injuries to persons or property occurring upon the FACILITY property for any reason.

8. HOLD HARMLESS: The RENTER agrees to hold the TOWN, harmless and to indemnify the TOWN from any loss, damage, or liability imposed by reason of any acts or omissions on the part of the RENTER, his agents, employees, or guests in the use of the facilities. The indemnification provided herein includes, but is not limited to, all costs, expenses and reasonable attorney's fees incurred by the TOWN in any action based on the foregoing, including, but not limited to, any action brought by the RENTER, RENTER's family, crew, guests, heirs, assigns or subrogees.

9. FOUL WEATHER: In the event of a tropical storm or hurricane watch or warning, all vessels at the FACILITY should be properly secured for foul weather by the RENTER. It is the RENTER'S responsibility to be aware of such warnings and to make arrangements for the proper securing of the vessel or removal of the vessel to another location. It is agreed that the TOWN will not be held liable for any consequences in their attempt to protect life and property in the event of a tropical storm or hurricane including a warning or watch. In the event it becomes necessary to move RENTER'S vessel, for safety purposes or otherwise, and the vessel is unattended, the TOWN is authorized, but not required, to effect the necessary move at RENTER'S expense, which costs will become a part of the rent for mooring of RENTER'S vessel.

10. FAILURE TO VACATE: In the event RENTER fails to vacate the mooring space within seven days after receipt of a written Notice of Termination by the TOWN, RENTER hereby grants the TOWN permission to board the vessel and move it under its own power, or to place it in tow and remove the vessel from its mooring space, to a location to be chosen at the sole discretion of the HARBORMASTER, at RENTER'S expense, and to take possession of the mooring space.

11. ENFORCEMENT FEES: RENTER is responsible for and will pay any and all reasonable attorney's fees, together with any costs or other charges incurred by the TOWN in the enforcement of any provision of this AGREEMENT.

12. SEVERABILITY: The mooring of vessels at the FACILITY is hereby declared to be a privilege and not a right, and all rentals are terminable with cause upon one week's written notice at the discretion of the TOWN, subject to appeal as identified below.

13. DISPUTES: Disputes arising under the RENTAL AGREEMENT will be presented to the HARBORMASTER. The HARBORMASTER will resolve disputes arising out of the activity on the waters of the Town related to mooring and anchoring, subject to appeal to the FACILITY Advisory Committee. Thereafter, in an appropriate instance, the recommendation of the Anchorage Advisory Committee may be presented to Town Council for a final determination. RENTER may go to Town Hall in person or may phone the TOWN at (239)-765-0202 to present a dispute to the HARBORMASTER or appeal the HARBORMASTER's determination to the Anchorage Advisory Committee.

14. VESSEL REPAIRS: RENTER is required to notify the TOWN when work is to be done by an outside contractor on RENTER'S vessel; the nature of the work; the name, address and phone number of the party doing the work; and a copy of the insurance policies of the party doing the work.

15. MODIFICATION: This AGREEMENT is the entire agreement between the parties and may only be modified in a writing executed with the same formality.

16. VENUE AND APPLICABLE LAW: This AGREEMENT will be construed in accordance with the laws of the State of Florida. Venue for any action to enforce the provisions of this agreement will be in Lee County, Florida.

I acknowledge that I have read and accept the terms and conditions, listed front and back, of this lease agreement.

_____ Date _____
RENTER

_____ Date _____
HARBORMASTER or designee

Copies to: White –Town of Fort Myers Beach, Florida

APPENDIX III

FACILITY MARINE SANITATION REGULATIONS

1. All vessels mooring in the Facility must contain a U.S. Coast Guard approved marine sanitation device as required, complying with the requirements of the Coast Guard governing the installation and use of such devices upon the particular vessel involved.
2. Sanitation devices must be properly functioning and used at all times while the vessel is in the Facility and are subject to inspection by the Harbormaster.
3. Y-valves must be locked and sealed in the non-overboard position.
4. All vessels, upon entering into a Mooring Rental Agreement at the Facility, must pump out their sewage holding tanks into the authorized mobile pump out unit as soon as possible.
5. Absolutely no pumping of sewage in any area within the Facility is allowed, except at approved pump out stations or mobile pump out units.
6. All vessels are required to have their tanks pumped at an approved pump out station or by the mobile pump out unit every three days unless an alternative pump out schedule for the vessel is approved by the Harbormaster. This schedule will be based on holding tank capacity and vessel usage.
7. Overboard discharge of human or pet sewage waste is strictly prohibited in the Facility.
8. The use of shoreside shower and laundry facilities are encouraged to reduce the impacts associated with gray water discharges from vessels (increased phosphates, reduced dissolved oxygen, and other water quality problems).
9. Violation of these conditions will be reason for withholding of the security deposit and will be prosecuted to the fullest extent of the law.

APPENDIX IV

FACILITY MARINE POLLUTION REGULATIONS

1. No person may litter into the water or discharge or throw overboard any oils, spirits, flammable liquids or oily bilge into Matanzas Harbor/Estero Bay. Overboard dumping of any trash is illegal and will not be tolerated within the Town's jurisdiction.
2. Hazardous materials, including sealed paint cans, waste oil, or solvents may not be deposited in trash receptacles. For disposal of these materials, please contact the Harbormaster.
3. If the Renter or their guests cause pollution, the TOWN may clean up the boater's refuse and unsightly material at the Renter's expense.
4. All boats with in-board or in-board/outboard engines must be equipped with a sorbent sock, properly installed in the engine compartment bilge. Sorbent socks are available at ship's stores in the vicinity of the FACILITY. The socks must be renewed annually or when contaminated.
5. Bilge cleaners and liquid detergents may not be used in boat bilges, as they will destroy the effectiveness of the sorbent socks.

APPENDIX V

FACILITY FUEL & OIL SPILL CONTROL REGULATIONS

1. The TOWN and the oil spill reporting hot line (1-800-424-8802) will be contacted immediately when a spill is discovered. **WARNING:** There is a large fine if even minor spills aren't reported.
2. Oil absorbent pads and pillows should be used to contain and remove a spill. Detergents should never be used to contain oil spills!
3. The cause of the spill should be identified and measures taken to secure against spreading.

APPENDIX VI

FACILITY PROTECTED SPECIES REGULATIONS

1. Renters must acquaint themselves with the publications and warnings available from the TOWN regarding safe operation in waters frequented by manatees and abide by all laws, ordinances, rules and regulations governing the operation of watercraft in the presence of manatees.
2. Harassment of protected wildlife is illegal.
3. Any incident relating to injured marine wildlife should be reported immediately to the Florida Fish and Wildlife Conservation Commission at (888) 404-3922.

APPENDIX VII
SERVICE PROVIDER AGREEMENT

**APPENDIX VIII
MOORING FIELD PLANS**