

TOWN OF BAY HARBOR ISLANDS

February 11, 2019

AGENDA

STATEMENT OF DECORUM

All comments must be addressed to the Council as a body and not to individuals. Any person making a racial or slanderous remark or who becomes boisterous while addressing the Town Council, staff, etc. shall be barred from the audience by the presiding officer. No profanity, shouting, heckling, verbal outbursts or disruptive behavior in support of or opposition to a speaker or his/her remarks is permitted. Please mute or turn off your cell phone or other electronic devices at the start of the meeting. Failure to do so may result on being barred from the meeting. Persons exiting the Chambers shall do so quietly.

CALL TO ORDER: 7:00 p.m.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

TOWN MANAGER'S REPORT:

1. **Report** of the Town investment performance for the period ending December 31, 2018. Presentation will be provided by Daniel Brea & Gerardo Rodriguez of BNY Mellon.

COUNCIL REPORTS:

PUBLIC COMMENT:

*There is a three (3) minute time limit for each speaker during public comment and a two (2) minute time limit for each speaker during all other agenda items. Your cooperation is appreciated in observing the three (3) minute rule. If you have a matter you would like to discuss which requires more than three (3) minutes, please arrange a meeting with the Town Manager or appropriate administrative official. **A request form is available from staff; please fill it in and return it to the Town Clerk prior to the start of the meeting if you would like to speak during public comment.** Please come forward to the podium, give your name and address, and the name and address of the organization you are representing if any.*

COMMITTEE REPORTS:

2. **Consideration and Approval** of a request for appointment to the Sustainability and Resiliency Committee. Enclosed is a copy of information submitted by Mr. John Corral and Edward Kazanjian.

STAFF RECOMMENDATION: Council Discretion

CONSENT AGENDA: *(Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.)*

3. **Consideration and Approval** of the following Meeting Minutes:
 - a. August 13, 2018 - Regular Council Meeting
 - b. September 17, 2018 - First Budget Public Hearing
 - c. September 17, 2018 - Public Hearing
 - d. September 17, 2018 - Regular Council Meeting
 - d. September 26, 2018 - Second Budget Public Hearing
 - e. October 10, 2018 - Regular Council Meeting

4. **Consideration** and **Approval** requested by Council Member Leonard to purchase the Bronze Sponsorship Package in the amount of \$3,000 to attend the Miami Dade County League of Cities 65th Annual Installation Gala which will be held on Saturday, May 4th, 2019. Enclosed is a copy of the Sponsorship Packages available.
5. **Consideration** and **Approval** of a request from the David L. Singer Foundation of the Town customary donation in the amount of \$500 for the Special Olympics Event. Enclosed is a copy of the funding request from the David Singer Foundation.
6. **Consideration** and **Approval** requested by Council Member Reid and Vice Mayor Fuller of a customary charity donation in the amount of \$1,000 to the Pelican Harbour Seabird Station. Enclosed is a copy of the sponsorship packages.
7. **Consideration** and **Approval** of a proposal from Parkeon in the amount of \$84,080 for the purchase of twelve (12) Pay by Plate Parking Meters. The meters will be located at the municipal lots on 103rd Street, 100 Street and 92nd Street, as well as, Bay Harbor Terrace and the parking garage. Enclosed is a copy of the proposal and supporting documents.
8. **Consideration** and **Approval** of a request by Council Member Leonard to provide the Bay Harbor Islands Police Department \$5,000 in LETF Trust funds for the purpose of providing scholarships to current Bay Harbor Islands Police Explorers.

STAFF RECOMMENDATION: Approval

POLL VOTE

ORDINANCES ON SECOND READING:

9. **Consideration** and **Approval** of an ordinance on **second** reading to prohibit medical marijuana dispensing facilities within the Town. Enclosed is a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AMENDING CHAPTER 23, ARTICLE I OF THE TOWN OF BAY HARBOR ISLANDS CODE OF ORDINANCES BY ADDING SECTION 23-5.3 TO PROHIBIT MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITIES WITHIN THE BOUNDARIES OF THE TOWN OF BAY HARBOR ISLANDS AS AUTHORIZED BY SECTION 381.986(11)(B), FLORIDA STATUTES; PROVIDING LEGISLATIVE FINDINGS; PROVIDING FOR CODIFICATION, PROVIDING FOR MORATORIUM CONTINGENCY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Council Discretion

POLL VOTE

ORDINANCES ON FIRST READING:

10. **Consideration and approval** of an ordinance on **first** reading amending Chapter 5 1/4 of the Town Code creating the "Communications Rights-of-Way Ordinance" providing for registration for placing or maintaining communications facilities in the public rights of way. Enclosed is a copy of the proposed ordinance and supporting documents.

AN ORDINANCE OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AMENDING THE CODE OF ORDINANCES OF THE TOWN OF BAY HARBOR ISLANDS BY AMENDING CHAPTER 5¼, SECTIONS 5¼-1 – 5¼-17, CREATING THE “COMMUNICATIONS RIGHTS-OF-WAY ORDINANCE,” AS PROVIDED HEREIN; PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING REQUIREMENT OF A PERMIT; PROVIDING APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR A PERFORMANCE CONSTRUCTION BOND; PROVIDING FOR CONSTRUCTION METHODS; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR FEES AND TAXES; PROVIDING ENFORCEMENT REMEDIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Council Discretion

POLL VOTE

TOWN MANAGER ITEMS: *(Town business items requiring Council approval)*

11. **Consideration and approval** of contract award to People's Choice Pressure Cleaning & Painting in the amount of \$18,975 for the exterior cleaning and painting of the Town Hall Complex. This is require to comply with the forty-year inspection. Enclosed is a copy of the Inspection results and proposals.

STAFF RECOMMENDATION: Approval

12. **Approval** of an assignment/transfer of the Town's solid waste and recycling contract from World Waste Recycling to Coastal Waste and Recycling Holdco, LLC. Enclosed is the letter from World Waste and Coastal Waste and Recycling.

STAFF RECOMMENDATION: Approval

13. **Consideration** of a request by Council Member Leonard of a scholarship donation to the Rotary Club of Bal Harbour. Enclosed is a copy of the Funding Request form and supporting documents.

STAFF RECOMMENDATION: Council Discretion

14. **Discussion and direction** requested by Town Manager Jimenez regarding the manner of bidding for the this year's holiday decorations.

ADJOURNMENT: *Set for 11:00 p.m. (Any items not addressed by 11:00 PM, will be continued to the following day at 7:00 PM)*

Pursuant to Florida Statutes 286.0105, the Town hereby advises the public that should any person decide to appeal any decision of the Town Council with respect to any matter to be considered at this meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

AGENDA ITEM REPORT

February 11, 2019

ITEM NUMBER: 1.

ITEM: Report of the Town investment performance for the period ending December 31, 2018. Presentation will be provided by Daniel Brea & Gerardo Rodriguez of BNY Mellon.

DESCRIPTION:

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk

ATTACHMENTS

1. BNY Mellon - TOBH 4th Qtr Final Pres

February 1, 2019

Melissa Cruz
Finance Director
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, Florida 33154

**Re: Town of Bay Harbor Investment Management Accounts
2018 4th Quarter Review**

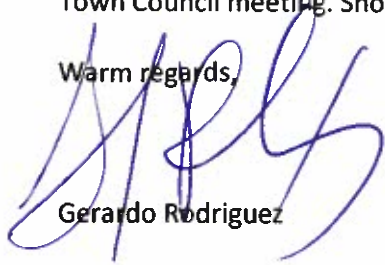
Dear Melissa:

The 4th Quarter was depicted by a flight-to-quality and a market sell-off that widen spreads on the Investment Grade Corporate Bond side. Our portfolio exposure of an underweight in Treasuries and Overweight Corporate Bonds was the reason for the slight underperformance in the quarter. Throughout the fourth quarter, global government bond yields were generally lower due to lower inflation data, U.S./China Trade Talks and other geopolitical headwinds that arose. The U.S. 10-year Treasury note yield closed the quarter at 2.69%, and has remained there through January, as talks of another looming Government Shutdown have kept Treasury yields in a tight range. Although U.S. Treasuries benefited from risk-off sentiment during the recent equity pullback, we expect both short- and long-term rates to move modestly higher and the Treasury yield curve to flatten.

2018 4th quarter returns for the town's accounts were 1.41%, 1.44% & 1.42% respectively for the Contingency fund, General fund and Water fund. As of 12/31/18, the combined market value was \$6,366,884 with an estimated annual income of \$144,855. Credit OAS ended the year at +143, which was 43 wider in Q4 and 54 wider YTD. Lower quality was worst performer, so it did help that the accounts can't own BBB. Corporate 3 month excess return was -3.10%; BBB excess was -3.77; single A was -2.66; AA was -1.49; AAA was -2.08. Our TIP allocation also negatively impacted performance in Q4 because we have an out-of-index position and they underperformed nominals. In Q4, TIPS returned -.42% while nominals returned 2.57%. Longer treasuries performed the best, with the 30-year treasury returning 4.10%; 10-year was 3.87%; 5-year was 2.81%; and 2-year was 1.28%.

I have also added our standard BNY Mellon presentation so you and the other council members could see another way the town's relationship could be presented. I look forward to presenting at the next Town Council meeting. Should you have any questions, please give me a call.

Warm regards,



Gerardo Rodriguez

1450 Brickell Avenue, Suite 2700, Miami, FL 33131
T305 810 2926 F866 357 8663 gerardo.rodriguez@bnymellon.com



BNY MELLON WEALTH MANAGEMENT

A Presentation for
Town of Bay Harbor Islands
Año oncecener 31, 2018

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Vice President*

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TOWN OF BAY HARBOR ISLANDS - ASSET SUMMARY

As of December 31, 2018

	<i>Contingency Fund</i>	<i>General Fund</i>	<i>Water Fund</i>	<i>Combined Accounts</i>
<i>Account Numbers</i>	<i>52-0657-00-8</i>	<i>52-0659-00-4</i>	<i>52-0819-00-4</i>	
<i>Market Values as of:</i>				
12/31/2001	1,655,582	2,345,312	1,441,665	5,442,560
12/31/2002	1,807,613	2,569,476	1,577,172	5,954,261
12/31/2003	1,850,986	3,898,522	1,617,841	7,367,350
12/31/2004	1,884,393	3,980,278	1,649,635	7,514,307
12/31/2005	1,898,590	4,879,864	1,661,436	8,439,890
12/31/2006	1,196,089	5,042,556	1,718,267	7,956,912
12/31/2007	1,278,555	2,268,410	1,837,152	5,384,116
12/31/2008	1,355,544	2,421,781	1,437,731	5,215,056
12/31/2009	1,419,099	2,524,553	1,517,389	5,461,041
12/31/2010	1,481,152	2,637,367	1,584,012	5,702,531
12/31/2011	1,548,521	2,750,455	1,653,460	5,952,437
12/31/2012	1,608,014	2,855,250	1,718,841	6,182,106
12/31/2013	1,572,275	2,792,826	1,680,356	6,045,456
12/31/2014	1,597,468	2,837,294	1,706,487	6,141,249
12/31/2015	1,608,541	2,857,170	1,718,420	6,184,131
12/31/2016	1,621,799	2,880,951	1,732,327	6,235,076
12/31/2017	1,646,962	2,924,378	1,758,756	6,330,096
12/31/2018	1,656,147	2,941,534	1,769,203	6,366,884
<i>Fixed Income</i>	1,621,558	2,886,282	1,736,807	6,244,648
<i>Cash & Equivalents</i>	34,588	55,251	32,397	122,236
<i>Market Value</i>	1,656,147	2,941,534	1,769,203	6,366,884
<i>Est. Annual Income</i>	37,722	66,670	40,463	144,855

Portfolio Comparisons

<i>Avg. Current Yield</i>	2.29%	2.28%	2.30%	2.29%
<i>BBG BARC Interm Govt/Credit Index*</i>	2.70%	2.70%	2.70%	2.70%
<i>Yield to Maturity/Call</i>	2.82%	2.80%	2.81%	2.81%
<i>BBG BARC Interm Govt/Credit Index*</i>	2.99%	2.99%	2.99%	2.99%
<i>Duration</i>	3.29	3.30	3.26	3.28
<i>BBG BARC Interm Govt/Credit Index*</i>	3.87	3.87	3.87	3.87

Portfolio Return Comparisons

<i>2018 4th Qtr Return</i>	1.41%	1.44%	1.42%
<i>BBG BARC Interm Govt/Credit Index*</i>	1.65%	1.65%	1.65%
<i>YTD Return</i>	0.97%	1.01%	1.02%
<i>BBG BARC Interm Govt/Credit Index*</i>	0.88%	0.88%	0.88%
<i>Annualized Return Since Inception</i>	4.27%	4.30%	4.43%
<i>BBG BARC Interm Govt/Credit Index*</i>	4.48%	4.48%	4.51%

* Bloomberg completed the acquisition of Barclays Intermediate Govt/Corp Index in August 2016 changing only the Benchmark name of the index to BBG BARC Interm Govt/Credit Index.

**CONTINGENCY FUND
PERFORMANCE HISTORY**

	Quarter Ended 10/1/2018 - 12/31/2018	YTD 1/1/18 - 12/31/2018	Inception Month through 12/31/2018*
Taxable Fixed Income	1.41%	0.97%	4.27%
BBG BARC Interm Govt/Credit Index	1.65%	0.88%	4.48%
Total Account Gross of Fees	1.39%	0.97%	4.18%
Total Account Net of Fees	1.27%	0.51%	3.67%

Cash Flows / Market Value Summary

Market Value as of December 31, 2007	\$	1,278,554.82
Contributions	\$	2,017.45
Withdrawals	\$	(8,532.82)
Net Contributions / Withdrawals - 2008	\$	(6,515.37)
Market Value as of December 31, 2008	\$	1,355,543.65
Net Contributions / Withdrawals - 2009	\$	(2,396.34)
Market Value as of December 31, 2009	\$	1,419,099.12
Net Contribution / Withdrawals - 2010	\$	(7,398.39)
Market Value as of December 31, 2010	\$	1,481,152.29
Net Contribution / Withdrawals - 2011	\$	(7,628.66)
Market Value as of December 31, 2011	\$	1,548,521.46
Net Contribution / Withdrawals - 2012	\$	(7,947.92)
Market Value as of December 31, 2012	\$	1,597,499.67
Net Contribution / Withdrawals - 2013	\$	(7,973.65)
Market Value as of December 31, 2013	\$	1,582,397.20
Net Contribution / Withdrawals - 2014	\$	(7,594.39)
Market Value as of December 31, 2014	\$	1,597,468.21
Net Contribution / Withdrawals - 2015	\$	(7,287.45)
Market Value as of December 31, 2015	\$	1,608,540.98
Net Contribution / Withdrawals - 2016	\$	(7,341.05)
Market Value as of December 31, 2016	\$	1,621,798.57
Net Contribution / Withdrawals - 2017	\$	(7,247.50)
Market Value as of December 31, 2017	\$	1,646,962.12
Net Contribution / Withdrawals - 2018	\$	(7,163.88)
Market Value as of December 31, 2018	\$	1,656,146.50

*Inception Dates Listed Below:

Taxable Fixed Income 07/01/1997

Portfolio Profile Report

Portfolio	10520657008
Market Value	\$ 1,636,025
Pricing Date	12/31/2018
Benchmark*	U.S. Government / Credit Intermediate
Benchmark Pricing Date	12/31/2018

Statistics (MV Weighted)	Portfolio	Index	Diff
Effective Duration (yrs)	3.29	3.87	-0.58
Eff Duration vs Index (%)	85.01		
Average Life (yrs)	3.60	4.27	-0.67
Yield to Maturity (%)	2.82	2.99	-0.17
Yield to Worst (%)	2.82	2.99	-0.17
Average Credit Quality	AA / Aa2	AA+	
Average Coupon (%)	2.25	2.67	-0.42
Average Price (\$)	98.22	98.85	-0.63
Current Yield (%)	2.29	2.70	-0.41

Credit Quality	%Portfolio	%Index	%Diff
AAA	50.64	65.62	-14.98
AA	12.51	4.79	7.72
A	36.22	12.92	23.30
BBB	0.63	16.67	-16.04
<BBB	-	-	-
NR	-	-	-

Effective Duration (yrs)	%Portfolio	%Index	%Diff
NA	-	-	-
<0	-	-	-
0 to 1	14.35	0.35	14.00
1 to 3	32.81	41.67	-8.86
3 to 4	16.01	15.15	0.86
4 to 6	27.23	24.69	2.54
6 to 8.5	9.29	18.14	-8.85
>8.5	0.32	-	0.32

Eff Maturity (Avg Life yrs)	%Portfolio	%Index	%Diff
< 0	-	-	-
0 to 1	14.35	0.05	14.30
1 to 3	29.69	39.18	-9.49
3 to 5	30.51	27.34	3.17
5 to 10	25.46	33.42	-7.96
10 to 20	-	-	-
> 20	-	-	-

Final Maturity (yrs)	%Portfolio	%Index	%Diff
< 0	-	-	-
0 to 1	14.35	-	14.35
1 to 3	29.69	38.53	-8.84
3 to 5	30.51	27.19	3.32
5 to 10	25.46	34.28	-8.82
10 to 20	-	-	-
> 20	-	-	-

Coupon	%Portfolio	%Index	%Diff
< 3%	80.02	71.67	8.35
3% to 4%	16.51	16.96	-0.45
4% to 5%	2.84	7.01	-4.17
5% to 6%	0.63	2.29	-1.66
6% to 7%	-	1.12	-1.12
> 7%	-	0.95	-0.95

Sector Weightings	%Portfolio	%Index	%Diff
Treasuries	45.84	60.21	-14.37
U.S. TIPS	2.63	-	2.63
Govt Related Agencies	0.91	4.45	-3.54
Govt Related Loc Auth	4.60	0.60	4.00
Govt Related Sovereign	-	0.90	-0.90
Govt Related Supranatl	-	2.70	-2.70
Corporates Financial	16.71	12.37	4.34
Corporates Industrial	27.81	17.28	10.53
Corporates Utility	1.50	1.48	0.02
Securitized ABS	-	-	-
Securitized CMBS	-	-	-
Securitized MBS Pass	-	-	-
Securitized Covered	-	-	-
Securitized CMO	-	-	-
N/A	-	-	-

*Benchmark index belongs to the Bloomberg Barclays family of Indices. The rating logic is the Bloomberg Barclays Index Rating.

TOWN OF BAY HARBOR CONTING-IMA

TOWN OF BAY HARBOR CONTING-IMA (by Account 10520657008)

Date Range: 7/1/1997 through 12/31/2018

			Last 3 Months		Year To Date		Selected Dates ¹	
Class	Benchmark	Portfolio Allocation	Class Return	Benchmark Return	Class Return	Benchmark Return	Class Return	Benchmark Return
Cash and Cash Equivalents	Lipper Money Market Index	2.08%	0.37%	0.51%	1.24%	1.63%	1.83%	1.92%
	Not Applicable		-	0.00%	-	0.00%	-	0.00%
Fixed Income	BBG BARC Interm Govt/Credit Index	97.92%	1.41%	1.65%	0.97%	0.88%	4.27%	4.48%
Totals	Class Blended Benchmark	100.00%	1.39%	1.63%	0.97%	0.87%	4.18%	4.38%
Totals (Net of Fees)	Class Blended Benchmark	100.00%	1.27%	1.63%	0.51%	0.87%	3.67%	4.38%

Information in this report is based on sources believed to be reliable but is not guaranteed. The information herein is not intended to be investment, tax or legal advice. Please consult with your tax or legal professional before taking action based on this information. Past performance is not indicative of future results.

FOOTNOTES:

¹ Annualized Return

Account summary

December 1, 2018 - December 31, 2018

Investment Manager For Town Of
Bay Harbor Islands Broad Causeway
Contingency Fund Under Agreement
Dated December 3, 2018
Account number 10520657008

Account activity

Market value

Market value as of December 1, 2018:	\$ 1,639,299.63
Additions	177.60
Withdrawals	-177.60
Change in investment value (Net of fees, includes income)	16,846.87
Market value as of December 31, 2018:	\$ 1,656,146.50
Accrued income as of December 31, 2018:	8,562.25
Total market value plus accrued income	\$ 1,664,708.75

Cash and money market activity

Cash/money market balance as of December 1, 2018:	\$ 32,484.08
Income	3,394.64
Receipts	177.60
Disbursements	-795.63
Sales/Maturities	59,678.53
Purchases	-60,351.17
Cash/money market balance as of December 31, 2018:	\$ 34,588.05

Income summary

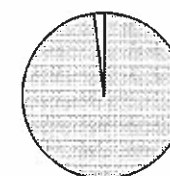
	This period	Year to date
Interest tax exempt	\$ 0.00	\$ 0.00
Interest taxable	3,394.64	37,864.97
Dividends	0.00	0.00
Other asset income	0.00	0.00
Total income	\$ 3,394.64	\$ 37,864.97

	Short term	Long term
Year to date realized net gain/loss	\$-638.31	\$-9,089.53
(For annual tax preparation please refer to your annual tax letter)		

Account profile

Investment objective:
Maximum income

Asset allocation



2% Cash & cash equivalents
98% Fixed income

Asset summary

	Market value
Cash & cash equivalents	\$ 34,588.05
(Includes income cash of \$ 1,200,767.65)	
Fixed income	1,621,558.45
Taxable	
Total assets	\$ 1,656,146.50

Bond maturities

Less than 1 year	1 to 5 years	5 to 10 years	over 10 years	
\$ 229,200.00	\$ 994,365.00	\$ 427,426.85	\$ 0.00	Par value
13.9%	60.2%	25.9%	0.0%	% of par value



BNY MELLON
WEALTH MANAGEMENT

www.bnymellonwealthmanagement.com

**GENERAL FUND
PERFORMANCE HISTORY**

	Quarter Ended 10/1/2018 - 12/31/2018	YTD 1/1/18 - 12/31/2018	Inception Month through 12/31/2018*
Taxable Fixed Income	1.44%	1.01%	4.30%
BBG BARC Intern Govt/Credit Index	1.65%	0.88%	4.48%
Total Account Gross of Fees	1.42%	1.01%	4.21%
Total Account Net of Fees	1.30%	0.56%	3.70%

Cash Flows / Market Value Summary

Market Value as of December 31, 2007	\$ 2,268,409.73
Contributions	\$ 3,412.05
Withdrawals	\$ (14,980.55)
Net Contributions / Withdrawals - 2008	\$ (11,568.50)
Market Value as of December 31, 2008	\$ 2,421,780.96
Net Contributions / Withdrawals - 2009	\$ (4,263.57)
Market Value as of December 31, 2009	\$ 2,524,552.73
Net Contribution / Withdrawals - 2010	\$ (13,164.96)
Market Value as of December 31, 2010	\$ 2,637,367.00
Net Contribution / Withdrawals - 2011	\$ (13,569.75)
Market Value as of December 31, 2011	\$ 2,750,455.09
Net Contribution / Withdrawals - 2012	\$ (14,116.60)
Market Value as of December 31, 2012	\$ 2,836,814.09
Net Contribution / Withdrawals - 2013	\$ (14,158.80)
Market Value as of December 31, 2013	\$ 2,810,396.98
Net Contribution / Withdrawals - 2014	\$ (13,487.16)
Market Value as of December 31, 2014	\$ 2,837,294.45
Net Contribution / Withdrawals - 2015	\$ (12,942.18)
Market Value as of December 31, 2015	\$ 2,857,170.30
Net Contribution / Withdrawals - 2016	\$ (13,035.08)
Market Value as of December 31, 2016	\$ 2,880,950.74
Net Contribution / Withdrawals - 2017	\$ (13,188.09)
Market Value as of December 31, 2017	\$ 2,924,378.08
Net Contribution / Withdrawals - 2018	\$ (12,785.07)
Market Value as of December 31, 2018	\$ 2,941,533.90

*Inception Dates Listed Below:
Taxable Fixed Income 7/1/1997

Portfolio Profile Report

Portfolio	10520659004
Market Value	\$ 2,910,633
Pricing Date	12/31/2018
Benchmark*	U.S. Government / Credit Intermediate
Benchmark Pricing Date	12/31/2018

Statistics (MV Weighted)	Portfolio	Index	Diff
Effective Duration (yrs)	3.30	3.87	-0.57
Eff Duration vs Index (%)	85.27		
Average Life (yrs)	3.61	4.27	-0.67
Yield to Maturity (%)	2.80	2.99	-0.19
Yield to Worst (%)	2.80	2.99	-0.19
Average Credit Quality	AA / Aa2	AA+	
Average Coupon (%)	2.24	2.67	-0.43
Average Price (\$)	98.21	98.85	-0.64
Current Yield (%)	2.28	2.70	-0.42

Credit Quality	%Portfolio	%Index	%Diff
AAA	51.46	65.62	-14.16
AA	12.52	4.79	7.73
A	35.31	12.92	22.39
BBB	0.70	16.67	-15.97
<BBB	-	-	-
NR	-	-	-

Effective Duration (yrs)	%Portfolio	%Index	%Diff
NA	-	-	-
<0	-	-	-
0 to 1	13.74	0.35	13.39
1 to 3	33.63	41.67	-8.04
3 to 4	15.79	15.15	0.64
4 to 6	27.02	24.69	2.33
6 to 8.5	9.46	18.14	-8.68
>8.5	0.35	-	0.35

Eff Maturity (Avg Life yrs)	%Portfolio	%Index	%Diff
< 0	-	-	-
0 to 1	13.74	0.05	13.69
1 to 3	29.44	39.18	-9.74
3 to 5	31.92	27.34	4.58
5 to 10	24.90	33.42	-8.52
10 to 20	-	-	-
> 20	-	-	-

Final Maturity (yrs)	%Portfolio	%Index	%Diff
< 0	-	-	-
0 to 1	13.74	-	13.74
1 to 3	29.44	38.53	-9.09
3 to 5	31.92	27.19	4.73
5 to 10	24.90	34.28	-9.38
10 to 20	-	-	-
> 20	-	-	-

Coupon	%Portfolio	%Index	%Diff
< 3%	80.81	71.67	9.14
3% to 4%	15.82	16.96	-1.14
4% to 5%	2.66	7.01	-4.35
5% to 6%	0.70	2.29	-1.59
6% to 7%	-	1.12	-1.12
> 7%	-	0.95	-0.95

Sector Weightings	%Portfolio	%Index	%Diff
Treasuries	46.75	60.21	-13.46
U.S. TIPS	2.78	-	2.78
Govt Related Agencies	0.68	4.45	-3.77
Govt Related Loc Auth	4.82	0.60	4.22
Govt Related Sovereign	-	0.90	-0.90
Govt Related Supranatl	-	2.70	-2.70
Corporates Financial	16.24	12.37	3.87
Corporates Industrial	27.20	17.28	9.92
Corporates Utility	1.52	1.48	0.04
Securitized ABS	-	-	-
Securitized CMBS	-	-	-
Securitized MBS Pass	-	-	-
Securitized Covered	-	-	-
Securitized CMO	-	-	-
N/A	-	-	-

*Benchmark index belongs to the Bloomberg Barclays family of Indices. The rating logic is the Bloomberg Barclays Index Rating.

TOWN OF BAY HARBOR-GEN FUND-IMA

TOWN OF BAY HARBOR-GEN FUND-IMA (by Account 10520659004)

Date Range: 7/1/1997 through 12/31/2018

			Last 3 Months		Year To Date		Selected Dates ¹	
Class	Benchmark	Portfolio Allocation	Class Return	Benchmark Return	Class Return	Benchmark Return	Class Return	Benchmark Return
Cash and Cash Equivalents	Lipper Money Market Index	1.87%	0.38%	0.51%	1.25%	1.63%	1.74%	1.92%
Fixed Income	BBG BARC Interm Govt/Credit Index	98.13%	1.44%	1.65%	1.01%	0.88%	4.30%	4.48%
Totals	Class Blended Benchmark	100.00%	1.42%	1.43%	1.01%	-0.41%	4.21%	4.85%
Totals (Net of Fees)	Class Blended Benchmark	100.00%	1.30%	1.43%	0.56%	-0.41%	3.70%	4.85%

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FOOTNOTES:

¹ Annualized Return

Account summary

December 1, 2018 - December 31, 2018

Investment Manager For Town Of Bay
Harbor Islands General Fund Under
Agreement Dated December 3, 2018
Account number 10520659004

Account activity

Market value

Market value as of December 1, 2018:	\$ 2,911,780.96
Additions	327.75
Withdrawals	-327.75
Change in investment value (Net of fees, includes income)	29,752.94
Market value as of December 31, 2018:	\$ 2,941,533.90
Accrued income as of December 31, 2018:	15,449.90
Total market value plus accrued income	\$ 2,956,983.80

Cash and money market activity

Cash/money market balance as of December 1, 2018:	\$ 52,238.39
Income	5,475.93
Receipts	327.75
Sales/Maturities	109,202.38
Disbursements	-1,425.41
Purchases	-110,567.58
Cash/money market balance as of December 31, 2018:	\$ 55,251.46

Income summary

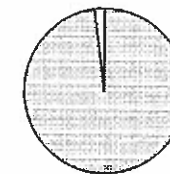
	This period	Year to date
Interest tax exempt	\$ 0.00	\$ 0.00
Interest taxable	5,475.93	66,363.65
Dividends	0.00	0.00
Other asset income	0.00	0.00
Total income	\$ 5,475.93	\$ 66,363.65

	Short term	Long term
Year to date realized net gain/loss	\$-1,042.95	\$-15,633.20
(For annual tax preparation please refer to your annual tax letter)		

Account profile

Investment objective:
Maximum income

Asset allocation



2% Cash & cash equivalents
98% Fixed income

Asset summary

	Market value
Cash & cash equivalents (Includes income cash of \$ 2,333,221.55)	\$ 55,251.46
Fixed income Taxable	2,886,282.44
Total assets	\$ 2,941,533.90

Bond maturities

Less than 1 year	1 to 5 years	5 to 10 years	over 10 years	
\$ 391,300.00	\$ 1,803,639.85	\$ 744,200.86	\$ 0.00	Par value
13.3%	61.4%	25.3%	0.0%	% of par value



**WATER FUND
PERFORMANCE HISTORY**

	Quarter Ended 10/1/2018 - 12/31/2018	YTD 1/1/18 - 12/31/2018	Inception Month through 12/31/2018*
Taxable Fixed Income	1.42%	1.02%	4.43%
BBG BARC Intern Govt/Credit Index	1.65%	0.88%	4.51%
Total Account Gross of Fees	1.40%	1.02%	4.27%
Total Account Net of Fees	1.28%	0.56%	3.76%

Cash Flows / Market Value Summary

Market Value as of December 31, 2007	\$ 1,837,151.93
Contributions	\$ 2,672.65
Withdrawals	\$ (511,419.15)
Net Contributions / Withdrawals - 2008	\$ (508,746.50)
Market Value as of December 31, 2008	\$ 1,437,731.17
Net Contributions / Withdrawals - 2009	\$ (2,559.30)
Market Value as of December 31, 2009	\$ 1,517,388.69
Net Contribution / Withdrawals - 2010	\$ (7,911.44)
Market Value as of December 31, 2010	\$ 1,584,011.73
Net Contribution / Withdrawals - 2011	\$ (8,154.75)
Market Value as of December 31, 2011	\$ 1,653,460.13
Net Contribution / Withdrawals - 2012	\$ (8,494.25)
Market Value as of December 31, 2012	\$ 1,707,646.24
Net Contribution / Withdrawals - 2013	\$ (8,520.42)
Market Value as of December 31, 2013	\$ 1,690,428.39
Net Contribution / Withdrawals - 2014	\$ (8,113.04)
Market Value as of December 31, 2014	\$ 1,706,486.60
Net Contribution / Withdrawals - 2015	\$ (7,784.69)
Market Value as of December 31, 2015	\$ 1,718,419.51
Net Contribution / Withdrawals - 2016	\$ (7,848.27)
Market Value as of December 31, 2016	\$ 1,732,327.07
Net Contribution / Withdrawals - 2017	\$ (7,933.07)
Market Value as of December 31, 2017	\$ 1,723,120.73
Net Contribution / Withdrawals - 2018	\$ (7,669.40)
Market Value as of December 31, 2018	\$ 1,769,203.46

*Inception Dates Listed Below:

Taxable Fixed Income 6/1/1997

Portfolio Profile Report

Portfolio	10520819004
Market Value	\$ 1,752,227
Pricing Date	12/31/2018
Benchmark*	U.S. Government / Credit Intermediate
Benchmark Pricing Date	12/31/2018

Statistics (MV Weighted)	Portfolio	Index	Diff
Effective Duration (yrs)	3.26	3.87	-0.61
Eff Duration vs Index (%)	84.24		
Average Life (yrs)	3.56	4.27	-0.67
Yield to Maturity (%)	2.81	2.99	-0.18
Yield to Worst (%)	2.80	2.99	-0.19
Average Credit Quality	AA / Aa2	AA+	
Average Coupon (%)	2.26	2.67	-0.41
Average Price (\$)	98.29	98.85	-0.56
Current Yield (%)	2.30	2.70	-0.40

Credit Quality	%Portfolio	%Index	%Diff
AAA	51.93	65.62	-13.69
AA	12.25	4.79	7.46
A	35.24	12.92	22.32
BBB	0.59	16.67	-16.08
<BBB	-	-	-
NR	-	-	-

Effective Duration (yrs)	%Portfolio	%Index	%Diff
NA	-	-	-
<0	-	-	-
0 to 1	13.41	0.35	13.06
1 to 3	35.27	41.67	-6.40
3 to 4	16.09	15.15	0.94
4 to 6	26.01	24.69	1.32
6 to 8.5	8.94	18.14	-9.20
>8.5	0.29	-	0.29

Eff Maturity (Avg Life yrs)	%Portfolio	%Index	%Diff
< 0	-	-	-
0 to 1	13.41	0.05	13.36
1 to 3	30.91	39.18	-8.27
3 to 5	31.08	27.34	3.74
5 to 10	24.61	33.42	-8.81
10 to 20	-	-	-
> 20	-	-	-

Final Maturity (yrs)	%Portfolio	%Index	%Diff
< 0	-	-	-
0 to 1	13.41	-	13.41
1 to 3	30.91	38.53	-7.62
3 to 5	31.08	27.19	3.89
5 to 10	24.61	34.28	-9.67
10 to 20	-	-	-
> 20	-	-	-

Coupon	%Portfolio	%Index	%Diff
< 3%	80.18	71.67	8.51
3% to 4%	16.57	16.96	-0.39
4% to 5%	2.66	7.01	-4.35
5% to 6%	0.59	2.29	-1.70
6% to 7%	-	1.12	-1.12
> 7%	-	0.95	-0.95

Sector Weightings	%Portfolio	%Index	%Diff
Treasuries	46.82	60.21	-13.39
U.S. TIPS	3.08	-	3.08
Govt Related Agencies	0.85	4.45	-3.60
Govt Related Loc Auth	4.58	0.60	3.98
Govt Related Sovereign	-	0.90	-0.90
Govt Related Supranatl	-	2.70	-2.70
Corporates Financial	16.18	12.37	3.81
Corporates Industrial	27.10	17.28	9.82
Corporates Utility	1.40	1.48	-0.08
Securitized ABS	-	-	-
Securitized CMBS	-	-	-
Securitized MBS Pass	-	-	-
Securitized Covered	-	-	-
Securitized CMO	-	-	-
N/A	-	-	-

*Benchmark index belongs to the Bloomberg Barclays family of Indices. The rating logic is the Bloomberg Barclays Index Rating.

BAY HARBOR WATER FUND-IMA

BAY HARBOR WATER FUND-IMA (by Account 10520819004)

Date Range: 6/1/1997 through 12/31/2018

			Last 3 Months		Year To Date		Selected Dates ¹	
Class	Benchmark	Portfolio Allocation	Class Return	Benchmark Return	Class Return	Benchmark Return	Class Return	Benchmark Return
Cash and Cash Equivalents	Lipper Money Market Index	1.82%	0.37%	0.51%	1.24%	1.63%	1.91%	1.93%
	Not Applicable		-	0.00%	-	0.00%	-	0.00%
Fixed Income	BBG BARC Interm Govt/Credit Index	98.18%	1.42%	1.65%	1.02%	0.88%	4.43%	4.51%
Totals	Class Blended Benchmark	100.00%	1.40%	1.63%	1.02%	0.87%	4.27%	4.36%
Totals (Net of Fees)	Class Blended Benchmark	100.00%	1.28%	1.63%	0.56%	0.87%	3.76%	4.36%

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FOOTNOTES:

¹ Annualized Return

Account summary

December 1, 2018 - December 31, 2018

Account activity

Market value

Market value as of December 1, 2018:	\$ 1,751,439.55
Additions	197.15
Withdrawals	-197.15
Change in investment value (Net of fees, includes income)	17,763.91
Market value as of December 31, 2018:	\$ 1,769,203.46
Accrued income as of December 31, 2018:	9,520.51
Total market value plus accrued income	\$ 1,778,723.97

Cash and money market activity

Cash/money market balance as of December 1, 2018:	\$ 30,296.19
Income	3,470.48
Receipts	197.15
Disbursements	-857.52
Sales/Maturities	69,547.74
Purchases	-70,257.23
Cash/money market balance as of December 31, 2018:	\$ 32,396.81

Income summary

	This period	Year to date
Interest tax exempt	\$ 0.00	\$ 0.00
Interest taxable	3,470.48	40,278.31
Dividends	0.00	0.00
Other asset income	0.00	0.00
Total income	\$ 3,470.48	\$ 40,278.31

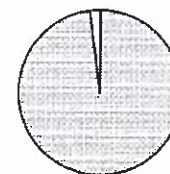
	Short term	Long term
Year to date realized net gain/loss	\$-607.45	\$-8,982.56
(For annual tax preparation please refer to your annual tax letter)		

Investment Manager For Town Of
Bay Harbor Islands Water Fund Under
Agreement Dated December 3, 2018
Account number 10520819004

Account profile

Investment objective:
Maximum income

Asset allocation



2% Cash & cash equivalents
98% Fixed income

Asset summary

	Market value
Cash & cash equivalents (Includes income cash of \$ 1,086,940.21)	\$ 32,396.81
Fixed income Taxable	1,736,806.65
Total assets	\$ 1,769,203.46

Bond maturities

Less than 1 year	1 to 5 years	5 to 10 years	over 10 years	Par value
\$ 229,200.00	\$ 1,095,561.00	\$ 442,426.85	\$ 0.00	
13.0%	62.0%	25.0%	0.0%	% of par value



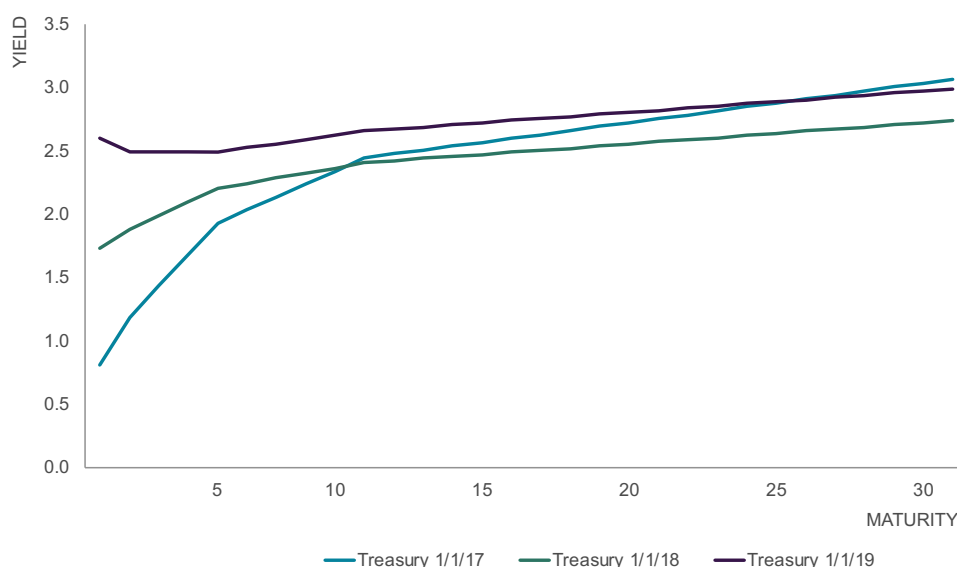
Bonds: 2018 Year-End Review & 2019 Outlook

John F. Flahive
Director, Fixed Income Investments

2018 was a disappointing year for almost all asset classes. The bond market was less volatile than equities, but experienced more twists and turns than normal. The annual total return of the Bloomberg/Barclays Bond index was barely positive at 0.01%, but the ride was especially bumpy during the fourth quarter.

The Federal Reserve's widely anticipated quarter-point pace of tightening resulted in four rate hikes in 2018, increasing the federal funds rate from 1.5% to 2.5%. The tightening pushed yields on all Treasury maturities higher and, as expected, we saw a bear flattener with yields on short maturities increasing more than intermediate and long maturities. The yield on the benchmark 10-year U.S. Treasury note ranged from a low of 2.4% at the start of 2018 to a peak of 3.24% in early October. However, the 10-year note ended the year at 2.67%, only 28 basis points (bps) higher than where it began the year.

Exhibit 1. Yield Curve Shifts
A Situation We Are Monitoring



As of 1/1/2019. Sources: Bloomberg.

The shape of the Treasury yield curve garnered a great deal of attention as an inverted curve — where short-term yields are higher than long-term yields — historically has been a very good leading indicator of an economic recession. However, recessions typically do not occur until almost two years after the inversion. When determining an inverted yield curve, we prefer to look at the relationship between the yield on the two-year Treasury and the 30-year Treasury. As of year-end, this was still positive by 54 bps. While the yield curve flattened, it still has a meaningful way to go before it inverts.

Yields on intermediate- and longer-dated Treasuries were also influenced by the material increase in Treasury debt, from \$15 trillion to \$16 trillion. The increase in U.S. Treasury debt supply contributed to the widening of yield spread between U.S. government debt and other high-quality global sovereign issuers, such as German bunds. We expect this trend to continue in 2019.

Exhibit 2. Treasury Yields Decouple?

Difference Between 10-Year U.S. and 10-Year Germany



As of 12/31/2018. Source: Bloomberg.

The worst-performing sector within the Treasury bond market was Treasury Inflation Securities (TIPS). Despite stronger global and domestic economic growth and a very low unemployment rate, inflation expectations fell in 2018. The implied break-even inflation rates on the 10-year TIPS declined from 200 bps to only 171 bps, largely due to the decline in the price of commodities, particularly oil.

Exhibit 3. Break-Even Inflation Rate

Rolling Implied Inflation on 10-Year Treasury

Yield on 10-Year Treasury Note Less 10-Year TIPS



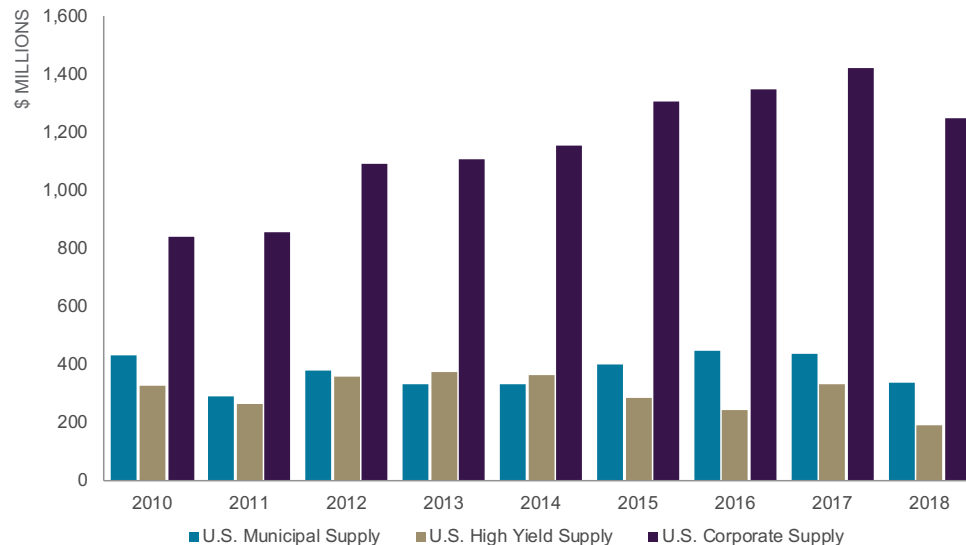
As of 12/31/2018. Source: Bloomberg.

Corporate Bonds

Corporate bonds, both investment-grade and high yield, posted their worst year since 2008. During 2018, the yield spread on investment-grade corporate bonds increased from 89 basis points to 143 basis points and high yield spreads widened from 343 bps to 526 bps. Despite increased corporate profitability and lower new-issue supply, both investment-grade and high yield bond spreads increased

materially. In fact, investment- grade issuance fell from \$1.4 trillion to \$1.2 trillion while high yield issuance fell more than 40%, which should have been supportive for yield spreads. However, demand turned extremely negative during the fourth quarter as investors became increasingly concerned about the impact slower global growth and weaker oil prices might have on corporate profitability. During the final three months of the year, mutual fund redemptions from corporate bond funds exceeded more than \$60 billion, the largest level since the Great Recession.

Exhibit 4. Fixed Income Supply

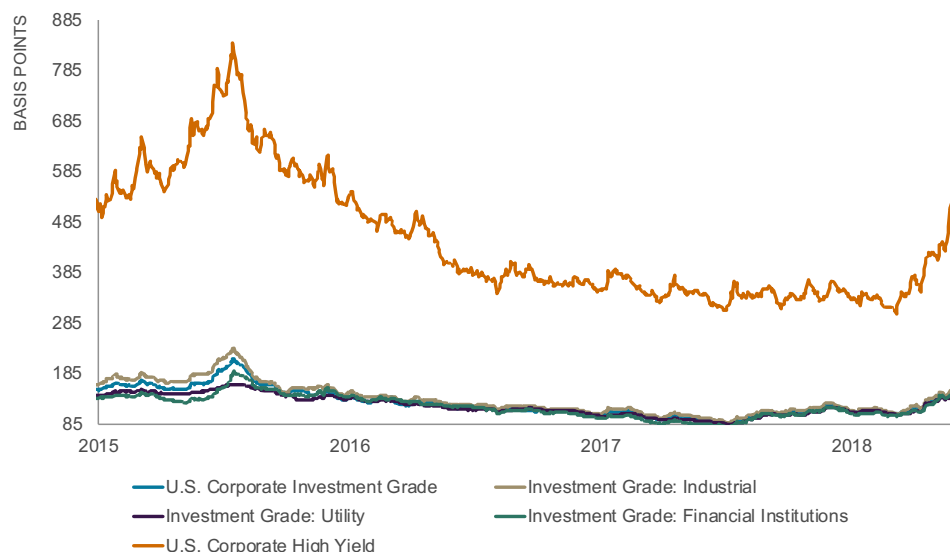


As of 12/31/2018. Source: Bloomberg League Tables and The Bond Buyer.

In a reversal of 2017, the weakest fixed income sector was emerging markets, particularly local currency emerging market debt. Concerns about dampened global growth amid the trade tensions between the U.S. and China, as well as dramatic declines in the commodity markets, hurt bond prices. The J.P. Morgan Emerging Markets Bond index (Local Currency) delivered a total return of -3.4% while the U.S. dollar denominated index returned -2.46%.

Exhibit 5. Investment Grade Credit Spreads

Three-Year Option-Adjusted Spread Changes



As of 12/31/2018. Source: Barclays Capital.

Municipal Bonds

Positive supply and demand dynamics helped produce slightly positive total returns for municipal bonds in 2018. Supply of new-issue municipal bonds declined roughly 24% from 2017 levels as the new tax legislation eliminated the ability for an issuer to refinance outstanding, higher interest rate debt prior to the call date. Consequentially, refunding activity declined by more than 35% and total new issuance volume fell from \$436 billion to \$340 billion. Demand for municipal bonds was robust during the first half of the year, with mutual fund inflows reaching \$15 billion. However, rising interest rates during the third quarter weighed on investor sentiment, with nearly half of the \$15 billion flowing out of municipal bond mutual funds in the latter half of the year. In contrast, demand from separately managed accounts was relatively strong throughout the whole year, with demand for maturities of 10-years or shorter particularly solid during the latter half of the year.

The combination of these factors resulted in materially different yield curve shifts in the municipal bond market compared to the Treasury yield curve. The municipal bond yield curve steepened, with yields on longer-dated maturities increasing 34 bps more than the yield on short maturities. The total return on the Bloomberg/Barclays Municipal Bond index was 1.28%, with the best-performing maturity profile five-years and shorter. The worst performing maturity profile was the 22- to 30-year, delivering a modest 0.34%. Municipal bond credit quality buckets also varied compared to the taxable bond market, with lower-quality outperforming higher-quality bonds. The total returns were as follows: BBB-rated at 1.96%, A-rated at 1.34%, AA-rated at 1.22%, and AAA-rated the worst at 1.05%.

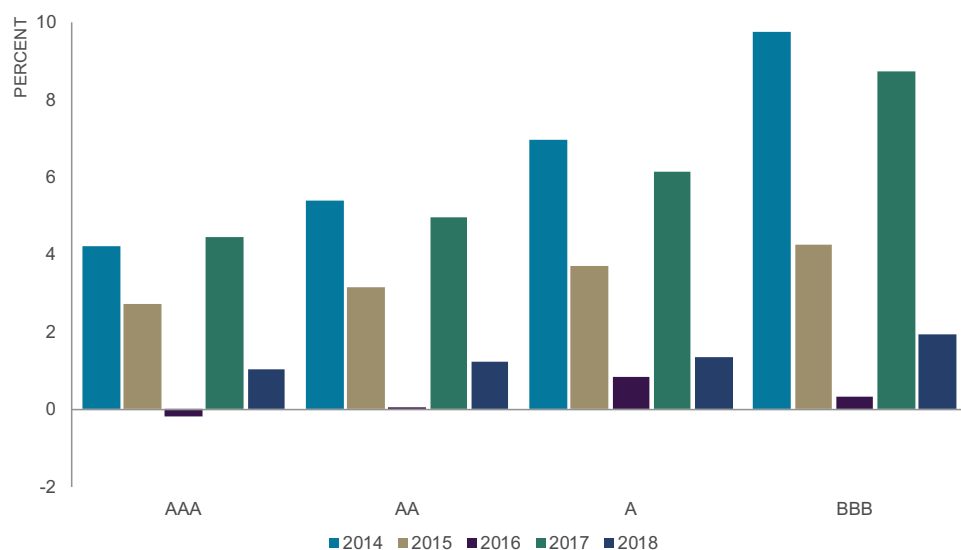
Another factor influencing the supply and demand of municipal bonds during 2018 was activity of the two prominent “institutional” holders of municipal debt, banks and property/casualty insurance companies. The material decline in the effective tax brackets of corporations raised questions about the potential future demand for tax-exempt municipal bonds from banks and insurance companies — whether they may instead become net sellers of their \$900 billion in bonds. Fortunately, the decline of \$40 billion from regional banks was not as aggressive as feared. Nevertheless, the lack of demand for municipal securities beyond 10 years was evident and will continue to influence the shape of the municipal bond curve for many years to come.

Municipal Bond Credit

Although yield remains an important component of total return, we are careful not to aggressively reach for yield. Instead we favor higher credit quality municipal bonds by employing a disciplined approach to our security-selection process. The elimination of the federal deductibility of state and local taxes (SALT) will have ramifications on municipal budgets in the near future, especially in states that currently have large state and property tax burdens. We foresee much greater pushback from taxpayers to at least maintain the level of tax burden, not increase it. This will result in much less financial flexibility at the state and local levels, particularly when there is an economic downturn.

Exhibit 6. Municipal Credit Quality Returns

2014–2018 Year-to-Date



As of 12/31/2018. Source: Barclays Capital.

Fortunately, the recent strong economic base and the windfall created from the repatriation of foreign-held profits has helped buffer many ever-increasing budgets around the country. Furthermore, our outlook calls for slower economic growth with lower longer-term averages near 2%. We do not foresee a recession until at least 2021. As a result, we do not believe we will see a near-term spike in municipal bankruptcies, but we could easily see an acceleration of downgrades in the coming years. We also believe the rating agencies will be even less patient towards states and localities that chronically underfund their pension and other post-retirement liabilities. An added concern is the unrealistic long-term capital market expectation return targets that many public plans continue to maintain.

Outlook

It appears the Federal Reserve is transitioning from a quarter-point pace of tightening to a semiannual pace as the federal funds rate has moved from 0% in late 2015 to near a more neutral level today. This implies that there will be less need to increase short-term interest rates in 2019 and beyond. Our outlook is for the Federal Reserve to only increase two more times in 2019, going from quarterly increases to semiannual ones. However, given growing economic uncertainty surrounding trade and geopolitical noise, we would not be surprised if the Federal Reserve only increased rates once — or not at all — during all of 2019.

In an environment with stable, short-term interest rates, intermediate- and longer-term interest rates should remain within the recent ranges held over the last few years. Therefore, the benchmark 10-year Treasury will likely remain between 2.25% and 3.25%. We are not calling for a completely inverted yield curve (based on the difference between 30-year yield below two-year) as our base case. But it may occur by late 2019 if the Federal Reserve increases rates more aggressively. Credit spreads have already increased materially, and thus we are calling for more stability in 2019. The combination of more modest stable credit spreads and range-bound interest rates should deliver modest total returns for fixed income in 2019.

We maintain a positive outlook for municipal bonds. Many taxpayers will realize the negative impacts from the capping of state and local deductions this spring. Demand for tax-exempt interest income should remain strong given the recent limits on state and local deductions and the income stability that municipal

bonds provide. Supply of new issuance is expected to increase moderately but we believe the increase will be manageable. Credit quality will be a growing focus, but we are anticipating relatively stable quality spreads there, too.

While the volatility and noise created by news headlines can be distracting, investors should stay focused on their long-term investment plan and the role fixed income can play within a well-diversified portfolio. It's very important to hold a mix of fixed income strategies that can provide relative stability, a source of income and diversification, especially during the later stage of an economic cycle.

About the Author

John F. Flahive

Director, Fixed Income Investments

John is the director of fixed income for BNY Mellon Wealth Management and is responsible for all fixed income strategy, policy and management. He is chairman of the Bond Strategy Committee, and is a member of the Investment Strategy Committee, Investment Policy Committee, and Asset Review Committee.

He has more than 30 years of investment experience and has been an investment manager with the firm since 1994. Prior to joining the firm, he was a senior portfolio manager and vice president with Neuberger & Berman, and a vice president and associate portfolio manager with T. Rowe Price.

John holds a bachelor's degree in business administration from Saint Michael's College, a master of business administration from Clarkson University, and attended New York University's Graduate School of Business Administration for Visiting Professionals. He is a CFA charterholder.

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AGENDA ITEM REPORT

February 11, 2019

ITEM NUMBER: 2.

ITEM: Consideration and Approval of a request for appointment to the Sustainability and Resiliency Committee. Enclosed is a copy of information submitted by Mr. John Corral and Edward Kazanjian.

DESCRIPTION:

The Town Council previously appointed 7 residents to this committee; however, shortly after the appointments one resident withdrew his name. Also, we have had a difficult time getting responses from two member. We did get a response from one member who will be turning in the required forms; however, the second member has been non-responsible. We have reached out and sent numerous emails and correspondence to no avail. We have advised that member that his position is now vacated for another resident to have the opportunity to serve.

We have been advertising for months in the Town's newsletter and have only received the attached two requests. There are now two seats open for membership in this committee. Town Council Appointments are needed to move forward.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk
Marlene Siegel, Town Clerk

ATTACHMENTS

1. J. Corral
2. E. Kazanjian

Marlene Siegel

From: john corral <johncorral123@gmail.com>
Sent: Friday, January 18, 2019 4:19 PM
To: Marlene Siegel
Subject: John Corral Committee Consideration Request

Hi Marlene-

Thanks for taking some this Friday afternoon to let me know about the open position on the resiliency committee. Since the goals or objectives from our discussion have not been defined or were not clear to me I would like to move forward with my request to see if I can add some value to the overall goal of this venture.

Here is my linkedin profile <https://www.linkedin.com/in/johncorral/>

This is a cliff note version of my resume and should meet the initial review of my qualifications if applicable.

I can provide a resume if needed as well.

Thanks

John

Total Control Panel

[Login](#)

To: msiegel@bayharborislands-fl.gov [Remove](#) this sender from my allow list

From: johncorral123@gmail.com

You received this message because the sender is on your allow list.

Email disclosure: Please note: Florida has a very broad public records law. Most written communications to or from local officials regarding town business are public records, and are available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure.

**John Corral**

Solution Visionary and Problem Solver | Co-Founder of One Source Payments

Miami/Fort Lauderdale Area Telecommunications

500+
connections

Previous AT&T Mobility, Neverfail Group, AT&T IoT
Recommendations 11 people have recommended John Corral
Websites Company Website

View John Corral's full profile.
It's free!

Your colleagues, classmates, and 500 million other professionals are on LinkedIn.

View John's Full Profile

John Corral's Posts & Activity**Smartphone Satisfaction...**

March 23, 2017

COSTA MESA, Calif., March 23, 2017/PRNewswire/ --Customer satisfaction is much higher among smartphone owners who use their device to operate other connected home services such as smart thermostats...

See all activity

John Corral liked this



Wow! What a proud moment in our company's history...

John Corral liked this



Day one at #CES19 in Las Vegas. Come and visit us at stand...

John Corral liked this



See more

Summary

John Corral has been an influential leader in driving technology innovation and mobile application development for Fortune 500 organizations for over 20 years.

Early in his career, he launched Micro Computer Supply which quickly scaled to include international locations throughout Central and South America and grew from \$800K to \$5M in sales in just two years before merging with Computer Accessories by Maxima.

After John's early success as an entrepreneur, he went on to lead major consulting engagements for AT&T including custom wireless, application development for M2M-IOT, platform-based SAAS solutions with organizations including Ryder, Raymond James, Florida Power and Light and NASA.

John combines his expertise as a highly technical sales engineer with his ability to communicate to all levels and roles within large organizations in both English and Spanish.

A small sample of John's career highlights include:

- ▶ Launching Wireless services at NASA and consulting for HA/DR with the Office of the President of the United States.
- ▶ Rolling-out an M2M custom solution for a company-wide fleet monitoring system for Ryder's 80K trucks.
- ▶ Deploying a mobile security solution for Raymond James to enable thousands of brokers and traders to securely trade or conduct customer transactions wirelessly.

John is solving some problems by developing a solution for the mobile payments industry by launching One Source Payments with his business partner, in January 2018. The three devices the company will roll out are set to enable businesses and employees to process mobile payments

View this profile in another language

People Also Viewed

Walt Rivenbark



Chad Diskin
BIS Account Manager at AT&T



Jorge Silveira
Senior Account Executive at AT&T



Herbert Lindo
Director of Mobility Applications Consulting - AT&T Mobility



Courtney Lowe
Sales Representative at T-Mobile



Diane Serna



Dirk Doebler
Ark Consulting LL



Frank Sabo
FirstNet Channel Sales Manager at AT&T



Joe Panella
Director at Cisco-Jasper, The ON Switch for the Internet of Things

Public profile badge

Include this LinkedIn profile on other websites



John Corral

Solution Visionary and Problem Solver | Co-Founder of One Source Payments

View profile

LinkedIn

View profile badges

Find a different John Corral

First Name

Last Name



Example: John Corral



John Corral
Engineering Test Supervisor at FlightSafety International
Tulsa, Oklahoma Area



John Corral
Realtor at Howard Hanna Real Estate Services
Cleveland/Akron, Ohio Area

Mobile Payments | Mobile Applications | M2M and IOT | Fortune 100 Organizations | Wireless Security | Enterprise Software | Cloud Computing | SaaS & Platform Solutions | Platform Integrations | Custom Mobile Solutions | Tablet-based Mobile Computing | IOS, Android, & Windows Phone

Experience



Mobile Applications Consultant - AT&T Industry Mobility Applications Consulting Group PCG

AT&T Mobility

2010 – 2017 • 7 years

Florida

John was recruited back to AT&T to serve as a founding member of their new Mobility Applications Consulting Group tasked with leading innovative, nationwide technology projects for Fortune 500 organizations in the Financial Services and Banking, Healthcare, Retail, and Transportation industries.

In this role, John led consulting engagements on technologies including mobile applications, mobile security, M2M and IOT, Telemetry, Enterprise software and cloud computing, SaaS, custom applications with platform integrations and custom mobile solutions.

Examples of his significant projects in this role include:

Transportation & Logistics:

- ▶ Implementing and deploying a mobile application for nationwide ATT- Direct TV installation technicians and fleet.
- ▶ Rolling-out a company-wide fleet monitoring system for Ryder's national fleet of trucks enabling tracking and high level ODB2 Telemetry.

Financial Services & Banking:

- ▶ Partnering to develop and implement a bilingual mobile banking solution for Mercantil Bank.
- ▶ Deploying a mobile security solution for Raymond James enabling thousands of brokers and traders to securely trade or conduct customer transactions.

Other Notable Projects Include:

- ▶ Launching the first secure messaging servers at NASA and the Office of the President of the United States. This included implementing redundancies to ensure solutions operated continuously without failing.
- ▶ Working with Florida Power & Light to implement geo-redundant backups for substations and enable remote access with a custom access point.

Notable Clients Include:

Raymond James, Ryder Fleet, Office Depot, Tampa Electric Fleet and IOT, CHEP, Carnival Cruise Line and MASTEC DTV Fleet and Installers.



Regional Manager SE US and Caribbean

Neverfail Group

2008 – 2010 • 2 years

John was recruited to expand the business reach into new markets in the southeast region of the U.S. as well as throughout the Caribbean in accounts from Fortune 1000 organizations to small businesses.

He led a team of top-talent sales professionals, a Systems Engineer, and a field team of resellers and partners providing solutions for High Availability and Disaster recovery of mobility, email - messaging, and mission-critical applications that demanded continuous availability.

Data Solutions Consulting Group PCG - Global Market Group -



Miami/Fort Lauderdale Area

John Bruce Corral, Jr.

VP Business Development and Marketing at Reed Electric and Field Service
Orange County, California Area

[More professionals named John Corral](#)

Your dream job is closer than you think

[See jobs](#)

LinkedIn

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Salesforce Tips

Viewers: 7602



Learning Salesforce

Viewers: 56347



Selling into Industries: Telecommunications

Viewers: 1829

[View all online courses](#)

2001 – 2008 • 7 years

South East Region

John was promoted to work with the Signature Clients Group in 2006 to grow the market share of PDAs, and OEM products among Fortune 500 accounts. During his time in this role, he produced over \$28M in annual sales and achieved a Top 5 national ranking in global markets for total revenue by propelling application and cloud based solutions for mission-critical deployments. John was the regional SME for all channels including retail for new 3G/4G LTE technology.

**Bellsouth Wireless Data – Cingular Wireless Applications Specialist
– Indirect Channel Manager**

Bellsouth Technology Solutions

June 1996 – 2001 • 5 years

Florida

Volunteer Experience

Disaster Recovery Advisory Council

Bay Harbor Islands, Florida

January 2013 – January 2015 • 2 years 1 month | Disaster and Humanitarian Relief

Personal help for this great cause

Ronald McDonald House Charities of Fort Lauderdale

January 2014 – Present • 5 years 1 month | Social Services

I try and make an effort to come out and support this group a couple of times personally or with other co-workers at ATT.

Skills & Endorsements

Join LinkedIn to see John's skills, endorsements, and full profile

Join now

Courses

AT&T Mobility

- 60+ Certifications at ATT/Bellsouth, Microsoft, Research in Motion, Blackberry, Microsoft and The Neverfail Group and External Vendors
- Wireless Internet from IP to UMTS LTE and Beyond

AT&T IoT

- Achieving Peak Performance
- Navigating Through Change

Bellsouth Technology Solutions

- SPIN Situtation Problem Implication Need

Honors & Awards

AT&T

2011

Top Regional producers across all metrics.
San Francisco

Sell 2 Excell 2012

AT&T

2011

Regional Sales Leader Mobile Applications in Solutions Florida . Las Vegas Run through the warehouse.

Mobile Application Sales Leader Signature Group 2008

AT&T

2008

Access to Management Milestones 2004

Bellsouth

2004

Circle of Excellence**Mobile Application Regional Sales Lead Signature Group 2007**

AT&T

Languages

English

Full professional proficiency

Spanish

Full professional proficiency

Recommendations

A preview of what LinkedIn members have to say about John:

“ I worked with John for 4 years in his role as a Mobility Applications Consultant, during that time I worked with several of his peers as well as their leadership and...

[See more](#)

“ John is a dynamic, energetic and inspiring sales leader. His can do attitude combined with his technical expertise helps customers find the right solution for their...

[See more](#)

[Sign up to see who recommended John](#)

View John Corral's full profile to...

- See who you know in common
- Get introduced
- Contact **John Corral** directly

[View John's Full Profile](#)

Not the John you're looking for? [View more](#)

Edward Kazanjian

10350 West Bay Harbor Drive, 8 TUV | 305-582-9659 | Edjoy@aol.com

February 1, 2019

Marlene M. Siegel, CMC
Town Clerk
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

Dear Marlene:

In 2006 my wife and I moved to Bay Harbor from Miami Beach. Our daughters, Dena and Melissa Willman had apartments on the Island. We fell in love with the community immediately. Over the past few years, I have watched with great interest the development and growth of the Island.

My professional career has been in commercial real estate development. I recently liquidated my holdings and find I have some free time. I would like to offer to assist on any committee you think would be appropriate.

Sincerely,
Eddie Kazanjian

EDWARD KAZANJIAN

10350 West Bay Harbor Drive, Apartment 8 TUV, Bay Harbor Islands, Florida

Email edjoy@aol.com Phone 305582-9659

I have been a resident and property owner in Bay Harbor Islands for the past 14 years. My daughters and their families live on the Island. My grandsons both attend Ruth K. Broad Elementary.

EXPERIENCE

1981 TO 2016

PRESIDENT, WELLINGTON REALTY

A real estate company with holdings in Boston, MA and Pompano, FL. Specializing in small commercial warehouses and office space.

- Building from concept to completion, land acquisition, zoning, permitting, architectural design, building construction and tenant lease negotiation.
- Property management.
- Commercial office condo formation and management.
- Code compliance.

1997 – PRESENT

BOARD MEMBER, CONDO BOARD

- **LA COSTA CONDOMINIUM MIAMI BEACH 1997 TO 2005**
- **ISLAND POINTE CONDOMINIUM, BAY HARBOR ISLANDS 2006- PRESENT**

EDUCATION

MAY 1967

SOUTH HAMPTON COLLEGE LONG ISLAND UNIVERSITY

BA BUSINESS ADMINISTRATION

SKILLS

- Negotiated the settlement of lawsuit at La Costa with the developer after turn-over.
- Negotiated the sale of roof rights for the condo association at Island Pointe
- Property Management oversight on behalf of the condo associations.
- Budget Oversight
- Building renovations

AGENDA ITEM REPORT

February 11, 2019

ITEM NUMBER: 3.

ITEM:

Consideration and Approval of the following Meeting Minutes:

- a. August 13, 2018 - Regular Council Meeting
- b. September 17, 2018 - First Budget Public Hearing
- c. September 17, 2018 - Public Hearing
- d. September 17, 2018 - Regular Council Meeting
- d. September 26, 2018 - Second Budget Public Hearing
- e. October 10, 2018 - Regular Council Meeting

DESCRIPTION:

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk

ATTACHMENTS

- 1. 8-13-18 DRAFT
- 2. 9-17-18 DRAFT Budget PH
- 3. 9-17-18 DRAFT variance
- 4. 9-17-18 Reg DRAFT
- 5. 9-26-18 2nd Budget PH
- 6. 10-10-18 reg DRAFT

TOWN OF BAY HARBOR ISLANDS MINUTES OF A REGULAR MEETING

A Regular Council Meeting of the Town Council was held on Monday August 13, 2018 at 7:02 p.m. in the Council Chambers. Upon roll call the following members responded:

Mayor Stephanie Bruder	
Vice Mayor Joshua Fuller	Council Member Jordan Leonard
Council Member Kelly Reid	Council Member Isaac Salver
Council Member Elizabeth Tricoche	Council Member Robert Yaffe

SPECIAL PRESENTATION:

Item 1. MPS SuperHero Foundation

Edwin & Monica representatives of the MPS SuperHero Foundation came forward to provide a small presentation of the Foundation.

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

Council Member Reid deferred Item #11 on utility billing to research other cities guidelines.

Council Member Tricoche would like to see a future agenda item to fund a mental health counselor for the school.

Council Member Yaffe pulled Item # 3 e through I moved to the September Council Meeting.

- e. December 11, 2017 - Public Hearing
- f. January 8, 2018 - Regular Council Meeting
- g. February 12, 2018 - Regular Council Meeting
- h. March 12, 2018 - Regular Council Meeting
- i. April 16, 2018 - Organizational Meeting

Council Member Leonard pulled items 5, 6 and 7 for discussion.

Mayor Bruder requested a future agenda item to discuss Town Hall facility renovation.

TOWN MANAGER'S REPORT:

Item 2. Vacation Rentals

Town Manager Wasson reported that to date the Town has issued an estimated 30 licenses for vacation rentals. He received an inquiry from a resident to change the occupancy regulations that currently limited 2 occupants per room. The question was if a property owner had a much larger room, could he possible add more occupants. He asked the Town Council if they would like to have a discussion on the maximum occupancy.

There was no consensus from the Town Council to discuss the Town Code on room occupancy.

- Report on Investments Performance – Charles Sachs, BNY Mellon

Charles Sachs of BNY Mellon came forward to report on the Town investment performance.

COUNCIL REPORTS: Each Council Member will be afforded two (2) minutes to make their reports.

Council Member Tricoche thanked staff for working on the her concerns for a school resource officer and reminded the residents of the Halouver Skate Park.

Council Member Reid reported she attended the grand opening of the Haulover Skate Park and will be attending the Florida League of Cities Conference in Hollywood this week.

Council Member Salver reported he attended the Miami Dade County School Board Audit Committee to discuss the next fiscal year. He added that the school board will have question on the ballot on teacher pay. On July 30th he attended a session on sexual harassment in Miami Dade County; Miami Dade County League of Cities monthly meeting and the grand opening of the Haulover Skate Park.

Council Member Leonard reported he attended the Halouver Skate Park opening and will be attending the Florida League Cities conference this week.

Council Member Yaffe reported he attended the Skate Park Dedication; the monthly meeting from Miami Dade County League of Cities and will be attending the Florida League of Cities Conference and Finance and Taxation Committee meetings.

Vice Mayor Fuller encourage all the residents to use the new Skate Park and the Miami Shores Aquatic facility. He reported to have attended Pizza with the Police and will be attending the Florida League of Cities Conference this week.

Mayor Bruder thanked Council Member Leonard for working so hard to get the Skate Park and reminded residents that school will be back in session this coming Monday.

PUBLIC COMMENT: There is a three (3) minute time limit for each speaker during public comment and a two (2) minute time limit for each speaker during all other agenda items. Your cooperation is appreciated in observing the three (3) minute rule. If you have a matter you would like to discuss which requires more than three (3) minutes, please arrange a meeting with the Town Manager or appropriate administrative official. A request form is available from staff; please fill it in and return it to the Town Clerk prior to the start of the meeting if you would like to speak during public comment. Please come forward to the podium, give your name and address, and the name and address of the organization you are representing if any.

Kathleen Kennedy, 9901 W. Bay Harbor Drive, came forward and would have liked for all of the kids to in attendance for the students of the year recognition at the June Meeting. She suggested keeping the older boat from police department to show the marine life to young kids.

Frances Neuhut, 1060 Kane Concourse, came forward and felt that the Town was becoming taxation without representation. She stated that the County was raising taxes.

COMMITTEE REPORTS:

CONSENT AGENDA: (Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.)

Item 3. Approval of the following Meeting Minutes:

- a. September 25, 2017 - Budget Public Hearing
- b. October 24, 2017 - Special Council Meeting
- c. November 13, 2017 - Regular Council Meeting
- d. November 20, 2017 - Special Council Meeting
- e. ~~December 11, 2017 - Public Hearing~~
- f. ~~January 8, 2018 - Regular Council Meeting~~
- g. ~~February 12, 2018 - Regular Council Meeting~~
- h. ~~March 12, 2018 - Regular Council Meeting~~
- i. ~~April 16, 2018 - Organizational Meeting~~

Item 4. Consideration and Approval for the purchase of a new police marine patrol vessel for \$194,485.00 from Brunswick Commercial and Government Products. The purchase will be through the Florida Sheriffs 1122 Program which piggybacks a federally negotiated pricing/contract. Bids were requested from six (6) boat manufacturers. Documents explaining the program and other quotes are attached.

Item 8. Approval of inland marine insurance policy for the Shepard Broad Causeway Bridge for the year beginning July 15, 2018 to July 14, 2019 in the amount of \$133,539. Enclosed is a memorandum from Finance Director, Melissa Cruz.

ACTION: Vice Mayor Fuller made a motion to approve the Consent Agenda. Council Member Yaffe seconded the motion and it passed by unanimous poll vote.

Item 5. Approval of an agreement with the Miami Dade County School Board for an address verification system. The agreement will put in place a process to verify address for students attending RKBHK-8 and would require reporting to the Town.

ACTION: Mayor Bruder made a motion to approve the agreement with the following changes:

1. Section 1f change of date to October 15th.

2. Include all military branches, Army, Marines, Navy.
3. Section 2a, change language, if they are negligence in anyway.
4. Letter to be sent regular mail.

Council Member Tricoche seconded the motion and it passed unanimously.

Item 6. Approval of a Memorandum of Understanding between the Miami Dade County School Board through the School Board Police Department and the Town of Bay Harbor Islands Police Department establishing guidelines for the placement of school based law enforcement officers (SBLEOs) at Miami-Dade County Public School.

Council Member Leonard stated that the Council should have received a revise agreement and clarified that this was a multiple year agreement with an estimated \$7,000 budget impact.

ACTION: Council Member Yaffe made a motion to approve the proposed agreement as revised. Council Member Tricoche seconded the motion and it passed unanimously.

Item 7. Approval of a Memorandum of Understanding between the Town of Surfside, Bal Harbour Village and the Town of Bay Harbor Islands to share costs to provide a police officer (resource officer) at RKBHK-8.

ACTION: Council Member Yaffe made a motion to approve the Memorandum of Understanding. Council Member Tricoche seconded the motion and it passed unanimously.

ORDINANCES ON SECOND READING:

Item 9. Consideration and Approval of an ordinance on second reading amending the Town Code to provide enhanced outdoor lighting requirements.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 10 OF THE TOWN'S CODE OF ORDINANCES ENTITLED HOUSING BY MODIFYING SECTIONS 10-1 AND 10-2; AMENDING CHAPTER 23 ENTITLED ZONING AND PLANNING BY MODIFYING SECTION 23-19 TO PROVIDE ENHANCED OUTDOOR LIGHTING REQUIREMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

Council Member Yaffe requested that a correction to typo on page 2 section B2.

ACTION: Council Member Reid made a motion to approve the proposed ordinance on second reading. Council Member Yaffe seconded the motion and it passed by unanimous poll vote.

Item 10. Approval of an ordinance on second reading requested by Council Member Yaffe amending Section 5-23.01 providing for staggered terms for the members of the Planning and Zoning Board.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 5 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED BUILDINGS AND CONSTRUCTION, BY AMENDING SECTION 5-23.01 TO PROVIDE FOR A STAGGERED PLANNING AND

ZONING BOARD; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and asked why the ordinance was being changed to have staggered terms.

CLOSED PUBLIC COMMENT

ACTION: Council Member Leonard made a motion to approve the proposed ordinance on second reading. Council Member Yaffe seconded the motion and it passed by unanimous poll vote.

~~Item 11. Approval of an ordinance on second reading amending Chapter 20 of the town code relating to utility billing and collections. Enclosed is a copy of the proposed ordinance.~~

~~AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 20 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED UTILITIES, BY AMENDING SECTIONS 20-7, 20-11, AND 20-15.1 TO PROVIDE FOR UNIFORM BILLING, PAYMENT, COLLECTION, AND THE FILING OF LIENS IN CONNECTION WITH UTILITIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.~~

ORDINANCES ON FIRST READING:

Item 12. Consideration and Approval of an ordinance on first reading requested by Council Member Yaffe amending Chapter 23 relating to vehicle parking lifts. Enclosed is a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 23 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED ZONING AND PLANNING, BY ADDING SECTION 23-24(H) ENTITLED VEHICLE PARKING LIFTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

Council Member Yaffe made a motion to discuss. Council Member Reid seconded the motion.

Council Member Yaffe was concerned with the safety operation of the parking lifts and clarified that the proposed code amendment would only apply to new developments.

Council Member Reid stated she attended the demonstration of the mechanical parking lifts and felt that the mechanism was too noisy and was audible from approximately 20 feet away.

There was a brief discussion on safety training for people utilizing the parking lifts; existing developments that currently have the parking lifts would not apply; list of properties that currently have parking lifts and should the parking lifts be regulated or ban.

PUBLIC COMMENT

Jerome Gavcovich, 1251 97 Street, came forward and was opposed to the parking lift ordinance. He felt that the parking lift reduces the amount of parking for new developments.

CLOSED PUBLIC COMMENT

At this time Council Member Yaffe withdrew his motion from the table and suggested for staff work to redefine the language.

Item 13. Consideration and approval of a proposed ordinance on first reading amending the Town Code with regard zoning and planning regulations to address the minimum open space requirements and second story building area requirements in the RD Single-Family District. Enclosed is a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA; AMENDING THE TOWN'S CODE OF ORDINANCES RELATED TO ZONING AND PLANNING REGULATIONS TO ADDRESS MINIMUM OPEN SPACE REQUIREMENTS AND SECOND STORY BUILDING AREA REQUIREMENTS IN THE RD SINGLE-FAMILY DISTRICT; AMENDING CHAPTER 23-1 OF THE ZONING AND PLANNING CODE ENTITLED DEFINITIONS; AMENDING CHAPTER 23-11 OF THE ZONING AND PLANNING CODE ENTITLED LAND DEVELOPMENT REGULATIONS; PROVIDING REQUIREMENTS AND STANDARDS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

PUBLIC COMMENT

Jerome Gavcovich, 1251 95 Street, came forward and felt that it was important that you limit the size of a one story home.

CLOSED PUBLIC COMMENT

ACTION: Council Member Leonard made a motion to approve the proposed ordinance on first reading. Council Member Tricoche seconded the motion and it passed by 5-2 poll vote with Mayor Bruder and Vice Mayor Fuller opposed.

DEFERRED ITEMS:

TOWN MANAGER ITEMS: (Town business items requiring Council approval)

At this time Council Member Yaffe recused himself for items 14 and 15.

Item 14. Consideration and Approval of a private Transfer of Development Rights (TDR) transaction for one (1) dwelling unit from the Villas at Bay Harbor Condo Association (1166 98th Street) to Atlantis 103, LLC (10281 West Bay Harbor Drive).

ACTION: Council Member Salver made a motion to approve the proposed private TDR transaction. Council Member Tricoche seconded the motion and it passed unanimously.

Item 15. Consideration and Approval of a private Transfer of Development Rights (TDR) transaction for four (4) dwelling units from Northern Start Condo Association (9725-9745 Bay Harbor Terrace) to Atlantis 103, LLC (10281 West bay Harbor Drive).

ACTION: Council Member Salver made a motion to approve the proposed private TDR transaction. Vice Mayor Fuller seconded the motion and it passed unanimously.

At this time Council Member Yaffe returned to the dias.

Item 16. Consideration and approval of Contract award to Arrow Asphalt and Engineering Inc. in the amount of \$225,000.00, for resurfacing roadways in Zone 2.

ACTION: Council Member Leonard made a motion to approve the contract award to Arrow Asphalt and Engineering Inc. Council Member Tricoche seconded the motion and it passed by unanimous poll vote.

Item 17. Consideration and approval of 95th Street Park Project budget in the total amount of \$181,000 and Contract award to West Construction, Inc. for construction of the 95th Street Park.

ACTION: Council Member Leonard made a motion to approve the contract award to West Construction Inc. Council Member Tricoche seconded the motion and it passed by unanimous poll vote.

Item 18. Approval of contract award to Brute Proof LLC. in the amount of \$29,750 to purchase a HyperV Terminal Server for the administrative computer network.

ACTION: Council Member Leonard made a motion to approve contract award to Brute Proof, LLC. Council Member Tricoche seconded the motion it passed by unanimous poll vote.

DISCUSSION ITEMS:

Item 19. Discussion requested by Council Member Yaffe regarding the meeting date for the Charter and Ordinance Review Committee. The next date of the committee is set by resolution to review the Charter every 10 years, 2022 with the committee becoming active 12 months prior.

Council Member Yaffe stated that there were citizens of the community that would like to further discuss the structure of the Towns' Charter. He would like for the committee to be structure differently so there was enough time for the committee to meet. He felt that the process of amending the Charter takes a lot of time for discussion and suggested for the committee to reopen sooner.

There was a brief discussion on how the committee is to be structure; amount of members; amount of time for committee to process amendments; Council discussion prior to committee discussion; and the current process how the Town or voters can proposed an amendment to the charter.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and asked for the Council to consider amending the Charter to have an Election for Mayor.

Victor Maya, 1155 103 Street, came forward and asked why was the Council in a rush to put a request from a developer to place a question on the November 2018 Ballot that could have increase the height to new developments to the RM3 district. He asked the Council to listen to the citizens' request to discuss the election of a Mayor.

CLOSED PUBLIC COMMENT

There being no further business to discuss meeting was adjourned at 9:42 p.m.

MAYOR

ATTEST

TOWN CLERK

DRAFT

**TOWN OF BAY HARBOR ISLANDS
MINUTES OF A REGULAR MEETING**

A Budget Public Hearing of the Town Council was held on Monday September 17, 2018 at 7:00 p.m. in the Council Chambers. Upon roll call the following members responded:

Mayor Stephanie Bruder	
Vice Mayor Joshua Fuller	Council Member Jordan Leonard
Council Member Kelly Reid	Council Member Isaac Salver
Council Member Elizabeth Tricoche	Council Member Robert Yaffe

Item 1. Announcement of the proposed 2018 property tax rate of 3.7199 mills, which is equal to the rolled-back rate, needed to fund expenses for the year beginning October 1, 2018 and ending September 30, 2019.

Town Manager Wasson announced the 2018 property tax rate of 3.7199 mills, which is equal to the rolled back rate. He explained that healthcare costs were reduced; revenue projections to the Building Department were increase; budgeted for a School Resource Officer and a mental health professional. He also added that the Finance Department will be launching new transparency software which will allow the residents to view all the Town expenditures.

Item 2. Public Comment concerning the proposed millage rate and proposed 2018-2019 Budget.

Item 3. Consideration and Approval of an ordinance on first reading providing for a millage rate of 3.7199 which is equal to the rolled-back rate for fiscal year 2018-2019.

AN ORDINANCE PROVIDING FOR A MILLAGE OF 3.7199 WHICH IS EQUAL TO THE ROLLED-BACK RATE FOR THE TOWN OF BAY HARBOR ISLANDS FOR THE CURRENT YEAR, A.D. 2018; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

ACTION: Council Member Leonard made a motion to approve the ordinance on first reading. Council Member Tricoche seconded the motion and it passed by unanimous poll vote.

Item 4. Consideration and Approval of an ordinance on first reading making appropriations for the operation of the General Fund, Water Fund, Sewer Fund, Parking Fund, Solid Waste Fund, Causeway Fund, and Stormwater Fund.

AN ORDINANCE MAKING APPROPRIATIONS FOR THE GENERAL, WATER, SEWER, PARKING, SOLID WASTE, CAUSEWAY, AND STORMWATER FUNDS FOR THE YEAR BEGINNING OCTOBER 1, 2018 AND ENDING SEPTEMBER 30, 2019, IN THE TOTAL SUM OF \$21,116,111; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

ACTION: Council Member Leonard made a motion to approve the proposed ordinance on first reading. Council Member Yaffe seconded the motion and it passed by unanimous poll vote.

Item 5. Announcement of the Second Budget Public Hearing schedule for Wednesday, September 26, 2018 at 7:00 p.m.

Town Manager Wasson announced the Second Budget Public Hearing was scheduled for Wednesday, September 26th, 2018 at 7:00 p.m.

There being no further business to discuss meeting was adjourned at 7:06 p.m.

ATTEST

TOWN CLERK

MAYOR

**TOWN OF BAY HARBOR ISLANDS
MINUTES OF A PUBLIC HEARING**

A Public Hearing of the Town Council was held on Monday September 17, 2018 at 6:30 p.m. in the Council Chambers. Upon roll call the following members responded:

Mayor Stephanie Bruder

Vice Mayor Joshua Fuller

Council Member Jordan Leonard

Council Member Kelly Reid

Council Member Isaac Salver

Council Member Elizabeth Tricoche

Council Member Robert Yaffe

QUASI-JUDICIAL PUBLIC HEARING

Item 1. Discussion for the purpose of hearing any public comment with respect to an application for variance from Section 23-12(6)(a)(v) and 23-12 (6)(a)(x) of the Town Code to construct a new dock / viewing platform that would extend 12 feet seaward and 25 feet wide parallel to the seawall for property located at 9414 West Broadview Drive, half of lot 85 and all of lot 86, in block 23, Bay Harbor Islands, Florida. The application for a variance is being requested by Broadhouse Holdings, Ltd.

Robert Rossie, 1370 97 Street, came forward and explained the homeowners request for a variance request to construct a new dock / viewing platform. He explained that the proposed dock was 300 square feet at 24 X 12 Feet. Due to environmental issues DERM has recommended that the dock be extended 12 feet from the property line.

There was a brief discussion on the property owner hardship, DERM recommendations, water depth and how the proposed dock would be utilize.

Item 2. Approval or Denial of a variance request for residence located at 9414 W. Broadview Drive. As required by Section 2-22 of the Town Code, the Town Council shall determine whether to grant or deny the application for variance. An affirmative vote of five Council Members is necessary in order to grant the request. The decision of the Town Council is final. If the request is granted, the decision of the Town Council shall be recorded in a resolution to be prepared by the Town Attorney. It should be noted that any approval of the Town Council is subject to other requirements of the Town Code, County Code, Florida Building Code, FEMA, etc.

ACTION: Council Member Leonard made a motion to approve the proposed variance application. Council Member Tricoche seconded the motion and it passed unanimously.

There being no further business to discuss meeting was adjourned at 6:42 p.m.

MAYOR

ATTEST

TOWN CLERK

DRAFT

TOWN OF BAY HARBOR ISLANDS MINUTES OF A REGULAR MEETING

A Regular Meeting of the Town Council was held on Monday September 17, 2018 at 7:08 p.m. in the Council Chambers. Upon roll call the following members responded:

Mayor Stephanie Bruder	
Vice Mayor Joshua Fuller	Council Member Jordan Leonard
Council Member Kelly Reid	Council Member Isaac Salver
Council Member Elizabeth Tricoche	Council Member Robert Yaffe

SPECIAL PRESENTATION:

Item 1. Dr. Martin Karp, Miami-Dade County School Board - District 3

Mayor Bruder announced that Dr. Karp could not be in attendance at the meeting but welcomed School Assistant Superintendent Jose Bueno and Ruth K. Broad Principal Mr. Scott Saperstein.

Assistant Superintendent Jose Bueno came forward and reported that School Board was working together with the Town to finalize the verification agreement which was under legal review. The Town has provided a list of the vacant properties in Town so the school can use as reference for any future students registration. The school Board reported 12 – 18 students tried to register to the school but were unsuccessful because they were unable to provide the address validation documents.

There was a detailed discussion on number of kids currently attending Ruth K. Broad K-8 Center; emergency notification for the parents; possible addition of a VPK class; school board policy on removing a student that was out of school boundaries; and there were no reports of any students remove from school as of date.

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

Council Member Leonard requested a future agenda item for the Town to host a Classical Musical Concert at the end of the year.

Vice Mayor Fuller pulled item # 7 a, b. and d for comments.

Item 7. Approval of the following Meeting Minutes:

- a. October 16, 2017 - Regular Council Meeting**
- b. December 11, 2017 - Public Hearing**
- d. February 12, 2018 - Regular Council Meeting**

Council Member Leonard pulled item # 8 for discussion.

Council Member Reid requested a future agenda item to discuss the Town regulations on a /c units to add split to wall units.

TOWN MANAGER'S REPORT:

Town Manager Wasson reported on the burglary over Labor Day Weekend after following the leads, Detective Castellanos work diligently on the case. The Bay Harbor Police met worked together with the New York City Police Department and were able to apprehend a suspect trying to flee to Canada.

Mayor Bruder requested an article in the Town Newsletter on safety tips to prevent robberies in our Community.

Item 2. Report on seawall assessment

Town Manager Wasson stated the Town will be notifying all property owners on the inspection results to their seawall. Property owners will be advised of their requirements and timeline for compliance.

Item 3. Town Clerk's report on Town Elections

Town Clerk Siegel reported that at the request of a local resident the Town will coordinate with Miami Dade County Elections department for an assessment to move precinct # 8 to the Community Center.

COUNCIL REPORTS: Each Council Member will be afforded two (2) minutes to make their reports.

Council Member Leonard reported the Miami Dade County League of Cities will be hosting the Best Practices Conference.

Council Member Yaffe attended the Florida League of Cities Policy and Taxation Committee in Orlando.

Vice Mayor Fuller attended the Florida League of Cities Annual Conference; the Florida League of Cities Land Use and Growth Committee and the 9/11 Ceremony.

Council Member Tricoche reminded the residents on the Town upcoming events such as the Car Show and the Halloween Event.

Council Member Reid attended the Florida League of Cities Annual Conference; the Municipal Participation Committee and the 9/11 Ceremony.

Council Member Salver attended the Children's Trust Meeting; Miami Dade County League of Cities monthly meeting; Florida League Cities Annual Conference and will also join the Florida Insurance Loan Committee.

Mayor Bruder attended the 9/11 Ceremony and reminded the residents of the upcoming event such as the Car Show and Halloween Event.

PUBLIC COMMENT: There is a three (3) minute time limit for each speaker during public comment and a two (2) minute time limit for each speaker during all other agenda items. Your cooperation is appreciated in observing the three (3) minute rule. If you have a matter you would like to discuss which requires more than three (3) minutes, please arrange a meeting with the Town Manager or appropriate administrative official. A request form is available from staff; please fill it in and return it

to the Town Clerk prior to the start of the meeting if you would like to speak during public comment. Please come forward to the podium, give your name and address, and the name and address of the organization you are representing if any.

Kathleen Kennedy, 9901 W. Bay Harbor Drive, came forward and wished everyone a Happy New Year. She contacted the Elections Department and made the suggestion to move the precinct to the community center and suggested water activities for the local residents.

Frances Neuhut, 1060 Kane Concourse, came forward and was concerned if the Town was budgeting for another parking garage and asked if the Town was losing revenue due the religious institution?

COMITEE REPORTS:

Item 4. Report from the Parks and Recreation Committee.

Assistant Town Manager Jimenez reported that a resident proposed paddle board activities on the water. The estimated cost was approximately about \$1,500. The location has not been determinate.

Consensus was for staff to continue to explore possible locations for the water activities.

Item 5. Consideration and Approval of a request for appointments to the Parks and Recreation Committee. The Committee currently has one vacant seat.

ACTION: Council Member Leonard made a motion to appoint April Griffin to the Parks and Recreation Committee. Vice Mayor Fuller seconded the motion and it passed unanimously.

Item 6. Consideration and Approval of a request for appointments to the Sustainability & Resiliency Committee.

Town Clerk Siegel recommended the Committee appointments be for one year term until all other resident Committees come up for re-appointment next year.

ACTION: Mayor Bruder made a motion to appoint residents to the Sustainability and Resiliency Committee. Council Member Yaffe seconded the motion and it passed unanimously.

CONSENT AGENDA: (Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.)

Item 7. Approval of the following Meeting Minutes:

- c. January 8, 2018 - Regular Council Meeting
- e. March 12, 2018 - Regular Council Meeting
- f. April 16, 2018 - Organizational Meeting

Item 9. Approval of Modification #Z0040-1 to the Subgrant Agreement between the Town of Bay Harbor Islands and the Florida Department of Emergency Management increasing the Federal funding by \$43,544.86 and the State funding by \$2,419.16.

Item 10. Approval of a resolution authorizing deposits and withdrawals of the Town Funds in certain accounts pursuant to the authority given under Chapter 655.043, Florida Statutes.

ACTION: Council Member Leonard made a motion to approve the consent agenda. Council Member Yaffe seconded the motion and it passed unanimous poll vote.

Item 8. Consideration and Approval of a resolution continuing and extending the temporary moratorium on medical marijuana treatment centers and medical dispensing facilities within the Town.

Council Member Yaffe requested for the Town Council to discuss at the November Meeting if they would like to regulate or prohibit medical marijuana dispensing facilities.

ACTION: Council Member Yaffe made a motion to extend the temporary moratorium. Council Member Tricoche seconded the motion and it passed unanimously.

ORDINANCES ON SECOND READING:

Item 11. Consideration and approval of a proposed ordinance on second reading amending the Town Code with regard zoning and planning regulations to address the minimum open space requirements and second story building area requirements in the RD Single-Family District. Enclosed is a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA; AMENDING THE TOWN'S CODE OF ORDINANCES RELATED TO ZONING AND PLANNING REGULATIONS TO ADDRESS MINIMUM OPEN SPACE REQUIREMENTS AND SECOND STORY BUILDING AREA REQUIREMENTS IN THE RD SINGLE-FAMILY DISTRICT; AMENDING CHAPTER 23-1 OF THE ZONING AND PLANNING CODE ENTITLED DEFINITIONS; AMENDING CHAPTER 23-11 OF THE ZONING AND PLANNING CODE ENTITLED LAND DEVELOPMENT REGULATIONS; PROVIDING REQUIREMENTS AND STANDARDS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and was concerned with all the proposed code amendments.

CLOSED PUBLIC COMMENT

ACTION: Council Member Yaffe made a motion to approve the proposed ordinance on second reading. Council Member Tricoche seconded the motion and it passed by unanimous poll vote.

ORDINANCES ON FIRST READING:

Item 12. Approval of an ordinance on first reading amending Chapter 20 of the town code relating to utility billing and collections.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 20 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED UTILITIES, BY AMENDING SECTIONS 20-7, 20-11, AND 20-15.1 TO PROVIDE FOR UNIFORM BILLING, PAYMENT, COLLECTION, AND THE FILING OF LIENS IN CONNECTION WITH UTILITIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

PUBLIC COMMENT

France Neuhut, 1060 Kane Concourse, came forward and felt that the property owner and tenant should both be notified on any past due utility bills.

CLOSED PUBLIC COMMENT

ACTION: Council Member Reid made a motion to approve the proposed ordinance on first reading. Council Member Yaffe seconded the motion and it passed by unanimous poll vote.

DEFERRED ITEMS:

TOWN MANAGER ITEMS: (Town business items requiring Council approval)

Item 13. Approval of an expenditure in the amount of \$32,800 for the cost of Root Pruning around Royal Palms, additional soil, and new plants to upgrade the appearance of Kane Concourse.

ACTION: Mayor Bruder made a motion to approve the expenditure. Council Member Leonard seconded the motion and it passed by unanimous poll vote.

Item 14. Consideration and Approval of a private Transfer of Development Rights (TDR) transaction for two (2) dwelling unit from BH 101, LLC (1155 101 Street) to Congress Driftwood, LLC (9927-9955 E. Bay Harbor Drive).

ACTION: Council Member Leonard made a motion to approve the private TDR transaction. Mayor Bruder seconded the motion and it passed unanimously.

Item 15. Consideration and Approval of a private Transfer of Development Rights (TDR) transaction for four (4) dwelling units form the Congress BHE, LLC (9781 East Bay Harbor Drive) to the Congress Driftwood, LLC (9955 E. Bay Harbor Drive).

ACTION: Council Member Yaffe made a motion to approve the private TDR transaction. Council Member Leonard seconded the motion and it passed unanimously.

Item 16. Consideration and Approval of a private Transfer of Development Rights (TDR) transaction for three (3) dwelling units from Congress BH, LLC (103001 E. Bay Harbor Drive) to Congress Driftwood, LLC (9927-9955 East Bay Harbor Drive). Consensus was for staff to draft an ordinance for first reading to establish lighting requirements for the new developments.

ACTION: Council Member Yaffe made a motion to approve the private TDR transaction. Vice Mayor Fuller seconded the motion and it passed unanimously.

DISCUSSION ITEMS:

Item 17. Discussion requested by Mayor Bruder regarding possible Town Hall renovations/facility. Enclosed is information previously distributed to the Council by the Town Manager regarding the same subject.

Town Manager Wasson presented the Council with a recent study provided by Kimley, Horn and Associates on the feasibility to construct an addition, renovate or construct a new to Town Hall facility.

Mayor Bruder asked for the Council feedback on the subject and should the council consider renovating the current facility; a new building or a private partnership.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and read comments from Dr. Neuhut and he felt it would be less costly if the Town renovated the existing facility.

CLOSED PUBLIC COMMENT

There was a brief discussion on the cost estimate provided by Kimley, Horn & Associates; suggestions to obtain other cost estimates for a renovations and/or new building and research other cities process for public building renovations.

Mayor Bruder requested an update on the subject at the November meeting.

There being no further business to discuss meeting was adjourned at 9:25 p.m.

MAYOR

ATTEST

TOWN CLERK

**TOWN OF BAY HARBOR ISLANDS
MINUTES OF A BUDGET PUBLIC HEARING**

A Budget Public Hearing of the Town Council was held on Wednesday September 26, 2018 at 7:00 p.m. in the Council Chambers. Upon roll call the following members responded:

Vice Mayor Joshua Fuller

Council Member Jordan Leonard

Council Member Kelly Reid

Council Member Elizabeth Tricoche

Council Member Robert Yaffe

BUDGET PUBLIC HEARING

Item 1. Consideration and Approval of an ordinance on second reading providing for a millage rate of 3.7199 which is equal to the rolled-back rate for fiscal year 2018-2019.

AN ORDINANCE PROVIDING FOR A MILLAGE OF 3.7199 WHICH IS EQUAL TO THE ROLLED-BACK RATE FOR THE TOWN OF BAY HARBOR ISLANDS FOR THE CURRENT YEAR, A.D. 2018; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and was upset that the Town Public Broadcasting Channel was going to be discontinued. She felt that the Town channel was very important since many senior residents did not have access to internet.

CLOSED PUBLIC COMMENT

ACTION: Council Member Yaffe made a motion to approve the proposed ordinance on second reading. Council Member Leonard seconded the motion and it passed by unanimous poll vote.

Item 2. Consideration and Approval of an ordinance on second reading making appropriations for the operation of the General Fund, Water Fund, Sewer Fund, Parking Fund, Solid Waste Fund, Causeway Fund, and Stormwater Fund.

AN ORDINANCE MAKING APPROPRIATIONS FOR THE GENERAL, WATER, SEWER, PARKING, SOLID WASTE, CAUSEWAY, AND STORMWATER FUNDS FOR THE YEAR BEGINNING OCTOBER 1, 2018 AND ENDING SEPTEMBER 30, 2019, IN THE TOTAL SUM OF \$21,116,111; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and suggested for the Town to share expenses with the surrounding cities for the shuttle bus service. She also suggested for the Town to budget for new election signs and a new electronic board sign.

CLOSED PUBLIC COMMENT

ACTION: Council Member Leonard made a motion to approve the proposed ordinance on second reading. Council Member Tricoche seconded the motion and it passed by unanimous poll vote.

Town Clerk Siegel stated that there was a conflict with October Regular Meeting schedule and needed to be re-scheduled to either the October 8th or October 10th.

Consensus was to schedule the Public Hearing and Regular Council Meeting for Wednesday, October 10th, 2018.

There being no further business to discuss meeting was adjourned at 7:10 p.m.

MAYOR

ATTEST

TOWN CLERK

DRAFT

**MINUTES OF A REGULAR MEETING
TOWN OF BAY HARBOR ISLANDS**

A Regular Council Meeting of the Town Council was held on Wednesday 10, 2018 at 8:49 p.m. in the Council Chambers. Upon roll call the following members responded:

Mayor Stephanie Bruder	
Vice Mayor Joshua Fuller	Council Member Jordan Leonard
Council Member Kelly Reid	Council Member Isaac Salver
Council Member Elizabeth Tricoche	Council Member Robert Yaffe

SPECIAL PRESENTATION:

Item 1. Presentation by PGIT of a \$5,000.

Chris Kittelson presented the Town with the \$5,000 refund check for staff training relating to safety.

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

Council Member Tricoche pulled Item 5 for discussion.

Council Member Ried would like a discussion item regarding setbacks.

Council Member Jordan requested a future agenda item on electric charging stations.

TOWN MANAGER'S REPORT:

Town Manager Wasson provided a status on the following events:

- Car Show will be held on October 21st, 2018.
- Kane Concourse landscaping project was near completion.
- Tot Lot Park will be undergoing resurfacing.
- Park enhancements to the 92 Street, possibly a shade structure
- West Island will undergo roadway resurfacing
- Open House for the Town After School Program will be held this Sunday.
- Broad Causeway Improvement Project was approved by FDOT and will go out to bid.

Town Manager Wasson announced that will be resigning from his position as Town Manager and he was extremely thankful for the opportunity to serve the Town as Town Manager.

ACTION: Council Member Yaffe made a motion to negotiate a contract with the Assistant Town Manager Jimenez and requested for the contract be brought to the next regular Council Meeting for approval. Member Reid seconded the motion and it passed 6-1 with Council Member Leonard opposed.

Council Member Leonard was opposed to the process and would have preferred for the for the item to have been on the agenda subject to the Council discussion and approval.

Assistant Town Manager Jimenez overwhelmed with the Council support and thanked the Town Council for the opportunity to serve the Town as the Town Manager.

COUNCIL REPORTS: Each Council Member will be afforded two (2) minutes to make their reports.

Council Member Tricoche reminded the resident about the Halloween Event.

Council Member Reid asked the residents to please look at the sample ballots for these upcoming elections.

Council Member Yaffe attended a Luncheon Event from the Ethics Commission.

Vice Mayor Fuller reported he attended the Pizza with the Cops Event.

PUBLIC COMMENT: There is a three (3) minute time limit for each speaker during public comment and a two (2) minute time limit for each speaker during all other agenda items. Your cooperation is appreciated in observing the three (3) minute rule. If you have a matter you would like to discuss which requires more than three (3) minutes, please arrange a meeting with the Town Manager or appropriate administrative official. A request form is available from staff; please fill it in and return it to the Town Clerk prior to the start of the meeting if you would like to speak during public comment. Please come forward to the podium, give your name and address, and the name and address of the organization you are representing if any.

Kathleen Kennedy, 9180 W. Bay Harbor Drive, came forward and thanked Town Manager Wasson for a great job and felt that the Assistant Manager Jimenez will do a great job. She suggested for the Council to consider an Employee of the Month award.

Council Member Salver suggested for a quarterly employee recognition instead of Employee of the Month.

Kenneth Eskin, 1310 99 ST, came forward and supported Juan Carlos Jimenez as the new Town Manager and also reported that the Town was listed # 12 of best cities in South Florida.

Frances Neuhut, 1060 Kane Concourse, came forward and commented that she was upset that the Town Public Channel was going to be discontinued. She also was concerned with global warming, soil testing in Town; red tide in Town; drinking water; asbestos contamination and oil contamination.

Linda Zilber, 1231 95 ST, came forward and thanked Town Manager Wasson for his service with the Town and supported Juan Carlos Jimenez as the new Town Manager.

COMMITTEE REPORTS:

CONSENT AGENDA: (Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the

request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.)

Item 2. Approval of the following Meeting Minutes:

- a. October 16, 2017 - Regular Council Meeting - Corrected**
- b. December 11, 2017 - Public Hearing - Corrected**
- c. February 12, 2018 - Regular Council Meeting – Corrected**

Item 3. Consideration and Approval of a Mutual Aid Agreement between the Town of Bay Harbor Islands and the City of Miami Beach Police Department for voluntary cooperation and operational assistance.

Item 4. Approval of revised Memorandum of understanding to implement a nurse enhancement initiative for school year 2018-2019.

Item 5. Consideration and Approval of an agreement with Miami Dade County School Board for an Address Verification Plan.

ACTION: Vice Mayor Fuller made a motion to approve the consent agenda. Council Member Tricoche seconded the motion and it passed unanimously.

ORDINANCES ON SECOND READING:

Item 6. Approval of an ordinance on second reading amending Chapter 20 of the town code relating to utility billing and collections.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 20 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED UTILITIES, BY AMENDING SECTIONS 20-7, 20-11, AND 20-15.1 TO PROVIDE FOR UNIFORM BILLING, PAYMENT, COLLECTION, AND THE FILING OF LIENS IN CONNECTION WITH UTILITIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and commented that the Employee of the Year should go to the Water Department. She suggested the Town not enter into any payment agreement with business owners / tenants.

CLOSED PUBLIC COMMENT

ACTION: Council Member Yaffe made a motion to approve the proposed ordinance on second reading. Council Member Leonard seconded the motion and it passed by unanimous poll vote.

ORDINANCES ON FIRST READING:

Item 7. Consideration and Approval of an ordinance on first reading amending Chapter 16 of the Town Code clarifying the benefits payable to the beneficiaries of vested terminated members who die prior to reaching their normal retirement age.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 16, THE TOWN OF BAY HARBOR ISLANDS EMPLOYEES RETIREMENT SYSTEM, OF THE TOWN OF BAY HARBOR ISLANDS CODE OF ORDINANCES; CLARIFYING THE BENEFITS PAYABLE TO THE BENEFICIARIES OF VESTED TERMINATED MEMBERS WHO DIE PRIOR TO REACHING THEIR NORMAL RETIREMENT DATE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

ACTION: Council Member Leonard made a motion to approve the proposed ordinance on first reading. Council Member Salver seconded the motion and it passed by unanimous poll vote.

DEFERRED ITEMS:

TOWN MANAGER ITEMS: (Town business items requiring Council approval)

Item 8. Consideration and Approval of the design of an Emergency Repair of a damaged Precast Prestressed U-Channel that supports the sewer forced main over the Indian Creek, in the amount of \$15,000.00. The design will be provided by Lakes Engineering Inc.

ACTION: Council Member Salver made a motion to approve the design of an Emergency Repair of a damaged Precast Pre stressed U-Channel. Council Member Leonard seconded the motion and it passed unanimously.

Item 9. Discussion and possible action requested by Council Member Leonard of an agreement with the Royal Philharmonic Orchestra of London in the amount of \$6,000 to host the December 30th, 2018 Classical Chamber Music Concert.

ACTION: Council Member Yaffe made a motion to approve the agreement with the Royal Philharmonic Orchestra of London. Council Member Leonard seconded the motion and it passed unanimously.

Vice Mayor Fuller would like for the event to be advertised on the Town Newsletter and for staff to coordinate the street closure and food trucks.

Item 10. Approval of a 3-year contract with Super Soccer Stars to provide the Town's recreational soccer program which includes the After School Program, Tournament Soccer and Pee-Wee Soccer.

Council Member Yaffe and Council Member Leonard suggested a 3 year contract subject to a termination at any time.

PUBLIC COMMENT

France Neuhut, 1060 Kane concourse, came forward and she was opposed to offering the same price to residents and non-residents.

CLOSED PUBLIC COMMENT

Assistant Manager Jimenez stated that the contract rates were set by the vendor. The Town will be charging different rates for resident and non-resident.

ACTION: Council Member Yaffe made a motion to approve a 3-year contract subject to termination at any time. Council Member Leonard seconded the motion and it passed unanimously.

Item 11. Consideration and Approval to utilize the National Joint Powers Alliance contract with Tyler Technologies, Inc. for the purchase and implementation of a new financial software system for the Town in the amount of \$108,295. This system will include modules for the general ledger, accounts payable, HR, payroll and utility billing.

ACTION: Council Member Yaffe made a motion to approve the new Financial Software System. Council Member Tricoche seconded the motion and it passed by unanimous poll vote.

There being no further business to discuss meeting was adjourned at 9:50 p.m.

MAYOR

ATTEST

TOWN CLERK

DRAFT

AGENDA ITEM REPORT

February 11, 2019

ITEM NUMBER: 4.

ITEM: Consideration and Approval requested by Council Member Leonard to purchase the Bronze Sponsorship Package in the amount of \$3,000 to attend the Miami Dade County League of Cities 65th Annual Installation Gala which will be held on Saturday, May 4th, 2019. Enclosed is a copy of the Sponsorship Packages available.

DESCRIPTION:

The Miami Dade County League of Cities 65th Annual Installation Gala will be held on Saturday, May 4th, 2019 at the Hilton Miami Airport Hotel. In previous years the Town has approved the Bronze Package which includes the following:

- * One (1) table for seating for ten (10) attendees.
- * Quarter page recognition in the event program,
- * Award Recognition during the VIP Reception

Enclosed is a copy of the sponsorship package details.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

This expense was budgeted in the 2018-2019 Fiscal Year. Amount budgeted for all Miami Dade League expenses, not just the annual gala. Bronze Sponsorship Package is \$3,000.

BUDGET IMPACT:

Name	Impact Date	Fund(s)	Account(s)	Project #(s)	Amount Budgeted
Miami Dade County League of Cities Annual Installation Gala	02/22/2019	Legislative Fund	001-511.0-400049.000		7500

Submitted By: Alba Chang, Deputy Town Clerk
Jordan Leonard, Council Member

ATTACHMENTS

1. MDCLC 65th Annual Gala

You may add a maximum of 9

Add

Sponsorship Opportunities

Item	Qty.	Max Limit	Price
MEMBERS: Individual Tickets		9	\$175.00 each
NON- MEMBERS: Individual Tickets		9	\$200.00 each
MEMBERS: Table of 10		3	\$1,650.00 each
NON-MEMBERS: Table of 10		3	\$1,900.00 each
Title Sponsor 2 tables of twelve with Royal table seating, Full page recognition in the event program (color), Recognition night of the event and on website, GOBO recognition displayed night of the event, Award recognition night of the event during VIP reception for 1 company representative and 1 guest, Company representative to deliver program welcome during VIP reception, Champagne Bottle Sparklers Table Service		1	\$20,000.00 each
Platinum Sponsor 2 tables of ten with premium seating, Full page recognition in the event program (color), Recognition night of the event and on website, GOBO recognition displayed night of the event, Award recognition night of the event during VIP reception for 1 company representative and 1 guest, 4 tickets to the MDCLC Best Practices Conference, Champagne Bottle Sparklers Table Service		1	\$15,000.00 each
Gold Sponsor 1 table of twelve with premium seating, Full page recognition in the event program (color), Recognition night of the event and on website, Award recognition night of the event during VIP reception for 1 company representative and 1 guest, 2 tickets to the MDCLC Best Practices Conference, Champagne Bottle Sparklers Table Service		1	\$10,000.00 each
Silver Sponsor 1 table of ten with quality seating, Half page recognition in the event program (color) , Recognition night of the event and on website, Award recognition night of the event during VIP reception for 1 company representative and 1 guest, Champagne Bottle Sparklers Table Service		1	\$5,000.00 each
Bronze Sponsor 1 table of ten with quality seating, Quarter page recognition in the event program (color), Recognition night of the event and on website, Award recognition night of the event during VIP reception for 1 company representative and 1 guest		1	\$3,000.00 each
Full Page Color ad Ad dimensions must be (5.5" W X 8.5" H) in a high resolution PDF or EPS format		1	\$1,250.00 each
Half Page Color ad Ad dimensions must be (5.5" W X 4.25" H) in a high resolution PDF or EPS format		1	\$750.00 each
Quarter Page color ad Ad dimensions must be (2.75" W X 4.25" H) in a high resolution PDF or EPS format		1	\$600.00 each

AGENDA ITEM REPORT

February 11, 2019

ITEM NUMBER: 5.

ITEM: Consideration and Approval of a request from the David L. Singer Foundation of the Town customary donation in the amount of \$500 for the Special Olympics Event. Enclosed is a copy of the funding request from the David Singer Foundation.

DESCRIPTION:

The David L. Singer Foundation is requesting a charity donation in the amount of \$500 to support this year Special Olympics Event which will be held on March 3, 2019.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

This expense was budgeted in the 2018-2019 Fiscal Year. The \$5,000 budgeted amount includes donations to the Foundation as well as PTA, Pelican and other groups.

BUDGET IMPACT:

Name	Impact Date	Fund(s)	Account(s)	Project #s)	Amount Budgeted
David L. Singer Foundation	02/22/2019	Legislative Fund	001-511.0-400049.000		5000

Submitted By: Alba Chang, Deputy Town Clerk

ATTACHMENTS

1. Special Olympics
2. Funding Request - REso



TOWN OF BAY HARBOR ISLANDS FUNDING REQUEST FORM

Name of Organization: David L. Singer Memorial Foundation	Amount Requested: \$500.00
Address: PO Box 189, Palm Beach, Florida 33480	Phone Number: (561) 629-3408
Mission Statement: For the past 37 years, the David L. Singer Memorial Foundation has been involved in working to provide a sanctioned track & field event with the Special Olympics in North Miami.	
Tax Status: Exempt	Employer ID Number: 65-0350670

Purpose of Request (Name of the project this request fill fund): Funds to provide a sanctioned track & field event for the Special Olympics.	
Anticipated Project Start Date: 03/03/2019	Completion Date: 03/03/2019
Total Cost of the Project (a detailed budget must be attached): \$35,000.00	

Have other cities or private entities donated money to this project? ☒ Yes ☐ No

If yes, please list the cities/entities with the amount donated by each:

Contributors to the event have included the City of North Miami Beach, Wells Fargo, Citrix, and many other local and national public and private companies.

Will this request have a direct impact on the Town of Bay Harbor Islands? ☐ Yes ☐ No

If yes, explain how?

Will this be a recurring request (Is a future donation request likely)? ☒ Yes ☐ No

If yes, please explain why?

We have appreciated the support from the Town of Bay Harbor over the past several years and hope to be able to count on the Town for years to come.

Bradley Vialpando, Treasurer, David L. Singer Memorial Foundation

Name and Title of Individual Filing Request (printed)

Signature

February 1, 2019

Date

Please note: All organizations that are awarded funding will be required to provide a follow-up report no later than two weeks after project completion.

**RESOLUTION OF THE TOWN OF BAY HARBOR ISLANDS
ESTABLISHING A POLICY FOR CHARITABLE
DONATIONS AND CONTRIBUTIONS.**

WHEREAS, the Town Council of the Town of Bay Harbor Islands is charged with preserving and protecting the public health, safety, and welfare of its citizens; and

WHEREAS, establishing a policy for charitable donations and contributions is essential to preserving and protecting the health, safety, and welfare of the citizens of the Town of Bay Harbor Islands; and

WHEREAS, the Town receives numerous requests from various sources for donations and contributions; and

WHEREAS, it is desirable to have an established policy to provide guidance to the Town and to those seeking charitable donations and contributions; and

WHEREAS, the granting of charitable donations and contributions pursuant to an established policy is a benefit to the citizens of Bay Harbor Islands and to the public at large;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Bay Harbor Islands as follows:

Section 1. The Town of Bay Harbor Islands hereby establishes a policy that charitable donations and contributions shall be made from time to time at the discretion of the Town Council; provided however, any such charitable donations and contributions (except for those relating to major catastrophes and acts of God such as a tsunami or hurricane) shall be to entities and causes which provide a direct impact and direct benefit to the Town of Bay Harbor Islands and its citizens.

Section 2. This Resolution shall become effective upon adoption.

PASSED AND ADOPTED this 11th day of April, 2005.

TOWN OF BAY HARBOR ISLANDS

BY: 

MAYOR

ATTEST:


TOWN CLERK

H:\A-TOWN\CLERK\Resolutions\policy for donations.wpd

AGENDA ITEM REPORT

February 11, 2019

ITEM NUMBER: 6.

ITEM: Consideration and Approval requested by Council Member Reid and Vice Mayor Fuller of a customary charity donation in the amount of \$1,000 to the Pelican Harbour Seabird Station. Enclosed is a copy of the sponsorship packages.

DESCRIPTION:

The Pelican Harbor Seabird Station is a non-profit organization that is dedicated to rescue, rehabilitate and release of native wildlife. This organization request the Town Council consider a \$1,000 sponsorship for their Annual Pelican Party Fundraising Event that will be held on April 15, 2019 which will be held at the Miami Shores Country Club.

Enclosed is a copy the Annual Pelican Party funding request and supporting documents.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

This is expense was budgeted in the 2018-2019 Fiscal Year. The \$5,000 budgeted amount includes donations to the Special Olympics, PTA, Pelican and other groups.

BUDGET IMPACT:

Name	Impact Date	Fund(s)	Account(s)	Project #(s)	Amount Budgeted
Pelican Harbour Seabird Station Donation	02/22/2019	Legislative	001-511.0-400049.000		5000

Submitted By: Alba Chang, Deputy Town Clerk
Kelly Reid, Council Member
Joshua Fuller, Vice Mayor

ATTACHMENTS

1. PHSS PP 2019 sponsor info
2. PHSS Funding Request - Bay Harbor Islands 2019
3. PHSS 2018 Budget - FY18 PL
4. Funding Request - REso



Brown Pelican.
PELECANUS FUSCUS.

PELICAN HARBOR SEABIRD STATION PRESENTS ...

Pelican Party

APRIL 13, 2019

MIAMI SHORES COUNTRY CLUB

CELEBRATING 40 YEARS
of Serving Native Florida Wildlife

SPONSORSHIP OPPORTUNITIES



ABOUT US



Our Mission

Pelican Harbor Seabird Station is dedicated to the rescue, rehabilitation and release of sick, injured or orphaned brown pelicans, seabirds and other native wildlife; and the preservation and protection of these species through educational and scientific means.

Our Story

In 1980, Harry and Darlene Kelton began caring for injured brown pelicans in a small shed in the Pelican Harbor marina. Today, PHSS is the only fully operational wildlife hospital within Miami-Dade County. It has grown from a single volunteer to a staff of 10 that is supported by more than 50 weekly volunteers and interns.

PHSS is a non-profit 501(c)(3) charity that operates solely on donations. We are grateful for the support of the Miami-Dade Parks Department for the land lease and water use that make our facility possible. But our operating budget is dependent on the generosity of organizations, businesses, and individuals ... like you.

Our Patients

PHSS has treated more than 31,000 wildlife patients of 200+ native species since our inception in 1980. As the population of Miami has grown, so has the need for our services, as more and more native wildlife patients are treated each year. In 2018, we treated 1,332 patients of 112 different native species.



Pelican Party 2019

CELEBRATING 40 YEARS
of Serving Native Florida Wildlife

THE ANNUAL PELICAN PARTY FUNDRAISER



The Pelican Party is our largest, most successful annual fundraising event. Each year, approximately 300 supporters, including elected officials, philanthropists, and diverse members of the community come together to celebrate and support PHSS. This year, festivities will include a celebration of our 40 years of service to native wildlife and the community!

Benefits to Sponsors

- Reach over 35,000 potential customers in target demographic area through event marketing and advertising.
- Achieve brand exposure at an appealing and well-attended community event.
- Enhance your reputation as outstanding corporate citizens through affiliation with a beloved charitable cause.
- Attend the event to enjoy elegant food, an open bar, music, and our fantastic silent auction.

Reach & Attendee Demographics

- PHSS has 15,000 Facebook followers, 1,600 Instagram followers, and 435 Twitter followers.
- Our mailing lists (both email and postal mail) reach over 16,000 local supporters.
- Pelican Party attendees are community-oriented, civic-minded, and well-connected individuals and families from throughout South Florida.

Fundraising Goal

Our fundraising goal for this year's Pelican Party and 40th Year Anniversary is \$150,000. This would amount to roughly 25% of our annual operating budget!



Pelican Party 2019

CELEBRATING 40 YEARS
of Serving Native Florida Wildlife

SPONSORSHIP OPPORTUNITIES

Presenting Sponsor: *Brown Pelican*

\$25,000



- 12 event tickets for you and your guests
- VIP table
- Verbal recognition at event
- Corporate logo and company name on print invitation
- Corporate logo and company name on banners and slideshow at event
- Corporate logo and company name on PHSS website
- Special social media thanks before and after event
- 12 tickets to pre-event Champagne Reception
- Unique commemorative artwork

SPONSORSHIP OPPORTUNITIES



Roseate Spoonbill

\$10,000

- 10 event tickets for you and your guests
- VIP table
- Corporate logo and company name on print invitation
- Corporate logo and company name on banners and slideshow at event
- Corporate logo and company name on PHSS website
- Special social media thanks before and after event
- 10 tickets to pre-event Champagne Reception
- Commemorative artwork

Yellow-crowned Night Heron

\$5,000



- 8 event tickets for you and your guests
- VIP table
- Corporate logo and company name on print invitation
- Corporate logo and company name on banners and slideshow at event
- Corporate logo and company name on PHSS website
- Special thanks on social media before and after event
- 8 tickets to pre-event Champagne Reception
- Commemorative artwork

SPONSORSHIP OPPORTUNITIES



Magnificent Frigatebird

\$2,500

- 6 event tickets for you and your guests
- VIP table seating
- Corporate logo and company name on print invitation
- Corporate logo and company name on banners and slideshow at event
- Corporate logo and company name on PHSS website
- Special thanks on social media before and after event
- 2 tickets to pre-event Champagne Reception

White Ibis (Minimum Corporate Sponsor Level)

\$1,000



- 4 event tickets for you and your guests
- Corporate logo and company name on banners and slideshow at event
- Corporate logo and company name on PHSS website
- Special thanks on social media after event
- 2 tickets to pre-event Champagne Reception

Sanderling (Individual Friends of PHHS Sponsor Level)

\$500



- 2 event tickets
- Name on banner slideshow at event
- Name on website
- Special thanks on social media after event
- Sponsor's pin



Pelican Party 2019

CELEBRATING 40 YEARS
of Serving Native Florida Wildlife

Bird illustrations provided courtesy of the John James Audubon Center at Mill Grove in Audubon, Pennsylvania, and the Montgomery County Audubon Collection.



TOWN OF BAY HARBOR ISLANDS

FUNDING REQUEST FORM

Name of Organization: Pelican Harbor Seabird Station		Amount Requested:
Address: 1279 NE 79th Street Causeway Miami, FL 33138		Phone Number: (305) 762-7633
Mission Statement: Pelican Harbor Seabird Station is dedicated to the rescue, rehabilitation and release of sick, injured or orphaned brown pelicans, seabirds and other native wildlife; and the preservation and protection of these species through educational and scientific means.		
Tax Status: 501(c)3 Nonprofit	Employer ID Number:	

Purpose of Request (Name of the project this request fill fund): 2019 40th Anniversary Pelican Party Sponsorship	
Anticipated Project Start Date:	Completion Date: Event Date 04/13/2019
Total Cost of the Project (a detailed budget must be attached): \$600,000 Operating Budget	

Have other cities or private entities donated money to this project? ☒ Yes ☐ No

If yes, please list the cities/entities with the amount donated by each:

Miami Dade County, Commissioner Audrey Edmonson, Commissioner Sally Heyman, others pending

Will this request have a direct impact on the Town of Bay Harbor Islands? ☒ Yes ☐ No

If yes, explain how?

Our organization's mission contributes directly to preserving the native wildlife and natural beauty of Bay Harbor Islands.

Will this be a recurring request (Is a future donation request likely)? ☒ Yes ☐ No

If yes, please explain why?

This is an annual event that raises almost 20% of our annual operating budget.

Christopher Boykin, Executive Director
Name and Title of Individual Filing Request (printed)

Christopher Boykin
Signature

1/31/2019
Date

Please note: All organizations that are awarded funding will be required to provide a follow-up report no later than two weeks after project completion.

Pelican Harbor Seabird Station

BUDGET OVERVIEW: 2018 BUDGET - FY18 P&L

January - December 2018

	JAN 2018	FEB 2018	MAR 2018	APR 2018	MAY 2018	JUN 2018	JUL 2018	AUG 2018	SEP 2018	OCT 2018	NOV 2018	DEC 2018	TOTAL
Income													
1600 Donations - General	17,499.33	17,499.33	17,499.33	17,499.33	17,499.33	17,499.33	17,499.33	17,499.33	17,499.33	17,499.33	17,499.33	17,499.33	\$209,991.96
1610 Special Events 1													\$0.00
1615 Pelican Party 1	5,000.00	10,000.00	10,000.00	22,250.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	5,000.00	\$52,250.00
1617 Seabirds on the Bay	1,600.00	1,600.00	1,600.00	1,600.00	1,600.00	1,600.00	1,600.00	1,600.00	1,600.00	1,600.00	1,600.00	1,600.00	\$19,200.00
1618 Give Miami Day	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	30,658.00	0.00	\$30,658.00
Total 1610 Special Events 1	6,600.00	11,600.00	11,600.00	23,850.00	1,600.00	1,600.00	1,600.00	1,600.00	1,600.00	1,600.00	32,258.00	6,600.00	\$102,108.00
1625 Donations from Patient Intakes	625.00	625.00	625.00	625.00	625.00	625.00	625.00	625.00	625.00	625.00	625.00	625.00	\$7,500.00
1630 Grants 1	19,001.83	19,001.83	19,001.83	19,001.83	19,001.83	19,001.83	19,001.83	19,001.83	19,001.83	19,001.83	19,001.83	19,001.87	\$228,022.00
1635 Fish Drive	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	25,812.00	\$25,812.00
1640 Donations received from educational programming	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	500.00	\$6,000.00
1645 Donations Cash Box	416.67	416.67	416.67	416.67	416.67	416.67	416.67	416.67	416.67	416.67	416.67	416.63	\$5,000.00
1650 Donations related to Promo Items 1	444.25	444.25	444.25	444.25	444.25	444.25	444.25	444.25	444.25	444.25	444.25	444.25	\$5,331.00
1670 Adopt a Bird	83.33	83.33	83.33	83.33	83.33	83.33	83.33	83.33	83.33	83.33	83.33	83.37	\$1,000.00
1675 Sponsor a Release	83.33	83.33	83.33	83.33	83.33	83.33	83.33	83.33	83.33	83.33	83.33	83.37	\$1,000.00
Total Income	\$45,253.74	\$50,253.74	\$50,253.74	\$62,503.74	\$40,253.74	\$40,253.74	\$40,253.74	\$40,253.74	\$40,253.74	\$40,253.74	\$70,911.74	\$71,065.82	\$591,764.96
GROSS PROFIT	\$45,253.74	\$50,253.74	\$50,253.74	\$62,503.74	\$40,253.74	\$40,253.74	\$40,253.74	\$40,253.74	\$40,253.74	\$40,253.74	\$70,911.74	\$71,065.82	\$591,764.96
Expenses													
1000 Advertising/Promotional													\$0.00
1001 Advertising	4,000.00	1,500.00	2,000.00	1,000.00	500.00	500.00	500.00	500.00	500.00	1,000.00	2,000.00	2,000.00	\$16,000.00
1002 Promotional Items	208.33	208.33	208.33	208.33	208.33	208.33	208.33	208.33	208.33	208.33	208.33	208.37	\$2,500.00
Total 1000 Advertising/Promotional	4,208.33	1,708.33	2,208.33	1,208.33	708.33	708.33	708.33	708.33	708.33	1,208.33	2,208.33	2,208.37	\$18,500.00
1200 Patient Food													\$0.00
1201 Fish	874.92	874.92	874.92	874.92	874.92	874.92	874.92	874.92	874.92	874.92	874.92	874.88	\$10,499.00
1202 Other than Fish	826.67	826.67	826.67	826.67	826.67	826.67	826.67	826.67	826.67	826.67	826.67	826.63	\$9,920.00
Total 1200 Patient Food	1,701.59	1,701.59	1,701.59	1,701.59	1,701.59	1,701.59	1,701.59	1,701.59	1,701.59	1,701.59	1,701.59	1,701.51	\$20,419.00
1270 Occupancy 1													\$0.00
1271 Facility Cost	1,000.00	1,000.00	1,000.00	1,000.00	811.25	811.25	811.25	811.25	811.25	811.25	811.25	811.25	\$10,490.00
Total 1270 Occupancy 1	1,000.00	1,000.00	1,000.00	1,000.00	811.25	811.25	811.25	811.25	811.25	811.25	811.25	811.25	\$10,490.00
1280 Insurance 1													\$0.00
1281 Auto Insurance	255.08	255.08	255.08	255.08	255.08	255.08	255.08	255.08	255.08	255.08	255.08	255.12	\$3,061.00
1282 Commercial Property Insurance	50.67	50.67	50.67	50.67	50.67	50.67	50.67	50.67	50.67	50.67	50.67	50.63	\$608.00
1283 Directors & Officers Insurance	108.08	108.08	108.08	108.08	108.08	108.08	108.08	108.08	108.08	108.08	108.08	108.12	\$1,297.00
1284 Dishonesty Bond	167.33	167.33	167.33	167.33	167.33	167.33	167.33	167.33	167.33	167.33	167.33	167.37	\$2,008.00
1285 General Liability Insurance	43.58	43.58	43.58	43.58	43.58	43.58	43.58	43.58	43.58	43.58	43.58	43.62	\$523.00
1286 Volunteer Accident Insurance	20.83	20.83	20.83	20.83	20.83	20.83	20.83	20.83	20.83	20.83	20.83	20.87	\$250.00
1287 Watercraft Liability Insurance	75.17	75.17	75.17	75.17	75.17	75.17	75.17	75.17	75.17	75.17	75.17	75.13	\$902.00
1289 Wind Insurance	124.83	124.83	124.83	124.83	124.83	124.83	124.83	124.83	124.83	124.83	124.83	124.87	\$1,498.00
1290 Flood Insurance	1,079.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$1,079.00
Total 1280 Insurance 1	1,924.57	845.57	845.57	845.57	845.57	845.57	845.57	845.57	845.57	845.57	845.57	845.73	\$11,226.00
1320 Office Expenses													\$0.00
1321 Office Supplies	2,500.00	750.00	500.00	500.00	350.00	250.00	150.00	100.00	100.00	100.00	100.00	100.00	\$5,500.00
1322 Information Technology	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	\$3,000.00
1323 Small Equipment	6,500.00	1,500.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$8,000.00
1325 Telephone & Internet	291.67	291.67	291.67	291.67	291.67	291.67	291.67	291.67	291.67	291.67	291.67	291.63	\$3,500.00
1326 Postage & Shipping 1	126.08	126.08	126.08	126.08	126.08	126.08	126.08	126.08	126.08	126.08	126.08	126.12	\$1,513.00
Total 1320 Office Expenses	9,667.75	2,917.75	1,167.75	1,167.75	1,017.75	917.75	817.75	767.75	767.75	767.75	767.75	767.75	\$21,513.00
1360 Labor Costs													\$0.00
1361 Salaries	26,000.00	26,000.00	26,000.00	26,000.00	24,850.00	24,850.00	24,850.00	24,850.00	24,850.00	24,850.00	24,850.00	24,850.00	\$302,800.00
1363 Workers Comp Insurance	482.50	482.50	482.50	482.50	482.50	482.50	482.50	482.50	482.50	482.50	482.50	482.50	\$5,790.00
1365 Health Insurance	638.33	638.33	638.33	638.33	638.33	638.33	638.33	638.33	638.33	638.33	638.33	638.37	\$7,660.00
1366 Dental Insurance	52.08	52.08	52.08	52.08	52.08	52.08	52.08	52.08	52.08	52.08	52.08	52.12	\$625.00
1367 Retirement Plan	416.67	416.67	416.67	416.67	416.67	416.67	416.67	416.67	416.67	416.67	416.67	416.63	\$5,000.00
1369 Payroll Taxes	1,833.33	1,833.33	1,833.33	1,833.33	1,833.33	1,833.33	1,833.33	1,833.33	1,833.33	1,833.33	1,833.33	1,833.37	\$22,000.00
1370 Employment Insurance	18.50	18.50	18.50	18.50	18.50	18.50	18.50	18.50	18.50	18.50	18.50	18.50	\$222.00
1372 Payroll Admin Costs	541.66	541.66	541.66	541.66	541.66	541.66	541.66	541.66	541.66	541.66	541.66	541.66	\$6,499.92
Total 1360 Labor Costs	29,983.07	29,983.07	29,983.07	29,983.07	28,833.07	28,833.07	28,833.07	28,833.07	28,833.07	28,833.07	28,833.07	28,833.15	\$350,596.92
1380 Administrative Expenses													\$0.00
1381 Permits, Fees & Dues	134.00	134.00	134.00	134.00	134.00	134.00	134.00	134.00	134.00	134.00	134.00	134.00	\$1,608.00
1382 Bank & Merchant Fees	255.58	255.58	255.58	255.58	255.58	255.58	255.58	255.58	255.58	255.58	255.58	255.62	\$3,067.00
Total 1380 Administrative Expenses	389.58	389.58	389.58	389.58	389.58	389.58	389.58	389.58	389.58	389.58	389.58	389.62	\$4,675.00
1390 Professional Services													\$0.00
1392 Accountant	1,102.00	1,102.00	1,102.00	1,102.00	1,102.00	1,102.00	1,102.00	1,102.00	1,102.00	1,102.00	1,102.00	1,102.00	\$13,224.00
1393 Other	900.00	900.00	900.00	367.00	366.66	366.66	366.66	366.66	366.66	366.66	366.66	366.38	\$6,000.00
Total 1390 Professional Services	2,002.00	2,002.00	2,002.00	1,469.00	1,468.66	1,468.66	1,468.66	1,468.66	1,468.66	1,468.66	1,468.66	1,468.38	\$19,224.00
1420 Special Event Expenses													\$0.00
1425 Pelican Party Expenses	750.00	4,000.00	2,000.00	22,250.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$29,000.00

	JAN 2018	FEB 2018	MAR 2018	APR 2018	MAY 2018	JUN 2018	JUL 2018	AUG 2018	SEP 2018	OCT 2018	NOV 2018	DEC 2018	TOTAL
1427 Seabirds on the Bay Expenses	760.00	760.00	760.00	760.00	760.00	760.00	760.00	760.00	760.00	760.00	760.00	760.00	\$9,120.00
Total 1420 Special Event Expenses	1,510.00	4,760.00	2,760.00	23,010.00	760.00	760.00	760.00	760.00	760.00	760.00	760.00	760.00	\$38,120.00
1440 Staff Expense													\$0.00
1441 Seminars, Travel, Training	650.00	650.00	1,250.00	0.00	0.00	0.00	0.00	0.00	1,250.00	0.00	1,200.00	0.00	\$5,000.00
1444 Staff & Volunteer Appreciation	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	250.00	\$3,000.00
1445 Uniforms	125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00	125.00	\$1,500.00
1446 Preventative Vaccinations	37.50	37.50	37.50	37.50	37.50	37.50	37.50	37.50	37.50	37.50	37.50	37.50	\$450.00
Total 1440 Staff Expense	1,062.50	1,062.50	1,662.50	412.50	412.50	412.50	412.50	412.50	1,662.50	412.50	1,612.50	412.50	\$9,950.00
1480 Auto & Boat Expense													\$0.00
1481 Emergency Transport	750.00	750.00	750.00	750.00	312.50	312.50	312.50	312.50	312.50	312.50	312.50	312.50	\$5,500.00
1482 Emergency Transport Repairs	166.67	166.67	166.67	166.67	166.67	166.67	166.67	166.67	166.67	166.67	166.67	166.63	\$2,000.00
Total 1480 Auto & Boat Expense	916.67	916.67	916.67	916.67	479.17	479.17	479.17	479.17	479.17	479.17	479.17	479.13	\$7,500.00
1490 Veterinary Clinic Expenses													\$0.00
1491 Veterinarian	1,331.50	1,331.50	1,331.50	1,331.50	1,331.50	1,331.50	1,331.50	1,331.50	1,331.50	1,331.50	1,331.50	1,331.50	\$15,978.00
1495 Vet Supplies	2,000.00	4,000.00	1,162.00	1,162.00	1,162.00	1,162.00	1,162.00	1,162.00	1,162.00	1,162.00	1,162.00	1,162.00	\$17,620.00
Total 1490 Veterinary Clinic Expenses	3,331.50	5,331.50	2,493.50	2,493.50	2,493.50	2,493.50	2,493.50	2,493.50	2,493.50	2,493.50	2,493.50	2,493.50	\$33,598.00
1520 Fund raising													\$0.00
1521 Donor Acknowledgement	400.00	150.00	400.00	550.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$1,500.00
Total 1520 Fund raising	400.00	150.00	400.00	550.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	\$1,500.00
1550 Educational Programming													\$0.00
1551 Educational Graphic Design	500.00	250.00	250.00	250.00	500.00	250.00	250.00	0.00	250.00	250.00	250.00	0.00	\$3,000.00
1553 Educational Supplies	1,458.33	1,458.33	1,458.33	1,458.33	1,458.33	1,458.33	1,458.33	1,458.33	1,458.33	1,458.33	1,458.33	1,458.37	\$17,500.00
1554 Educational Communication	750.00	450.00	400.00	400.00	50.00	50.00	50.00	50.00	50.00	500.00	500.00	500.00	\$3,750.00
1557 Educational Newsletter	0.00	3,500.00	0.00	0.00	2,436.00	0.00	0.00	2,436.00	0.00	0.00	2,436.00	0.00	\$10,808.00
Total 1550 Educational Programming	2,708.33	5,658.33	2,108.33	2,108.33	4,444.33	1,758.33	1,758.33	3,944.33	1,758.33	2,208.33	4,644.33	1,958.37	\$35,058.00
Total Expenses	\$60,805.89	\$58,426.89	\$49,638.89	\$67,255.89	\$44,365.30	\$41,579.30	\$41,479.30	\$43,615.30	\$42,679.30	\$42,379.30	\$47,015.30	\$43,129.26	\$582,369.92
NET OPERATING INCOME	\$ -15,552.15	\$ -8,173.15	\$614.85	\$ -4,752.15	\$ -4,111.56	\$ -1,325.56	\$ -1,225.56	\$ -3,361.56	\$ -2,425.56	\$ -2,125.56	\$23,896.44	\$27,936.56	\$9,395.04
Other Income													
1700 Interest Income 1	416.67	416.67	416.67	416.67	416.67	416.67	416.67	416.67	416.67	416.67	416.67	416.63	\$5,000.00
Total Other Income	\$416.67	\$416.67	\$416.67	\$416.67	\$416.67	\$416.67	\$416.67	\$416.67	\$416.67	\$416.67	\$416.67	\$416.63	\$5,000.00
Other Expenses													
1720 Depreciation 1	958.33	958.33	958.33	958.33	958.33	958.33	958.33	958.33	958.33	958.33	958.33	958.37	\$11,500.00
Total Other Expenses	\$958.33	\$958.33	\$958.33	\$958.33	\$958.33	\$958.33	\$958.33	\$958.33	\$958.33	\$958.33	\$958.33	\$958.37	\$11,500.00
NET OTHER INCOME	\$ -541.66	\$ -541.66	\$ -541.66	\$ -541.66	\$ -541.66	\$ -541.66	\$ -541.66	\$ -541.66	\$ -541.66	\$ -541.66	\$ -541.66	\$ -541.74	\$ -6,500.00
NET INCOME	\$ -16,093.81	\$ -8,714.81	\$73.19	\$ -5,293.81	\$ -4,653.22	\$ -1,867.22	\$ -1,767.22	\$ -3,903.22	\$ -2,967.22	\$ -2,667.22	\$23,354.78	\$27,394.82	\$2,895.04

**RESOLUTION OF THE TOWN OF BAY HARBOR ISLANDS
ESTABLISHING A POLICY FOR CHARITABLE
DONATIONS AND CONTRIBUTIONS.**

WHEREAS, the Town Council of the Town of Bay Harbor Islands is charged with preserving and protecting the public health, safety, and welfare of its citizens; and

WHEREAS, establishing a policy for charitable donations and contributions is essential to preserving and protecting the health, safety, and welfare of the citizens of the Town of Bay Harbor Islands; and

WHEREAS, the Town receives numerous requests from various sources for donations and contributions; and

WHEREAS, it is desirable to have an established policy to provide guidance to the Town and to those seeking charitable donations and contributions; and

WHEREAS, the granting of charitable donations and contributions pursuant to an established policy is a benefit to the citizens of Bay Harbor Islands and to the public at large;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Bay Harbor Islands as follows:

Section 1. The Town of Bay Harbor Islands hereby establishes a policy that charitable donations and contributions shall be made from time to time at the discretion of the Town Council; provided however, any such charitable donations and contributions (except for those relating to major catastrophes and acts of God such as a tsunami or hurricane) shall be to entities and causes which provide a direct impact and direct benefit to the Town of Bay Harbor Islands and its citizens.

Section 2. This Resolution shall become effective upon adoption.

PASSED AND ADOPTED this 11th day of April, 2005.

TOWN OF BAY HARBOR ISLANDS

BY: 

MAYOR

ATTEST:


TOWN CLERK

H:\A-TOWN\CLERK\Resolutions\policy for donations.vpd

AGENDA ITEM REPORT

February 11, 2019

ITEM NUMBER: 7.

ITEM: Consideration and Approval of a proposal from Parkeon in the amount of \$84,080 for the purchase of twelve (12) Pay by Plate Parking Meters. The meters will be located at the municipal lots on 103rd Street, 100 Street and 92nd Street, as well as, Bay Harbor Terrace and the parking garage. Enclosed is a copy of the proposal and supporting documents.

DESCRIPTION:

The Town will "piggy-back" of the Miami Parking Authority (MPA) purchase agreement with Parkeon to purchase twelve (12) Pay by Plate Parking Meters in the amount of \$84,080. Eight of the meters will be located in the parking garage and the others will be located on the municipal lots on 103, 100 and 92nd Street and one in Bay Harbor Terrace. This will eliminate the current individual meter heads on the lots and the street meters on Bay Harbor Terrace.

The sales quote includes twelve (12) Pay by Plate Parking Meters; the eight (8) parking meters units to be located in the parking garage will utilize electric power, and the other four meters will be solar powered. A monthly access fee of \$684 will be charge for the myParkfolio Back-Office Software Management System which is utilize for the processing, storage of all transactions, maintenance, alarms, statistics and database space. The Town will be responsible for installing the four concrete pads, 3 in the lots and one on the street and for reconnecting the electrical power for the units in the parking garage.

Enclosed is a copy of the sales quote and original contract.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

This is a budgeted expense included in the 2018-2019 fiscal year.

BUDGET IMPACT:

Name	Impact Date	Fund(s)	Account(s)	Project #(s)	Amount Budgeted
Pay by Plate Parking Meters		Parking Fund	404-545.0-400063.000		85000

Submitted By: Alba Chang, Deputy Town Clerk
Juan C Jimenez, Town Manager
Patrick Prendergast, Director of Code Compliance & Parking

ATTACHMENTS

1. Bay Harbour Business District and Garage 10-31-2018 (2)
2. MPA Fully Executed 9-2014 (2)



October 31, 2018

Sales Quote - Bay Harbour Business District and Garage			
Contact : JC Jimenez and Patrick Prendergast			
StradaPal Rapide TPAL Pay by Plate			
(Accepts coin and credit card)			
Includes:			
Solar Power Operation w/Autonomous Battery for outside/ No solar tops for inside units			
7" Color Screen			
Two Year Warranty			
Coin Acceptor/Validator			
Credit/Debit Card Reader			
Modem and Antenna Kit			
Includes 1 coin canister			
Thermal Graphic Printer w/Self Sharpening Receipt Cutting Blade			
1 Roll of Paper			
Personalized Software Including Programming and Testing			
Instructional Graphics and Personalized Rate Plate			
Multi Lingual Button			
Increment and Max Buttons for Credit Card Payments			
Credit Card Software			
shipping included			
	QUANTITY	PRICE	TOTAL
StradaPal Rapide Pay by Plate	12	\$6,522	\$78,264
Install by Consolidated Parking	12	\$300	\$1,800
TOTAL	12	\$6,822	\$80,064
Recommended Options			
	QUANTITY	PRICE	TOTAL
AC Main for units in garage	8	\$265	\$2,120
Coin Selector spares	6	\$316	\$1,896
TOTAL Recommended Options			\$4,016
TOTAL Including Options	12		\$84,080

With removal of existing Metric units it is necessary to have the Cities electrical technical staff uninstall the wiring from the units and then have them reinstall to the new Parkeon units.
 Bay Harbour is responsible for the four pads to be poured for the new locations



BOS Management Fees

myParkfolio Back-Office Software Management System

Monthly Fees	Monthly Total
12	\$57
	\$684

Includes:

2 way wireless connectivity
Wireless airtime fees
On-line access to hosted secure server
Processing and storage of all transactions, maintenance, alarms, & statistic.
Database space
PCI Level 1 Certified real-time credit card authorization account set-up and management
Secure user rights management

Option

E Permit in webinar to City

Sign and Date

Please send questions to:

Scott Fox

Business Development Manager

Parkeon

40 Twosome Drive, suite 7, Moorestown, NJ 08057

Phone: 856-234-8000 x 360 - cell 443-991-0229

Email sfox@@parkeon.com

**SERVICE AGREEMENT BETWEEN MIAMI PARKING AUTHORITY AND PARKEON INC. FOR
PROVISION OF PAY BY PLATE PARKING METERS**

This Agreement is made and entered into this 5th day of September, 2014, by and between Parkeon Inc., (hereinafter "Contractor") and The Department of Off-Street Parking d/b/a Miami Parking Authority (hereinafter "MPA").

WITNESSETH

WHEREAS, a Request for Proposals ("RFP") was issued by Miami Parking Authority for the provision of PAY BY PLATE PARKING METERS and to install a central management system; and

WHEREAS, the MPA has determined that the proposal submitted by Contractor qualifies as the best proposal and that Contractor should be awarded the Agreement to provide the requested services; and

WHEREAS, the parties desire to enter into this Agreement for the purpose of setting forth the terms and conditions which shall govern the provision of services and goods rendered by Contractor.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein and for other good and valuable consideration, the parties hereby agree as follows:

SCOPE OF SERVICES. The services to be provided in connection with this Agreement are outlined in Exhibit B of this agreement. Said services shall be provided in accordance with the applicable terms and conditions set forth in the MPA solicitation, and it is understood and agreed among the parties that in the event of a variance between the terms and conditions of this Agreement and any amendment thereto and the terms and conditions contained either in the solicitation document or the Response thereto, the order of precedence shall be as follows: (1) This Agreement; (2) the MPA's solicitation; (3) the Contractor's response.

All associated costs and pricing are outlined in Exhibit A of this agreement.

Parkeon Services and Level 2 support agreement is outlined in exhibit C

All equipment and software shall be fully warranted for a period of two (2) year, with additional option years. The warranty period shall begin upon successful verification testing of the system and Contractor agrees to provide technical support with regard to the system .

TERM

This Agreement shall not be binding upon the parties until it has been executed first by the Contractor and then by the authorized representatives of the MPA in accordance with applicable ordinances, laws and regulations.

The Term of this Agreement shall commence on the date of this agreement and shall remain in effect for a term of five consecutive years ("Initial Term"), unless terminated sooner, in whole or in part, in accordance with the terms of this Agreement. Notwithstanding the foregoing, this Agreement may be extended at the option of the MPA for two (2) additional one (1) year terms ("Option Periods") upon written notice provided to Contractor by MPA thirty (30) days prior to the expiration of the Initial Term.

COMPENSATION

During the term of this Agreement, MPA shall compensate the Contractor in accordance with the Pricing Schedule attached hereto and incorporated herein by reference as Exhibit A. which includes all reimbursable expenses. All other fees reflected on Exhibit A shall be directly invoiced monthly by Contractor to MPA in accordance with the INVOICES section set forth below.

INVOICES

The Contractor shall submit original invoices for all fees to be invoiced on a monthly basis as reflected on Exhibit A, or copies of original invoices certified as such by the Contractor, on the Contractor's letterhead and in form and substance acceptable by the MPA and with all necessary supporting documentation, to the MPA. The invoice shall

describe the services provided, list the price per unit, reflect any applicable terms of payment, and show the contract number to which it relates.

Invoices shall be submitted to:

The MPA shall use its best efforts to remit payment based on the Contractor's invoice within thirty (30) days after receipt of accurate invoice and approval by the MPA.

TAX PAYMENTS

Miami Parking Authority is exempt from Federal Excise, State and Local Taxes on all purchases and upon request, will issue tax exemption certificates to the Contractor.

TITLE & RISK

The title and risk of loss of any goods hereunder shall not pass to the MPA until the MPA actually receives and takes possession of the goods at the point or points of delivery. The Contractor/successful bidder shall assume all liability and responsibility for delivery of such goods in good condition to the MPA.

PATENT INDEMNIFICATION

The Contractor warrants that any goods/services furnished hereunder do not infringe or violate any patent, trademark, copyright, trade secret, or any other proprietary right of any third party; that it shall defend all suits that may arise with respect thereto; and that it shall indemnify, defend, save and hold harmless the MPA, its officials, employees, agents, successors and assigns, from and against all liabilities, suits, claims, damages, costs or expenses, including without limitation attorney and expert witness fees, for or by reason of any actual or alleged claim the goods/services purchased by MPA hereunder infringe any patent, copyright, or is a violation of trade secret disclosure laws, whether by reason of the Contractor's purchase or otherwise. This indemnification obligation shall survive the expiration or termination of this Agreement.

SHIPMENTS

Partial shipments may be allowed unless otherwise stated in writing by MPA. The Contractor shall not ship excess quantities without the MPA's prior written approval.

ENTIRE AGREEMENT

This Agreement constitutes the full and final understanding of the parties with respect to the subject matter hereof and supersedes and replaces any and all prior or contemporaneous agreements or understandings, whether written or oral, express or implied, between the parties with respect to the subject matter of the Agreement.

STANDARD OF PERFORMANCE

All services by the Contractor shall be performed in compliance with the specified requirements, in a manner satisfactory to the MPA, and in accordance with the generally accepted business practices and procedures of the MPA and pursuant to the governing rules, practices and regulations of the industry, based on the type of services performed hereunder.

HEADINGS

Titles and headings used herein are for the convenience of reference only and shall be disregarded completely in the interpretation and validity of this Agreement or any of its terms.

MODIFICATION AND AMENDMENT

This Agreement shall be amended or modified only by a written document signed by the parties hereto, in accordance with applicable laws and regulations.

RIGHTS IN DATA

The Contractor agrees that all reports, studies, plans, models, drawings, specifications, and any other information or data of any type produced under this Agreement, whether or not the same is accepted or rejected by the MPA, shall remain the property of the MPA and shall not be published by the Contractor or any other party without the express prior written consent of the MPA. In implementing the foregoing, the Contractor hereby grants and assigns to the MPA all rights and claims of whatever nature, whether now or hereafter, arising in and to any and all of such reports, studies, plans, models, drawings, specifications, and other information or data and shall cooperate fully with the MPA in any steps the MPA may take to obtain copyrights, trademark or like protections with respect thereto. The signing of this Agreement shall constitute a complete transfer of ownership, intellectual property and copyright of all documents from the Contractor to the MPA upon the Contractor's delivery of such documents and/or information to the MPA or upon completion of the Project, whichever occurs first. The Contractor shall not construe such transfer as a grant for usage nor can the Contractor revoke it.

EMPLOYMENT OF MPA WORKERS

The Contractor shall not engage, on a full, part-time or any other basis during the term of this Agreement, any professional or technical personnel who are or have been at any time during the term of this Agreement in the employ of the MPA.

CONTRACTOR'S PERSONNEL

The Contractor certifies that it presently has adequate qualified personnel to perform all services required under this Agreement and that all work performed under this Agreement shall be supervised by the Contractor. Contractor will make its personnel aware of and cause them to comply with the MPA's policies that have been made known to Contractor while performing pursuant to this Agreement. The Contractor further certifies that all of its employees assigned to perform any work hereunder shall have such knowledge and experience as required to perform the duties assigned to them. Any employee of the Contractor who, in the opinion of the MPA, is incompetent, whose conduct becomes detrimental to the work, or whom the MPA deems to be unsatisfactory for any reason, shall immediately be removed from association with the services hereunder per the MPA's request. Upon such request, the Contractor shall use all reasonable efforts to promptly replace such employee(s) with substitute employee(s) having appropriate skills and training. Contractor is responsible for the acts or omissions of its personnel under or relating to this Agreement.

The Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement, all employee compensation and benefits. The MPA shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, health, welfare and disability benefits, Federal and local taxes, or other compensation, benefits or taxes for any personnel provided on behalf of the Contractor. In addition, the Contractor shall be solely liable and responsible for any and all workers' compensation benefits to any person as a result of injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to this Agreement.

INDEPENDENT CONTRACTORS

Nothing in this Agreement shall be deemed or construed to represent that the Contractor, or any of the Contractor's employees or agents, are the agents, representatives, or employees of the MPA. The Contractor acknowledges that it is an independent contractor over the details and means for performing the services hereunder. Anything in this Agreement which may appear to give the MPA the right to direct the Contractor as to the details of the performance of its obligations hereunder or to exercise a measure of control over the Contractor is solely for purposes of compliance with local, state and federal regulations and means the Contractor will follow the desires of the MPA only as to the intended results of the scope of this Agreement.

It is further expressly agreed and understood by the Contractor that neither it nor its employees or agents shall hold itself out contrary to the terms of this paragraph, and the MPA shall not be liable for any representation, act or omission of the Contractor contrary to the provisions hereof.

TERMINATION

1. It shall be cause for the immediate termination of this Agreement if, after its execution, the MPA determines that either:

- a. The Contractor or any of its principals, partners or corporate officers, if a corporation, including the corporation itself, has plead or been found guilty of a criminal violation, whether state or federal, involving, but not limited to, governmental sales or purchases, including but not limited to the rigging of bids, price fixing, misappropriation of government funds, or any other collusive and illegal activity pertaining to bidding and governmental contracting; or
- b. the Contractor subcontracted, assigned, delegated, or transferred its rights, obligations or interests, voluntarily or involuntarily, under this Agreement without the MPA's consent or approval; or
- c. the Contractor has filed bankruptcy, has been adjudicated bankrupt, become insolvent or made an assignment for the benefit of creditors, or a receiver, or similar officer is appointed to take charge of all or part of the Contractor's assets.

2. Notwithstanding the foregoing or any section herein to the contrary, the Contractor shall not be relieved of liability to the MPA for damages sustained by the MPA by virtue of any breach of the Agreement by the Contractor, and the MPA may withhold any payments to the Contractor, for the purpose of setoff, until such time as the exact amount of damages due the MPA from the Contractor is determined.

3. The MPA may, in its sole discretion, suspend and/or terminate this Agreement for convenience upon giving 30 business days prior written notice to the Contractor. In the event a purported termination for cause by the MPA is in error, then such termination may, at the MPA's sole discretion, be deemed to be a termination for convenience under this section. In the event of such termination, the Contractor shall be entitled to receive compensation for any work performed in accordance with the Agreement up to the termination date. All goods accepted by MPA or services completed by the Contractor prior to the Termination Date shall be documented and all tangible work documents shall be transferred to the MPA prior to payment for services rendered, and shall become the sole property of the MPA.

4. The Contractor shall not be compensated for any anticipatory profits, or other damages of any description, that have not been earned as of the date of termination.

CONFLICT OF INTEREST

Neither party shall engage in any conduct or activity in the performance of this Agreement that constitutes a conflict of interest under applicable federal, state or local laws, rules and regulations.

The Contractor covenants that it has no public or private interest, and shall not acquire, any interest, directly or indirectly, which would conflict in any manner with the performance required under this Agreement, and the Contractor covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer, official, agent or employee of the MPA, in an effort to secure the Agreement or favorable treatment with respect to any determinations concerning the performance of the Agreement. The Contractor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the MPA as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to the Contractor in connection with any work contemplated or performed relative to this Agreement. For breach or violation of this provision, the MPA shall have the right to recover or withhold the full amount of such gratuities.

GENERAL COMPLIANCE WITH LAWS

The Contractor certifies that it is qualified or will take steps necessary to qualify to do business in the State of Florida and that it shall take such action as, from time to time, may be necessary to remain so qualified and shall obtain and maintain, at its own expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Agreement. Such permits and licenses shall be made available to the MPA, upon request.

NON-DISCRIMINATION

The Contractor hereby agrees to comply with Title VI and Title VII of the Civil Rights Act of 1964 and all other federal, state or local laws prohibiting discrimination, which provide in whole or in part, that no person shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the Contractor's employment practices on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, State or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination, and shall post in conspicuous places available to all employees and applicants notices of nondiscrimination. In the event the Contractor fails to comply with the MPA's non-discrimination policy and any and all other laws prohibiting discrimination, this Agreement may be canceled, terminated or suspended in whole or in part by the MPA. The MPA reserves the right to investigate any claims of illegal discrimination by the Contractor and in the event a finding of discrimination is made and upon written notification thereof, the Contractor shall take all necessary steps to cure and rectify such action to the reasonable satisfaction of the MPA. The Contractor's failure or refusal to do so shall be cause for termination of this Agreement in accordance with the terms of this Agreement.

EMPLOYMENT OF ILLEGAL IMMIGRANTS

The Contractor hereby certifies to comply with all applicable federal and state laws prohibiting the employment of individuals not legally authorized to work in the United States. Contractor shall not knowingly (i) utilize the services of illegal immigrants; or (ii) utilize the services of any subcontractor who will utilize the services of illegal immigrants in the performance of the contract. In the event the Contractor fails to comply with any and all local, state and federal laws prohibiting the employment of individuals not legally authorized to work in the United States, this agreement may be canceled, terminated or suspended in whole or in part by the MPA, and the Contractor may be prohibited from contracting to supply goods and/or services to the MPA for a period of one (1) year from the date of discovery of the usage of illegal immigrant services in the performance of a contract with the MPA.

SEVERABILITY

If any terms or provisions of this Agreement are held to be illegal, invalid or unenforceable as a matter of law, such provision shall be fully severable, and the remaining provisions of this Agreement shall remain in full force and effect and continue to be binding and shall not be affected by such provision or by its severance herefrom. Furthermore, in lieu of such unlawful, invalid, or unenforceable provision, the parties may negotiate in good faith to replace such provision with a valid, legal and enforceable provision that most closely approximates the parties' original intent.

NO WAIVER OF CONTRACTUAL RIGHT

No term or provision of this Agreement, or of any document executed pursuant hereto, shall be held to be waived, modified or deleted unless in writing and executed by the parties hereto. No delay or failure of the MPA to enforce any right or provision of this Agreement or in any document executed pursuant hereto shall operate as a waiver or relinquishment of the MPA's right to subsequently enforce and compel strict compliance with such provision or any other provision herein or in any document related hereto and specifically identified as a waiver of any succeeding breach thereto or of any other provision herein contained.

ORGANIZATION STATUS AND AUTHORITY

The Contractor represents and warrants that it is a corporation, limited liability company, partnership, or other entity duly organized, validly existing and in good standing under the laws of the state of Delaware and doing business in the State of Florida; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary. The execution, delivery and performance of this Agreement by the Contractor has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of the Contractor, any provision of any indenture, agreement or other instrument to which the Contractor is a party, or by which the Contractor's respective properties or assets are bound, in conflict with, result in a breach of, or constitute

(with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

Each person executing this Agreement represents that: he/she is lawfully authorized to sign the Agreement on behalf of the party he/she represents and execution of the Agreement was duly and regularly authorized by the party's governing body.

WARRANTY

The Contractor warrants to the MPA that all goods/work shall be free from defects in design and faulty or improper workmanship and shall be in strict compliance with the terms of this Agreement. This warranty shall be effective for a period of not less than one year from the date of acceptance by the MPA of such goods and/or services as satisfactorily complete, and shall be in addition to all other warranties, express, implied or statutory. The warranty shall survive the termination or expiration of this Agreement.

RECORDS AND AUDITS

The Contractor shall make and keep as the same accrue, full and complete books, documents, accounting records and other evidence, that specifically relate to this Agreement, in accordance with generally accepted accounting principles. The Contractor shall retain such records, and shall make same available to the MPA, upon reasonable request, during the term of this Agreement, and for a minimum period of three (3) full years after completion of the contract obligations or from the date of final payment under this Agreement, whichever is later. In the event any litigation, claim or audit is instituted prior to the expiration of the required three-year retention period, such records shall be retained until such litigation, claim or audit finding has been resolved. Copies of said records shall be furnished to the MPA upon request.

Upon reasonable notice, the Contractor shall permit the MPA, any other governmental entity, any agency participating in the funding of this Agreement, or any of their duly authorized representatives, to enter the Contractor's offices, during regular business hours, to interview employees and to inspect and/or copy said records and books of accounts together with any and all documents pertaining hereto that may be kept, maintained or possessed by the Contractor. Reviews may also be accomplished at meetings that are arranged at mutually agreeable times and places.

Contractor acknowledges and agrees that such documents and records may be available for public view, copy and inspection pursuant to Chapter 119, Florida Statutes.

DISPUTE RESOLUTION

In the event of any dispute(s), controversy, or claim arising out of or relating to this Agreement or the breach thereof, the parties agree that they shall first use their best efforts in an attempt to settle the dispute through negotiations involving themselves or their representatives as they each deem appropriate.

FORCE MAJEURE

The Contractor shall not be deemed in default hereunder, nor shall the Contractor be responsible for any delay, interruption, or cessation in the performance of its obligations under this Agreement where such failure of performance is the result of any force majeure event, including, but not limited to, acts of God, riots, wars, strikes, epidemics, acts, governmental authorities or acts of nature or other similar cause beyond its control.

SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

NOTICES

All notices and other communications required or permitted to be given hereunder shall be written and hand delivered with signed receipt; delivered by facsimile; delivered by a nationally recognized overnight courier; or mailed via certified U.S. mail, postage prepaid and return receipt requested. All notices shall be deemed received and effectively given as follows: (i) if by hand delivery, on the date of delivery; (ii) if by fax, on the day the fax transmission is received at the receiving location and receipt is telephonically confirmed by the sender; (iii) if by delivery via U.S. mail, on the date of receipt appearing on a return receipt card; or (iv) if by overnight courier, on the date receipt is confirmed by such courier service. All notices must be addressed to the respective party at the following addresses or to such other person or address as either party may designate in writing and deliver as provided herein:

To the CONTRACTOR: Parkeon, 40 Twosome Drive, Suite 7, Moorestown, NJ 08057; Attn: Jim Dufon; Phone: 856.234.8000; Fax: 856.234.7178

COOPERATIVE AGREEMENT

The Contractor agrees that this contract may be extended to any jurisdiction within the United States to purchase at contract prices in accordance with contract terms.

Any jurisdiction using such contract may place its own order(s) directly with the Contractor. Miami Parking Authority acts only as its own Contracting Agent and is not responsible for placement of orders, payment or discrepancies of the participating jurisdictions.

It is the Contractor's responsibility to notify the jurisdictions of the availability of the contract.

NUMBER AND GENDER

Unless the context requires otherwise, (i) use of a specific gender imports the other gender(s); and (ii) use of the singular imports the plural and vice versa.

SURVIVAL

The parties hereto acknowledge that provisions that require or contemplate performance or observance after expiration or termination of this Agreement shall survive the expiration or termination of this Agreement and continue in full force and effect.

DRAFTER

This Agreement is the result of arm's length negotiations between the parties and shall be construed to have been drafted by both parties such that any ambiguities in this Agreement shall not be construed against either party.

COUNTERPARTS

This Agreement may be signed in multiple counterparts and/or counterpart signature pages, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same instrument. Signed signature pages may be transmitted by facsimile, and any such signature shall have the same legal effect as an original.

GOVERNING LAW, JURISDICTION AND VENUE

The terms and conditions of this Agreement shall be construed in accordance with and governed by the laws of the State of Florida, Miami-Dade County, Florida. All actions, whether sounding in contract or in tort, relating to the validity, construction, interpretation and enforcement of this Agreement shall be instituted and litigated in the courts of the State of Florida, without regard to conflicts of laws principles. In accordance herewith, the parties to this Agreement submit to the jurisdiction of the courts of the State of Florida.

INDEMNIFICATION

a. Contractor shall defend, indemnify and hold harmless MPA and the City of Miami, and their respective officers, directors, employees, agents, servants, successors, assigns and subsidiaries (collectively "the Indemnified Parties"), from and against any and all losses and liabilities, data breaches as a result of the actions or inactions of the Contractor, damages, penalties, fines, forfeitures, demands, claims, causes of action, suits, costs and expenses incidental thereto (including cost of defense and attorney's fees), which any of the Indemnified Parties may hereafter incur, be responsible for, or pay as a result of any and all liabilities associated with (i) the use; (ii) the performance or non-performance of this Agreement. Contractor, however, is not responsible for consequential damages, including revenue loss

; or (iii) Contractor's failure to comply with any of the provisions contained herein, or to conform to statutes, ordinances, or other regulations or requirements of any governmental authority, federal or state, in connection with the performance of this Agreement. In case Contractor shall be made a party to any litigation commenced against MPA, then Contractor shall protect and hold the Indemnified Parties harmless and shall pay all costs, expenses, and reasonable attorney's fees incurred or paid by MPA or the City in connection with such litigation and any appeal thereof. The provisions of this paragraph shall survive the termination of this Agreement.

b. Contractor assumes all liability, and agrees to indemnify, in accordance with statutory limits for a governmental agency (subject to any and all applicable Federal, State or local laws regarding same,) defend and hold harmless the Indemnified Parties for any and all claims, liabilities, costs and damages arising from Assumed Risks. "Assumed Risks" is any personal injury and any loss or damage (whether by theft or otherwise) and including, without limitation to: (i) damage or injuries occasioned by mechanical failure. This section shall not, in any manner, alter or waive the Indemnified Parties' and/or MPA's sovereign immunity or extend the MPA's or the Indemnified Parties' liability beyond the limits established in Section 768.28, Florida Statutes.

INSURANCE REQUIREMENTS FOR A CERTIFICATE OF INSURANCE PROVISION OF PAY BY PLATE PARKING METERS

I. Commercial General Liability (Primary and Non Contributory)

A. Limits of Liability

Bodily Injury and Property Damage Liability

Each Occurrence \$ 1,000,000

General Aggregate Limit \$ 2,000,000

Products/Completed Operations \$ 1,000,000

Personal and Advertising Injury \$ 1,000,000

B. Endorsements Required

City of Miami & MPA listed as an additional insured

B. Endorsements Required

City of Miami & MPA included as an Additional Insured

III. Worker's Compensation

A. Limits of Liability

Statutory-State of Florida

Waiver of subrogation

IV. Employer's Liability

A. Limits of Liability

\$1,000,000 for bodily injury caused by an accident, each accident.

\$1,000,000 for bodily injury caused by disease, each employee
\$1,000,000 for bodily injury caused by disease, policy limit
V. Umbrella Policy (Excess Follow Form)

A. Limits of Liability

Bodily Injury and Property Damage Liability
Each Occurrence \$ 2,000,000
Aggregate \$ 2,000,000

B. Endorsements Required

City of Miami & MPA listed as an additional insured

IX. Builders' Risk

The above policies shall provide the MPA with written notice of cancellation or material change from the insurer not less than (30) days prior to any such cancellation or material change.

Companies authorized to do business in the State of Florida, with the following qualifications, shall issue all insurance policies required above:

The company must be rated no less than "A" as to management, and no less than "Class V" as to Financial Strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent. All policies and /or certificates of insurance are subject to review and verification by Risk Management prior to insurance approval.

Certificates will indicate no modification or change in insurance shall be made without thirty (30) days written advance notice to the certificate holder.

NOTE: MPA RFP NUMBER AND/OR TITLE OF RFP MUST APPEAR ON EACH CERTIFICATE.

Compliance with the foregoing requirements shall not relieve the Successful Proposer of his liability and obligation under this section or under any other section of this Agreement.

The Successful Proposer shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period; including any and all option terms that may be granted to the Successful Proposer.

--If insurance certificates are scheduled to expire during the contractual period, the Successful Proposer(s) shall be responsible for submitting new or renewed insurance certificates to the MPA at a minimum of ten (10) calendar days in advance of such expiration.

--In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the MPA shall:

A) Suspend the Contract until such time as the new or renewed certificates are received by the MPA in the manner prescribed in the RFP.

B) The MPA may, at its sole discretion, terminate the Contract for cause and seek re-procurement damages from the Successful Proposer in conjunction with the violation of the terms and conditions of the Contract.

ATTORNEY'S FEES

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, each party will be responsible for their own attorney's fees.

IN WITNESS WHEREOF, the parties, by and through their duly authorized representatives, have executed this Agreement, effective as of the day and year first above written.

MIAMI PARKING AUTHORITY

PARKEON INC

By: [Signature]
Name: Art Noriega
Title: CEO

By: [Signature]
Name: CJ Octon
Title: President

9/5/2014

Exhibit A Cost and Pricing

Capital Costs

	# of units	Unit Price	Total
Multi Space	300-400	\$4375	\$1,312,500 based on 300 units

Ongoing Maintenance and Operating Costs

Monthly/Annual Fees	Per Transaction	Additional Monthly Fees	Annual Cost*	Total Cost * Please use 100,000 annual transactions for estimate
Gateway Fees	\$0	\$17/meter	\$61,200	(\$17 * 300 meters* 12 months)
Processing Fees	\$0	\$17/meter	\$61,200	(\$17 * 300 meters* 12 months)
Communication Fees	\$0	\$5/meter	\$18,000	Communication Provider: <u>AT&T</u> (\$5*300 meters *12 months)
	Annual Cost	On-Call/Hrly	Cost per Add'l User	
Annual Software Agreement	\$0	\$0	\$0	
	After Hours Support	Annual Cost		
On-Call Operations & Maintenance Support**	\$0	\$0		**Please assume Operations & Maintenance Support is phone-based following the completion of on-site training and implementation

Other fees

Shipping	\$0 (included in unit price)	
Spare parts	See attached spare parts price list	Please list on a separate sheet of part and unit costs.
Training	\$0 (included in unit price)	
Marketing	\$0	
Other	Pay Station Removal: \$275 for each pay station removed and not replaced with a new Parkeon unit	

Credit for existing machines

	# of units	Unit Price	Total
Parkeon - DG Model	29	\$50	\$1450
Parkeon - Strada BNA	335	\$425	\$142,375
Parkeon - Strada Transfer	77	\$425	\$32,725
Parkeon- Stelio	181	\$50	\$9,050
MacKay- Guardian, Multi Elite	21	\$50	\$1,050



Strada Transfer Recommended Spares List

Reference	Description	List Price	Price If Purchased At Time of Meter Procurement (represents 20% discount off list price)
ELP1000009195	Main Board - NEOPS	\$1,768	\$1,414
MEC1000018070	Upper front fitted with enhanced keyboard (for 7" display)	\$499	\$399
MEC1000019038	7" screen module guard glass	\$91	\$73
ELM1000019264	7" color screen module	\$971	\$777
400770311	4A Slow Blow Fuse (Pack of 10)	\$9	\$7
ELM1000008737	Thermal Printer	\$1018	\$814
SVT CAS 46	Programmed Coin Selector (.05, .10, .25, 1.00)	\$893	\$714
ELM1000001431	NEOPS Datapack	\$117	\$94
404304570	EPSUM M900 Card Reader (no magnetic strip kit)	\$972	\$778
404304511	EPSUM M900 Magnetic Strip Kit	\$261	\$209
CAR1000016441	3G Modem	\$878	\$702
CAT1000018056	3G Modem Antenna	\$68	\$54
404001714	Relay board	\$77	\$62
125277	Escrow	\$240	\$192
143430	Equipped Rack	\$797	\$638
PHM SDA xxxxxx	Upper Door Lock (ball type) without key	\$151	\$121
SVT CAS 18	Upper Door Key	\$56	\$45
MEC1000012432	Lower Door Lock Square	\$45	\$36
135078	Square Key	\$27	\$22
MEC1000006542	Ticket Bowl with Antistatic Brush & e-lock interface	\$175	\$140
120341	Ticket Bowl Flap	\$22	\$18
135410	Coin Bowl	\$62	\$50
135493	Coin Bowl Flap	\$23	\$18
404002394	Solar Charger Board	\$130	\$104
CAR1000018359	Three-channel charger board for extended solar power	\$130	\$104
ELM1000017902	Integrated Solar Module - 16.5 Watts	\$1,048	\$838
404402613	Cable for Solar Power Supply	\$45	\$36
ELP1000010525	Connector board for extended keyboard	\$152	\$122

Consumables

Reference	Description	List Price	Price If Purchased At Time of Meter Procurement (represents 20% discount off list price)
MEC1000005081	Coin Canister (Transfer model)	\$265	\$212
	Custom keyboard label	Quoted upon request	Quoted upon request

Additional Product Options

All below prices including shipping. Installation services to be quoted individually.

Product	Quantity	Price
StradaPAL Transfer	300 or more	\$4375
	100 to 299	\$4813
	50 to 99	\$5295
	1 to 49	\$5825
StradaPAL Rapide	300 or more	\$4900
	100 to 299	\$5390
	50 to 99	\$5929
	1 to 49	\$6522
StradaPAL BNA	300 or more	\$7840
	100 to 299	\$8230
	50 to 99	\$8640
	1 to 49	\$9075
Strada Transfer	300 or more	\$4175
	100 to 299	\$4613
	50 to 99	\$5095
	1 to 49	\$5625
Strada Rapide	300 or more	\$4700
	100 to 299	\$5190
	50 to 99	\$5729
	1 to 49	\$6322
Strada BNA	300 or more	\$7640
	100 to 299	\$8030
	50 to 99	\$8440
	1 to 49	\$8875

myParkfolio Back-Office System

Number of machines	Configuration	Price
250 or more	Pay by Plate or Pay by Space	\$39/meter/month
	Pay & Display	\$39/meter/month
100 to 249	Pay by Plate or Pay by Space	\$45/meter/month
	Pay & Display	\$42/meter/month
50 to 99	Pay by Plate or Pay by Space	\$52/meter/month
	Pay & Display	\$45/meter/month
49 or less	Pay by Plate or Pay by Space	\$57/meter/month
	Pay & Display	\$45/meter/month

Extend by Text Service

The Parkeon Extend by Text Service includes two parts:

1. Notification by text to the end user that their parking time is expiring. There is not additional charge for this service.
2. Time extension by text. There is a \$0.25 per transaction fee for this service. The end user will be charged this per transaction fee on his/her credit card. The charge will appear in the bank of MPA. Parkeon will invoice MPA for these transaction fees on a monthly basis.

Exhibit B Scope of Services

PROVISION OF PAY BY PLATE PARKING METERS:

MPA desires a system with features and functionalities including, but not limited to:

- Accept payment by coin, credit card, debit card, smart card and have an option to upgrade to chip-based credit cards or NFC technology.
- The ability to integrate with mobile payment applications such as pay by phone or smart phone applications for enforcement and reporting.
- Meters that operate without cabling for power or communication, and without ancillary infrastructure.
- Capable of operating in a stand-alone mode in the event the network environment temporarily fails, until the network environment is restored
- All card readers integrated into the meter mechanism itself or explain how reader is secured with the meter housing
- All meter products must be Payment Application - Data Security Service (PA-DSS) compliant and all service providers must be Payment Card Industry – Data Security Service (PCI-DSS)
- Scope of work will include the removal of approximately 675 Pay and Display machines. Vendor will detail credits provided for these if applicable.
- Preference (extra points) will be granted to firms which can demonstrate and outline their use of local distributors for parts and maintenance of equipment.

MULTI-SPACE METER SPECIFICATIONS

The Pay by Plate multi-space parking meters shall have the following primary features:

- 2.0.2.1 At a minimum, all meters shall be capable of accepting payment via coins, credit cards, and debit cards. Credit card types accepted by the meters shall include Visa, MasterCard, American Express, and Discover.
- 2.0.2.2 Key panel with intuitive payment navigation. Please describe your machines' key panels and payment steps, and provide images showing each step of processing each payment type.
- 2.0.2.3 Meters shall be wirelessly networked via cellular network and connected to a centralized SaaS management system. Utilize wireless technology for 2-way communications with the parking meters to monitor payments, status and usage while also providing remote diagnostics and the ability to change settings remotely (e.g., pricing or out of service notifications). Alternative wireless communication solutions may be considered at the sole discretion of the MPA.
- 2.0.2.4 System must be compatible with cellular vendors such as ATT, Sprint and T Mobile.
- 2.0.2.5 All meters shall generate real-time alarms and status reports for maintenance needs, reporting by text messages, and/or e-mails to staff resources designated by MPA.
- 2.0.2.6 Meter displays shall alert parkers when the machine is out of order or in a mode that is coin only or credit card only.
- 2.0.2.7 Meter displays shall use LCD or LED technology. Displays shall also include backlighting for night viewing capability. All graphics and text on displays shall be clearly visible in all ambient lighting conditions including the entire range between direct sunlight and complete darkness.
- 2.0.2.8 Meter shall support pay-by-cell phone payment technology. Pay-by-cell technology shall include the ability to extend time through cell phone communication. Pay-by-cell technology shall include the provision of smart phone applications.
- 2.0.2.9 Meter shall be future compatible with smart phone applications that provide general information about MPA's parking system and/or real-time parking availability.
- 2.0.2.10 Meter shall be compatible with future implementations or pilot studies of on-street parking sensor technology.
- 2.0.2.11 All field equipment and components shall be fully protected from the ambient environment. Operation of the equipment shall not be effected in any way by normal weather conditions experienced in Miami. At a minimum, operation of the equipment shall not be effected in any way by the conditions listed below:
 - a) Ambient Temperatures: -10°F to 120°F (with addition of solar loading)
 - b) Humidity: 0% to 95% (non-condensing)
 - c) Rain: Blowing rain with 80 mph gusts
 - d) Dust: Blowing dust and fine sand
- 2.0.12 Meters shall provide the ability to cancel any transaction without penalty at any point prior to completing the transaction.

- 2.0.13 In the event of a malfunction to the coin acceptor, the meter automatically reverts to credit card only functionality. The functional state of the meter shall be prominently noted on the meter displays.
- 2.0.14 The wireless based back end management system should enable the control of the meter mechanisms from the central office to enable quick and effective monitoring of maintenance status and changing of data related mechanism, the replaced unit, and the replacement unit.
- 2.0.15 The management system shall have the capability to track audit amounts by mechanism, route, and any other selected meter configuration.
- 2.0.16 System shall provide login capability and access to the management system via the internet.
- 2.0.17 Accept credit and debit card payments.
- 2.0.18 Accept coin payment.
- 2.0.19 Operate in Pay-by-Plate mode.
- 2.0.20 Include a standard solar panel for charging and maintaining battery power.
- 2.0.21 Provide real-time maintenance status updates.
- 2.0.22 Provide enhanced enforcement communications with smartphone devices.
- 2.0.23 Allow for variable rate structures or the ability to conveniently and remotely change rates by MPA.
- 2.0.24 Allow for variable time-limits and time enforcement structures, including the ability for MPA to conveniently and remotely set special event time structures.
- 2.0.25 Ability to communicate changing rate structures at the multi-space meter.
- 2.0.26 Multi-space meter shall have separate compartments and keys for collection and maintenance functions.
- 2.0.27 Multi-space meters shall have separate key for cash box.
- 2.0.28 Multi-space meter coin collection box shall be theft deterrent, made of durable metal construction, and compatible with Owner's existing operations.
- 2.0.29 Multi-space meter frame shall be durable and capable of deterring theft.
- 2.0.30 Contractor shall provide samples of signage that are mounted on, or adjacent to pay station that directs the public to pay at pay station.
- 2.0.31 Ticket roll capacity should be 4500 tickets or more.
- 2.0.32 Software must be able to recognize the difference between the letter O and the number 0 i.e., I and 1, S and 5.
- 2.0.33 Contractor shall be responsible for the initial start-up of multi-space parking meters.

2.0.3 OPERATION AND RATES

The following rate and operating characteristics shall apply to all meter mechanisms purchased.

- 2.0.3.1 **FIXED RATE** – same rate all day, for select/every day(s) of the week. Meters can be remotely programmed for holidays, special events, or other rate changes via the web-based management system and shall not require MPA staff to interface directly with the meters to accomplish such a rate update.
- 2.0.3.2 **MULTIPLE-RATES** – varied rates throughout the day, a minimum of six (6) times. This can include Tow-Away, No Parking, or Free Parking options, in addition to hourly parking rates for normal metering time. Meters can be remotely programmed for holidays, special events, or other rate changes via the web-based management system and shall not require MPA staff to interface with each individual meter to accomplish such a rate update.
- 2.0.3.3 **PRE-PAY** – allow a motorist to pay for parking prior to the beginning of enforcement hours, up to the maximum stay period. However, metered time will only begin at beginning of enforcement hours. For example, a 2 hour meter can be fully paid prior to the beginning of enforcement at 8AM. In such an example, metered time would only begin at 8AM and expire at 10AM.
- 2.0.3.4 **TOW-AWAY** – meters can be programmed to enforce defined tow-away zones. During the tow-away period, the meters will not accept credit card payment and no time will be given for coins. The meters shall be capable of displaying "Tow-Away; Do Not Park" on the display screen. In such a configuration, motorists will only be able to pay for time up to the beginning of the tow-away period. Changes to this feature can be remotely programmed via the web-based management system and shall not require MPA staff to interface directly with each individual meter to accomplish such a rate update.
- 2.0.3.5 **EVENT PARKING** – meters can be programmed to accept event parking rates, such that flat rate payment shall enable the vehicle to park for a pre-determined amount of time. For example, \$10 for an event, such that the rate begins at 7am and the \$10 results in the meter being paid for the duration of the event.
- 2.0.3.6 **Changes/updates** to all rate structures, maximum stay (time limits), available payment methods, and hours of meter operations shall also be managed and updated via a SaaS management system, providing remote management capability.
- 2.0.3.7 **ABILITY TO ADD TIME** – if a parker uses pay by cell as the payment option. The pay by cell transaction must have the ability to send the transaction expiry time directly to the meter in real-time. The cost of this

functionality must be highlighted in the pricing proposal. The MPA desires the ability for the user to receive a text message or other notification when the payment transaction is made at the machine and time is about to expire. It must also have the capability to add additional time at the same or higher rate.

2.0.4 GRAPHICAL DISPLAY

2.0.4.1 All meter displays shall be remotely programmable via web-based meter management system, such that the meter staff is not required to be present at the meter for changes to be made.

2.0.4.2 For increased visibility in low-light conditions, the display shall be backlit. Backlight shall be enabled automatically via light sensitivity and shall require no additional settings to be adjusted. Additionally, backlight shall only be enabled during a transaction in order to conserve battery power.

2.0.4.3 Displays and solar panels shall be protected by a UV resistant (non- yellowing) material.

2.0.4.4 In the event of a coin jam or other coin acceptor malfunction, meter shall continue to allow payment via the credit card slot with the aforementioned payment options including pay by cell and smart phone apps (where applicable). During such a malfunction, the meter shall display "Cards only, No Coins" on the display. In such an event, the meter shall wirelessly notify maintenance staff of the location and type of malfunction via email, text message, or both.

2.0.4.5 In the event of a card reader malfunction, meter shall continue to allow payment via coins/tokens. During such a malfunction, meter shall display "Coins only, No Cards" on the display. In such an event, the meter shall wirelessly notify maintenance staff of the location and type of malfunction via email, text message, or both.

2.0.4.6 In the event that both a coin acceptor malfunction and card reader malfunction are present, the meter shall display "Out of Order". In such an event, the meter shall wirelessly notify maintenance staff of the location and type of malfunction via email, text message, or both.

2.0.4.7 All messages shall be remotely updated and programmed via web-based management system.

2.0.4.8 Meters must have color screen capable of displaying advertisements, messages and other services.

2.0.5 COIN VALIDATION

2.0.5.1 All equipment shall be fully electronic with solid state components and straight down, free-fall coin chute. Multi- space meters shall be able to recognize and give time for both coins and/or custom token. Standard coin recognition shall include, but is not limited to, US denominations of \$0.05, \$0.10, \$0.25 and \$1.00 coins. The validator may also be reprogrammed remotely as new coins/tokens are implemented as part of the payment options provided by the MPA.

2.0.5.2 The coin validator (also referred to as "coin acceptor") shall detect metallic as well as non-metallic jams. Jam clearance shall be accomplished without special tools or disassembly of the meter. The coin validator shall be a removable component for the purposes of clearing coin or other types of coin validator jams. Coins passing through the mechanism shall be deposited into the coin box in the meter vault when the mechanism is properly installed in the upper housing.

2.0.6 POWER

2.0.6.1 Multi-space meters shall be equipped with an integrated solar panel recharge system with no hard wire connection required. In multi-space meters, the solar panel will be integrated within the primary frame of the unit. No external or elevated solar panels are desired. Contractor shall specify the number of solar panels on meters and specify how equipment meter is made to minimize vandalism.

2.0.6.2 Battery equipment shall be rechargeable/back-up battery packs to provide ongoing power during low light conditions. Battery packs shall have a minimum life capability of 24-36 months without replacement (depending on climate and wireless features enabled). All rechargeable batteries shall be capable of being recharged manually.

2.0.6.3 All equipment shall use solar panel and combination rechargeable/back- up battery pack to provide ongoing and backup power. All rechargeable batteries shall have the capability to be manually recharged.

2.0.6.4 All meters shall be compatible with traditional alkaline and rechargeable batteries. 2.0.6.5 All meters shall have extended battery life capabilities (minimum 12 months before replacement)

2.0.6.6 All meters shall retain at least one full year's data during a power failure or battery removal.

2.0.6.7 The battery must be replaceable without the use of tools for all meters.

2.0.6.8 All meters shall have the ability to have separate access for battery replacement for rechargeable and non-rechargeable batteries.

2.0.7 CREDIT CARD PAYMENT

2.0.7.1 Payment applications and devices accepting credit card payments shall be PA-DSS validated according to the latest version in effect at the time of Contract Award and shall be upgradable to maintain current standards throughout the life of the system.

2.0.7.2 No equipment, components, applications, means, or methods used by the Contractor during the implementation of the system shall compromise the system's PA-DSS validation or prevent the MPA from satisfactorily passing an audit of PCI compliance.

2.0.7.3 No application shall implement any changes to the Operating System that can potentially jeopardize PCI Compliance.

2.0.7.4 Payment with a credit card shall utilize a hybrid card reader built into multi-space meter. The hybrid card readers shall allow for use of both magnetic stripe credit card and smart card or chip card. Users shall insert (chip card) or insert/remove (credit card) the card to start the payment process. Users shall then have the ability to toggle up or down to select the amount of time to be purchased, up to the maximum and down to the minimum metered time. Users shall then select "OK" to purchase, or can press "CANCEL" to stop the transaction. Contractor shall explain transaction process if different than described above. Differences may be considered at the sole discretion of the MPA.

2.0.7.5 The Contractor shall provide a minimum of two (2) options for secure gateway service for secure (encrypted) credit card data transmission to MPA's merchant account provider. Credit card data transmission shall be in compliance with current PCI-DSS. If applicable, contractor shall provide evidence of PCI-DSS Level 1 certification. Fees shall be detailed in the proposal.

2.0.7.6 Keypad shall be utilized to eliminate any moving parts associated with the user interface for card payment. Alternative keypad types may be considered at the sole discretion of the MPA. All keypads shall be modular to all meters for in-field replacement if necessary.

2.0.7.7 The card slot shall be functional in all weather, including rain, and shall not be disabled by water or other liquid.

2.0.7.8 Meter shall adjust the amount of time purchased by the user based on selections at the meter interface, adjusting the value selected with credit card and showing the equivalent time purchased on the meter interface.

2.0.7.9 The customer shall be able to cancel any transaction without penalty prior to accepting the transaction.

2.0.8 WIRELESS DATA and MANAGEMENT SYSTEM CAPABILITIES

2.0.8.1 Multi-space meter shall be individually capable of transmitting wireless data (no hardwire connection required) for the purposes of payment card processing, coin transactions, updates to the operating features and rate configuration of the meter, as well as fault notification. The wireless capability shall be integral to the meter mechanism design and shall not require a secondary connection to a wireless device.

2.0.8.2 System shall remotely communicate with all devices in real-time for a general broadcast of information or software update or an ability to communicate to a single device to upload information or software. Broadcasting information such as rate changes or time increment changes shall be in real-time to all field devices.

2.0.8.3 System shall be capable of generating alarms for any user selectable event type. Alarm Hierarchy shall be completely configurable so that the MPA can adjust priority of alarms, audible tones, where the alarms are sent, etc. Initial Alarm Hierarchy shall be coordinated with MPA during implementation.

2.0.8.4 Management system shall be completely web-based system accessible via desktop computer, laptop computer, or Windows, Android or iOS mobile devices to authorized personnel. It is desired that no additional software other than an internet browser shall be required for management to access and fully use in conjunction with the meter products. The system should support the current Internet Explorer, FireFox and Chrome. Additionally, the vendor must commit to supporting new versions of each browser, and ancillary components like Java, within 90 days of their respective version updates. This shall provide access to the meter management system from authorized user 24/7 over the web. Vendor shall list all data equipment necessary to operate software system including desktops, laptops, handheld devices, and any necessary server requirements which the MPA would need to have available or provide at the time of install. Vendor should describe the licensing model and identify all costs associated with using the system. This includes per user licensing, technical support, per device costs or any other one time or recurring fees.

2.0.8.5 Management system shall provide role-based access control using the principle of least privilege for all system functions including system administration and security administration.

2.0.8.6 Management system shall provide a variety of reports to include financial, technical, and administrative functions via a single web-portal. Reports shall include, but are not limited to:

- a) Credit card reconciliation (daily, weekly, monthly, annually)
- b) Cash collection reports (by date, time, pole, amount collected and collector)

- c) Meter must print a receipt showing meter number, location, and coin collection quantity after each collection
- d) Revenue Summary reports (daily, weekly, monthly, annually, by zone, route, street or pole)
- e) Coin box level (% full)
- f) Individual transactions (cash or credit) by pole
- g) GPS location of meters on a map with statistical mouse-over feature
- h) Ability to change text on LCD remotely
- i) Adjudication Reports
- j) Ability to change rates and other operating parameters remotely via the internet
- k) Meter uptime (over time, by zone, street, and pole)
- l) Maintenance software for logging Service requirements over time
- m) Meter paid occupancy reports (if applicable)
- n) Accumulative totals of all cash and card transactions
- o) Exception reports for units not performing as required (communications or payment faults)
- p) Access to Help materials and User Manuals shall be available on-line

2.0.8.7 Management system shall have the ability to export all query results to multiple formats including comma-separated-value, Microsoft Excel®, Microsoft Access®, Adobe Acrobat (.PDF),

2.0.8.8 Management system will provide an API or other interface for MPA to programmatically transfer report data to MPA for data analysis or real time display on the MPA website. The API should also allow MPA applications to query the system to determine tag status (Paid, Not Paid, Expiration Time...)

2.0.8.9 The Contractor shall install and configure all application software and firmware required by the system with all software licenses registered to MPA.

2.0.8.10 Automatically detect and report fault conditions through the management system - The system shall perform a self-check on a routine basis and provide notification for fault conditions and equipment failure.

2.0.8.11 Remote monitoring of multi-space meters.

2.0.8.12 The system shall correctly process parking fees during a transition:

- from daylight savings time to standard time, and vice versa
- at the beginning of March during leap years (e.g., when there is a February 29th)
- from one rate to another

2.0.8.13 To the greatest extent possible, industry standard software packages shall be utilized. Each such software package shall be identified in the Contractor's Proposal. The Contractor's Proposal shall state the purpose of the software package, where it will be used, and how it will be used. If one software package is required to interface with another software package, the interface shall be documented and supported by flowcharts or block diagrams as appropriate. The Contractor shall advise if the software used in the system will be customized or "off the shelf" software, and shall describe the method of obtaining further software updates or modifications.

2.0.8.14 Application software shall have been designed for use in parking meter systems, and shall be written in a standard, industry-accepted computer language such as Java, C++, Visual Basic, etc. The Contractor shall identify the version of software that will be used in their Proposal.

2.09 TRAINING, IMPLEMENTATION, MARKETING & ONGOING SUPPORT

2.0.9.1. The Contractor(s) shall provide training necessary for staff to use any parking meter and parking meter management software used in the implementation and subsequent defined use period (based on outright purchase or financing/leasing of meters).

2.0.9.2. The Contractor(s) shall provide training necessary for staff to maintain and operate parking meter technology after implementation (based on outright purchase or financing/leasing of meters).

2.0.9.3. The Contractor shall provide training necessary for staff to utilize the wireless communication system to communicate with the parking meters used in the implementation.

2.0.9.4. The Contractor shall provide training on an individual basis or in a group setting as approved by MPA for the operation and maintenance of the parking meters. Vendor must provide a training program for technicians and staff responsible for:

- a. Installation, start up, and maintenance/repair of the units.
- b. Coin collection.
- c. Programming rates, valid parking times, etc.; through the management software.
- d. Monitoring the equipment, generating reports and internal auditing.
- e. Date file collection, credit card file downloading and processing, set up and maintenance of user account passwords, etc.
- f. The vendor will provide detailed documentation on the use of the API identified in section 2.0.8.8 above.

2.0.9.5. The Offeror shall provide a thorough outline of the training content and provide training schedule for both software and hardware. The schedule shall include periodic refresher training (continual education), included but not limited to, emphasis on particular areas of MPA's choice and upgrades of software and/or hardware.

2.0.9.6. The Contractor(s) shall provide a minimum of forty (40) hours of training at a designated MPA facility for designated MPA employees. The vendor shall provide additional training as requested at prevailing rates throughout the length of the Contract.

2.0.9.7. The Contractor(s) shall provide ten (10) copies of the operating manual in English for installation, maintenance, and use (complete with wiring diagrams and specifications) are to be provided at the time the units are delivered.

2.0.9.8. The Contractor(s) shall maintain or assist in the maintenance of the meters during the first 120 days of the implementation to ensure that all meters *are in good working order and can accept coin and credit/debit payments used throughout the initial period.*

2.0.9.9. Offerors shall provide warranty information for parking equipment, equal to or exceeding one year from installation.

2.0.9.10. The Contractor(s) shall provide assistance with initial marketing and education of new equipment, including materials, business outreach, and initial implementation outreach for users.

2.0.9.11. The Contractor(s) shall include a marketing or campaign plan that shall provide the public with a smooth transition to the new parking meter equipment. The marketing or campaign plan is subject to approval from MPA and shall include:

a. Pamphlet information on "How to" use the parking meters.

b. Advertising and promotional materials advertising the launch date.

c. Survey forms allowing customers to give direct feedback to the MPA

d. The MPA will specify color, logos and printed instructions after selection of Contractor (s).

2.0.9.12. Offeror shall provide a point of contact that is able to be reached Monday through Friday during normal operating hours (8 am to 6 pm), Eastern Time.

2.0.9.13. Offeror shall also provide a point of contact for after hour requests. (6pm-8am)

2.0.9.14. Offeror shall return phone calls the same day should MPA need immediate assistance.

2.0.9.15. Offeror shall provide detailed scheduled maintenance guidelines and instructions to ensure that MPA is maintaining the equipment as required to ensure optimal performance. Offeror shall be willing to train MPA's maintenance technician(s) that will be responsible for maintaining the pay stations. The training shall encompass all operational aspects of the pay stations.

2.0.9.16. The Offeror guarantees, for a period of two (2) years from the date of installation to repair and/or replace any part or modular component determined to be defective in material or workmanship under normal use and service at no additional cost to MPA. The Offeror shall also provide MPA with any new software releases for a period of two (2) years at no charge.

2.0.9.17. The Offeror must have a local office that can respond to any escalated service issues within four (4)

business hours. In addition, the Offeror must be able to stock parts and provide repairs to parts at the local office.

2.0.9.18 Vendor must describe what data is collected and stored, how it is used and if and under what circumstance it is transferred to third parties.

Exhibit C

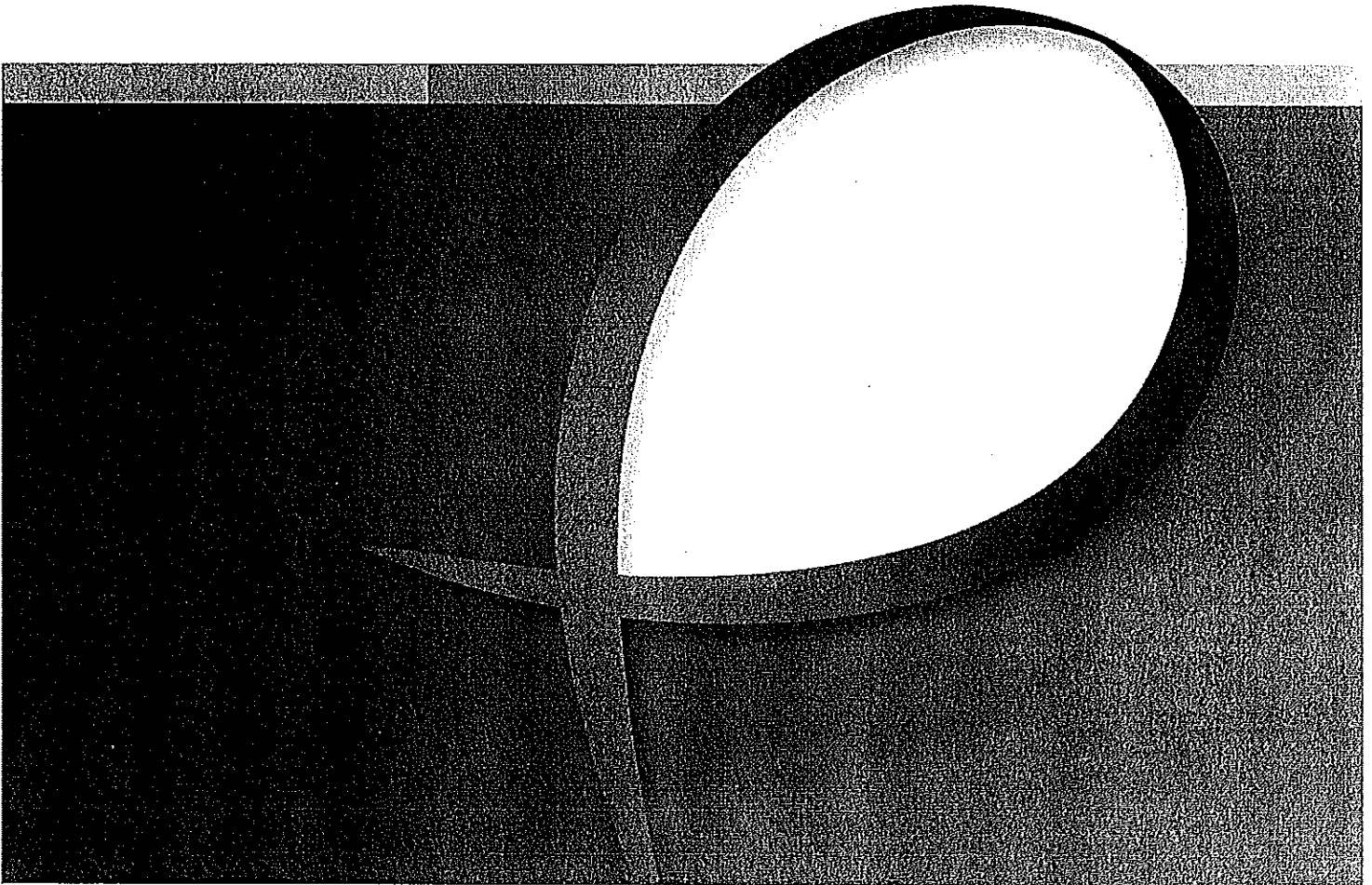
Parkeon Services and Level 2 support agreement



Exhibit C

MIAMI PARKING AUTHORITY

PARKEON Services and
Level II Support Agreement



Revision History

01	08/25/2014	L. DEPERROIS	Initial revision
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Reference document

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1. PARTIES TO AGREEMENT / PERIOD OF PERFORMANCE

- 1.1 This Agreement, dated as of August 25th 2014, is made by and between PARKEON Inc. ("Parkeon") a corporation organized and existing under the laws of the State of Delaware, having an office at 40 Twosome Drive, Suite 7, Moorestown, NJ 08057, USA and MIAMI PARKING AUTHORITY ("MPA" or "Customer"). (Individually referred to as the "Party", collectively to as the "Parties".)
- 1.2 Parkeon is to provide the services listed below to the Customer upon the terms and conditions stated herein commencing October, 1st 2014 for an initial period of twelve (12) months (the "Initial Period"). At the end of the Initial Period, the Agreement shall be automatically renewed for the following twelve (12) month period (the "Automatic Renewal Period") upon the same terms and conditions unless (i) one Party gives written notice of non-renewal to the other party or (ii) Parkeon advises Customer of a price increase, at least sixty (60) calendar days prior to the end of the Initial Period.
- 1.3 After the Initial Period of the agreement, each Renewal Period may be subject to a cost increase. Fees will be increased proportionate to the current CPI and market costs for communications on the renewal date of this Agreement.
- 1.4 Failure of the Parties to agree to new pricing within sixty (60) calendar days prior to the end of the Initial Period and/or any subsequent Renewal Period will entitle Parkeon to terminate the Agreement.

2. SCOPE OF SERVICES TO BE PERFORMED BY PARKEON

The following services (the "Services") will be provided by Parkeon under this Agreement.

SERVICE	LIST PRICE PER MONTH	TERMINALS
☒ Pay-By-Plate Work Spaces - Action required - Terminal Out-of-Order - Communications Problems - Maintenance Performed - Consumables - Cash Collections - Cash-In-Terminals - Parking Activity - Ticket Sales Analysis - Transactions by Payment	\$39.00 per machine	STRADA TRANSFER Number of units: 300
☒ Pay-By-Plate - Enforcement web site - Enforcement		
☒ Standard Work Spaces - Maintenance - Collections - Transactions - Control		
☒ Customer Telephone Support		
☒ Software Customization - Tariff Editor - Download module	Included	STRADA TRANSFER Number of units: 300

CLOUD BASED SERVICES	LIST PRICE PER MONTH	TERMINALS
☐ Validation codes		
☒ Notification / Extend by Text	End user convenience fee apply	STRADA TRANSFER Number of units: 300
☐ CBORD		

OTHER SERVICES	LIST PRICE PER MONTH	TERMINALS
☐ Whoosh (Refer to <u>Appendix D</u> if elected by Customer)		

3. PAYMENT TERMS

☒ Monthly billing ☒ 30 Day Payment Terms from receipt of invoice

4. GENERAL TERMS AND CONDITIONS

4.1. PARKEON DELIVERY OF SERVICES UNDER AGREEMENT

- 4.1.1 Parkeon will provide Level II Remote Technical Support when Customer consistent with Level I training and diagnosis/Service materials is not able to adequately service the Multi-space meters,
- 4.1.2 Parkeon will provide the Services with care and skill consistent with applicable industry standards.
- 4.1.3 Parkeon will maintain a properly staffed Level II Remote Call-in Service operation to assist Customer with the full range of diagnostics and repairs activities. Support will be available during Parkeon's regular business hours (Monday-Friday 8:00am/8:00pm EST) excluding holidays.
- 4.1.4 Parkeon will maintain a log of all Service incidents which will document the service problem, and relevant hardware/network environment as applicable and contact information. This log will be available to Customer upon reasonable request.
- 4.1.5 Parkeon will take all technical and commercially reasonable measures to provide a resolution within four (4) business hours of receipt of Customer's request for assistance.
- 4.1.6 Parkeon will escalate back office support requests to Level III if, within four (4) business hours, a resolution is not implemented.
- 4.1.7 Parkeon will convene regular Service review meetings with Customer to review Service history.
- 4.1.8 Parkeon will guard and maintain the confidentiality of all, logins, passwords and personal identification provided in connection with the Services against unauthorized use of the Services.
- 4.1.9 Parkeon will be entitled to subcontract in part or whole performance of the Services to be provided under this Agreement with prior written consent of Customer, such written consent not being unreasonably withheld.

4.2. CUSTOMER PARTICIPATION

- 4.2.1 Customer is responsible for Level I Technical Service and maintenance for all machines as specified in Appendix C.
- 4.2.2 Prior to requesting Level II support services, Customer will have attempted to service the Multi-space meters, consistent with Level I training and diagnosis/Service materials and encountered issues that it cannot resolve.
- 4.2.3 Customer will submit all requests into Parkeon's Technical Support using the contact method specified in Appendix A and provide all necessary information to permit Parkeon to perform the required services. Customer will update Parkeon in writing of any changes to such information (especially any change of address) and be available to work with the Parkeon's support resource assigned to the support request.

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- 4.2.3 Customer will submit all requests into Parkeon's Technical Support using the contact method specified in Appendix A and provide all necessary information to permit Parkeon to perform the required services. Customer will update Parkeon in writing of any changes to such information (especially any change of address) and be available to work with the Parkeon's support resource assigned to the support request.

4.4. FEES - INVOICING AND PAYMENT OBLIGATIONS

In consideration for receiving the Services and/or Additional Work, Customer shall pay to Parkeon the fees as set forth in the Article 2 Scope of Services above or agreed to pursuant to Article 4.3 above, as follows:

- 4.4.1 Parkeon will invoice the Customer as set forth in Article 3 above which invoice is due and payable within thirty (30) days of receipt.
- 4.4.2 In the event that there is an increase in the number of units being provided under this Agreement, then a Service charge based on the monthly per machine charge in effect at the time of installation shall be added to Customer's invoice.
- 4.4.3 Absent prior notification to and approval of the Customer, the total amount payable to Parkeon under this Agreement for the Initial twelve (12) month Period of the Agreement, plus any subsequent Renewal Periods of twelve (12) months, shall not exceed \$140,400.00 (one hundred forty thousand four hundred dollars) per twelve month period. This amount will be increased accordingly upon article 4.4.2. This amount is excluding any applicable taxes relating to the base Service provided under the terms of this Agreement.
- 4.4.4 To the extent that a disagreement arises in connection with the sum due and owing under the Agreement, Customer agrees to pay the undisputed amount of the invoice within the contractual deadline set forth in the 4.4.1 above.
- 4.4.5 If amounts due and owing Parkeon remain unpaid past the due date, Parkeon shall be entitled to interest of five percent (5.00%) commencing on the due date of the payment.
- 4.4.6 If amounts due and owing Parkeon remain unpaid for sixty (60) calendar days from the due date, Parkeon shall be entitled to terminate the Agreement with immediate effect by serving written notice to the Customer.

4.5. TERMINATION

- 4.5.1 Termination for Non-Appropriation of Funds. This Agreement shall terminate without penalty at such time as appropriated funds are not available to satisfy the obligations of Customer hereunder. The failure of Customer to make an appropriation in any given year shall not be deemed a breach of this Agreement, nor give rise to any cause of action by Parkeon for legal or equitable relief. Customer shall provide Parkeon written notice sixty (60) calendar days prior to such non-appropriation termination and shall pay to Parkeon all sums due and owing under the Agreement as of the date the non-appropriation termination becomes effective.
- 4.5.2 Termination for Convenience. Notwithstanding any other provision of this Agreement, Customer may terminate this Agreement (in whole or in part) without cause sixty (60) days following delivery of a written Notice of Termination to Parkeon.
- 4.5.2.1 Upon receipt of a Notice of Termination, and except as otherwise agreed between Parkeon and Customer, Parkeon shall immediately proceed with the following actions:
- 4.5.2.1.1 Stop work as specified in the Notice
- 4.5.2.1.2 Place no further orders for materials, services, or facilities, except as necessary to complete any part of the Agreement not subject to termination..
- 4.5.2.1.3 Cancel all cancelable orders and terminate all subcontracts to the extent they relate to the Work terminated
- 4.5.2.1.4 Assign to Customer, and deliver to the work site, any non-cancelable orders for material and equipment that is not capable of use except in the performance of this Agreement.
- 4.5.2.1.5 Take all reasonable measures to mitigate Customer's liability under this section.
- 4.5.2.1.6 Complete performance of non-terminated work
- 4.5.2.2 Upon termination of the Agreement without cause, Customer shall immediately pay Parkeon all amounts due and owing under the Agreement up to the date of termination, all non-cancelable costs for material and equipment that cannot be used other than in connection with this Agreement, and ten (10%) percent of the difference between the Total Agreement Price and all payments due to Parkeon prior to termination of the Agreement.
- 4.5.3 Other Termination. Without prejudice to any other rights or remedies to which the Parties may be entitled, either Party may:
- 4.5.3.1 Terminate the Agreement in the event of a material breach of this Agreement which is not remedied within thirty (30) calendar days of notification to the other Party in writing to remedy such breach which notification will set forth in reasonable detail the nature of the alleged breach;
- 4.5.3.2 Immediately upon (i) appointment of a receiver or administrator over the other Party or its assets or if the other Party is subject to bankruptcy, liquidation or any analogous proceedings under laws of any competent jurisdiction or (ii) the other Party suspends or ceases, or threatens to suspend or cease, to perform all or a substantial part of its Work under this Agreement;

- 4.5.3.3 Upon the occurrence of a Force Majeure event (a circumstance not within the control of the Affected Party) but only if and to the extent that such circumstance despite the exercise of reasonable diligence cannot be prevented, avoided or substantially mitigated by the Party and such circumstance materially and adversely affects that Party's ability to perform its obligations under this Agreement for an uninterrupted period of no less than three (3) months. In such event, the Affected Party shall promptly notified the Other Party of its intention to terminate the Agreement which termination shall have full force and effect three (3) business days after receipt of notice. Neither Party will be liable to the Other Party for damages.
- 4.5.4 Upon termination of the Agreement by Customer for any reason under 4.5.3, Parkeon shall be paid any amounts owed under the Agreement up to the date of termination.
- 4.5.5 Parkeon shall not by reason of the termination of this Agreement be liable to Customer or be subject to consequential, incidental, indirect or special damages or for costs associated with substituted performance.

4.6. INTELLECTUAL PROPERTY

- 4.6.1 Customer agrees that all Intellectual Property Rights, confidential know-how, tools, methods, skills, trade secrets, graphics, logos and trade names used by Parkeon in performing its obligations under this Agreement ("Intellectual Property Rights") are, and will remain, the property of Parkeon (or the third-party who has granted Parkeon the right to use such rights) and nothing in this Agreement or Parkeon's performance under this Agreement will be deemed to transfer to Customer any such Intellectual Property Rights of Parkeon or any third-party.
- 4.6.2 Customer acknowledges that the name "PARKEON" and any other trademark, brand name, trade name and logotype associated with the Products or services of Parkeon (hereinafter referred to as "PARKEON Trademarks") whether or not registered, are and shall remain the property of the owner of the Trademarks, being Parkeon or one of its affiliates, and that Customer has no right, title or interest in PARKEON Trademarks during the term of this Agreement or thereafter except as provided otherwise herein.
- 4.6.3 The Parties both agree that except as otherwise provided herein, neither Party shall utilize the intellectual property rights of the other.
- 4.6.4 Parkeon shall defend or, at its option, settle any claim or action brought against Customer alleging that the use of the Services as provided under the Agreement and as used within the scope of the Services granted to Customer, infringes the Intellectual Property Rights of a third-party, provided that (i) this infringement claim is not attributable (a) to a use other than in accordance with this Agreement regardless of whether the use is in combination with any service(s) not furnished by Parkeon, or (b) to the use of a non-current release of the Software and that (ii) Customer gives reasonable notice and cooperation to Parkeon in connection with the defense of such claim, makes no admission or settlement in respect of such claim and that Parkeon directs and controls such defense.

- 4.6.5 Software licensing: Parkeon will provide Customer a license to use Pay Station software and Parkfolio back office. Parkeon does not provide software or licensing for software being used with Parkeon products that is not part of the Parkeon Pay Station, Parkfolio back office, or other Parkeon products provided by Parkeon to Customer under this Agreement. Customer shall provide such software and licensing as needed.

4.7. PROPRIETARY AND CONFIDENTIAL INFORMATION

- 4.7.1 Proprietary Information (hereafter "Proprietary Information") means object code, source code and any benchmark tests for the Services, pricing and other information Identified as proprietary, but excludes: (a) information made available to the general public without restriction by the disclosing Party or by an authorized third-party, (b) information known to the receiving Party independent of disclosures by the disclosing Party, (c) information independently developed by the receiving Party without access to or use of the disclosing Party's Proprietary Information, or (d) information related to the Agreement that the receiving Party may be required to disclose pursuant to the applicable Freedom of Information statutes or pursuant to subpoena or other lawful process initiated by a governmental authority or by the disclosing Party, provided that the receiving Party notifies the disclosing Party of the lawful process to allow the disclosing Party to appear before the governmental authority and protect its interests, and such disclosure complies with applicable law.
- 4.7.2 Confidential Information (hereafter "Confidential Information") means non-disclosable data, but shall exclude (a) information known to the receiving Party independent of disclosures by the disclosing Party, (b) information independently developed by the receiving Party without access to or use of the disclosing Party's confidential information, or (c) Information related to the Agreement that the receiving Party is required to disclose pursuant to applicable Freedom of Information statutes or pursuant to subpoena or other lawful process initiated by a governmental authority or by the disclosing Party, provided that the receiving Party notifies the disclosing Party of the lawful process in a timely manner to allow the disclosing Party to appear before the governmental authority and protect its interests, and such disclosure complies with applicable law.
- 4.7.3 The Parties shall use reasonable efforts to protect each other's Proprietary and Confidential Information from disclosure. Neither Party is entitled to disclose the other Party's Confidential or Proprietary Information without prior written consent of the other Party, which may be withheld in the other Party's sole and absolute discretion. Provided the other Party's prior written consent has been obtained, the Party requesting consent may disclose in confidence the other Party's Confidential or Proprietary Information on a need-to-know basis to such Party's contractors and subcontractors as have executed a non-disclosure agreement, and the Party making that disclosure shall be responsible for that person's compliance with these restrictions on disclosure and use.

- 4.7.4 Upon termination of this Agreement, the Parties shall securely dispose of all information received and shall make no further use of it. The termination shall not serve to release any Party from its obligations regarding confidentiality under this article which shall remain in force for a period of two (2) years after the date of termination.
- 4.7.5 As a municipal corporation, Customer may have an obligation to disclose public records pursuant to applicable Freedom of Information statutes. To avoid disclosure of Parkeon Proprietary Information, any documents that contain trade secrets will be clearly marked "Proprietary" prior to submission to Customer. Upon citizen request for disclosure of Proprietary Information pursuant to the applicable statutes, sufficient notice shall be provided to Parkeon to permit Parkeon to contest such disclosure.

4.8. LIABILITY AND WARRANTY

- 4.8.1 This clause sets out the liability of Parkeon in its entirety (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to Customer in respect of any claims relating to (i) Parkeon's performance of the Agreement (ii) any breach of this Agreement (iii) any use made by the Customer of the Services, or (iv) any representation, statement or act or omission (including negligence) of Parkeon arising under or in connection with this Agreement.
- 4.8.2 Notwithstanding any other provision of this Agreement to the contrary or rule of law or statute, in no event shall Parkeon be liable to Customer for (i) any special, indirect, incidental or consequential loss, costs, damages, charges or expenses; or (ii) loss of profits, business, contracts, business opportunities, income, or anticipated savings; or (iii) damage to reputation or (iv) loss or corruption of data or information; or (v) any degradation which occurs in relation to the network or associated software or hardware of the Customer as a result of the performance of the Services.
- 4.8.3 Parkeon Multi-space meters communicate through public cellular communication networks. Parkeon shall not be liable to Customer for any loss, costs, damages, charges or expenses arising from failures, defects or limitations of the cellular communication network or any product or service supplied by a third-party in connection with the cellular communication network. The cellular providers may experience capacity, interference, equipment and other problems; may make unannounced changes to their Services which impact communications; may limit, restrict or end the Services. Parkeon's sole obligation under this Agreement in connection with the cellular communication network is to treat communications problems that impact Multi-space meters performance as a priority issue and work with the cellular provider to expeditiously resolve the problem.
- 4.8.4 Data is saved in accordance with current data protection and back up standards. However, complete security cannot be guaranteed. In the event of data loss or data errors, Parkeon shall not be held liable unless the data loss or data error was solely the direct result of gross negligence on the part of Parkeon.

- 4.8.5 Parkeon shall have no liability to Customer for malfunction of third-party systems, acts or omissions of a third-party, infiltration or disruption of Parkeon services by a third-party by any means, including without limitation, DDoS attacks, software viruses, Trojan horses, worms, time bombs or any software programs or technology designed to disrupt or delay the Parkeon's services.
- 4.8.6 Parkeon's maximum aggregate total liability for damages arising out of or relating to this Agreement, exclusive of claims by third-parties, shall not exceed an amount equivalent to twenty-five (25%) percent of the remaining contract value in the year in which the damages occurred.
- 4.8.7 Parkeon makes no warranty express or implied that all security threats, breaches and vulnerabilities will be detected and/or avoided. Parkeon may be required to reduce or suspend Services for limited periods to enable technical or maintenance operations to be conducted or upgraded or as the result of an imminent threat of material harm. Parkeon will use best efforts to minimize inconvenience to the Customer caused by such reduction or temporary suspension of Services.

4.9. EXTENSION OF TIME FOR FORCE MAJEURE

- 4.9.1 In the event of a Force Majeure incident which does not result in termination of the Agreement per Article 4.5.3.3 above, the end date of this Agreement shall be extended by the period of time that such circumstance materially and adversely impaired or prevented a Party's ability to perform its obligations under this Agreement (the "Affected Period"). Immediately upon termination of the Affected Period, the Affected Party shall resume performance. The Party seeking to obtain a Force Majeure extension of time must immediately notify the other Party in writing of the nature, details and anticipated effect and duration of the Force Majeure incident.

4.10. GOVERNING LAW AND JURISDICTION

- 4.10.1 This Agreement made in two original counterparts in the English language shall be governed by and construed in accordance with the laws of the State of New York.
- 4.10.2 All disputes or claims arising under or in connection with this Agreement shall, in the first instance, be subject to amicable resolution by the Parties. In the event the dispute or claim cannot satisfactorily be resolved amicably, the Parties agree to submit such disputes or claim to binding arbitration. Arbitration shall be held in Moorestown, New Jersey. The commercial arbitration rules of the American Arbitration Association shall apply. Any judgment, decision, or award by the arbitrators shall be final and binding on the Parties and may be enforced in any court having jurisdiction over a Party against whom any such judgment, decision, or award is to be enforced. The Parties shall bear their own costs and expenses (including attorney's fees) for any arbitration, unless otherwise directed by the arbitrator.

4.11. CONTRACT DOCUMENTS

- 4.11.1 The contract documents which govern the dealings between the Parties are as follows, listed by order of precedence:
- Changes, modifications, amendments and extension of this Agreement
 - The Agreement including its Appendices,
 - Parkeon's Response to Bid # RFP 14-07 Provision of Pay-by-Plate Parking Meters dated May 12, 2014.

4.12. NOTICES

- 4.12.1 Addresses may be changed by either Party from time to time and shall be notified to the other Party. All notices and other communication hereunder shall be deemed to have been given as of the date of delivery by hand, or five (5) working days after posting when mailed by registered or certified mail, postage prepaid, or twenty-four (24) hours after dispatch if sent by facsimile during business hours of the receiving Party. Refusal to accept delivery has the same effect as receipt.
- 4.12.2 Notices or other communications to either Party shall be made in writing and addressed to the relevant Party at its address as stated below:

PARKEON INC.

40 TWOSOME DRIVE, UNIT #7
MOORESTOWN, NJ 08057
USA
Attention: Mr. Lionel DEPERROIS

MIAMI PARKING AUTHORITY

40 N.W. THIRD STREET, Suite 1103
MIAMI, FL 33128
USA
Attention: Alejandra ARGUDIN

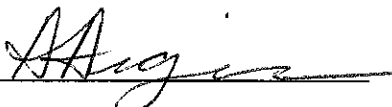
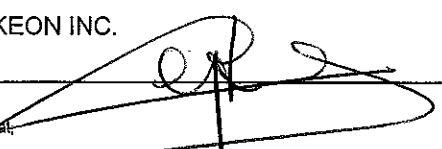
4.13. GENERAL

- 4.13.1 This Agreement including appendices and changes, modifications, amendments and extension thereto represents the entire agreement between the Parties.
- 4.13.2 This Agreement supersedes and cancels all other agreements, written or oral, between the Parties relating to the Services.
- 4.13.3 The failure of any Party to insist upon strict performance of any of the terms or conditions herein, irrespective of the length of time for which such failure shall continue, shall not be a waiver of that Party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation of this Agreement. No waiver or consent shall be effective unless in writing and signed by the Party against whom such waiver or consent is asserted.
- 4.13.4 The terms and conditions of this Agreement shall be binding only upon written agreement signed by the duly qualified representatives of each Party.
- 4.13.5 The Parties may amend or modify this Agreement at any time, provided that such amendment(s) or modification(s) make specific reference to this Agreement, and are executed in writing by a duly authorized representative of both Parties. Such amendment(s) or modification(s) shall not invalidate this Agreement, nor relieve or release the Parties from their obligations under this Agreement.
- 4.13.6 Neither Party shall be bound by any condition, definition, guarantee or representation other than those set forth in this Agreement.
- 4.13.7 Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer and employee between the Parties. Parkeon shall at all times remain an independent contractor with respect to the Services to be performed under this Agreement. The Customer shall not be obligated to provide workers' compensation insurance, health or accident insurance to cover Parkeon for any type of loss which might result to Parkeon or its employees, in connection with the performance of the Services set forth in this Agreement. The Customer shall not pay any contribution to Social Security, unemployment insurance, federal or state withholding taxes, nor provide any other contributions or benefits which might otherwise be expected in an employer-employee relationship, it being specifically agreed that Parkeon is not an employee of the Customer.
- 4.13.8 Provided the other Party's prior written consent has been obtained, each Party shall have the right to make reference to the name, trademarks and logo of the other Party (provided that such reference shall not refer to the content of this Agreement) in any marketing literature, on all websites, on any media and any commercial documents and brochures of the other Party.
- 4.13.9 The Party representatives who execute this Agreement hereby represent and warrant that they have full and complete authority to act on behalf of Parkeon and Customer, respectively, and that their signatures below, the terms and provisions hereof, constitute valid and enforceable obligations of each.

4.13.10 In the event any portion of this agreement is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining provisions of the Agreement, as if such invalid or unconstitutional provision was not originally a part of the Agreement.

IN WITNESS WHEREOF, THE DULY AUTHORIZED REPRESENTATIVES OF THE PARTIES HAVE EXECUTED THIS AGREEMENT.

Approved as to Legality and Form:

For MIAMI PARKING AUTHORITY Date: <u>9 / 5 / 14</u> Name: Alejandra ARGUDIN as Title: Chief Operations Officer Signature:  By signing I confirm that, - I have read, understood and accepted the general terms and conditions of this agreement.	For PARKEON Date: <u>9 / 5 / 2014</u> Name: Lionel DEPERROIS as Title: Chief Operations Officer for PARKEON INC. Signature:  By signing I confirm that, - I have read, understood and accepted the general terms and conditions of this agreement.
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APPENDIX A

LEVEL II REMOTE TECHNICAL SUPPORT

Parkeon will provide Level II Remote Technical Support between the hours of 8:00AM and 8:00PM EST Monday through Friday excluding company holidays. The primary method of contacting Parkeon is via email:

parkfolio_support@moorestown.parkeon.com

A request number will be generated and can be referred to in correspondence and discussions to the issue.

In a situation where Level I Service is exhausted and is of an urgent nature you may contact Parkeon Level II Remote Technical Support via telephone at

Toll free: 1 (800) 732 - 6868 x 244.

APPENDIX B

PARKEON RETURN MATERIALS AUTHORIZATION ('RMA')

Email us at:

SalesAdmin@moorestown.parkeon.com

Phone: Please call 1-800-732-6868 x 245

Hours of operation: Monday – Friday: 8:00 AM – 5:00 PM Eastern Standard Time

All requests for parts, machine changes and miscellaneous sales should be directed to the above contact point. For parts being returned for repair or replacement a Return Material Authorization (**RMA**) is required PRIOR to the physical return of the product:

1. Parkeon will issue an RMA number and provide shipping instructions.
2. Customer will ship the defective parts back to Parkeon and clearly mark the outside of the carton or the shipping label with the RMA number. Each assigned RMA is limited to 20 individual items.
3. Customer agrees to properly wrap each defective part and package them securely within a box to assure no further damage will occur to these parts.
4. Customer is responsible for freight charges on items being returned to Parkeon. Parkeon is responsible for standard ground freight charges of replacements.
5. Once Parkeon has received the defective parts, replacement parts will be shipped within 72 hours via two (2) business-day delivery if parts are covered under standard warranty. If parts are covered under a Parkeon Service Contract, replacement parts will be shipped within 24 hours via two (2) business-day delivery
6. Parkeon will cross reference all parts against its warranty/contract database and determine if the part is covered. Customer will be notified if parts are not covered under warranty and will be advised of available options by the Sales Administration Dept.
7. Customer is responsible for testing of parts before returning. Parkeon will inspect and test parts to determine reason for return. If any parts are determined to be functional with no problem found or found functional after a standard cleaning procedure, Customer will be charged \$175.00 dollars per unit for Preventative Maintenance charge to clean and restock.
8. Customer is responsible for all replacement charges for parts out of warranty or not covered under contract.
9. Customer is responsible for all expedited shipping charges.
10. Customer should ship all return parts to Parkeon and reorder on a regular weekly basis in order to provide a smooth flow of replacement parts and eliminate the need for expedited requests. Bulk RMAs (> 20 items) or multiple RMAs per week will result in processing and handling delays.

APPENDIX C

LEVEL I TECHNICAL SERVICE AND MAINTENANCE

Customer is responsible, through its trained staff, for performing Level I Technical service and maintenance for all Pay Stations covered through this Agreement, as follows.

Technical Services

1. Open Pay Station and remove and/or replace internal components as necessary.
2. Execute self-diagnostic and other repair processes, as shown in service training and described in the Service Guide and other documentation provided in conjunction with and at the time of training.
3. Install programming changes to the Pay Station using the maintenance procedures that are available at the maintenance keyboard on the Pay Station and explained during Level I service training.
4. Maintain a log of repair activities performed by the technicians, which will be available for reference purposes during a call to Level II Technical Support.
5. Ensure that the staff servicing Parkeon's Pay Stations have successfully completed the full training program provided by Parkeon and maintain the certification level of all staff who service the Pay Stations or operate ParkFolio back office software system.
6. Complete all prescribed Level I diagnostics and repair steps prior to escalating a service issue to Level II support.
7. Ensure that only trained Level I service staff initiate support requests to the Level II helpdesk.
8. Use its own qualified IT resource to provide desktop client, server, network, and infrastructure services necessary to maintain the proper functioning of the ParkFolio system.
9. Provide all information required to open a support request with Parkeon Level II Service and be available to work with the Parkeon support resource assigned to the support request.
10. Timely complete the recommended Pay Station preventative maintenance process to maximize useful life of the parts within the Pay Station.
11. Maintain the concrete mounting pad and mounting hardware per installation specifications.
12. Maintain all electrical installation accessories other than those that form an integral part of the Pay Stations as well as electrical connections to the Pay Stations
13. Maintain a supply of locally-available parts sufficient to meet desired repair timelines. These parts will be supplied to Parkeon as needed for Level II On-Site Operation.
14. Maintain a log of all parts replacements which will be made available to Parkeon upon demand.
15. Archive data and historical analysis for data older than 90 days.

Parkfolio Services

1. Maintain desktop and file server computers, LAN connections, internet connections and other aspects of the operating environment in a manner that allows the operation of and compatibility with the Parkfolio software.
2. Require all staff using Parkfolio to have successfully completed the full Parkfolio training program as provided by Parkeon.
3. Design, customize and generate reports using data in Parkfolio.
4. Complete all prescribed Level I diagnosis and repair steps prior to escalating issues for Level I. Obtain appropriate Information Technology or Information Services resources to provide server, network, firewall, and infrastructure support services, including Web server, authentication software, WebObjects' Monitor, software installation, application installation on production servers, database connections, and database changes.
5. Provide all information required to open a support request for Parkeon Level II support and be available to work with Parkeon support resource assigned to the support request.

APPENDIX D

WHOOSH - MOBILE PHONE SOLUTION

Parkeon offers a service called WHOOSH. This Service is used to make remote payment for municipal parking, and Parkeon, via the WHOOSH platform, is the technical intermediary between a parking user ("User") of the WHOOSH Service and Customer. The WHOOSH platform allows for the User's payment of parking time from a mobile phone or a computer, consistent with the options chosen by the Client.

ARTICLE 1 - PURPOSE

The purpose of this Agreement is to define the rights and obligations of Parkeon and Customer with respect to Parkeon's provisions of WHOOSH Service.

ARTICLE 2 - ATTACHMENTS

The document is comprised of the following attachments:

- ANNEX 1 - Scope of the WHOOSH Service
- ANNEX 2 - Price conditions
- ANNEX 3 - Service levels
- ANNEX 4 - Corporate Style Guide

ARTICLE 3 - DESCRIPTION OF THE WHOOSH SERVICE

WHOOSH is a service rendered by Parkeon; it enables Users having activated the Service to make remote payments for parking.

The WHOOSH Service makes possible:

- Registration by the User for the WHOOSH Service,
- Payment for parking rights by User via mobile phone or a computer,
- Processing of electronic money flows up to the remittance of parking payments to the Customer merchant banking account in accordance with the approved time limit,
- Access to certain information by parking enforcement officers, through the use of portable terminals (PDAs) or by API monitoring,
- Access by User to his/her account and history of his/her transactions,
- Access by Customer to the monitoring of the issuance and sale of parking rights,
- Customer's assistance as regards to the use and handling of complaints,

The roles of each of the parties is further defined as follows:

- Customer defines the parking policy.
- Parkeon makes available and manages:
 - The WHOOSH Mobile Payment Service platform, which registers users and is used for transactional interface at the time of purchase of the parking rights;
 - The processing of all of the "parking business" functionalities and the data concerning the monitoring of online parking rights.
- Parkeon shall provide access to the payment platform used for Internet payment transactions via credit card.
- Customer shall verify electronic payments.

ARTICLE 4 – FINANCIAL CONDITIONS

- 4.1 In addition to the parking fee charged by Customer, User will pay a Service Fee for the use of the WHOOSH Service as defined in Annex 2. The parking fee plus the Service Fee will be sent to the Customer's bank through their selected merchant bank processor. The Customer is responsible for any fees charged by their merchant bank processor.
- 4.2 Parkeon will invoice Customer on a monthly basis to collect the Service Fee and Customer will pay Parkeon all such Service Fees that it collects.
- 4.3 The Service Fees shall be payable within twenty days of invoice date.
- 4.4 Parkeon reserves the right to suspend services and/or to terminate the agreement in the event of a payment delay in excess of 60 days.

ARTICLE 5 – PARKEON'S COMMITMENTS

5.1 Parkeon undertakes to provide the expertise and care necessary to provide the WHOOSH Service, as well as to follow relevant accepted industry practices and to achieve a level of quality that is consistent with market standards.

5.2 Parkeon warrants that the WHOOSH Service will be available and meet or exceed the standards contained in the Service Level Agreement defined in Annex 3.

However, Parkeon may in its sole discretion suspend the provision of the WHOOSH Service in the following situations:

- Suspension of the WHOOSH Service with advance notice of one working day, by any written means:
 - Installation of updates
 - Maintenance of the System and/or scheduled Maintenance
 - Service Fee payment delay in excess of 60 days.
- Suspension of the WHOOSH Service without advance notice:
 - Risks for the smooth functioning or safety of the infrastructures or equipment,
 - Technical or maintenance work by Parkeon on its infrastructures or equipment,
 - Fraud detected or reported,
 - Suspected or reported wrongful, fraudulent, unlawful use of the WHOOSH Service,
 - Failure to perform by a third-party and necessary to the rendering of the WHOOSH Service, including, but not limited to, the suppliers and operators of the telecommunications network.
 - And, more generally, in all emergency situations.

Regardless of the circumstances, Parkeon shall inform Customer of any suspension as soon as reasonably possible.

5.3 Back office

Parkeon shall provide Customer access to the Back Office tools enabling Customer to have access to the information and to the management reports on the transactions executed by the Users of the WHOOSH Service.

These tools draw on the infrastructure and platform managed and hosted by Parkeon. The platform is accessible by Customer through an Extranet. The conditions for the availability of these tools are defined in Annex 1.

Parkeon shall collect information regarding Users' payments and shall make this information available on the Platform for Customer use. Parkeon shall continue to be the owner of this information.

5.4 Changes to the Services

Parkeon may occasionally, at its own initiative and in its sole discretion, change all or some of the functions or any component of the Service or make any modification (hereinafter referred to as "Modification") in order to improve the performance, service quality, or to correct errors or preserve the competitiveness of the Service. Before making such a Modification, Parkeon shall inform the Client by e-mail of said Modification.

ARTICLE 6 – CUSTOMER'S OBLIGATION

6.1 Customer must carry out all operations that are necessary prior to the launch of the WHOOSH Service and on an on-going basis, in particular:

- Opening and maintenance of the remote selling account throughout the duration of the agreement,
- Supply of all of the city data for parameterisation of the solution (mapping of parking payment terminals, prices, zone, etc.)
- Setting up of the system to verify electronic tickets and supply interface data, if applicable
- Training of the city's employees
- And, more generally, transmit to Parkeon any information useful to the implementation of the WHOOSH Service.

It is hereby stipulated that the above list is given for indicative purposes and that it can be supplemented at the start of the project based on Customer's specific characteristics.

6.2 Customer undertakes to render the WHOOSH Service in accordance with Parkeon's recommendations and pursuant to the terms and conditions of the WHOOSH Service, provided to the User on the WHOOSH application and on the WHOOSH web site.

6.3 Customer undertakes not to use or authorise a third-party to exploit the information obtained from the use of the WHOOSH Service for purposes other than those related to the WHOOSH Service.

6.4 Customer acknowledges that the WHOOSH Service is paid for by credit card. Any transfer of information associated with the payment shall take place in a secure context. In particular, at the time of a payment, a credit card number and its validity date are transferred in a secure context using protocols in force, on the server of the service provider chosen by Parkeon.

In this connection and pursuant to standard terms of the service provider chosen by Parkeon, Customer acknowledges the importance of complying with the security rules.

For complete information on the security rules to be followed, Customer can refer to the PCI DSS (Payment Card Industry Data Security Standards) available, for example, on the Internet site of Visa or MasterCard, or from Financial Institutions.

In addition, Customer undertakes to:

- Ensure the application of the security patches on all of its machines, as well as setting up the machines' secure configurations.
- Never store on any type of medium information that is sensitive, such as credit card numbers or visual cryptograms (CVCs/CVV's)
- Protect all of its passwords and change these regularly, in particular, the password needed to obtain access to the Account of the payment service provider
- Protect access to its servers and its applications, as well to its technical infrastructure in general, in particular, using the firewall and antivirus.
- Establish secure application development procedures

The platform of Parkeon's payment service provider shall supply several automatic or manual methods permitting Parkeon to monitor consistency between the payments handled by the payment service provider and its own sales system. The system permits, notably:

- online consultation of transactions via Customer's Account,
- via SHA-1 key systems, to ensure the consistency of the payment data,
- the sending of payment notification e-mails,
- the use of other electronic means of notification in real or deferred time.

Customer undertakes to establish and apply adequate procedures for monitoring the proper execution of payments.

Parkeon strongly recommends Customer set up as many monitoring mechanisms as possible, in particular, in the case of e-commerce applications, and Parkeon reserves the right to limit the financial possibilities of the Account of the payment services provider (types of transactions permitted, maximum number of transactions per period, etc.) if it deems Customer's checks and/or monitoring insufficient. The mechanisms for checks and monitoring used, and/or the activation or non-activation of the security options are freely chosen by Customer, and cannot under any circumstances give rise to Parkeon's liability.

ARTICLE 7 – MARKETING AND PROMOTION

Customer authorizes Parkeon to engage in marketing, business analytics and advertising campaigns for the promotion of the WHOOSH Service, including but not exclusive communication and promotion by press, flyers, city Internet site, affixing of information stickers on places of sale (on parking payment terminals, or in their absence, on any other medium visible from parking places) in a manner consistent with the Corporate Style Guide and the definition of the zone codes.

To this end, Parkeon hereby grants Customer a non-exclusive license during the term of this Agreement for the purposes of using the WHOOSH name and logo in the conditions defined below:

Parkeon shall provide to Customer graphical materials (logo, visuals, etc.) needed in order to organize the promotion and showcasing of the WHOOSH Service to Users. Customer is authorized to modify these items, if applicable, within the limits defined by Parkeon's written instructions and in accordance with the Corporate Style Guide enclosed in Annex 4. In such case, Customer must obtain Parkeon's written approval prior to any use of said items.

Upon the expiry of the Agreement, whatever the reason, Customer shall return to Parkeon as soon as requested all of the items that were handed over to it pursuant to this Article.

ARTICLE 8 – INFORMATION REGARDING USERS

In accordance with the terms of this Agreement and those of applicable laws Parkeon shall keep full files of all of the information and data collected from Users. Parkeon shall obtain and use this information only in accord with applicable laws in force and any amendment to this Act and shall not give or disclose this information, in any circumstances, to third parties, except for the information that has been expressly approved by Customer or is required to be produced pursuant to subpoena or court order. Parkeon shall comply with all of the provisions concerning data processing and freedoms and shall apply these accordingly to its technical facilities.

Each Party undertakes, as regards the Service rendered, to comply with all of the provisions of applicable law. No data and in particular personal data, may be used by either Party for any purpose other than the strict performance of the Agreement. Parkeon undertakes to implement mechanisms to monitor access to these data.

ARTICLE 9 - SUSPENSION

Parkeon reserves the right to suspend, limit or to partially or completely restrict the supply of and/or access to the Service after having so notified Customer by any means, notably:

- In the event of a breach of one of Customer's obligations indicated in the Agreement
- In the event of a failure to make timely payment of the amounts due, and in the absence of a challenge, duly reasoned and sent to Parkeon by registered mail with return
- In the event of non-conforming use of the Products or Services
- And, more generally, if the Agreement provides for this.

The resumption of the Service after suspension and/or limitation due to Customer's act or fault can give rise to the invoicing of Resumption of Service Fees. In the event of a suspension and/or a limitation, regardless of the cause, Customer shall continue to be bound by its obligations; it is understood that the suspension shall not give rise to the cessation of the invoicing of said fees.

In addition, Parkeon shall be authorized to suspend, limit or restrict the Service for any improvement or preventive or curative maintenance work, or if Parkeon is required to follow an order, an instruction, a demand from the Government, a regulatory authority or from any competent administrative or local authority.

ANNEX 1

SCOPE OF THE WHOOSH SERVICE

FUNCTIONAL AND TECHNICAL SCOPE

The WHOOSH Service permits:

- The registration of users for the service via:
 - Applications for IOS and Android smartphones
 - Internet/Mobile Internet browser and access to the dedicated site www.whooshstore.com and m.whooshstore.com
- The obtaining and payment of parking rights by users who use their mobile phone or a computer via:
 - Applications for IOS and Android smartphones
 - Internet/Mobile Internet
- The obtaining of payment confirmation from the web site;
- The obtaining of expiry imminent notification via push notification if option chosen by the user;
- The possibility to extend the ticket in progress, in accordance with pricing rules in force as established by Customer;
- The secure processing of electronic money flows up to the remittance of payments to the Customer;
- Access to the information necessary to the verifying of the vehicles parked, by the parking enforcement officers having portable terminals (PDAs) beforehand that are connected either via the monitoring application or by the making available of an API;
- Access by users to their account and to the history of their transactions;
- Access by the Customer to the financial information and to the monitoring of parking rights sales transactions;
- Assisting users in using the WHOOSH Service;
- The handling of complaints communicated by the Customer;
- Informing the user of the city price;
- Access to FAQs, as well as to a usage tutorial.

INFRASTRUCTURE

The WHOOSH Service is provided in SaaS mode.

Parkeon shall supply:

- access to the WHOOSH Service platform that registers users and is the transactional interface at the time of the purchase of the parking rights by Smartphone (IOS and Android), Internet application and Mobile Internet.
- access to the payment monitoring information;
- myParkfolio interface for the reporting of information concerning the Transactions executed on all of the distribution channels and permitting the financial and statistical consolidation of the data concerning the parking rights delivered by the distribution channels set up.

Parkeon manages the connection to the payment platform that is used for Internet payment transactions.

REGULATORY CONSIDERATIONS

Parkeon shall ensure the conformity of the WHOOSH Service to Payment Card Industry Security Standards ("PCI-DSS") and the maintenance of all of the accreditations required by outside firms, excluding all of the systems that are not directly under its control.

IMPLEMENTATION AND EXPLOITATION PROCEDURE

INITIALISATION

1. Parkeon shall allocate to each of the on-street parking zones and to each street in which the parking zone is authorised, a certain number of unique parking zone codes.
2. Parkeon shall agree with the Customer on a timetable for the commencement of the service at a launch meeting.
3. Parkeon shall provide the following to the client at least 20 days prior to the agreed date for the commencement of the service:
 - a. The telephone number of customer service;
 - b. The list of the parking zone numbers allocated for each of the parking payment terminals, provided with their address for the introduction of the Whoosh Service.
4. Parkeon shall provide either standard items enabling the Client to create its communications media, or the standard models made by Parkeon; a 3-section brochure model leaflet, printed on both sides, a model of stickers to be affixed on parking payment terminals, recommendations for the affixing of said stickers, access to the Internet site and to a training video, and suggestions for contributing content and visuals.

5. Parkeon undertakes to process all of the data with the strictest possible confidentiality.
6. Customer undertakes to perform the following obligations:
 - a. To supply, as a pre-condition to the activation of the Service all of the information necessary for the parameterisation and personalisation of the Service and to inform Parkeon in writing, of any change of this information (in particular and not limited to, any moving of a parking payment terminal to a new address, or pricing modification). Customer is alone responsible for the consequences caused by a failure to supply or to make available this information; in particular, Customer shall furnish:
 - i. A copy of the contract of adherence to the merchant contract mentioning its identifier at the acquirer (MerchantID)
 - ii. List of the names of zones
 - iii. GPS coordinates of the zones in question
 - iv. Names and titles of the users of the monitoring service
 - v. Agreement on communication to the public (stickers, flyers and any promotional content)
 - vi. Agreement on any communications content (label, websites, naming review, etc.)
 - vii. Agreement on the list of applicable rates
 - viii. Confirmation of use of the monitoring API supplied by Parkeon; any use of another interface shall be quantified and be the subject of a specific timetable.
 - b. To supply to Parkeon the contact information of the person responsible for the Customer for the implementation and exploitation of the service, and to inform Parkeon immediately in the event of any change.
 - c. To authorise Parkeon to use the parking data for statistical purposes
 - d. To ensure the security and conformity of the use of the system by its agents.
 - e. To restrict the dissemination and to maintain the confidentiality of all of the logins, passwords and identification of the personnel, used with respect to the Service and, more generally, to protect this information so as to avoid any use by unauthorised persons.
 - f. To only use the Service in accordance with the instructions given by Parkeon, for its proper management.
 - g. To test the conformity of the system made available in accordance with the recommendations or specifications supplied by Parkeon.

ACTIVATION OF THE SERVICE

1. The Service shall be activated on an agreed date for the launch of the Service (mentioned on the Service registration form), insofar as the preconditions are satisfied and the activation date is realistic. In the event of the non-satisfaction or incomplete satisfaction of the preconditions, Parkeon shall suggest a new date for the activation of the Service, which must be consistent with the date on which the preconditions will be satisfied
2. During the activation of the Service the Customer must ensure the full availability of a manager, who is an employee of the Customer and has knowledge of and access to all information associated with the Service.
3. After activation, Parkeon shall notify the Customer of the official launch of the Service.

SUPPORT

Parkeon shall provide a support service in accordance with the conditions described in Annex 3, "Service Availability and Levels".

In this connection, Parkeon shall:

1. Provide access to the technical support service to assist the Customer to reply to and advise the user on the questions associated with the WHOOSH Service;
2. Ensure that the technical support is available during business hours 8:00AM and 8:00PM EST Monday through Friday excluding company holidays;
3. Ensure that the technical support can be reached via a telephone number at the local call rate;
4. Monitor the performance and supply of the WHOOSH Service.

UPGRADE MAINTENANCE

Parkeon is entitled to modify the Service

Parkeon shall be responsible for the corrective and upgrade maintenance of the WHOOSH Service. In this case, Parkeon can suspend the supply of the Service in the conditions defined in this agreement.

ANNEX 2

PRICING CONDITIONS

SERVICE FEES

The Service Fee is \$0.35 per transaction.

REVISION OF PRICES

Parkeon reserves the right to increase or decrease the Service Fee on an annual basis. Written notification will be provided to Customer at least 30 days prior to a price revision.

ANNEX 3

SERVICE AVAILABILITY AND LEVELS (SLA)

This SLA defines the Service Level to which Parkeon is committed and the financial liability of Parkeon to Customer in the event of the non-attainment of the Service Level. This SLA pertains specifically to the WHOOSH Service.

As regards the service levels as defined in following Articles 4 and 6, the average response time and/or the average availability are understood as average values calculated for all Customers for the given period.

ARTICLE 1 - MAINTENANCE OF THE WHOOSH SERVICE

- 1.1 Parkeon shall send Customer an e-mail informing the latter of any major modification having an impact on the functionalities of Customer's account. This e-mail shall contain a description of these modifications.
- 1.2 Parkeon shall do its utmost to deliver good backward compatibility of the new versions of the interfaces that can be used by the Customer's applications.
- 1.3 The procedures described in Articles 1.1 and 1.2 above do not apply to urgent corrections of bugs or made for reasons of security or required directly or indirectly by Financial Institutions, or governmental or legal authorities.
- 1.4 Unavailability associated with the maintenance of the Service shall, if possible, be scheduled during periods of low traffic. In principle, this maintenance shall not exceed an average of 4 hours per month. However, this average monthly maintenance duration can be exceeded once each quarter, by at most 8 hours. Customer shall be informed in writing at least 48 hours prior to the beginning of the maintenance activities, except in the case of Article 1.3 above.

ARTICLE 2 - MONITORING OF THE SERVICE

- 2.1 The Service is monitored in two ways:
 - Active monitoring: Parkeon's automatic procedures, which periodically test the availability of the main system and its functionalities. These active monitoring processes include the alert and escalation mechanisms needed for Parkeon's technical support department to be informed as quickly as possible.
 - Passive monitoring: Customer is able to notify, 24 hours a day, an incident associated with the use of the Service. Outside the Help Desk's working hour time slots, this notification shall be made by e-mail to the address support@whooshstore.com
- 2.2 Customer undertakes not to use the active monitoring system in order to avoid a possible disturbance of the Service's performance due to unnecessary overload.

ARTICLE 3 - AVAILABILITY OF THE SERVICE

During the days and time slots in which parking is not free of charge, Parkeon shall take measures to enable:

- The User Service to be operational 24 hours a day, except for scheduled maintenance.
- Transactional flows to be recorded every day without loss of data
- The Service to be open to users during paid parking times, except for scheduled maintenance.
- The Service via the Internet site for users to be operational 24 hours a day, except for scheduled maintenance.
- The management and monitoring service via the interfaces connected to the system to be operational, Monday to Friday, from 8:00AM to 8:00PM EST, excluding company holidays.
- The service for the verifying carried out by parking enforcement officers to be operational throughout the activity period of the services of the City's Police force (working hours).
- The Service for access by law enforcement personnel to be operational 24 hours a day, except for scheduled maintenance.

Unavailability of the Service is defined as the period during which the majority of Customer's users are unable to place new authorisation or payment transactions via the Service. It is also agreed that the service shall be considered unavailable if the response time as defined in Article 4 below exceeds 60 seconds for the majority of the Customer's users.

3.1 Parkeon offers 98% availability of the Service, on a monthly basis, although the situations mentioned in Article 3.2 are excluded. Customer can, if it expressly requests this, obtain the transmission of an SLA report covering a given month, to enable it to monitor the level of performance compared to the SLA.

3.2 Unavailability excludes the following situations, which therefore do not give rise to the right to any compensation:

- Errors following the configuration based on incorrect information supplied by Customer,
- Supply by Customer or its users of incorrect or incomplete data needed by Parkeon to properly execute a transaction,
- Scheduled unavailability due to maintenance, insofar as executed in accordance with Article 1 of this SLA,
- Failures by Customer or by its users to comply with Parkeon's procedures,
- Malfunction of the equipment of Customer or of its users,
- Unavailability of telecommunications lines,
- Unavailability of Internet access,
- Unavailability of the acquirer's authorisation equipment,
- Force majeure,
- Unavailability resulting from a bug that could have been easily detected by Customer during the test phase, if it had carried out a few basic tests during the Service's pre-activation period.

3.3 Notification and beginning of an incident

Customer shall inform Parkeon of the existence of an incident:

- During working hours: by telephone and by assistance request ticket. (See Article 5, Technical assistance below) The unavailability time shall commence as of the moment in which the assistance request ticket is created. In the event that the receiving procedure that permits the creation of assistance request tickets is unavailable, the unavailability time shall commence as of the telephone call to the Parkeon technical support department.
- Outside working hours: by e-mail, only to the address support@whooshstore.com. The unavailability time is only counted over the Technical Support's time slot worked, i.e. 8:00AM to 8:00PM EST, Monday to Friday excluding company holidays.

3.4 If the duration of the incident is less than 15 minutes, the unavailability time is not counted for the purposes of the application of Article 3.

3.5 If two (2) consecutive unavailability periods of less than 15 minutes, occurring for an identical reason, are separated by a short period of availability (less than 15 minutes AND a total duration of less than the duration of the periods of unavailability), the two unavailability periods shall be considered as a single unavailability period, commencing with the beginning of the first unavailability period and ending at the end of the last unavailability period.

ARTICLE 4 - RESPONSE TIME

4.1 Parkeon guarantees an average monthly response time of its online payment authorization process of less than twenty (20) seconds for all of its debit or credit card transactions. However, certain exceptions could exist, associated with specific acquirer connections. In that case, Parkeon would indicate it to Customer on a case-by-case basis. This applies only to online transactions transmitted individually to the Parkeon payment service provider and excludes any transaction consolidation mechanism.

4.2 Response time is measured from time of receipt of the payment request by Parkeon until the sending by Parkeon of the result of the payment request to the initiator of this request.

ARTICLE 5 - TECHNICAL ASSISTANCE

Technical assistance is provided by telephone (see the service telephone numbers available on the contact page) and by e-mail, from 8:00AM until 8:00PM EST, excluding legal holidays and Company published holidays.

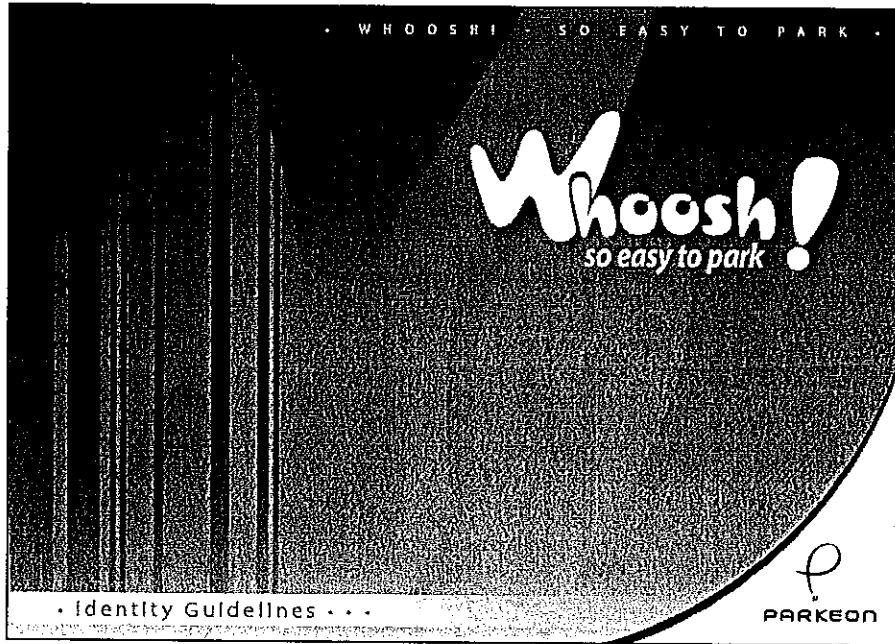
ARTICLE 6 - SEVERITY LEVEL AND RESOLUTION

Parkeon undertakes to restore basic functionalities, or at least, to communicate an action plan for resolution, within the time limits defined below. The time limit is assessed as of the time that Parkeon becomes aware of the problem. If the analysis of a problem concludes that the latter results from improper use of the system or of a part of the system by the client, Parkeon shall maintain the level of severity and shall strive to keep to the time limit defined below. In such a case, Parkeon nevertheless reserves the right to apply a specific price for this resolution and to increase the intervention time.

Severity	Description	Intervention time commitment vs. Technical Support Working hours	
		During	Outside
CRITICAL	A problem, the impact of which on Customer's commercial operations is critical, namely, if it is not possible to make parking purchases via Whoosh.	4 hours	4 hours as of the subsequent working hours
MAJOR	- A problem of configuration or updating having an impact on the supervisory functionalities (loss or modification) or triggering a loss or a modification of key information. - A problem having an impact on access to the supervisory service	6 hours	6 hours as of the subsequent working hours
MINOR	A problem giving rise to the loss or modification of non-major information.	24 hours	36 hours
SUPERFICIAL	A configuration modification request, or any other problem, the impact of which on Customer's commercial operations is limited.	36 hours	48 hours

ANNEX 4

CORPORATE STYLE GUIDE



• How can I use the logo? • • •



• Logo introduction
Where possible the "Whoosh!" logo should be used in full pink color with dark grey baseline.



• Clearance area
To ensure legibility and to prevent any obstruction of the "Whoosh!" logo, always maintain a minimum distance between the "Whoosh!" logo and any other element (graphic, type, line, or edge of page).
The clearance area around the "Whoosh!" logo on all four sides should never be less than the height of the letter 'o' (see illustration above).



• Minimum size
To ensure legibility, never reproduce the "Whoosh!" logo as less than 40 mm wide.
For a lower positioned logo, please use the logo without baseline.

• Identity Guidelines • • •

PARKEON S.A.S. - Parc La Fayette - 6, rue Isaac Newton - 21625 Besençon Cedex 9
Phone: +33 (0)3 81 54 56 00 - Fax: +33 (0)3 81 54 49 06 - www.parkeon.com

² "Whoosh!" is a Parkeon service

• Which logo type do I use? ...



- **Spot colour**
Use and refer to this logo when spot colour printing is required.
Preferred for Spot Printing

 Pantone Redline Red C	 Pantone 532 C
---	---
- **CMJK**
Use this logo for all full colour applications.
Preferred for Process Printing

 C: 0%	 M: 100%
 Y: 19%	 K: 70%
 R: 4%	 G: 25%
- **RGB**
Use this logo for digital applications including PowerPoint and Word.
Preferred for Electronic Applications

 R: 223%	 B: 28%
 G: 0%	 C: 57%
 R: 110%	 B: 66%

Web Safe Hexadecimal > #E3147D / #26373E

2

• Identity Guidelines • • •

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Parkeon S.A.S. - Parc La Fayette - 6, rue Isaac Newton - 25075 Besançon Cedex 3
Phone: +33 (0)3 81 54 56 00 - Fax: +33 (0)3 81 54 49 96 - www.parkeon.com

• Which alternative logos can I use? ...





- **One colour**
When single colour production only is available the entire Whoosh! logotype should appear in the "Whoosh!" pink including the baseline.
- **Black**
When appearing in any application where "Whoosh!" colours are not available, the entire "Whoosh!" logotype should appear in black against a light background or white against a dark background. No other colours should be used.
- **Reversed**
Whenever the entire "Whoosh!" logotype may appear as a reversed white logo on a black or dark coloured background. When reversing the logotype, be sure to maintain sufficient contrast.

Avoid complicated backgrounds that compete with the "Whoosh!" logotype or reduce its legibility.

4

• Identity Guidelines • • •

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Phone: +33 (0)3 81 54 56 00 - Fax: +33 (0)3 81 54 49 96 - www.parkeon.com

• Which alternative logos can I use? ...



- Without the baseline
If necessary, the "Whoosh!" logo can be used without the baseline "so easy to park".



- "Whoosh!" Initials
Additional graphic element issued from the applications.



- "Whoosh!" applications icon
Icon for "Whoosh!" applications.

• Identity Guidelines ...

"Whoosh!" is a Parkeon service
Parkeon S.A.S. - Parc La Fayette - 6, rue Isaac Newton - 25075 Besançon Cedex 9
Phone: +33 (0)3 81 54 56 00 - Fax: +33 (0)3 81 54 49 96 - www.parkeon.com

• Which fonts should I use? ...

- Main Content Fonts
Fonts to use for the main content of any Whoosh! presentation material (body copy).

Myriad Pro Light / Italic
AaBbCc1234 - AaBbCc1234

Myriad Pro Regular / Italic
AaBbCc1234 - AaBbCc1234

Myriad Pro Semibold / Italic
AaBbCc1234 - AaBbCc1234

Myriad Pro Bold / Italic
AaBbCc1234 - AaBbCc1234
- Substitute Fonts
Please use Arial (normal - bold - italic - bold italic) for all digital mediums and web use when Myriad Pro is not available.

• Identity Guidelines ...

"Whoosh!" is a Parkeon service
Parkeon S.A.S. - Parc La Fayette - 6, rue Isaac Newton - 25075 Besançon Cedex 9
Phone: +33 (0)3 81 54 56 00 - Fax: +33 (0)3 81 54 49 96 - www.parkeon.com

MPA_CONNECTIVITY_AND_SERVICES_AGREEMENT_V1 0.docx
AGREEMENT_TEMPLATE - V06

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PARKEON INC., 40 TWOSOME DRIVE - UNIT 7, MOORESTOWN NJ 08057, USA
PARKEON proprietary and confidential document. PARKEON written consent required prior to release of any part hereof

AGENDA ITEM REPORT

February 11, 2019

ITEM NUMBER: 8.

ITEM: Consideration and Approval of a request by Council Member Leonard to provide the Bay Harbor Islands Police Department \$5,000 in LETF Trust funds for the purpose of providing scholarships to current Bay Harbor Islands Police Explorers.

DESCRIPTION:

The scholarships will be awarded to the Bay Harbor Islands Police Explorers who will be attending college next year. The committee will award Explorers up to \$1,000 each based on their years of service and commitment to the program.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

The committee will award Explorers **up to** \$1,000 each based on their years of service and commitment to the program. The maximum requested expenditure is \$5,000.

The current balance of LETF funds available is \$24,944.80.

BUDGET IMPACT:

Name	Impact Date	Fund(s)	Account(s)	Project #(s)	Amount Budgeted
Scholarship for Bay Harbor Police Explorers		Law Enforcement Trust Fund	001-521.0-400049.000		

Submitted By: Curtis Johnson, Lieutenant

ATTACHMENTS

1. Funding Request - REso

**RESOLUTION OF THE TOWN OF BAY HARBOR ISLANDS
ESTABLISHING A POLICY FOR CHARITABLE
DONATIONS AND CONTRIBUTIONS.**

WHEREAS, the Town Council of the Town of Bay Harbor Islands is charged with preserving and protecting the public health, safety, and welfare of its citizens; and

WHEREAS, establishing a policy for charitable donations and contributions is essential to preserving and protecting the health, safety, and welfare of the citizens of the Town of Bay Harbor Islands; and

WHEREAS, the Town receives numerous requests from various sources for donations and contributions; and

WHEREAS, it is desirable to have an established policy to provide guidance to the Town and to those seeking charitable donations and contributions; and

WHEREAS, the granting of charitable donations and contributions pursuant to an established policy is a benefit to the citizens of Bay Harbor Islands and to the public at large;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Bay Harbor Islands as follows:

Section 1. The Town of Bay Harbor Islands hereby establishes a policy that charitable donations and contributions shall be made from time to time at the discretion of the Town Council; provided however, any such charitable donations and contributions (except for those relating to major catastrophes and acts of God such as a tsunami or hurricane) shall be to entities and causes which provide a direct impact and direct benefit to the Town of Bay Harbor Islands and its citizens.

Section 2. This Resolution shall become effective upon adoption.

PASSED AND ADOPTED this 11th day of April, 2005.

TOWN OF BAY HARBOR ISLANDS

BY: 

MAYOR

ATTEST:


TOWN CLERK

H:\A-TOWN\CLERK\Resolutions\policy for donations.wpd

AGENDA ITEM REPORT

February 11, 2019

ITEM NUMBER: 9.

ITEM: Consideration and Approval of an ordinance on **second** reading to prohibit medical marijuana dispensing facilities within the Town. Enclosed is a copy of the proposed ordinance.

DESCRIPTION:

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk
 Frank Simone, Assistant Town Attorney

ATTACHMENTS

1. Proposed Ordinance - Medical Marijuana
2. 2018.11.05 Memorandum on Medical Marijuana Treatment Center Dispensing Facilities

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AMENDING CHAPTER 23, ARTICLE I OF THE TOWN OF BAY HARBOR ISLANDS CODE OF ORDINANCES BY ADDING SECTION 23-5.3 TO PROHIBIT MEDICAL MARIJUANA TREATMENT CENTER DISPENSING FACILITIES WITHIN THE BOUNDARIES OF THE TOWN OF BAY HARBOR ISLANDS AS AUTHORIZED BY SECTION 381.986(11)(B), FLORIDA STATUTES; PROVIDING LEGISLATIVE FINDINGS; PROVIDING FOR CODIFICATION, PROVIDING FOR MORATORIUM CONTINGENCY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, as provided in Section 2(b), Article VIII of the Constitution of the State of Florida, and Section 166.021(1), Florida Statutes, the Town of Bay Harbor Islands, Florida (the “Town”), a municipal corporation, enjoys all governmental, corporate, and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except as expressly prohibited by law; and

WHEREAS, on November 8, 2016, Florida voters approved an amendment to the Florida Constitution, titled “Use of Marijuana for Debilitating Medical Conditions” (“Amendment 2”); and

WHEREAS, Amendment 2 legalized the medical use of marijuana throughout the State of Florida for individuals with certain medical conditions as determined by a licensed Florida physician and authorized the registration and regulation of centers that acquire, produce and distribute marijuana for medical purposes; and

WHEREAS, Section 381.986, Florida Statutes, authorizes qualified physicians to prescribe marijuana for qualified patients diagnosed with certain conditions; and

WHEREAS, Section 381.986(11)(b), Florida Statutes, authorizes a county or municipality to “ban medical marijuana treatment center dispensing facilities from being located within the boundaries of that county or municipality,”; and

WHEREAS, Section 381.986(11), Florida Statutes further provides that “[a] county or municipality that does not ban dispensing facilities ... may not place specific limits, by ordinance, on the number of dispensing facilities that may locate within that county or municipality,” and that “... a county or municipality may not enact ordinances for permitting or for determining the location of dispensing facilities which are more restrictive than its ordinances permitting or determining the locations for pharmacies licensed under chapter 465”; and

WHEREAS, Section 386.986, Florida Statutes, severely limits, through State preemption, the Town’s control over the zoning and permitting of medical marijuana treatment center dispensing facilities, thereby substantially restricting the Town’s ability to protect surrounding land uses for which medical marijuana treatment center dispensing facilities may not be compatible; and

WHEREAS, The Marijuana Policy Group has published a memorandum entitled “Municipal Dispensary Allocation: Florida,” which evaluated the market need for medical marijuana treatment center dispensing facilities and the harmful consequences and secondary effects of over-saturation of medical marijuana treatment center dispensing facilities within the market place; and

WHEREAS, The Marijuana Policy Group determined that Florida should have no more than one medical marijuana treatment center dispensing facility for every fifty thousand residents and the optimal ratio is one medical marijuana treatment center dispensing facility per 67,222 residents, and the Town has a population (approximately 6,006) well below such ratios; and

WHEREAS, given among other things, the potential negative secondary land use effects of medical marijuana treatment center dispensing facilities, The Marijuana Policy Group’s analysis of optimal population ratios (residents per medical marijuana treatment center dispensing facility), and the statutory restrictions on local government authorities to regulate number and location of medical marijuana treatment center dispensing facilities if not banned, there is a rational basis for the Town to exercise its authority under Section 381.986(11)(b), Florida Statutes, to ban medical marijuana treatment center dispensing facilities within the boundaries of the Town; and

WHEREAS, the Town finds that this Ordinance is in the interests of the public health, safety, and welfare; and

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Bay Harbor Islands that:

Section 1. Recitals. The foregoing recitals are adopted and hereby incorporated as if fully set forth herein.

Section 2. Amendment of Town Code. Chapter 23, Article I of the Code is hereby amended to add the follow new provisions:

Section 23-5.3 Medical Marijuana Treatment Center Dispensing Facilities Prohibited

- (1) Prohibition. Medical Marijuana Treatment Center Dispensing Facilities are prohibited and shall not be located within the boundaries of the Town. The Town shall not accept, process or approve any request or application for a development order, building permit or other approval associated with a proposed Medical Marijuana Treatment Center Dispensing Facility.
- (2) Definition. For the purposes of this section, the term “Medical Marijuana Treatment Center Dispensing Facility” means any facility where marijuana, or any product derived therefrom, is dispensed at retail.
- (3) Interpretation/Intent. This section and the terms used herein shall be interpreted in accordance with Section 381.986, Florida Statutes and Chapter 64-4 of the Administrative Code. The intent of this section is to ban Medical Marijuana Treatment Center Dispensing Facilities from being located within the boundaries of the Town, as authorized by Section 381.986(11)(b)(1), Florida Statutes.

Section 3. Codification. Section 2 of this Ordinance shall be incorporated into the Town Code. Any section, paragraph number, letter and/or heading may be changed or modified as necessary to effectuate the foregoing. Grammatical, typographical and similar errors may be corrected, and additions, alterations, and omissions not affecting the construction or meaning of this Ordinance or the Town Code may be freely made.

Section 4. Moratorium Contingency. In the event that Section 381.986, Florida Statutes, is amended or interpreted by a court of competent jurisdiction in a way as to eliminate or prevent the Town's ability to ban or prohibit Medical Marijuana Treatment Center Dispensing Facilities within the Town limits, upon the effective date of such, an automatic one-year moratorium shall go into place on the acceptance, proceeding and approval of Marijuana Treatment Center Dispensing Facilities (including by way of acceptance, proceeding and approval of applications for development orders and permits) within the Town's limits in order to give the Town time to evaluate changes in the applicable law, the Town's ability to regulate such uses and activities and potentially enact local legislation regarding the same. Such one-year moratorium may be terminated early through resolution or ordinance of the Town Council.

Section 5. Conflicts. In the event that the provisions of this Ordinance are in conflict with any other ordinance, then the provisions of this Ordinance shall prevail.

Section 6. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

Section 7. Effective Date. This Ordinance shall be in full force and take effect upon its passing and adoption.

PASSED on First Reading this _____ day of _____, 2019.

PASSED AND ADOPTED on Second Reading this _____ day of _____, 2019.

TOWN OF BAY HARBOR ISLANDS

By: _____
Stephanie Bruder, Mayor

ATTEST:

Marlene Siegel,
Town Clerk

APPROVED AS TO FORM:

Frank C. Simone, Esq.,
Assistant Town Attorney

SHERMAN & SHERMAN P.A.

Attorneys at Law

701 BRICKELL AVENUE
SUITE 1550
MIAMI, FLORIDA 33131

TELEPHONE (305) 221-8000

TELEFAX (305) 357-2510

WEBSITE: ShermansLaw.com

To: Town Council

From: Craig B. Sherman, Esq, Town Attorney and
Frank C. Simone, Assistant Town Attorney



Date: November 5, 2018

Re: Medical Marijuana Treatment Center Dispensing Facilities.

On November 8, 2016, Florida voters approved an amendment to the Florida Constitution, entitled "Use of Marijuana for Debilitating Medical Conditions" ("Amendment 2").

Amendment 2 legalized the medical use of Marijuana throughout the State of Florida for individuals with certain medical conditions, as determined by a licensed Florida physician and authorized the registration and regulation of centers that acquire, produce, and distribute Marijuana for medical purposes.

Section 381.986, Florida Statutes (the "Statute") was enacted in response to Amendment 2, in order to regulate the medical use of medical marijuana within the state. A copy of the Statute is attached hereto.

The Statute allows a municipality to ban Medical Marijuana Treatment Center Dispensing Facilities from its municipal borders.

Section 381.986(11), Florida Statutes entitled "Preemption," expressly states that:

(11) Preemption.--Regulation of cultivation, processing, and delivery of marijuana by medical marijuana treatment centers is preempted to the state except as provided in this subsection.

(a) A medical marijuana treatment center cultivating or processing facility may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school.

(b) 1. A county or municipality may, by ordinance, ban medical marijuana treatment center dispensing facilities from being located within the boundaries of that county or municipality. A county or municipality that does not ban dispensing facilities under this subparagraph may not place specific limits, by ordinance, on the number of dispensing facilities that may locate within that county or municipality.

2. A municipality may determine by ordinance the criteria for the location of, and other permitting requirements that do not conflict with state law or department rule for, medical marijuana treatment center dispensing facilities located within the boundaries of that municipality. A county may determine by ordinance the criteria for the location of, and other permitting requirements that do not conflict with state law or department rule for, all such dispensing facilities located within the unincorporated areas of that county. **Except as provided in paragraph (c), a county or municipality may not enact ordinances for permitting or for determining the location of dispensing facilities which are more restrictive than its ordinances permitting or determining the locations for pharmacies licensed under chapter 465.** A municipality or county may not charge a medical marijuana treatment center a license or permit fee in an amount greater than the fee charged by such municipality or county to pharmacies. A dispensing facility location approved by a municipality or county pursuant to former s. 381.986(8)(b), Florida Statutes 2016, is not subject to the location requirements of this subsection.

(c) A medical marijuana treatment center dispensing facility may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school unless the county or municipality approves the location through a formal proceeding open to the public at which the county or municipality determines that the location promotes the public health, safety, and general welfare of the community.

(d) This subsection does not prohibit any local jurisdiction from ensuring medical marijuana treatment center facilities comply with the Florida Building Code, the Florida Fire Prevention Code, or any local amendments to the Florida Building Code or the Florida Fire Prevention Code.

(Emphasis Added).

Based upon the Statute, the Town may ban medical marijuana treatment center dispensing facilities from being located within the boundaries of the Town.

If the Town does not ban medical marijuana treatment center dispensing facilities from being located within the boundaries of the Town, the Town may not:

1. Limit the number of medical marijuana treatment center dispensing facilities in the Town; or
2. Restrict the location of the medical marijuana treatment center dispensing facilities within a certain location in the Business District, as the Town presently has a pharmacy located within the Business District (subject only to the 500 foot prohibition from Ruth K. Broad Bay Harbor K-8 Center (“School”), unless the Town were to approve a specific location for medical marijuana treatment center dispensing facility within 500 feet of the School, through a public hearing).



KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Validity Called into Doubt by Florida Department of Health v. People United for Medical Marijuana, Fla.App. 1 Dist., July 03, 2018

West's Florida Statutes Annotated

Title XXIX. Public Health (Chapters 381-408)

Chapter 381. Public Health: General Provisions (Refs & Annos)

West's F.S.A. § 381.986

381.986. Medical use of marijuana

Effective: July 1, 2018

Currentness

(1) Definitions.--As used in this section, the term:

- (a) “Caregiver” means a resident of this state who has agreed to assist with a qualified patient's medical use of marijuana, has a caregiver identification card, and meets the requirements of subsection (6).
- (b) “Chronic nonmalignant pain” means pain that is caused by a qualifying medical condition or that originates from a qualifying medical condition and persists beyond the usual course of that qualifying medical condition.
- (c) “Close relative” means a spouse, parent, sibling, grandparent, child, or grandchild, whether related by whole or half blood, by marriage, or by adoption.
- (d) “Edibles” means commercially produced food items made with marijuana oil, but no other form of marijuana, that are produced and dispensed by a medical marijuana treatment center.
- (e) “Low-THC cannabis” means a plant of the genus *Cannabis*, the dried flowers of which contain 0.8 percent or less of tetrahydrocannabinol and more than 10 percent of cannabidiol weight for weight; the seeds thereof; the resin extracted from any part of such plant; or any compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds or resin that is dispensed from a medical marijuana treatment center.
- (f) “Marijuana” means all parts of any plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its seeds or resin, including low-THC cannabis, which are dispensed from a medical marijuana treatment center for medical use by a qualified patient.
- (g) “Marijuana delivery device” means an object used, intended for use, or designed for use in preparing, storing, ingesting, inhaling, or otherwise introducing marijuana into the human body, and which is dispensed from a medical marijuana treatment center for medical use by a qualified patient.

(h) “Marijuana testing laboratory” means a facility that collects and analyzes marijuana samples from a medical marijuana treatment center and has been certified by the department pursuant to s. 381.988.

(i) “Medical director” means a person who holds an active, unrestricted license as an allopathic physician under chapter 458 or osteopathic physician under chapter 459 and is in compliance with the requirements of paragraph (3)(c).

(j) “Medical use” means the acquisition, possession, use, delivery, transfer, or administration of marijuana authorized by a physician certification. The term does not include:

1. Possession, use, or administration of marijuana that was not purchased or acquired from a medical marijuana treatment center.

2. Possession, use, or administration of marijuana in a form for smoking, in the form of commercially produced food items other than edibles, or of marijuana seeds or flower, except for flower in a sealed, tamper-proof receptacle for vaping.

3. Use or administration of any form or amount of marijuana in a manner that is inconsistent with the qualified physician's directions or physician certification.

4. Transfer of marijuana to a person other than the qualified patient for whom it was authorized or the qualified patient's caregiver on behalf of the qualified patient.

5. Use or administration of marijuana in the following locations:

a. On any form of public transportation, except for low-THC cannabis.

b. In any public place, except for low-THC cannabis.

c. In a qualified patient's place of employment, except when permitted by his or her employer.

d. In a state correctional institution, as defined in s. 944.02, or a correctional institution, as defined in s. 944.241.

e. On the grounds of a preschool, primary school, or secondary school, except as provided in s. 1006.062.

f. In a school bus, a vehicle, an aircraft, or a motorboat, except for low-THC cannabis.

(k) “Physician certification” means a qualified physician's authorization for a qualified patient to receive marijuana and a marijuana delivery device from a medical marijuana treatment center.

(l) “Qualified patient” means a resident of this state who has been added to the medical marijuana use registry by a qualified physician to receive marijuana or a marijuana delivery device for a medical use and who has a qualified patient identification card.

(m) “Qualified physician” means a person who holds an active, unrestricted license as an allopathic physician under chapter 458 or as an osteopathic physician under chapter 459 and is in compliance with the physician education requirements of subsection (3).

(n) “Smoking” means burning or igniting a substance and inhaling the smoke.

(o) “Terminal condition” means a progressive disease or medical or surgical condition that causes significant functional impairment, is not considered by a treating physician to be reversible without the administration of life-sustaining procedures, and will result in death within 1 year after diagnosis if the condition runs its normal course.

(2) Qualifying medical conditions.—A patient must be diagnosed with at least one of the following conditions to qualify to receive marijuana or a marijuana delivery device:

(a) Cancer.

(b) Epilepsy.

(c) Glaucoma.

(d) Positive status for human immunodeficiency virus.

(e) Acquired immune deficiency syndrome.

(f) Post-traumatic stress disorder.

(g) Amyotrophic lateral sclerosis.

(h) Crohn's disease.

(i) Parkinson's disease.

(j) Multiple sclerosis.

(k) Medical conditions of the same kind or class as or comparable to those enumerated in paragraphs (a)-(j).

(l) A terminal condition diagnosed by a physician other than the qualified physician issuing the physician certification.

(m) Chronic nonmalignant pain.

(3) Qualified physicians and medical directors.--

(a) Before being approved as a qualified physician, as defined in paragraph (1)(m), and before each license renewal, a physician must successfully complete a 2-hour course and subsequent examination offered by the Florida Medical Association or the Florida Osteopathic Medical Association which encompass the requirements of this section and any rules adopted hereunder. The course and examination shall be administered at least annually and may be offered in a distance learning format, including an electronic, online format that is available upon request. The price of the course may not exceed \$500. A physician who has met the physician education requirements of former s. 381.986(4), Florida Statutes 2016, before June 23, 2017, shall be deemed to be in compliance with this paragraph from June 23, 2017, until 90 days after the course and examination required by this paragraph become available.

(b) A qualified physician may not be employed by, or have any direct or indirect economic interest in, a medical marijuana treatment center or marijuana testing laboratory.

(c) Before being employed as a medical director, as defined in paragraph (1)(i), and before each license renewal, a medical director must successfully complete a 2-hour course and subsequent examination offered by the Florida Medical Association or the Florida Osteopathic Medical Association which encompass the requirements of this section and any rules adopted hereunder. The course and examination shall be administered at least annually and may be offered in a distance learning format, including an electronic, online format that is available upon request. The price of the course may not exceed \$500.

(4) Physician certification.--

(a) A qualified physician may issue a physician certification only if the qualified physician:

1. Conducted a physical examination while physically present in the same room as the patient and a full assessment of the medical history of the patient.
2. Diagnosed the patient with at least one qualifying medical condition.
3. Determined that the medical use of marijuana would likely outweigh the potential health risks for the patient, and such determination must be documented in the patient's medical record. If a patient is younger than 18 years of age, a second physician must concur with this determination, and such concurrence must be documented in the patient's medical record.

4. Determined whether the patient is pregnant and documented such determination in the patient's medical record. A physician may not issue a physician certification, except for low-THC cannabis, to a patient who is pregnant.
5. Reviewed the patient's controlled drug prescription history in the prescription drug monitoring program database established pursuant to s. 893.055.
6. Reviews the medical marijuana use registry and confirmed that the patient does not have an active physician certification from another qualified physician.
7. Registers as the issuer of the physician certification for the named qualified patient on the medical marijuana use registry in an electronic manner determined by the department, and:
 - a. Enters into the registry the contents of the physician certification, including the patient's qualifying condition and the dosage not to exceed the daily dose amount determined by the department, the amount and forms of marijuana authorized for the patient, and any types of marijuana delivery devices needed by the patient for the medical use of marijuana.
 - b. Updates the registry within 7 days after any change is made to the original physician certification to reflect such change.
 - c. Deactivates the registration of the qualified patient and the patient's caregiver when the physician no longer recommends the medical use of marijuana for the patient.
8. Obtains the voluntary and informed written consent of the patient for medical use of marijuana each time the qualified physician issues a physician certification for the patient, which shall be maintained in the patient's medical record. The patient, or the patient's parent or legal guardian if the patient is a minor, must sign the informed consent acknowledging that the qualified physician has sufficiently explained its content. The qualified physician must use a standardized informed consent form adopted in rule by the Board of Medicine and the Board of Osteopathic Medicine, which must include, at a minimum, information related to:
 - a. The Federal Government's classification of marijuana as a Schedule I controlled substance.
 - b. The approval and oversight status of marijuana by the Food and Drug Administration.
 - c. The current state of research on the efficacy of marijuana to treat the qualifying conditions set forth in this section.
 - d. The potential for addiction.
 - e. The potential effect that marijuana may have on a patient's coordination, motor skills, and cognition, including a warning against operating heavy machinery, operating a motor vehicle, or engaging in activities that require a person to be alert or respond quickly.

f. The potential side effects of marijuana use.

g. The risks, benefits, and drug interactions of marijuana.

h. That the patient's de-identified health information contained in the physician certification and medical marijuana use registry may be used for research purposes.

(b) If a qualified physician issues a physician certification for a qualified patient diagnosed with a qualifying medical condition pursuant to paragraph (2)(k), the physician must submit the following to the applicable board within 14 days after issuing the physician certification:

1. Documentation supporting the qualified physician's opinion that the medical condition is of the same kind or class as the conditions in paragraphs (2)(a)-(j).

2. Documentation that establishes the efficacy of marijuana as treatment for the condition.

3. Documentation supporting the qualified physician's opinion that the benefits of medical use of marijuana would likely outweigh the potential health risks for the patient.

4. Any other documentation as required by board rule.

The department must submit such documentation to the Coalition for Medical Marijuana Research and Education established pursuant to s. 1004.4351.

(c) A qualified physician may not issue a physician certification for more than three 70-day supply limits of marijuana. The department shall quantify by rule a daily dose amount with equivalent dose amounts for each allowable form of marijuana dispensed by a medical marijuana treatment center. The department shall use the daily dose amount to calculate a 70-day supply.

1. A qualified physician may request an exception to the daily dose amount limit. The request shall be made electronically on a form adopted by the department in rule and must include, at a minimum:

a. The qualified patient's qualifying medical condition.

b. The dosage and route of administration that was insufficient to provide relief to the qualified patient.

c. A description of how the patient will benefit from an increased amount.

d. The minimum daily dose amount of marijuana that would be sufficient for the treatment of the qualified patient's qualifying medical condition.

2. A qualified physician must provide the qualified patient's records upon the request of the department.

3. The department shall approve or disapprove the request within 14 days after receipt of the complete documentation required by this paragraph. The request shall be deemed approved if the department fails to act within this time period.

(d) A qualified physician must evaluate an existing qualified patient at least once every 30 weeks before issuing a new physician certification. A physician must:

1. Determine if the patient still meets the requirements to be issued a physician certification under paragraph (a).

2. Identify and document in the qualified patient's medical records whether the qualified patient experienced either of the following related to the medical use of marijuana:

a. An adverse drug interaction with any prescription or nonprescription medication; or

b. A reduction in the use of, or dependence on, other types of controlled substances as defined in s. 893.02.

3. Submit a report with the findings required pursuant to subparagraph 2. to the department. The department shall submit such reports to the Coalition for Medical Marijuana Research and Education established pursuant to s. 1004.4351.

(e) An active order for low-THC cannabis or medical cannabis issued pursuant to former s. 381.986, Florida Statutes 2016, and registered with the compassionate use registry before June 23, 2017, is deemed a physician certification, and all patients possessing such orders are deemed qualified patients until the department begins issuing medical marijuana use registry identification cards.

(f) The department shall monitor physician registration in the medical marijuana use registry and the issuance of physician certifications for practices that could facilitate unlawful diversion or misuse of marijuana or a marijuana delivery device and shall take disciplinary action as appropriate.

(g) The Board of Medicine and the Board of Osteopathic Medicine shall jointly create a physician certification pattern review panel that shall review all physician certifications submitted to the medical marijuana use registry. The panel shall track and report the number of physician certifications and the qualifying medical conditions, dosage, supply amount, and form of marijuana certified. The panel shall report the data both by individual qualified physician and in the aggregate, by county, and statewide. The physician certification pattern review panel shall, beginning January 1, 2018, submit an annual report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(h) The department, the Board of Medicine, and the Board of Osteopathic Medicine may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this subsection.

(5) Medical marijuana use registry.--

(a) The department shall create and maintain a secure, electronic, and online medical marijuana use registry for physicians, patients, and caregivers as provided under this section. The medical marijuana use registry must be accessible to law enforcement agencies, qualified physicians, and medical marijuana treatment centers to verify the authorization of a qualified patient or a caregiver to possess marijuana or a marijuana delivery device and record the marijuana or marijuana delivery device dispensed. The medical marijuana use registry must also be accessible to practitioners licensed to prescribe prescription drugs to ensure proper care for patients before medications that may interact with the medical use of marijuana are prescribed. The medical marijuana use registry must prevent an active registration of a qualified patient by multiple physicians.

(b) The department shall determine whether an individual is a resident of this state for the purpose of registration of qualified patients and caregivers in the medical marijuana use registry. To prove residency:

1. An adult resident must provide the department with a copy of his or her valid Florida driver license issued under s. 322.18 or a copy of a valid Florida identification card issued under s. 322.051.

2. An adult seasonal resident who cannot meet the requirements of subparagraph 1. may provide the department with a copy of two of the following that show proof of residential address:

a. A deed, mortgage, monthly mortgage statement, mortgage payment booklet or residential rental or lease agreement.

b. One proof of residential address from the seasonal resident's parent, step-parent, legal guardian or other person with whom the seasonal resident resides and a statement from the person with whom the seasonal resident resides stating that the seasonal resident does reside with him or her.

c. A utility hookup or work order dated within 60 days before registration in the medical use registry.

d. A utility bill, not more than 2 months old.

e. Mail from a financial institution, including checking, savings, or investment account statements, not more than 2 months old.

f. Mail from a federal, state, county, or municipal government agency, not more than 2 months old.

g. Any other documentation that provides proof of residential address as determined by department rule.

3. A minor must provide the department with a certified copy of a birth certificate or a current record of registration from a Florida K-12 school and must have a parent or legal guardian who meets the requirements of subparagraph 1.

For the purposes of this paragraph, the term “seasonal resident” means any person who temporarily resides in this state for a period of at least 31 consecutive days in each calendar year, maintains a temporary residence in this state, returns to the state or jurisdiction of his or her residence at least one time during each calendar year, and is registered to vote or pays income tax in another state or jurisdiction.

(c) The department may suspend or revoke the registration of a qualified patient or caregiver if the qualified patient or caregiver:

1. Provides misleading, incorrect, false, or fraudulent information to the department;
2. Obtains a supply of marijuana in an amount greater than the amount authorized by the physician certification;
3. Falsifies, alters, or otherwise modifies an identification card;
4. Fails to timely notify the department of any changes to his or her qualified patient status; or
5. Violates the requirements of this section or any rule adopted under this section.

(d) The department shall immediately suspend the registration of a qualified patient charged with a violation of chapter 893 until final disposition of any alleged offense. Thereafter, the department may extend the suspension, revoke the registration, or reinstate the registration.

(e) The department shall immediately suspend the registration of any caregiver charged with a violation of chapter 893 until final disposition of any alleged offense. The department shall revoke a caregiver registration if the caregiver does not meet the requirements of subparagraph (6)(b)6.

(f) The department may revoke the registration of a qualified patient or caregiver who cultivates marijuana or who acquires, possesses, or delivers marijuana from any person or entity other than a medical marijuana treatment center.

(g) The department shall revoke the registration of a qualified patient, and the patient's associated caregiver, upon notification that the patient no longer meets the criteria of a qualified patient.

(h) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this subsection.

(6) Caregivers.--

(a) The department must register an individual as a caregiver on the medical marijuana use registry and issue a caregiver identification card if an individual designated by a qualified patient meets all of the requirements of this subsection and department rule.

(b) A caregiver must:

1. Not be a qualified physician and not be employed by or have an economic interest in a medical marijuana treatment center or a marijuana testing laboratory.
2. Be 21 years of age or older and a resident of this state.
3. Agree in writing to assist with the qualified patient's medical use of marijuana.
4. Be registered in the medical marijuana use registry as a caregiver for no more than one qualified patient, except as provided in this paragraph.
5. Successfully complete a caregiver certification course developed and administered by the department or its designee, which must be renewed biennially. The price of the course may not exceed \$100.
6. Pass a background screening pursuant to subsection (9), unless the patient is a close relative of the caregiver.

(c) A qualified patient may designate no more than one caregiver to assist with the qualified patient's medical use of marijuana, unless:

1. The qualified patient is a minor and the designated caregivers are parents or legal guardians of the qualified patient;
2. The qualified patient is an adult who has an intellectual or developmental disability that prevents the patient from being able to protect or care for himself or herself without assistance or supervision and the designated caregivers are the parents or legal guardians of the qualified patient; or
3. The qualified patient is admitted to a hospice program.

(d) A caregiver may be registered in the medical marijuana use registry as a designated caregiver for no more than one qualified patient, unless:

1. The caregiver is a parent or legal guardian of more than one minor who is a qualified patient;

2. The caregiver is a parent or legal guardian of more than one adult who is a qualified patient and who has an intellectual or developmental disability that prevents the patient from being able to protect or care for himself or herself without assistance or supervision; or

3. All qualified patients the caregiver has agreed to assist are admitted to a hospice program and have requested the assistance of that caregiver with the medical use of marijuana; the caregiver is an employee of the hospice; and the caregiver provides personal care or other services directly to clients of the hospice in the scope of that employment.

(e) A caregiver may not receive compensation, other than actual expenses incurred, for any services provided to the qualified patient.

(f) If a qualified patient is younger than 18 years of age, only a caregiver may purchase or administer marijuana for medical use by the qualified patient. The qualified patient may not purchase marijuana.

(g) A caregiver must be in immediate possession of his or her medical marijuana use registry identification card at all times when in possession of marijuana or a marijuana delivery device and must present his or her medical marijuana use registry identification card upon the request of a law enforcement officer.

(h) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this subsection.

(7) Identification cards.--

(a) The department shall issue medical marijuana use registry identification cards for qualified patients and caregivers who are residents of this state, which must be renewed annually. The identification cards must be resistant to counterfeiting and tampering and must include, at a minimum, the following:

1. The name, address, and date of birth of the qualified patient or caregiver.

2. A full-face, passport-type, color photograph of the qualified patient or caregiver taken within the 90 days immediately preceding registration or the Florida driver license or Florida identification card photograph of the qualified patient or caregiver obtained directly from the Department of Highway Safety and Motor Vehicles.

3. Identification as a qualified patient or a caregiver.

4. The unique numeric identifier used for the qualified patient in the medical marijuana use registry.

5. For a caregiver, the name and unique numeric identifier of the caregiver and the qualified patient or patients that the caregiver is assisting.

6. The expiration date of the identification card.

(b) The department must receive written consent from a qualified patient's parent or legal guardian before it may issue an identification card to a qualified patient who is a minor.

(c) The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 establishing procedures for the issuance, renewal, suspension, replacement, surrender, and revocation of medical marijuana use registry identification cards pursuant to this section and shall begin issuing qualified patient identification cards by October 3, 2017.

(d) Applications for identification cards must be submitted on a form prescribed by the department. The department may charge a reasonable fee associated with the issuance, replacement, and renewal of identification cards. The department shall allocate \$10 of the identification card fee to the Division of Research at Florida Agricultural and Mechanical University for the purpose of educating minorities about marijuana for medical use and the impact of the unlawful use of marijuana on minority communities. The department shall contract with a third-party vendor to issue identification cards. The vendor selected by the department must have experience performing similar functions for other state agencies.

(e) A qualified patient or caregiver shall return his or her identification card to the department within 5 business days after revocation.

(8) Medical marijuana treatment centers.--

(a) The department shall license medical marijuana treatment centers to ensure reasonable statewide accessibility and availability as necessary for qualified patients registered in the medical marijuana use registry and who are issued a physician certification under this section.

1. As soon as practicable, but no later than July 3, 2017, the department shall license as a medical marijuana treatment center any entity that holds an active, unrestricted license to cultivate, process, transport, and dispense low-THC cannabis, medical cannabis, and cannabis delivery devices, under former s. 381.986, Florida Statutes 2016, before July 1, 2017, and which meets the requirements of this section. In addition to the authority granted under this section, these entities are authorized to dispense low-THC cannabis, medical cannabis, and cannabis delivery devices ordered pursuant to former s. 381.986, Florida Statutes 2016, which were entered into the compassionate use registry before July 1, 2017, and are authorized to begin dispensing marijuana under this section on July 3, 2017. The department may grant variances from the representations made in such an entity's original application for approval under former s. 381.986, Florida Statutes 2014, pursuant to paragraph (e).

2. The department shall license as medical marijuana treatment centers 10 applicants that meet the requirements of this section, under the following parameters:

a. As soon as practicable, but no later than August 1, 2017, the department shall license any applicant whose application was reviewed, evaluated, and scored by the department and which was denied a dispensing organization license by the department under former s. 381.986, Florida Statutes 2014; which had one or more administrative or judicial challenges pending as of January 1, 2017, or had a final ranking within one point of the highest final ranking in its region under

former s. 381.986, Florida Statutes 2014; which meets the requirements of this section; and which provides documentation to the department that it has the existing infrastructure and technical and technological ability to begin cultivating marijuana within 30 days after registration as a medical marijuana treatment center.

b. As soon as practicable, the department shall license one applicant that is a recognized class member of *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999), or *In Re Black Farmers Litig.*, 856 F. Supp. 2d 1 (D.D.C. 2011). An applicant licensed under this sub-subparagraph is exempt from the requirement of subparagraph (b)2.

c. As soon as practicable, but no later than October 3, 2017, the department shall license applicants that meet the requirements of this section in sufficient numbers to result in 10 total licenses issued under this subparagraph, while accounting for the number of licenses issued under sub-subparagraphs a. and b.

3. For up to two of the licenses issued under subparagraph 2., the department shall give preference to applicants that demonstrate in their applications that they own one or more facilities that are, or were, used for the canning, concentrating, or otherwise processing of citrus fruit or citrus molasses and will use or convert the facility or facilities for the processing of marijuana.

4. Within 6 months after the registration of 100,000 active qualified patients in the medical marijuana use registry, the department shall license four additional medical marijuana treatment centers that meet the requirements of this section. Thereafter, the department shall license four medical marijuana treatment centers within 6 months after the registration of each additional 100,000 active qualified patients in the medical marijuana use registry that meet the requirements of this section.

5. Dispensing facilities are subject to the following requirements:

a. A medical marijuana treatment center may not establish or operate more than a statewide maximum of 25 dispensing facilities, unless the medical marijuana use registry reaches a total of 100,000 active registered qualified patients. When the medical marijuana use registry reaches 100,000 active registered qualified patients, and then upon each further instance of the total active registered qualified patients increasing by 100,000, the statewide maximum number of dispensing facilities that each licensed medical marijuana treatment center may establish and operate increases by five.

b. A medical marijuana treatment center may not establish more than the maximum number of dispensing facilities allowed in each of the Northwest, Northeast, Central, Southwest, and Southeast Regions. The department shall determine a medical marijuana treatment center's maximum number of dispensing facilities allowed in each region by calculating the percentage of the total statewide population contained within that region and multiplying that percentage by the medical marijuana treatment center's statewide maximum number of dispensing facilities established under subparagraph a., rounded to the nearest whole number. The department shall ensure that such rounding does not cause a medical marijuana treatment center's total number of statewide dispensing facilities to exceed its statewide maximum. The department shall initially calculate the maximum number of dispensing facilities allowed in each region for each medical marijuana treatment center using county population estimates from the Florida Estimates of Population 2016, as published by the Office of Economic and Demographic Research, and shall perform recalculations following the official release of county population data resulting from each United States Decennial Census. For the purposes of this subparagraph:

(I) The Northwest Region consists of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and Washington Counties.

(II) The Northeast Region consists of Alachua, Baker, Bradford, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Lafayette, Levy, Marion, Nassau, Putnam, St. Johns, Suwannee, and Union Counties.

(III) The Central Region consists of Brevard, Citrus, Hardee, Hernando, Indian River, Lake, Orange, Osceola, Pasco, Pinellas, Polk, Seminole, St. Lucie, Sumter, and Volusia Counties.

(IV) The Southwest Region consists of Charlotte, Collier, DeSoto, Glades, Hendry, Highlands, Hillsborough, Lee, Manatee, Okeechobee, and Sarasota Counties.

(V) The Southeast Region consists of Broward, Miami-Dade, Martin, Monroe, and Palm Beach Counties.

c. If a medical marijuana treatment center establishes a number of dispensing facilities within a region that is less than the number allowed for that region under sub-subparagraph b., the medical marijuana treatment center may sell one or more of its unused dispensing facility slots to other licensed medical marijuana treatment centers. For each dispensing facility slot that a medical marijuana treatment center sells, that medical marijuana treatment center's statewide maximum number of dispensing facilities, as determined under sub-subparagraph a., is reduced by one. The statewide maximum number of dispensing facilities for a medical marijuana treatment center that purchases an unused dispensing facility slot is increased by one per slot purchased. Additionally, the sale of a dispensing facility slot shall reduce the seller's regional maximum and increase the purchaser's regional maximum number of dispensing facilities, as determined in sub-subparagraph b., by one for that region. For any slot purchased under this sub-subparagraph, the regional restriction applied to that slot's location under sub-subparagraph b. before the purchase shall remain in effect following the purchase. A medical marijuana treatment center that sells or purchases a dispensing facility slot must notify the department within 3 days of sale.

d. This subparagraph shall expire on April 1, 2020.

If this subparagraph or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end, the provisions of this subparagraph are severable.

(b) An applicant for licensure as a medical marijuana treatment center shall apply to the department on a form prescribed by the department and adopted in rule. The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 establishing a procedure for the issuance and biennial renewal of licenses, including initial application and biennial renewal fees sufficient to cover the costs of implementing and administering this section, and establishing supplemental licensure fees for payment beginning May 1, 2018, sufficient to cover the costs of administering ss. 381.989 and 1004.4351. The department shall identify applicants with strong diversity plans reflecting this state's commitment to diversity and implement training programs and other educational programs to enable minority persons and minority business enterprises, as defined in s. 288.703, and veteran business enterprises, as defined in s. 295.187, to compete for medical marijuana treatment center licensure and contracts. Subject to the requirements in subparagraphs (a)2.-4., the department shall issue a license to an applicant if the applicant meets the requirements of this section and pays the

initial application fee. The department shall renew the licensure of a medical marijuana treatment center biennially if the licensee meets the requirements of this section and pays the biennial renewal fee. An individual may not be an applicant, owner, officer, board member, or manager on more than one application for licensure as a medical marijuana treatment center. An individual or entity may not be awarded more than one license as a medical marijuana treatment center. An applicant for licensure as a medical marijuana treatment center must demonstrate:

1. That, for the 5 consecutive years before submitting the application, the applicant has been registered to do business in the state.
2. Possession of a valid certificate of registration issued by the Department of Agriculture and Consumer Services pursuant to s. 581.131.
3. The technical and technological ability to cultivate and produce marijuana, including, but not limited to, low-THC cannabis.
4. The ability to secure the premises, resources, and personnel necessary to operate as a medical marijuana treatment center.
5. The ability to maintain accountability of all raw materials, finished products, and any byproducts to prevent diversion or unlawful access to or possession of these substances.
6. An infrastructure reasonably located to dispense marijuana to registered qualified patients statewide or regionally as determined by the department.
7. The financial ability to maintain operations for the duration of the 2-year approval cycle, including the provision of certified financial statements to the department.
 - a. Upon approval, the applicant must post a \$5 million performance bond issued by an authorized surety insurance company rated in one of the three highest rating categories by a nationally recognized rating service. However, a medical marijuana treatment center serving at least 1,000 qualified patients is only required to maintain a \$2 million performance bond.
 - b. In lieu of the performance bond required under sub-subparagraph a., the applicant may provide an irrevocable letter of credit payable to the department or provide cash to the department. If provided with cash under this sub-subparagraph, the department shall deposit the cash in the Grants and Donations Trust Fund within the Department of Health, subject to the same conditions as the bond regarding requirements for the applicant to forfeit ownership of the funds. If the funds deposited under this sub-subparagraph generate interest, the amount of that interest shall be used by the department for the administration of this section.
8. That all owners, officers, board members, and managers have passed a background screening pursuant to subsection (9).

9. The employment of a medical director to supervise the activities of the medical marijuana treatment center.

10. A diversity plan that promotes and ensures the involvement of minority persons and minority business enterprises, as defined in s. 288.703, or veteran business enterprises, as defined in s. 295.187, in ownership, management, and employment. An applicant for licensure renewal must show the effectiveness of the diversity plan by including the following with his or her application for renewal:

a. Representation of minority persons and veterans in the medical marijuana treatment center's workforce;

b. Efforts to recruit minority persons and veterans for employment; and

c. A record of contracts for services with minority business enterprises and veteran business enterprises.

(c) A medical marijuana treatment center may not make a wholesale purchase of marijuana from, or a distribution of marijuana to, another medical marijuana treatment center, unless the medical marijuana treatment center seeking to make a wholesale purchase of marijuana submits proof of harvest failure to the department.

(d) The department shall establish, maintain, and control a computer software tracking system that traces marijuana from seed to sale and allows real-time, 24-hour access by the department to data from all medical marijuana treatment centers and marijuana testing laboratories. The tracking system must allow for integration of other seed-to-sale systems and, at a minimum, include notification of when marijuana seeds are planted, when marijuana plants are harvested and destroyed, and when marijuana is transported, sold, stolen, diverted, or lost. Each medical marijuana treatment center shall use the seed-to-sale tracking system established by the department or integrate its own seed-to-sale tracking system with the seed-to-sale tracking system established by the department. Each medical marijuana treatment center may use its own seed-to-sale system until the department establishes a seed-to-sale tracking system. The department may contract with a vendor to establish the seed-to-sale tracking system. The vendor selected by the department may not have a contractual relationship with the department to perform any services pursuant to this section other than the seed-to-sale tracking system. The vendor may not have a direct or indirect financial interest in a medical marijuana treatment center or a marijuana testing laboratory.

(e) A licensed medical marijuana treatment center shall cultivate, process, transport, and dispense marijuana for medical use. A licensed medical marijuana treatment center may not contract for services directly related to the cultivation, processing, and dispensing of marijuana or marijuana delivery devices, except that a medical marijuana treatment center licensed pursuant to subparagraph (a)1. may contract with a single entity for the cultivation, processing, transporting, and dispensing of marijuana and marijuana delivery devices. A licensed medical marijuana treatment center must, at all times, maintain compliance with the criteria demonstrated and representations made in the initial application and the criteria established in this subsection. Upon request, the department may grant a medical marijuana treatment center a variance from the representations made in the initial application. Consideration of such a request shall be based upon the individual facts and circumstances surrounding the request. A variance may not be granted unless the requesting medical marijuana treatment center can demonstrate to the department that it has a proposed alternative to the specific representation made in its application which fulfills the same or a similar purpose as the specific representation in a way that the department can reasonably determine will not be a lower standard than the specific representation in the application. A variance may not be granted from the requirements in subparagraph 2. and subparagraphs (b)1. and 2.

1. A licensed medical marijuana treatment center may transfer ownership to an individual or entity who meets the requirements of this section. A publicly traded corporation or publicly traded company that meets the requirements of this section is not precluded from ownership of a medical marijuana treatment center. To accommodate a change in ownership:

a. The licensed medical marijuana treatment center shall notify the department in writing at least 60 days before the anticipated date of the change of ownership.

b. The individual or entity applying for initial licensure due to a change of ownership must submit an application that must be received by the department at least 60 days before the date of change of ownership.

c. Upon receipt of an application for a license, the department shall examine the application and, within 30 days after receipt, notify the applicant in writing of any apparent errors or omissions and request any additional information required.

d. Requested information omitted from an application for licensure must be filed with the department within 21 days after the department's request for omitted information or the application shall be deemed incomplete and shall be withdrawn from further consideration and the fees shall be forfeited.

Within 30 days after the receipt of a complete application, the department shall approve or deny the application.

2. A medical marijuana treatment center, and any individual or entity who directly or indirectly owns, controls, or holds with power to vote 5 percent or more of the voting shares of a medical marijuana treatment center, may not acquire direct or indirect ownership or control of any voting shares or other form of ownership of any other medical marijuana treatment center.

3. A medical marijuana treatment center may not enter into any form of profit-sharing arrangement with the property owner or lessor of any of its facilities where cultivation, processing, storing, or dispensing of marijuana and marijuana delivery devices occurs.

4. All employees of a medical marijuana treatment center must be 21 years of age or older and have passed a background screening pursuant to subsection (9).

5. Each medical marijuana treatment center must adopt and enforce policies and procedures to ensure employees and volunteers receive training on the legal requirements to dispense marijuana to qualified patients.

6. When growing marijuana, a medical marijuana treatment center:

- a. May use pesticides determined by the department, after consultation with the Department of Agriculture and Consumer Services, to be safely applied to plants intended for human consumption, but may not use pesticides designated as restricted-use pesticides pursuant to s. 487.042.
 - b. Must grow marijuana within an enclosed structure and in a room separate from any other plant.
 - c. Must inspect seeds and growing plants for plant pests that endanger or threaten the horticultural and agricultural interests of the state in accordance with chapter 581 and any rules adopted thereunder.
 - d. Must perform fumigation or treatment of plants, or remove and destroy infested or infected plants, in accordance with chapter 581 and any rules adopted thereunder.
7. Each medical marijuana treatment center must produce and make available for purchase at least one low-THC cannabis product.
8. A medical marijuana treatment center that produces edibles must hold a permit to operate as a food establishment pursuant to chapter 500, the Florida Food Safety Act, and must comply with all the requirements for food establishments pursuant to chapter 500 and any rules adopted thereunder. Edibles may not contain more than 200 milligrams of tetrahydrocannabinol, and a single serving portion of an edible may not exceed 10 milligrams of tetrahydrocannabinol. Edibles may have a potency variance of no greater than 15 percent. Edibles may not be attractive to children; be manufactured in the shape of humans, cartoons, or animals; be manufactured in a form that bears any reasonable resemblance to products available for consumption as commercially available candy; or contain any color additives. To discourage consumption of edibles by children, the department shall determine by rule any shapes, forms, and ingredients allowed and prohibited for edibles. Medical marijuana treatment centers may not begin processing or dispensing edibles until after the effective date of the rule. The department shall also adopt sanitation rules providing the standards and requirements for the storage, display, or dispensing of edibles.
9. Within 12 months after licensure, a medical marijuana treatment center must demonstrate to the department that all of its processing facilities have passed a Food Safety Good Manufacturing Practices, such as Global Food Safety Initiative or equivalent, inspection by a nationally accredited certifying body. A medical marijuana treatment center must immediately stop processing at any facility which fails to pass this inspection until it demonstrates to the department that such facility has met this requirement.
10. When processing marijuana, a medical marijuana treatment center must:
- a. Process the marijuana within an enclosed structure and in a room separate from other plants or products.
 - b. Comply with department rules when processing marijuana with hydrocarbon solvents or other solvents or gases exhibiting potential toxicity to humans. The department shall determine by rule the requirements for medical marijuana treatment centers to use such solvents or gases exhibiting potential toxicity to humans.

c. Comply with federal and state laws and regulations and department rules for solid and liquid wastes. The department shall determine by rule procedures for the storage, handling, transportation, management, and disposal of solid and liquid waste generated during marijuana production and processing. The Department of Environmental Protection shall assist the department in developing such rules.

d. Test the processed marijuana using a medical marijuana testing laboratory before it is dispensed. Results must be verified and signed by two medical marijuana treatment center employees. Before dispensing, the medical marijuana treatment center must determine that the test results indicate that low-THC cannabis meets the definition of low-THC cannabis, the concentration of tetrahydrocannabinol meets the potency requirements of this section, the labeling of the concentration of tetrahydrocannabinol and cannabidiol is accurate, and all marijuana is safe for human consumption and free from contaminants that are unsafe for human consumption. The department shall determine by rule which contaminants must be tested for and the maximum levels of each contaminant which are safe for human consumption. The Department of Agriculture and Consumer Services shall assist the department in developing the testing requirements for contaminants that are unsafe for human consumption in edibles. The department shall also determine by rule the procedures for the treatment of marijuana that fails to meet the testing requirements of this section, s. 381.988, or department rule. The department may select a random sample from edibles available for purchase in a dispensing facility which shall be tested by the department to determine that the edible meets the potency requirements of this section, is safe for human consumption, and the labeling of the tetrahydrocannabinol and cannabidiol concentration is accurate. A medical marijuana treatment center may not require payment from the department for the sample. A medical marijuana treatment center must recall edibles, including all edibles made from the same batch of marijuana, which fail to meet the potency requirements of this section, which are unsafe for human consumption, or for which the labeling of the tetrahydrocannabinol and cannabidiol concentration is inaccurate. The medical marijuana treatment center must retain records of all testing and samples of each homogenous batch of marijuana for at least 9 months. The medical marijuana treatment center must contract with a marijuana testing laboratory to perform audits on the medical marijuana treatment center's standard operating procedures, testing records, and samples and provide the results to the department to confirm that the marijuana or low-THC cannabis meets the requirements of this section and that the marijuana or low-THC cannabis is safe for human consumption. A medical marijuana treatment center shall reserve two processed samples from each batch and retain such samples for at least 9 months for the purpose of such audits. A medical marijuana treatment center may use a laboratory that has not been certified by the department under s. 381.988 until such time as at least one laboratory holds the required certification, but in no event later than July 1, 2018.

e. Package the marijuana in compliance with the United States Poison Prevention Packaging Act of 1970, 15 U.S.C. ss. 1471 et seq.

f. Package the marijuana in a receptacle that has a firmly affixed and legible label stating the following information:

(I) The marijuana or low-THC cannabis meets the requirements of sub-subparagraph d.

(II) The name of the medical marijuana treatment center from which the marijuana originates.

(III) The batch number and harvest number from which the marijuana originates and the date dispensed.

(IV) The name of the physician who issued the physician certification.

(V) The name of the patient.

(VI) The product name, if applicable, and dosage form, including concentration of tetrahydrocannabinol and cannabidiol. The product name may not contain wording commonly associated with products marketed by or to children.

(VII) The recommended dose.

(VIII) A warning that it is illegal to transfer medical marijuana to another person.

(IX) A marijuana universal symbol developed by the department.

11. The medical marijuana treatment center shall include in each package a patient package insert with information on the specific product dispensed related to:

a. Clinical pharmacology.

b. Indications and use.

c. Dosage and administration.

d. Dosage forms and strengths.

e. Contraindications.

f. Warnings and precautions.

g. Adverse reactions.

12. Each edible shall be individually sealed in plain, opaque wrapping marked only with the marijuana universal symbol. Where practical, each edible shall be marked with the marijuana universal symbol. In addition to the packaging and labeling requirements in subparagraphs 10. and 11., edible receptacles must be plain, opaque, and white without depictions of the product or images other than the medical marijuana treatment center's department-approved logo and the marijuana universal symbol. The receptacle must also include a list all of the edible's ingredients, storage instructions, an expiration date, a legible and prominent warning to keep away from children and pets, and a warning that the edible has not been produced or inspected pursuant to federal food safety laws.

13. When dispensing marijuana or a marijuana delivery device, a medical marijuana treatment center:

a. May dispense any active, valid order for low-THC cannabis, medical cannabis and cannabis delivery devices issued pursuant to former s. 381.986, Florida Statutes 2016, which was entered into the medical marijuana use registry before July 1, 2017.

b. May not dispense more than a 70-day supply of marijuana to a qualified patient or caregiver.

c. Must have the medical marijuana treatment center's employee who dispenses the marijuana or a marijuana delivery device enter into the medical marijuana use registry his or her name or unique employee identifier.

d. Must verify that the qualified patient and the caregiver, if applicable, each have an active registration in the medical marijuana use registry and an active and valid medical marijuana use registry identification card, the amount and type of marijuana dispensed matches the physician certification in the medical marijuana use registry for that qualified patient, and the physician certification has not already been filled.

e. May not dispense marijuana to a qualified patient who is younger than 18 years of age. If the qualified patient is younger than 18 years of age, marijuana may only be dispensed to the qualified patient's caregiver.

f. May not dispense or sell any other type of cannabis, alcohol, or illicit drug-related product, including pipes, bongs, or wrapping papers, other than a marijuana delivery device required for the medical use of marijuana and which is specified in a physician certification.

g. Must, upon dispensing the marijuana or marijuana delivery device, record in the registry the date, time, quantity, and form of marijuana dispensed; the type of marijuana delivery device dispensed; and the name and medical marijuana use registry identification number of the qualified patient or caregiver to whom the marijuana delivery device was dispensed.

h. Must ensure that patient records are not visible to anyone other than the qualified patient, his or her caregiver, and authorized medical marijuana treatment center employees.

(f) To ensure the safety and security of premises where the cultivation, processing, storing, or dispensing of marijuana occurs, and to maintain adequate controls against the diversion, theft, and loss of marijuana or marijuana delivery devices, a medical marijuana treatment center shall:

1. a. Maintain a fully operational security alarm system that secures all entry points and perimeter windows and is equipped with motion detectors; pressure switches; and duress, panic, and hold-up alarms; and

b. Maintain a video surveillance system that records continuously 24 hours a day and meets the following criteria:

(I) Cameras are fixed in a place that allows for the clear identification of persons and activities in controlled areas of the premises. Controlled areas include grow rooms, processing rooms, storage rooms, disposal rooms or areas, and point-of-sale rooms.

(II) Cameras are fixed in entrances and exits to the premises, which shall record from both indoor and outdoor, or ingress and egress, vantage points.

(III) Recorded images must clearly and accurately display the time and date.

(IV) Retain video surveillance recordings for at least 45 days or longer upon the request of a law enforcement agency.

2. Ensure that the medical marijuana treatment center's outdoor premises have sufficient lighting from dusk until dawn.

3. Ensure that the indoor premises where dispensing occurs includes a waiting area with sufficient space and seating to accommodate qualified patients and caregivers and at least one private consultation area that is isolated from the waiting area and area where dispensing occurs. A medical marijuana treatment center may not display products or dispense marijuana or marijuana delivery devices in the waiting area.

4. Not dispense from its premises marijuana or a marijuana delivery device between the hours of 9 p.m. and 7 a.m., but may perform all other operations and deliver marijuana to qualified patients 24 hours a day.

5. Store marijuana in a secured, locked room or a vault.

6. Require at least two of its employees, or two employees of a security agency with whom it contracts, to be on the premises at all times where cultivation, processing, or storing of marijuana occurs.

7. Require each employee or contractor to wear a photo identification badge at all times while on the premises.

8. Require each visitor to wear a visitor pass at all times while on the premises.

9. Implement an alcohol and drug-free workplace policy.

10. Report to local law enforcement within 24 hours after the medical marijuana treatment center is notified or becomes aware of the theft, diversion, or loss of marijuana.

(g) To ensure the safe transport of marijuana and marijuana delivery devices to medical marijuana treatment centers, marijuana testing laboratories, or qualified patients, a medical marijuana treatment center must:

1. Maintain a marijuana transportation manifest in any vehicle transporting marijuana. The marijuana transportation manifest must be generated from a medical marijuana treatment center's seed-to-sale tracking system and include the:

- a. Departure date and approximate time of departure.
- b. Name, location address, and license number of the originating medical marijuana treatment center.
- c. Name and address of the recipient of the delivery.
- d. Quantity and form of any marijuana or marijuana delivery device being transported.
- e. Arrival date and estimated time of arrival.
- f. Delivery vehicle make and model and license plate number.
- g. Name and signature of the medical marijuana treatment center employees delivering the product.

(I) A copy of the marijuana transportation manifest must be provided to each individual, medical marijuana treatment center, or marijuana testing laboratory that receives a delivery. The individual, or a representative of the center or laboratory, must sign a copy of the marijuana transportation manifest acknowledging receipt.

(II) An individual transporting marijuana or a marijuana delivery device must present a copy of the relevant marijuana transportation manifest and his or her employee identification card to a law enforcement officer upon request.

(III) Medical marijuana treatment centers and marijuana testing laboratories must retain copies of all marijuana transportation manifests for at least 3 years.

- 2. Ensure only vehicles in good working order are used to transport marijuana.
- 3. Lock marijuana and marijuana delivery devices in a separate compartment or container within the vehicle.
- 4. Require employees to have possession of their employee identification card at all times when transporting marijuana or marijuana delivery devices.
- 5. Require at least two persons to be in a vehicle transporting marijuana or marijuana delivery devices, and require at least one person to remain in the vehicle while the marijuana or marijuana delivery device is being delivered.
- 6. Provide specific safety and security training to employees transporting or delivering marijuana and marijuana delivery devices.

(h) A medical marijuana treatment center may not engage in advertising that is visible to members of the public from any street, sidewalk, park, or other public place, except:

1. The dispensing location of a medical marijuana treatment center may have a sign that is affixed to the outside or hanging in the window of the premises which identifies the dispensary by the licensee's business name, a department-approved trade name, or a department-approved logo. A medical marijuana treatment center's trade name and logo may not contain wording or images commonly associated with marketing targeted toward children or which promote recreational use of marijuana.

2. A medical marijuana treatment center may engage in Internet advertising and marketing under the following conditions:

a. All advertisements must be approved by the department.

b. An advertisement may not have any content that specifically targets individuals under the age of 18, including cartoon characters or similar images.

c. An advertisement may not be an unsolicited pop-up advertisement.

d. Opt-in marketing must include an easy and permanent opt-out feature.

(i) Each medical marijuana treatment center that dispenses marijuana and marijuana delivery devices shall make available to the public on its website:

1. Each marijuana and low-THC product available for purchase, including the form, strain of marijuana from which it was extracted, cannabidiol content, tetrahydrocannabinol content, dose unit, total number of doses available, and the ratio of cannabidiol to tetrahydrocannabinol for each product.

2. The price for a 30-day, 50-day, and 70-day supply at a standard dose for each marijuana and low-THC product available for purchase.

3. The price for each marijuana delivery device available for purchase.

4. If applicable, any discount policies and eligibility criteria for such discounts.

(j) Medical marijuana treatment centers are the sole source from which a qualified patient may legally obtain marijuana.

(k) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this subsection.

(9) Background screening.--An individual required to undergo a background screening pursuant to this section must pass a level 2 background screening as provided under chapter 435, which, in addition to the disqualifying offenses provided in s. 435.04, shall exclude an individual who has an arrest awaiting final disposition for, has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to an offense under chapter 837, chapter 895, or chapter 896 or similar law of another jurisdiction.

(a) Such individual must submit a full set of fingerprints to the department or to a vendor, entity, or agency authorized by s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

(b) Fees for state and federal fingerprint processing and retention shall be borne by the individual. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(e) for records provided to persons or entities other than those specified as exceptions therein.

(c) Fingerprints submitted to the Department of Law Enforcement pursuant to this subsection shall be retained by the Department of Law Enforcement as provided in s. 943.05(2)(g) and (h) and, when the Department of Law Enforcement begins participation in the program, enrolled in the Federal Bureau of Investigation's national retained print arrest notification program. Any arrest record identified shall be reported to the department.

(10) Medical marijuana treatment center inspections; administrative actions.--

(a) The department shall conduct announced or unannounced inspections of medical marijuana treatment centers to determine compliance with this section or rules adopted pursuant to this section.

(b) The department shall inspect a medical marijuana treatment center upon receiving a complaint or notice that the medical marijuana treatment center has dispensed marijuana containing mold, bacteria, or other contaminant that may cause or has caused an adverse effect to human health or the environment.

(c) The department shall conduct at least a biennial inspection of each medical marijuana treatment center to evaluate the medical marijuana treatment center's records, personnel, equipment, processes, security measures, sanitation practices, and quality assurance practices.

(d) The Department of Agriculture and Consumer Services and the department shall enter into an interagency agreement to ensure cooperation and coordination in the performance of their obligations under this section and their respective regulatory and authorizing laws. The department, the Department of Highway Safety and Motor Vehicles, and the Department of Law Enforcement may enter into interagency agreements for the purposes specified in this subsection or subsection (7).

(e) The department shall publish a list of all approved medical marijuana treatment centers, medical directors, and qualified physicians on its website.

(f) The department may impose reasonable fines not to exceed \$10,000 on a medical marijuana treatment center for any of the following violations:

1. Violating this section or department rule.
2. Failing to maintain qualifications for approval.
3. Endangering the health, safety, or security of a qualified patient.
4. Improperly disclosing personal and confidential information of the qualified patient.
5. Attempting to procure medical marijuana treatment center approval by bribery, fraudulent misrepresentation, or extortion.
6. Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which directly relates to the business of a medical marijuana treatment center.
7. Making or filing a report or record that the medical marijuana treatment center knows to be false.
8. Willfully failing to maintain a record required by this section or department rule.
9. Willfully impeding or obstructing an employee or agent of the department in the furtherance of his or her official duties.
10. Engaging in fraud or deceit, negligence, incompetence, or misconduct in the business practices of a medical marijuana treatment center.
11. Making misleading, deceptive, or fraudulent representations in or related to the business practices of a medical marijuana treatment center.
12. Having a license or the authority to engage in any regulated profession, occupation, or business that is related to the business practices of a medical marijuana treatment center suspended, revoked, or otherwise acted against by the licensing authority of any jurisdiction, including its agencies or subdivisions, for a violation that would constitute a violation under Florida law.
13. Violating a lawful order of the department or an agency of the state, or failing to comply with a lawfully issued subpoena of the department or an agency of the state.

(g) The department may suspend, revoke, or refuse to renew a medical marijuana treatment center license if the medical marijuana treatment center commits any of the violations in paragraph (f).

(h) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this subsection.

(11) Preemption.--Regulation of cultivation, processing, and delivery of marijuana by medical marijuana treatment centers is preempted to the state except as provided in this subsection.

(a) A medical marijuana treatment center cultivating or processing facility may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school.

(b) 1. A county or municipality may, by ordinance, ban medical marijuana treatment center dispensing facilities from being located within the boundaries of that county or municipality. A county or municipality that does not ban dispensing facilities under this subparagraph may not place specific limits, by ordinance, on the number of dispensing facilities that may locate within that county or municipality.

2. A municipality may determine by ordinance the criteria for the location of, and other permitting requirements that do not conflict with state law or department rule for, medical marijuana treatment center dispensing facilities located within the boundaries of that municipality. A county may determine by ordinance the criteria for the location of, and other permitting requirements that do not conflict with state law or department rule for, all such dispensing facilities located within the unincorporated areas of that county. Except as provided in paragraph (c), a county or municipality may not enact ordinances for permitting or for determining the location of dispensing facilities which are more restrictive than its ordinances permitting or determining the locations for pharmacies licensed under chapter 465. A municipality or county may not charge a medical marijuana treatment center a license or permit fee in an amount greater than the fee charged by such municipality or county to pharmacies. A dispensing facility location approved by a municipality or county pursuant to former s. 381.986(8)(b), Florida Statutes 2016, is not subject to the location requirements of this subsection.

(c) A medical marijuana treatment center dispensing facility may not be located within 500 feet of the real property that comprises a public or private elementary school, middle school, or secondary school unless the county or municipality approves the location through a formal proceeding open to the public at which the county or municipality determines that the location promotes the public health, safety, and general welfare of the community.

(d) This subsection does not prohibit any local jurisdiction from ensuring medical marijuana treatment center facilities comply with the Florida Building Code, the Florida Fire Prevention Code, or any local amendments to the Florida Building Code or the Florida Fire Prevention Code.

(12) Penalties.--

(a) A qualified physician commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, if the qualified physician issues a physician certification for the medical use of marijuana for a patient without a reasonable belief that the patient is suffering from a qualifying medical condition.

(b) A person who fraudulently represents that he or she has a qualifying medical condition to a qualified physician for the purpose of being issued a physician certification commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) A qualified patient who uses marijuana, not including low-THC cannabis, or a caregiver who administers marijuana, not including low-THC cannabis, in plain view of or in a place open to the general public; in a school bus, a vehicle, an aircraft, or a boat; or on the grounds of a school except as provided in s. 1006.062, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(d) A qualified patient or caregiver who cultivates marijuana or who purchases or acquires marijuana from any person or entity other than a medical marijuana treatment center violates s. 893.13 and is subject to the penalties provided therein.

(e) 1. A qualified patient or caregiver in possession of marijuana or a marijuana delivery device who fails or refuses to present his or her marijuana use registry identification card upon the request of a law enforcement officer commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, unless it can be determined through the medical marijuana use registry that the person is authorized to be in possession of that marijuana or marijuana delivery device.

2. A person charged with a violation of this paragraph may not be convicted if, before or at the time of his or her court or hearing appearance, the person produces in court or to the clerk of the court in which the charge is pending a medical marijuana use registry identification card issued to him or her which is valid at the time of his or her arrest. The clerk of the court is authorized to dismiss such case at any time before the defendant's appearance in court. The clerk of the court may assess a fee of \$5 for dismissing the case under this paragraph.

(f) A caregiver who violates any of the applicable provisions of this section or applicable department rules, for the first offense, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083 and, for a second or subsequent offense, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(g) A qualified physician who issues a physician certification for marijuana or a marijuana delivery device and receives compensation from a medical marijuana treatment center related to the issuance of a physician certification for marijuana or a marijuana delivery device is subject to disciplinary action under the applicable practice act and s. 456.072(1)(n).

(h) A person transporting marijuana or marijuana delivery devices on behalf of a medical marijuana treatment center or marijuana testing laboratory who fails or refuses to present a transportation manifest upon the request of a law enforcement officer commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(i) Persons and entities conducting activities authorized and governed by this section and s. 381.988 are subject to ss. 456.053, 456.054, and 817.505, as applicable.

(j) A person or entity that cultivates, processes, distributes, sells, or dispenses marijuana, as defined in s. 29(b)(4), Art. X of the State Constitution, and is not licensed as a medical marijuana treatment center violates s. 893.13 and is subject to the penalties provided therein.

(k) A person who manufactures, distributes, sells, gives, or possesses with the intent to manufacture, distribute, sell, or give marijuana or a marijuana delivery device that he or she holds out to have originated from a licensed medical marijuana treatment center but that is counterfeit commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For the purposes of this paragraph, the term “counterfeit” means marijuana; a marijuana delivery device; or a marijuana or marijuana delivery device container, seal, or label which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a licensed medical marijuana treatment center and which thereby falsely purports or is represented to be the product of, or to have been distributed by, that licensed medical marijuana treatment facility.

(l) Any person who possesses or manufactures a blank, forged, stolen, fictitious, fraudulent, counterfeit, or otherwise unlawfully issued medical marijuana use registry identification card commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(13) Unlicensed activity.--

(a) If the department has probable cause to believe that a person or entity that is not registered or licensed with the department has violated this section, s. 381.988, or any rule adopted pursuant to this section, the department may issue and deliver to such person or entity a notice to cease and desist from such violation. The department also may issue and deliver a notice to cease and desist to any person or entity who aids and abets such unlicensed activity. The issuance of a notice to cease and desist does not constitute agency action for which a hearing under s. 120.569 or s. 120.57 may be sought. For the purpose of enforcing a cease and desist order, the department may file a proceeding in the name of the state seeking issuance of an injunction or a writ of mandamus against any person or entity who violates any provisions of such order.

(b) In addition to the remedies under paragraph (a), the department may impose by citation an administrative penalty not to exceed \$5,000 per incident. The citation shall be issued to the subject and must contain the subject's name and any other information the department determines to be necessary to identify the subject, a brief factual statement, the sections of the law allegedly violated, and the penalty imposed. If the subject does not dispute the matter in the citation with the department within 30 days after the citation is served, the citation shall become a final order of the department. The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section. Each day that the unlicensed activity continues after issuance of a notice to cease and desist constitutes a separate violation. The department shall be entitled to recover the costs of investigation and prosecution in addition to the fine levied pursuant to the citation. Service of a citation may be made by personal service or by mail to the subject at the subject's last known address or place of practice. If the department is required to seek enforcement of the cease and desist or agency order, it shall be entitled to collect attorney fees and costs.

(c) In addition to or in lieu of any other administrative remedy, the department may seek the imposition of a civil penalty through the circuit court for any violation for which the department may issue a notice to cease and desist. The civil penalty shall be no less than \$5,000 and no more than \$10,000 for each offense. The court may also award to the prevailing party court costs and reasonable attorney fees and, in the event the department prevails, may also award reasonable costs of investigation and prosecution.

(d) In addition to the other remedies provided in this section, the department or any state attorney may bring an action for an injunction to restrain any unlicensed activity or to enjoin the future operation or maintenance of the unlicensed activity or the performance of any service in violation of this section.

(e) The department must notify local law enforcement of such unlicensed activity for a determination of any criminal violation of chapter 893.

(14) Exceptions to other laws.--

(a) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, a qualified patient and the qualified patient's caregiver may purchase from a medical marijuana treatment center for the patient's medical use a marijuana delivery device and up to the amount of marijuana authorized in the physician certification, but may not possess more than a 70-day supply of marijuana at any given time and all marijuana purchased must remain in its original packaging.

(b) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, an approved medical marijuana treatment center and its owners, managers, and employees may manufacture, possess, sell, deliver, distribute, dispense, and lawfully dispose of marijuana or a marijuana delivery device as provided in this section, s. 381.988, and by department rule. For the purposes of this subsection, the terms “manufacture,” “possession,” “deliver,” “distribute,” and “dispense” have the same meanings as provided in s. 893.02.

(c) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, a certified marijuana testing laboratory, including an employee of a certified marijuana testing laboratory acting within the scope of his or her employment, may acquire, possess, test, transport, and lawfully dispose of marijuana as provided in this section, in s. 381.988, and by department rule.

(d) A licensed medical marijuana treatment center and its owners, managers, and employees are not subject to licensure or regulation under chapter 465 or chapter 499 for manufacturing, possessing, selling, delivering, distributing, dispensing, or lawfully disposing of marijuana or a marijuana delivery device, as provided in this section, in s. 381.988, and by department rule.

(e) This subsection does not exempt a person from prosecution for a criminal offense related to impairment or intoxication resulting from the medical use of marijuana or relieve a person from any requirement under law to submit to a breath, blood, urine, or other test to detect the presence of a controlled substance.

(f) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section and pursuant to policies and procedures established pursuant to s. 1006.62(8), school personnel may possess marijuana that is obtained for medical use pursuant to this section by a student who is a qualified patient.

(g) Notwithstanding s. 893.13, s. 893.135, s. 893.147, or any other provision of law, but subject to the requirements of this section, a research institute established by a public postsecondary educational institution, such as the H. Lee Moffitt Cancer Center and Research Institute, Inc., established under s. 1004.43, or a state university that has achieved the

preeminent state research university designation under s. 1001.7065 may possess, test, transport, and lawfully dispose of marijuana for research purposes as provided by this section.

(15) Applicability.--This section does not limit the ability of an employer to establish, continue, or enforce a drug-free workplace program or policy. This section does not require an employer to accommodate the medical use of marijuana in any workplace or any employee working while under the influence of marijuana. This section does not create a cause of action against an employer for wrongful discharge or discrimination. Marijuana, as defined in this section, is not reimbursable under chapter 440.

(16) Fines and fees.--Fines and fees collected by the department under this section shall be deposited in the Grants and Donations Trust Fund within the Department of Health.

(17) Rules adopted pursuant to this section before July 1, 2019, are not subject to s. 120.541(3). Notwithstanding paragraph (8)(e), a medical marijuana treatment center may use a laboratory that has not been certified by the department under s. 381.988 until such time as at least one laboratory holds the required certification pursuant to s. 381.988, but in no event later than July 1, 2019. This subsection expires July 1, 2019.

Credits

Added by Laws 2014, c. 2014-157, § 2, eff. June 16, 2014. Amended by Laws 2016, c. 2016-123, § 1, eff. March 25, 2016; Laws 2016, c. 2016-145, § 24, eff. July 1, 2016; Laws 2017, c. 2017-232, §§ 1, 3, eff. June 23, 2017; Laws 2018, c. 2018-10, § 29, eff. July 1, 2018; Laws 2018, c. 2018-110, § 43, eff. May 10, 2018; Laws 2018, c. 2018-142, § 1, eff. March 30, 2018.

Editors' Notes

EXPIRATION

<Subsection (17) expires by its own terms on July 1, 2019.>

<Subsection (8)(a)5. expires by its own terms on April 1, 2020.>

<Laws 2017, c. 2017-232, § 1, provides:>

<“Legislative intent.--It is the intent of the Legislature to implement s. 29, Article X of the State Constitution by creating a unified regulatory structure. If s. 29, Article X of the State Constitution is amended or a constitutional amendment related to cannabis or marijuana is adopted, this act shall expire 6 months after the effective date of such amendment.”>

Notes of Decisions (1)

West's F. S. A. § 381.986, FL ST § 381.986

Current through the 2018 Second Regular Session of the 25th Legislature.

AGENDA ITEM REPORT

February 11, 2019

ITEM NUMBER: 10.

ITEM: Consideration and approval of an ordinance on **first** reading amending Chapter 5 1/4 of the Town Code creating the "Communications Rights-of-Way Ordinance" providing for registration for placing or maintaining communications facilities in the public rights of way. Enclosed is a copy of the proposed ordinance and supporting documents.

DESCRIPTION:

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk

ATTACHMENTS

1. Town of BHI CROW Ordinance - Final for First Reading1-20-19
2. Exec. Summary -CROW Ordinance
3. G. Resnick PowerPoint for Town of Bay Harbor Islands Town Council Meeting on 2-11-2019 (2)

TOWN OF BAY HARBOR ISLANDS, FLORIDA

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AMENDING THE CODE OF ORDINANCES OF THE TOWN OF BAY HARBOR ISLANDS BY AMENDING CHAPTER 5¼, SECTIONS 5¼-1 – 5¼-17, CREATING THE “COMMUNICATIONS RIGHTS-OF-WAY ORDINANCE,” AS PROVIDED HEREIN; PROVIDING INTENT AND PURPOSE, APPLICABILITY AND AUTHORITY TO IMPLEMENT; PROVIDING DEFINITIONS; PROVIDING FOR REGISTRATION FOR PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY; PROVIDING REQUIREMENT OF A PERMIT; PROVIDING APPLICATION REQUIREMENTS AND REVIEW PROCEDURES; PROVIDING FOR A PERFORMANCE CONSTRUCTION BOND; PROVIDING FOR CONSTRUCTION METHODS; PROVIDING DEVELOPMENT AND OBJECTIVE DESIGN STANDARDS; PROVIDING FOR FEES AND TAXES; PROVIDING ENFORCEMENT REMEDIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Town of Bay Harbor Island, Florida (“Town”) staff periodically reviews Town Ordinances and makes recommendations to the Town Council to revise its Ordinances; and

WHEREAS, the Town Council of the Town of Bay Harbor Islands has determined that the following amendments promote and protect the general health, safety and welfare of the residents of the Town of Bay Harbor Islands by regulating the siting of communications facilities and utility poles within the public rights-of-way; and,

WHEREAS, this Ordinance accommodates the growing needs and demand for communications services; and

WHEREAS, this Ordinance seeks to address expressly new communications facilities and technologies, while also protecting, preserving, and maintaining the public safety and aesthetic characters of areas where such public rights-of-way exist; and

WHEREAS, Section 337.401, Florida Statutes, addresses *inter alia*, the authority of local governments to regulate the placement and maintenance of communications facilities in the public rights-of-way; and

WHEREAS, Section 337.401(3)(g), Florida Statutes, provides that a local government may not use its authority over the placement of facilities in its rights-of-way as a basis for asserting or exercising regulatory control over a provider of communications services regarding matters within the exclusive jurisdiction of the Florida Public Service Commission or Federal Communications Commission, including, but not limited to, the operations, systems,

qualifications, services, service quality, service territory, and prices of a provider of communications services; and

WHEREAS, Chapter 610, Florida Statutes, addresses the provision of cable and video service in Florida, and provides: “Notwithstanding any other provision of law, a municipality... may require the issuance of a permit in accordance with and subject to s. 337.401 to a certificateholder that is placing and maintaining facilities in or on a public right-of-way in the municipality or county. In accordance with s. 337.402, the permit may require the permitholder to be responsible, at the permitholder’s expense, for any damage resulting from the issuance of such permit and for restoring the public right-of-way to its original condition before installation of such facilities. The terms of the permit shall be consistent with construction permits issued to other providers of communications services placing or maintaining communications facilities in a public right-of-way.” and

WHEREAS, in 2017, Florida enacted the Advanced Wireless Infrastructure Deployment Act, Section 337.401(7), *Florida Statutes* (“Wireless Act”); and

WHEREAS, the Wireless Act addresses local governments regulation of the installation of utility poles in the public rights-of-way to collocate small wireless facilities, and the placement and maintenance of small wireless facilities and micro wireless facilities in the public rights-of-way; and

WHEREAS, the Wireless Act provides that a local government may adopt by ordinance objective design standards requiring a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements, objective design standards requiring a new utility pole intended to support the collocation of small wireless facilities that replace an existing facility to be of substantially similar design, material, and color, and reasonable spacing requirements concerning the location of ground-mounted equipment; and

WHEREAS, the Wireless Act also provides that a local government may adopt by ordinance provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, municipal liability, and municipal warranties provided such provisions are reasonable and nondiscriminatory; and

WHEREAS, it is the Town Council’s intent to exercise its authority over the placement and maintenance of communications facilities in its rights-of-way to the full extent consistent with applicable state and federal law; and

WHEREAS, it is the Town Council’s further intent to treat each such communications services provider in a reasonable, nondiscriminatory, and competitively neutral manner in exercising such authority to the extent consistent with applicable law; and,

WHEREAS, the Town’s rights-of-way are essential for the travel of persons and the transport of goods throughout the Town and are a unique and physically limited resource requiring proper management by the Town to ensure public safety, maximize efficiency, minimize costs to Town taxpayers for the foregoing uses, reasonably balance the potential inconvenience to and

negative effects upon the public from the placement and maintenance of communications facilities in the rights-of-way against the substantial benefits that accrue from such placement and maintenance, and promote the public health, safety and general welfare; and

WHEREAS, a duly noticed public hearing as required by law was held by the Town Council of the Town of Bay Harbor Islands, at which public hearing all residents and interested persons were given an opportunity to be heard; and,

WHEREAS, the Town Clerk submitted the proposed ordinance to the Secretary of State pursuant to Section 337.401(3)(d); and

WHEREAS, the Town Council for the Town of Bay Harbor Islands, Florida finds and declares that this ordinance is in the best interest of the public health, safety and welfare of the citizens and residents of the Town of Bay Harbor Islands, Florida and that it advances a significant and important governmental interest,

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS as follows:

SECTION 1. **Recitals Adopted.** That each of the above stated recitals is hereby adopted and confirmed.

SECTION 2. **Town Code Amended.** The Town Council hereby amends Chapter 5¼, Sections 5¼-1 - 5¼-17 of the Code of Ordinances, Town of Bay Harbor Islands, Florida, as follows¹:

Chapter 5¼. – ~~TELECOMMUNICATIONS~~COMMUNICATIONS RIGHTS-OF-WAY

Sec. 5¼-1.- Title.

This chapter shall be known and may be cited as the “Town of Bay Harbor Islands ~~Telecommunications~~Communications Rights-of-Way Ordinance.”

Sec. 5¼-2. ~~Intent and Purpose.~~

~~It is the intent of the Town of Bay Harbor Islands to promote the public health, safety, and general welfare by providing for the use of the public rights-of-way within the town, to adopt and administer reasonable regulations consistent with state and federal law, including F.S. §§ 337.401, 362.01, and 337.29(3) and the town's home-rule authority in accordance with the provisions of the Telecommunications Act of 1996, to provide for the payment of compensation and other consideration by a telecommunications service provider to the town for the cost of regulating and maintaining the public rights-of-way and for the privilege of using the public rights-of-way within the town for constructing and maintaining telecommunications facilities, and to establish the reasonable regulations concerning the use of the public rights-of-way by all telecommunications service providers after the effective date of this chapter. In regulating its public rights-of-way, the town shall~~

¹ Words stricken through are intended to be deleted; words underlined are intended to be added.

~~be governed by and shall comply with all applicable federal, state and local laws and regulations.~~

The purpose of this chapter is:

- (1) To establish a competitively neutral policy for the use of public rights-of-way for communications facilities;
- (2) To protect the Town's investment in the public right-of-way by providing for the payment of nondiscriminatory fees for the use of the right-of-way by communications companies,
- (3) To regulate the placement and maintenance of structures and facilities in the public rights-of-way pursuant to F.S. § 337.401; and
- (4) To adopt and to administer reasonable rules and regulations not inconsistent with state and federal law, including the United States and Florida Constitutions, F.S. § 337.401, as it may be amended, the Town's home-rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996, the Spectrum Act, FCC regulations, and other federal and state law; to establish reasonable rules and regulations necessary to manage the placement and maintenance of communications facilities in the public rights-of-way by all communications services providers after the effective date of this Ordinance; and to minimize disruption to the public rights-of-way.
- (5) Applicability.
 - a. This Ordinance shall apply to all facilities for communications services placed or maintained in the Town public rights-of-way pursuant to Section 337.401, F.S., including but not limited to any person holding a certificate of franchise authority pursuant to Section 610.103, Florida Statutes, communications services providers, pass-through providers, and wireless providers. Persons seeking to place or maintain communications facilities on private property or other property to which the Town, any municipality, Miami-Dade County, or any governmental entity has a fee simple or leasehold interest in real property, not within and exclusive of the public rights-of-way, located within the jurisdictional boundaries of the Town shall comply with the applicable provisions of the Town Code, Chapter 5 1/3, Wireless Telecommunications Facilities, to the extent it applies, unless such property is addressed expressly in this Ordinance. This Ordinance is not applicable to communication facilities outside the public rights-of-way. Pursuant to this Ordinance, a person may be authorized to place or to maintain small wireless facilities, micro wireless facilities, fiber, cable, backhaul facilities or utility poles for collocation of small wireless facilities in the Town public rights-of-way. Wireless support structures, telecommunications towers and other wireless facilities, including but not limited to an antenna that is not part of a small wireless facility or micro wireless facility, shall not be allowed to be placed or maintained in the public rights-of-way, to the extent not inconsistent with applicable law. This Ordinance applies to the placement of conduit, fiber or cable for the purpose of providing backhaul or communications service. Consistent with Section 337.401, Florida Statutes, this Ordinance applies to a cable or video service provider that has

been issued and holds a certificate of franchise authority from the Florida Department of State pursuant to Chapter 610, Florida Statutes, that places or maintains a cable system or wireline facilities in the Town's public rights-of-way. This Ordinance shall not apply to wireless or communications facilities owned by the Town, and shall not apply to communications or wireless facilities owned by a person, including an electric cooperative, to the extent such facilities are utilized on an internal, non-commercial basis by said person. This Ordinance does not apply to the placement of electric utility poles for an electric distribution system located within the Town public rights-of-way pursuant to a valid franchise agreement with the Town. However, collocation of small wireless facilities on such utility poles and any other utility poles placed or maintained by a Town franchised utility in the public rights-of-way will be governed by the applicable provisions of this Ordinance. Ordinances approving a franchise agreement with an electric utility shall remain in full force and effect, notwithstanding any provision of this Ordinance.

- b. This Ordinance implements *inter alia*, the Advanced Wireless Infrastructure Deployment Act, Section 337.401(7), F.S. ("Wireless Act"). By adopting this Ordinance, the Town does not waive any rights with respect to the Wireless Act including any rights that may exist under federal law, the Florida Constitution and the U.S. Constitution. In the event the Wireless Act, Section 337.401(7), F.S., is repealed, amended, or overturned by a court of competent jurisdiction, or preempted by applicable federal law or regulation, in whole or in part, provisions of this Ordinance may no longer apply, in which case pending and future applications for small wireless facilities or utility poles intended to support the collocation of small wireless facilities in the public rights-of-way, will be governed by applicable law. In addition, permits issued pursuant to this Ordinance may be suspended or revoked, and facilities installed pursuant to this Ordinance or the Wireless Act may be required to be removed at the facility owner's expense, to the extent consistent with applicable law. It is the Town's intent not to create any vested rights in placing and maintaining facilities addressed in the Wireless Act in the public rights-of-way as a result of this Ordinance or any permit issued pursuant to this Ordinance, to the extent not inconsistent with applicable law.
- c. To the extent any provision of this Ordinance conflicts with the Code of Ordinances, this Ordinance shall control.
- d. This Ordinance shall be applicable to all communications facilities placed in the public rights-of-way on or after the effective date of this Ordinance, all pending applications for permits subject to this Ordinance, and shall apply to all existing communications facilities placed in the public rights-of-way prior to the effective date of this Ordinance, to the full extent permitted by state and federal law. A person with existing communications facilities in the public rights-of-way shall comply with the registration and permitting requirements set forth in this Ordinance by the earlier of the following: ninety (90) days from the effective date of this Ordinance or prior to the issuance of a permit pursuant to this Ordinance. This

provision shall not require removal or modification of communications facilities placed or maintained in the public rights-of-way pursuant to a previously issued permit or otherwise lawfully placed in the public rights-of-way prior to the effective date of this Ordinance, unless such facilities are abandoned or otherwise required to be altered or removed consistent with this Ordinance or applicable law. Notwithstanding this provision, to the extent not inconsistent with applicable law, the Town reserves its authority to require compliance with objective or stealth design standards that may require concealment such as a wrap or landscaping of existing communications facilities in the public rights-of-way.

- e. Reservation of rights. The Town reserves the right to amend this Ordinance as it shall find necessary in the lawful exercise of its police powers.
- (6) Authority to implement Ordinance. The Town Manager is authorized to adopt, to modify, and to repeal rules and regulations to carry out the intent and purposes of this Ordinance.

Sec. 5 ¼-3. - Definitions.

~~For the purpose of this chapter, the following terms, phrases, words and derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined herein or in any permit that might be granted hereunder shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. § 151 et seq., as amended (collectively the "Communications Act"), and, if not defined therein, as defined by Florida Statute; and, if not defined therein, be construed to mean the common and ordinary meaning.~~

~~*Gross receipts* shall mean all cash, credits or property of any kind or nature, with deductions for bad debt expense, reported as revenue items to the registrant's audited income statements arising from, or attributable to recurring local service revenues of registrant within the town. The town reserves the right to amend the definition contained herein as permitted by applicable law. The definition herein shall not be applicable as of October 1, 2001.~~

~~*Law* means any local, state or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, guideline or other requirements, as amended, now in effect or subsequently enacted or issued including, but not limited to, the Communications Act of 1934, 47 U.S.C. § 151 et seq. as amended by the Telecommunications Act of 1996, Pub L. No. 104-104 § 101(a), 110 Stat. 70, and all orders, rules, tariffs, guidelines and regulations issued by the Federal Communications Commission or the governing state authority pursuant thereto.~~

~~*Person* means any individual, corporation, partnership, association, joint venture, estate, trust, syndicate, fiduciary, organization or legal entity of any kind, and any lawful trustee, successor, assignee, transferee or personal representative thereof, and all other groups or~~

combinations and shall include the town to the extent the town obtains or holds a certificate under F.S. Ch. 364.

~~PSC means the Florida Public Service Commission.~~

~~Public rights-of-way means the surface, the airspace above the surface and the area below the surface of any public street, alley, viaduct, elevated roadway, bridge, public easement, or any other public way for which the town is the authority that has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law. Public rights-of-way shall not include any real or personal town property except as described above and shall not include town buildings, fixtures, or other structures or improvements, regardless of whether they are situated in the public rights-of-way.~~

~~Recurring local service revenues means revenues from the monthly recurring charges for local service, including but not limited to (1) recurring basic area revenues derived from the provision of flat-rated basic area services; (2) recurring optional extended area revenues derived from the provision of optional extended area services; (3) local private line revenues derived from local services which provide communication between specific locations, either through dedicated circuits, private switching arrangements, predefined transmission paths, whether virtual or physical, or any other method of providing such services; (4) revenues from the sale of local services for resale; and (5) other local service revenues from the provision of secondary features that are integrated with the telecommunications network, including, without limitation, services such as call forwarding, call waiting, and touchtone line service. Except as provided herein, revenues from all recurring local services provided by a registrant over a telecommunications facility or system in the public rights-of-way shall constitute recurring local service revenues subject to this chapter. Recurring local service revenues do not include revenues from (1) toll charges for the transmission of voice, data, video, or other information; (2) access charges paid by carriers for origination and/or termination of toll telephone service as defined in F.S. § 203.012(7) or other charges required by the Federal Communications Commission which are directly passed through to end users; (3) interstate service; (4) ancillary services such as directory advertising, directory assistance, detailed billing services, inside wire maintenance plans, bad check charges, and non-recurring charges for installation, move, changes or termination services; (5) cellular mobile telephone or telecommunications services; or specialized mobile telephone or telecommunications service; or specialized mobile radio, or pagers or paging service, or related ancillary services; (6) public telephone charges collected on site; (7) teletypewriter or computer exchange services as defined in F.S. § 203.012(6); or (8) local message rated (message, unit or time basis) and minutes of use charges in excess of the minimum flat-rated charges for similar services. This definition shall not be applicable as of October 1, 2001.~~

~~Registrant or facility owner shall mean a telecommunications company or other person which seeks to use or occupy the public rights-of-way that has registered with the town in accordance with the provisions of this chapter.~~

~~Registration and register shall mean the process described in section 5¼-4 whereby a telecommunications service provider provides certain information to the town.~~

~~Telecommunications company~~ has the meaning set forth in F.S. § 364.02(12) as amended. The term telecommunications company does not include an open video system or a cable service provider.

~~Telecommunications facilities, facilities or systems~~ means any facility, equipment or property, including, but not limited to, cables, conduits, converters, splice boxes, cabinets, handholes, manholes, vaults, equipment, drains, surface location markers, appurtenances, located, to be located, used, or intended to be used, in the public rights-of-way of the town to transmit, convey, route, receive, distribute, provide or offer telecommunications services. As of October 1, 2001, the term communications shall be substituted for telecommunications.

~~Telecommunications service~~ shall include, without limitation, the transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by and through electronic, radio, satellite, cable optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. Telecommunications service, as contemplated herein, does not include the provision of service via an open video system or a cable service which shall require separate authorizations from the town. As of October 1, 2001, the term communications shall be substituted for telecommunications.

~~Telecommunications service provider~~ shall refer to any person making available or providing telecommunications services, as defined herein, through the use of a telecommunications facility in the public rights-of-way. As of October 1, 2001, the term communications shall be substituted for telecommunications.

~~Town~~ means the Town of Bay Harbor Islands, an incorporated municipality of the State of Florida, in its present form or in any later reorganized, consolidated, or enlarged form.

As used in this chapter: the following terms, phrases, words and derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” and “will” are mandatory, and “may” is permissive. Words not otherwise defined in this Ordinance or in any permit that may be granted pursuant to this Ordinance shall be given the meaning set forth in the Communications Act of 1934, 47 U.S.C. §151 *et seq.*, as amended or the Spectrum Act, 47 U.S.C. §1455(a) (collectively the “Communications Act”), and if not defined in the Communications Act, as defined by Florida Statutes; and, if not defined by Florida Statutes, as defined in the Town Code, and if not defined in the Town Code, shall be construed to mean the common and ordinary meaning.

Abandonment or Abandoned shall mean the cessation of all uses of a communications facility for a period of one hundred eighty (180) or more consecutive days provided this term shall not include the cessation of all use of a communications facility within a physical structure where the physical structure continues to be used for some purpose or use accessory to the communications facility. By way of example, cessation of all use of a cable within a conduit, where the conduit continues to be used for some purpose or use accessory to the communications facility, shall not be Abandonment of a communications facility. A wireless infrastructure provider’s failure to have a wireless service provider provide service through a small wireless

facility collocated on a utility pole within nine (9) months after the application is approved in accordance with Section 337.401(7)(j), F.S., shall constitute abandonment. The terms Abandonment or Abandoned are not intended to include a dropped line from a potential or existing customer in the event the communications services provider reasonably anticipates future use of the dropped line.

Abut shall mean, when used in conjunction with a lot or parcel of land or public right-of-way, means a lot or parcel of land or public right-of-way that shares all or a part of a common lot line or boundary line with another lot or parcel of land or public right-of-way.

Adjacent Properties or *Properties Adjacent* shall mean (i) those lots or parcels of land that abut another lot or parcel of land or public right-of-way that is contiguous to a communications facility site or proposed site and (ii) the lots or parcels of land or public right-of-way that would be contiguous to lots or parcels or public rights-of-way but for an intervening local or collector roadway.

Antenna shall mean communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

Applicable Codes shall mean uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, including, but not limited expressly to the Florida Building Code, National Electrical Code, National Electrical Safety Code, 2010 Florida Department of Transportation Utility Accommodation Manual, the Florida Department of Transportation Manual on Traffic Control and Safe Practices, the State of Florida Manual of Uniform Minimum Standards for Design Construction and Maintenance for Streets and Highways, the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States, as may be amended, and Town codes or ordinances adopted to implement Section 337.401, *Florida Statutes*, including but not limited to this Ordinance. The term includes objective design standards adopted by this Ordinance that may require a new utility pole that replaces an existing utility pole to be of substantially similar design, material, and color or that may require reasonable spacing requirements concerning the location of ground-mounted equipment. The term includes objective design standards adopted by this Ordinance that may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements; however, such design standards may be waived by the Town upon a showing that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards impose an excessive expense.

Applicant shall mean a registrant who submits an application for a permit to locate a communications facility or utility pole within the public rights-of-way.

Application shall mean a request submitted by an applicant to the Town for a permit to collocate small wireless facilities or for any relief pursuant to this Ordinance.

As-Built Plans shall mean a set of final and complete drawings in a format as specified by

the Town submitted upon completion of a project, signed and sealed by professional surveyor or mapper as defined in Section 472.005, F.S., or licensed engineer, that reflect all changes made during the construction process, and show the exact dimensions, geometry and location of all elements of the work completed under the permit.

Authority shall mean the Town to the extent it has jurisdiction and control of the rights-of-way of any public road. The term does not include the Department of Transportation rights-of-way under the jurisdiction and control of the department, which are excluded from this Section.

Authority or Town Utility Pole shall mean utility pole owned by the Town in the public rights-of-way. The term does not include a utility pole owned by a municipal electric utility, a utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the rights-of-way within:

- (a) A retirement community that:
 - (i) Is deed restricted as housing for older persons as defined in Section 760.29(4)(b), Florida Statutes.
 - (ii) Has more than 5,000 residents; and
 - (iii) Has underground utilities for electric transmission or distribution.

Clear Zone shall mean the roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, recoverable slope, non-recoverable slope, clear runout area, or combination thereof. The width of the clear zone is dependent upon the traffic volumes and speeds, and on the roadside geometry.

Collocation or Collocate shall mean to install, mount, maintain, modify, operate, or replace one or more wireless facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way.

Communications facilities or facility or system shall mean the permanent or temporary plant, equipment, and property, including but not limited to cables, wires, conduits, ducts, fiber optics, poles, antennae, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, wireless facilities, wireless support structure, wireline backhaul facilities, small wireless facilities, micro wireless facility, utility poles for communications facilities other than utility poles installed pursuant to a valid franchise with an electric utility, and other equipment or pathway used to transmit, receive, distribute, provide or offer communications services. A utility pole intended for collocation of a small wireless facility shall be considered a facility for purposes of this Ordinance.

Communications Services shall means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable service and video service as defined in F.S. §§610.103(1) and (11), to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, including wireless services, regardless of the protocol used for such transmission or conveyance.

Communications Services Provider shall mean any person making available or providing communications services through the placement or maintenance of a communications facility in public rights-of-way, or a wireless infrastructure provider. A certificateholder as defined in Section 610.103(4), F.S. is a communications services provider pursuant to this Ordinance.

Communications Services Tax shall mean local communications services tax authorized to be levied and collected by counties and municipalities upon communication service providers for communications services, pursuant to Section 202.19, F.S. as amended.

Consolidated Permit Application shall mean a single permit application that would otherwise require individual permit applications for the collocation of between two (2) and thirty (30) small wireless facilities to existing structures within the public rights-of-way.

FCC shall mean the Federal Communications Commission.

Florida Building Code shall mean the Florida Building Code promulgated under Chapter 553, Florida Statutes and includes the applicable amendments thereto as both may be amended from time to time.

Florida Greenbook shall mean the latest edition of the Florida Department of Transportation Manual of Uniform Minimum Standards for Design, Construction and Maintenance of Streets and Highways.

Force Majeure Event shall mean a cause or event not within a person's control that shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within a person's control, and thus not constituting a force majeure event for purposes of this Ordinance, shall include, without limitation, the financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of person's directors, officers, employees, contractors or agents.

Graffiti shall mean any inscriptions, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed to any communications facility whether or not authorized by the registrant of the communications facility. A wrap shall not be considered graffiti.

Historic Property shall mean any prehistoric or historic district, site, building, object or other real or personal property, of historical, architectural or archaeological value. These properties or resources may include, but are not limited to, monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, engineering works, treasure troves, artifacts, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government, or culture of the Town.

Homeowners' Association shall mean an incorporated association whose members consist

of owners of single family homes or condominium units that manage or control property owned by the association.

In Public Rights-Of-Way or In The Public Rights-Of-Way shall mean in, on, over, under or across the public rights-of-way.

Licensed Engineer means a Florida Registered Professional Engineer, or a person who is exempt from such registration requirements as provided in F.S. § 471.003.

Lighting System on SR-922 or SR-922 Lighting System means the lighting system including light poles, attached signs, light fixtures, foundations, pull-boxes, conductors, conduits, load centers and all wiring form the tie-in location with the power company to the load center and from the load center to the components that make up the lighting system, that is referenced in the Memorandum of Agreement entered on March 20, 2008, as it may be amended, between the Town and the Florida Department of Transportation with respect to a roadway lighting system on SR-922 within the Town, in accordance with Town Resolution No. 1061, dated March 10, 2008, as it may be amended.

Lot shall mean a designated parcel of land established by plat, subdivision, or as otherwise permitted by law, to be used, developed, or built upon as a unit.

Micro Wireless Facility shall mean a small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, if any, no longer than 11 inches.

Ordinance or Chapter shall mean this Ordinance or Chapter of the Town Code.

Parcel shall mean any piece of real property that has a single parcel identification number assigned to it by the Miami-Dade County Property Appraiser.

Pass-through Provider shall mean any person who places or maintains a communications facility in the public rights-of-way and who does not remit taxes imposed by the Town pursuant to Chapter 202, F.S., as amended. A pass-through provider can also be a wireless infrastructure provider as defined herein, and/or an owner of a communications facility pursuant to this ordinance.

Permit shall mean the public right-of-way permit that must be obtained before a person may construct in the public right-of-way and shall include, but not be limited to, right-of-way engineering and construction permits issued by the Town.

Person shall include any individual, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, but shall not include the Town.

Place or Maintain or Placement or Maintenance or Placing or Maintaining shall mean to

erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A communications services provider that owns or exercises physical control over communications facilities in public rights-of-way, such as the physical control to maintain and repair, is *placing or maintaining* the facilities. To the extent required by applicable law, a party providing service only through resale or only through use of a third party's unbundled network elements is not *placing or maintaining* the communications facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the public rights-of-way is not *placing or maintaining* facilities in the public rights-of-way.

PSC shall mean the Florida Public Service Commission.

Public right-of-way or right-of-way shall mean a public right-of-way, public utility easement, highway, street, bridge, tunnel, waterway, dock, wharf, court, lane, path, or alley owned by the Town or for which the Town is the authority that has jurisdiction and control and may lawfully grant access to such property pursuant to applicable law; and includes the surface, the air space over the surface and the area below the surface of all public roads, streets, highways, alleys, boulevards, bridges, tunnels, public utility easements, and all public grounds. *Public rights-of-way* shall not include private property. *Public rights-of-way* shall not include any real or personal Town property except as described above, and shall not include Town parks, buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the *public rights-of-way*.

Registrant or Facility Owner shall mean a communications services provider or other person that has registered with the Town in accordance with the terms of this article.

Registration and Register shall mean the process described in this ordinance whereby a communications services provider provides certain information to the Town.

Shroud shall mean a covering or enclosure of equipment associated with a small wireless facility, other than the antenna, collocated on an existing structure or wireless support structure.

Signage shall mean any display of characters, ornamentation, letters or other display such as, but not limited to, a symbol, logo, picture, or other device used to attract attention, or to identify, or as an advertisement, announcement, or to indicate directions, including the structure or frame used in the display. The term Signage shall not include identification of the owner and contact information of the communications services provider or utility pole, or identification of wires, cables, etc. necessary to aid in safety or hazard work or maintenance or repair work of the communications facility.

Small Wireless Facility shall mean a wireless facility that meets the following qualifications:

- (a) Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and

(b) All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

Stealth Design shall mean a method of camouflaging any wireless support structure, antenna or other communications facility, including, but not limited to, supporting electrical or mechanical equipment, small wireless facility, or utility pole which is designed to enhance compatibility with the surrounding neighborhood and be as visually unobtrusive as possible.

Surrounding Neighborhood shall mean the area within a five hundred (500) foot radius of a communications facility site or proposed communications facility site.

Town shall mean the Town of Bay Harbor Islands, Florida, a municipal corporation of the State of Florida, in its present form or in any later reorganized, consolidated, or enlarged form.

Town Manager shall mean the Town of Bay Harbor Islands, Florida, Town Manager or his/her designee.

Utility shall mean any person or entity that is a local exchange carrier or an electric, gas, water, steam or other public utility, and who owns or operates appurtenant facilities or equipment that is situated within the public rights-of-way for transmission of such utility's goods, commodities or services.

Utility Pole shall mean a pole or similar structure that is used in whole or in part to provide communications services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure 15 feet in height or less, not including a lighting fixture that may be mounted on top of a pole, unless an authority grants a waiver for such pole.

Wireless Facility shall mean equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include:

- (a) The structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated;
- (b) Wireline backhaul facilities; or
- (c) Coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

Wireless Infrastructure Provider shall mean a person who has been certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures but is not a wireless services provider.

Wireless Provider shall mean a wireless infrastructure provider or a wireless services provider.

Wireless Services shall mean any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless facilities.

Wireless Services Provider shall mean a person who provides wireless services.

Wireless Support Structure shall mean a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless facilities. The term does not include a utility pole.

Wrap shall mean an aesthetic covering depicting artistic or scenic imagery. Imagery in a wrap may not contain any advertising.

Sec. 5¼-4. Registration- For Placing Or Maintaining Communications Facilities in Public Rights-Of-Way.

- (a) — ~~Each telecommunications service provider that desires to place, erect, construct, install, locate, maintain, repair, extend, expand, remove, or relocate any telecommunications facilities in, under, over or across any public rights-of-way in the town shall be considered to be using or occupying the rights-of-way and shall be required to register with the town in accordance with the terms of this chapter.~~
- (b) — ~~Any telecommunications provider desiring to use the public right-of-way shall file a registration with the town which shall include the following information:~~
 - (1) — ~~Identity of the applicant and name, address and telephone number of applicant's primary contact person in connection with the registration;~~
 - (2) — ~~A statement of whether the applicant presently provides retail services to any telecommunications services customers within the jurisdictional limits of the town at the time of registration or whether the applicant simply intends to lease its facilities to other telecommunication service providers who will be providing direct service to retail customers within the jurisdictional limits of the town. This information will allow the town to follow up, with the registrant, at the time the registrant begins to make physical use of the public rights-of-way, and allow the town to determine whether a liner mile charge is applicable in accordance with subsection 5¼-5(b) of this chapter;~~

- ~~(3) — Evidence of the insurance coverage required under this chapter and acknowledgement that registrant has received and reviewed a copy of this chapter;~~
 - ~~(4) — A copy of federal and/or state certification authorizing the applicant to provide telecommunications services; and~~
 - ~~(5) — A security fund in accordance with this chapter.~~
- ~~(c) — The town will review the information submitted by the applicant. Such review will be by the town manager or his or her designee. If the applicant submits information in accordance with subsection (b) above, the registration shall be effective and the town shall notify the applicant of the effectiveness of registration in writing. If the town determines that the information has not been submitted in accordance with subsection (b) above, the town shall notify the applicant of the noneffectiveness of registration, and reasons for the noneffectiveness, in writing. The town shall so reply to an applicant within 30 days after receipt of registration information from the applicant. A registrant may cancel a registration upon written notice to the town noticing that it will no longer maintain facilities in the public rights-of-way and will no longer need to pull permits to perform work in public rights-of-way. Within 30 days of any change in the information required to be submitted pursuant to this section, the registrant shall provide updated information to the town.~~
- ~~(d) — registration shall not convey title, equitable or legal, in the public right-of-way. Registrants may only occupy public rights-of-way for telecommunications facilities. Registration does not excuse a telecommunications provider from obtaining appropriate access or pole attachment before locating its facilities on another person's facilities. Registration does not excuse a provider from complying with all applicable town ordinances, including this chapter.~~
- ~~(e) — Each application for registration or transfer shall be accompanied by a nonrefundable application fee in the amount of \$800.00. The fee amount shall be equal to the town's costs and expenses incurred in connection with approving the registration, transfer or renewal. If the application fee is insufficient to cover all costs or expenses incurred by the town in connection with approval of the registration or transfer the applicant shall reimburse the town for any such costs and expenses in excess of the application fee. Fee amounts may be amended from time to time, by resolution of the town commission, for the purpose of complying with this provision.~~
- ~~(f) — Registration with the town shall be nonexclusive. Registration does not establish any priority for the use of the public right-of-way by a registrant or any other registrants. Registrations are expressly subject to any future amendment to or replacement of this chapter and further subject to any additional town ordinances, as well as any state or federal laws that may be enacted during the term of the registration.~~
- (a) All persons seeking to place or maintain a communications facility, including but not limited to a cable system, fiber, backhaul facility, or utility pole for collocation

of a small wireless facility in the public rights-of-way in the Town pursuant to this Ordinance shall first register with the Town in accordance with this Ordinance before being eligible to receive a permit. Subject to the terms and conditions prescribed in this Ordinance and approval of a permit if necessary, a registrant may place or maintain a communications facility in public rights-of-way. A communications services provider, pass-through provider, or wireless infrastructure provider with an existing communications facility in the public rights-of-way of the Town as of the effective date of this Ordinance shall comply with the terms of this Ordinance, including, but not limited to obtaining an effective registration, or be in violation thereof, by the earlier of the following: ninety (90) days from the effective date of this Ordinance or prior to the issuance of a permit by the Town pursuant to this Ordinance. This provision shall not require removal or modification of communications facilities placed or maintained in the public rights-of-way pursuant to a previously issued permit prior to the effective date of this Ordinance unless such facilities are abandoned or otherwise required to be altered or removed. To the extent not inconsistent with applicable law, each registration, transfer or renewal shall be accompanied by a nonrefundable fee in the amount of \$800.00. The fee amount is intended to be equal to the Town's costs and expenses incurred in connection with processing the registration, transfer or renewal. If the fee is insufficient to cover all costs or expenses incurred by the Town in connection with the processing of the registration, transfer or renewal, the applicant shall reimburse the Town for any such costs and expenses in excess of the fee. Fee amounts may be amended from time to time, by resolution of the Town Council, for the purpose of complying with this provision.

(b) Requirements for an effective registration. A person that desires to place or maintain a communications facility including but not limited to a utility pole for collocation of a small wireless facility in the public rights-of-way in the Town shall file four complete originals in a format designated by the Town that shall include the following information:

- (1) Name of the registrant;
- (2) Name, address and telephone number of the registrant's primary contact person in connection with the registration and name, address, telephone number and email addresses of the registrant's primary contact person in the event of an emergency or issue involving its facilities, which shall be monitored 24 hours per day, 7 days per week.
- (3) Whether the registrant provides or intends to provide communications services within the Town, and if it does not provide or intend to provide communications within the Town, indicate that the registrant is a communications facility provider, wireless infrastructure provider, or pass-through provider, or may seek to place and maintain a facility to provide services other than communications services, as the case may be, and whether the registrant currently remits or intends to remit Communications

Service Tax for distribution to the Town, as authorized in Ch. 202, F.S.;

- (4) Evidence of the insurance coverage required under this Ordinance;
- (5) Acknowledgment that registrant has received and reviewed a copy of this Ordinance;
- (6) A copy of the registrant's certificate of authorization, public convenience and necessity, or other similar certification or licenses issued by the Florida Public Service Commission, the Florida Department of State, the FCC, or other federal authority. A copy of federal or state certification authorizing the registrant to provide communications services, if any;
- (7) Documentation demonstrating that if the registrant is an individual, that the registrant is a resident of Florida, or if the registrant is a corporation that the registrant is organized under the laws of Florida or licensed to do business within Florida, or, as applicable, a statement that the registrant is not a resident or organized or licensed to do business within Florida; and
- (8) A permanent performance bond as described herein to guarantee compliance in accordance with this Ordinance.

(c) Insurance.

- (1) Registrant shall provide, pay for and maintain satisfactory to the Town, the types of insurance described herein. All insurance shall be from responsible companies duly authorized to do business in the state of Florida and having a rating in Best's Insurance Guide of A or better, or having a rating acceptable to the Town. All liability policies shall provide that the Town is an additional insured in the endorsement. Thirty-days advance written notice by registered or certified mail must be given to the Town of any cancellation, intent not to renew, or reduction in the policy coverages. As evidence of compliance with the insurance required herein, the registrant shall furnish the Town with a fully completed satisfactory Certificate of Insurance evidencing all coverage required. Also, the registrant shall provide a copy of the actual additional insured endorsement as issued on the Commercial General Liability policy, signed by an authorized representative of the insurer(s) verifying inclusion of the Town of Bay Harbor Islands and its members, officials, officers and employees as additional insureds in the Commercial General Liability coverage. Such documents shall be filed and maintained with the Town annually. In addition to the certificate of insurance, the registrant shall provide a copy of the insurance policy, if requested by the Town.
- (2) The limits of coverage of insurance required shall be not less than the following:

- i. Worker's compensation and employer's liability. Insurance employer's liability: Such insurance shall be no more restrictive than that provided by the Standard Workers' Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance, without restrictive endorsements. The minimum amount of coverage (inclusive of any amount provided by an umbrella or excess policy) shall be:

<u>Part One:</u>	<u>“Statutory” Coverage A when required by Florida Statute 440 as amended</u>
<u>Part Two:</u>	<u>\$1,000,000 (Each Accident)</u>
	<u>\$1,000,000 (Disease-Policy Limit)</u>
	<u>\$1,000,000 (Disease-Each Employee)</u>

The Workers’ Compensation Policy must be endorsed to waive the insurer’s right to subrogate against the Town and the Town Council members, officials, officers, agents and employees in the manner which would result from the attachment of the NCCI Waiver Of Our Right to Recover From Others Endorsement (Advisory Form WC 00 03 13) with Town and the Town Council members, officials, officers, agents and employees scheduled thereon.

- ii. Comprehensive general liability. Such insurance shall be no more restrictive than that provided by the most recent version of standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida without any restrictive endorsements, other than those required by ISO or the State of Florida. Said coverage shall not exclude contractual liability, products/completed operations, explosion, collapse, and underground property damage, subcontractors or independent contractors. The Town of Bay Harbor Islands, and its members, officials, officers and employees shall be included as “Additional Insureds” on a form no more restrictive than the latest edition of ISO Form CG 20 10 (Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization Endorsement). The minimum limits (inclusive of amounts provided by an umbrella or excess policy) shall be:

<u>General Aggregate</u>	<u>\$3,000,000</u>
<u>Products/Completed Operations Aggregate</u>	<u>\$3,000,000</u>
<u>Personal and Advertising Injury</u>	<u>\$3,000,000</u>
<u>Each Occurrence</u>	<u>\$3,000,000</u>

The insurance provided by Registrant shall apply on a primary basis. Any insurance, or self-insurance, maintained by the Town of Bay Harbor Islands shall be excess of, and shall not contribute with, the

insurance provided by Registrant.

- iii. Automobile liability. Such insurance shall be no more restrictive than that provided by Section II (Liability Coverage) of the most recent version of standard Business Auto Policy (ISO Form CA 00 01) without any restrictive endorsements, including coverage for liability contractually assumed. The policy shall cover all owned, non-owned, and hired autos used in connection with the performance of the work. The minimum limits (inclusive of any amounts provided by an umbrella or excess policy) shall be:

<u>Each Occurrence Bodily Injury and Property Damage Liability Combined</u>	<u>\$3,000,000</u>
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- iv. Umbrella or excess liability. Registrant may satisfy the minimum limits required above for either commercial general liability, business auto liability and employer's liability coverage under umbrella or excess liability. The umbrella or excess liability shall have an aggregate limit not less than the highest "each occurrence" limit for commercial general liability, business auto liability or employer's liability. The Town shall be specifically endorsed as an "additional insured" on the umbrella or excess liability, unless the certificate of insurance states the umbrella or excess liability provides coverage on a "follow-form" basis.
- v. Self-insurance. Registrant may satisfy the insurance requirements and conditions of this division under a self-insurance plan and/or retention if acceptable to the Town in its sole discretion based on the Town's evaluation of the registrant's ability to comply with the Town Code. Registrant agrees to notify the Town, and/or indicate on the certificate(s) of insurance when self-insurance is relied upon or when a self-insured retention meets or exceeds \$100,000. The Town reserves the right, but not the obligation, to request and review a copy of the registrant's most recent annual report or audited financial statement, which the registrant agrees to furnish for the purpose of determining the registrant's financial capacity to self-insure.

- (3) Right to review. Town, by and through its risk manager, reserves the right to review, to reject or to accept any required policies of insurance or self-insurance, including limits, coverages, or endorsements herein from time to time throughout the life of this Ordinance. The Town reserves the right, but not the obligation, to review and reject any insurer or self-insurer providing coverage because of its poor financial condition or failure to operate legally.

- (4) This Ordinance shall not be construed to affect in any way the Town's rights,

privileges and immunities as set forth in F.S. §768.28. Insurance under this division shall run continuously with the presence of the registrant's facilities in the public rights-of-way, and any termination or lapse of such insurance shall be a violation of this Ordinance. Notwithstanding the foregoing, the Town may, in its sole discretion, require increased or decreased levels of insurance.

- (d) Permanent Performance Bond to Guarantee Compliance. For an effective registration, a registrant shall file with the Town, for Town approval, a permanent performance bond in the amount of twenty-five thousand dollars (\$25,000), in the form of a cash deposit or irrevocable letter of credit. Any cash deposit shall be held in a Town account or separate account and used only for the purposes contained in this Ordinance. The letter of credit shall be issued by a financial institution within Miami-Dade County and shall be in a form and issued by a financial institution acceptable to the Town Attorney. The permanent performance bond shall be conditioned on the full and faithful performance by the registrant of all requirements, duties and obligations imposed upon the registrant by the provisions of this Ordinance, including but not limited to requirements to restore the public rights-of-way and guarantee such restoration, remove any abandoned communications facilities, indemnify the Town as required herein, pay appropriate compensation to the Town, and pay for any damage to Town or other facilities in the public rights-of-way. The permanent performance bond shall not be deemed to be a fee, tax or other imposition on a registrant in its capacity, if applicable, as a dealer of communications services or as compensation for use of the public rights-of-way and shall not be used as such by the Town. Should the Town draw upon the permanent performance bond, the Town shall promptly notify the registrant, and the registrant shall promptly restore the cash deposit and/or letter of credit, as may be necessary, to the full amount. In the event a registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this Ordinance, subject to provisions for notice in this Ordinance, there shall be recoverable from the permanent performance bond, any damages or loss suffered by the Town as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, plus a reasonable allowance for attorneys' fees. The cash deposit and instruments of the permanent performance bond shall be furnished as frequently as necessary to provide a continuing guarantee of the registrant's full and faithful performance at all times. A registrant may request that the Town return the permanent performance bond or approve the cancellation of the permanent performance bond upon the expiration of a registrant's obligations pursuant to the Town Code but in no event while a registrant maintains obligations with respect to facilities in the public rights-of-way. If the Town determines that a cash deposit should be returned, it shall return the cash deposit to the registrant without interest.
- (e) Review of Registration. The Town shall review the information submitted by the registration applicant. If the applicant submits information in accordance with this subsection the Town shall notify the applicant of the effectiveness of registration

in writing. If the Town determines that the information has not been submitted in accordance with this subsection, the Town shall notify the applicant in writing of the non-effectiveness of registration, and reasons for the non-effectiveness. The Town shall undertake efforts to so notify an applicant within 30 days after receipt of registration information from the applicant. A notice of non-effectiveness of a registration shall not preclude an applicant from reapplying.

(f) Regulations Applicable to Registrations.

- (1) A registration shall not convey any title, equitable or legal, in the public rights-of-way. Within 30 days of any change in the information required to be submitted by a registrant, a registrant shall provide updated information to the Town.
- (2) Registration shall be nonexclusive. Registration shall not establish any right or priority to place or maintain a communications facility in any particular area in public rights-of-way within the Town. Registrations are expressly subject to any future amendment to or replacement of this Ordinance, and further subject to any additional Town ordinances, as well as any applicable state or federal laws.
- (3) Unregistered use of public rights of way. To the extent that a person with communications facilities in the public rights-of-way, is not registered as required herein, said person shall register with the Town pursuant to this Ordinance within ninety (90) days from the effective date of this Ordinance. No new permits shall be issued to unregistered persons with communications facilities within the public rights-of-way.
- (4) Registration renewal. A registrant shall renew its registration with the Town by April 1 of even-numbered years in accordance with the registration requirements in this Section, as may be amended, except that a registrant that initially registers during the even-numbered year when renewal would be due, or the odd-numbered year immediately preceding such even-numbered year, shall not be required to renew until the next even-numbered year. If no information in the then-existing registration has changed, the renewal may state that no information has changed. Upon request of the Town in conjunction with the renewal of a registration, a registrant shall provide at its costs as built plans that have not previously been provided, updated maps or other information showing the location of its facilities within the Town public rights-of-way. Failure to renew a registration may result in the Town restricting the issuance of additional permits.
- (5) Indemnification. A registrant shall, at its sole cost and expense, indemnify, hold harmless and defend the Town, its officials, boards, members, agents and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the Town arising out of the placement or maintenance

of its communications system or facilities in public rights-of-way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this Ordinance, or permit issued by the Town, provided however, a registrant shall not be required to indemnify the Town for the gross negligence, wanton or willful acts of the Town. This provision includes, but is not limited to, the Town's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. Town agrees to notify the registrant, in writing, within a reasonable time of Town receiving notice of any issue it determines may require indemnification. Nothing in this Ordinance shall prohibit the Town from participating in the defense of any litigation by its own counsel and at its own cost, if in the Town's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this Ordinance shall be construed or interpreted:

- i. as denying to either party any remedy or defense available to such party under the laws of the state of Florida;
- ii. as consent by the Town to be sued; or
- iii. as a waiver of sovereign immunity beyond the waiver provided in F.S. §768.28, as it may be amended.

(6) A registrant may cancel a registration upon written notice to the Town that the registrant will no longer place or maintain any communications facilities in public rights-of-way. No liens shall apply to public rights-of-way or Town property as a result of the placement or maintenance of a registrant's facilities in the public rights-of-way or on a Town utility pole. In the event any liens are filed on the Town property or public rights-of-way, the registrant shall discharge such lien at its expense within ten (10) days of receiving notice, or the Town may discharge such lien, and charge such costs plus reasonable attorney's fees to registrant.

(7) A registrant shall pay or reimburse the Town, as applicable, for any personal property or other taxes or assessments that may be imposed on the registrant's facilities placed or maintained in the public rights-of-way or on a Town utility pole as a result of a registrant's collocation.

(8) Reports and records.

(a) Upon reasonable request, a registrant shall provide the following documents to the Town as received or filed:

- i. Any pleadings, petitions, notices, and documents, which may directly impact the obligations under this Ordinance and which are reasonably necessary for the Town to protect its interests under this Ordinance.
- ii. Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.

- (b) The Town shall keep any documentation, books and records of the registrant confidential to the extent required under Florida Statutes.
- (9) Termination of Registration. The Town may terminate a registration if:
 - (a) A federal or state authority suspends, denies, or revokes a registrant's certification or license required to provide communications services;
 - (b) The registrant's placement or maintenance of a communications facility in the public rights-of-way presents an extraordinary danger to the general public or other users of the public rights-of-way and the registrant fails to remedy the danger promptly after receipt of written notice;
 - (c) The registrant abandons its facilities in the public rights-of-way; or
 - (d) The registrant commits substantial and material violations of any of the provisions of applicable codes including but not limited to this Ordinance.
- (10) Notice of intent to terminate. Prior to termination, the Town shall notify the registrant with a written notice setting forth all matters pertinent to the proposed termination action, including the reason therefore. The registrant shall have thirty (30) days after receipt of such notice within which to address or to eliminate the reasons or within which to present a plan, satisfactory to the Town, to accomplish the same and to take such steps as are necessary to render every portion of the facilities remaining in the public rights-of-way safe. If the plan is rejected by the Town, the Town shall provide written notice of such rejection within fifteen (15) days of receipt of the plan to the registrant and shall make a final determination as to termination of the registration and the terms and conditions relative thereto.
- (11) Post termination action. In the event of termination, following any appeal period, the former registrant shall: (a) in accordance with the provisions of this Ordinance and as may otherwise be provided under state law, notify the Town of the assumption or anticipated assumption by another registrant of ownership of the registrant's communications facilities in the public rights-of-way; or (b) provide the Town with an acceptable plan for removal or disposition of its communications facilities in the public rights-of-way and restore the public rights-of-way to its condition immediately prior to the removal. If a registrant fails to comply with this subsection, the communications facilities are deemed to be abandoned and the Town may exercise any remedies or rights it has at law or in equity as well as the Town's remedies pursuant to this Ordinance. The obligations of the registrant hereunder shall survive the termination of a registration. A registrant that has its registration terminated by the Town under this

Ordinance may reapply for registration one (1) year after the termination date of the prior registration, unless otherwise permitted to reapply at the sole discretion of the Town.

- (12) In the event of termination of a registration, this Ordinance does not authorize the Town to cause the removal of communications facilities used to provide another service for which the registrant or another person who owns or exercises physical control over the communications facilities holds a valid certification or license with the governing federal or state agency, if required, for the provision of such service, and is registered with the Town, if required.
- (13) If a registrant transfers, sells or assigns its registration or its facilities in the public rights-of-way, incident to a transfer, sale or assignment of the registrant's assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this Ordinance. Written notice of any such transfer, sale or assignment shall be provided to the Town within 20 days of the effective closing date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current registrant, and is in compliance with the provisions of this Ordinance, then the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant, or has an effective registration that is not in compliance with this Ordinance as it may have been amended, then the transferee, buyer or assignee shall register as provided in this Ordinance within 60 days of the transfer, sale or assignment. If permit applications are pending in the registrant's name, the transferee, buyer or assignee shall notify the appropriate Town officials that the transferee, buyer or assignee is the new applicant.
- (14) Town makes no warranties or representations regarding the fitness, suitability or availability of public rights-of-way for the registrant's communications facilities. Any performance of work or costs incurred by registrant or provision of services shall be at registrant's sole risk. Nothing in this Ordinance shall affect the Town's authority to add, vacate or abandon public rights-of-way, and the Town makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for communications facilities.
- (15) In the event registrant desires to use its existing facilities or to construct new facilities for the purpose of providing other utility or non-utility services to existing or potential consumers or resellers, by providing any other services other than the provision of communications service, or for providing any other use to existing or potential consumers, a registrant shall seek such additional and separate authorization from the Town for such activities as may be required by applicable law.

Sec. 5¼-5. ~~Fees and payments~~Requirement of a Permit.

(a) ~~— In consideration for the rights, privileges and permission granted hereunder, a registrant hereunder shall pay to the town annually a sum equal to one percent of gross receipts of the registrant on recurring local service revenues for services provided within the corporate limits of the town. Included within such one percent maximum fee or consideration are all taxes, licenses, fees, in-kind contributions accepted pursuant to Florida Statute, Section 337.401(5), and other impositions except ad valorem taxes and amounts for assessments for special benefits, such as sidewalks, street pavings, and similar improvements, and occupational license taxes levied or imposed by the town upon a registrant. In the event that applicable law currently permits or is amended to permit the town to collect a fee higher than one percent or permits the town to calculate the fee on revenues not specified herein, the registrant shall pay following written notice from the town, its fee payments to the town to that higher amount on the effective date of such law. In the event applicable law is amended to require the town to collect a fee lower than the current statutory limit, the town shall take all necessary steps to conform the requirements hereof to applicable law. All of the aforestated payments shall be made to the town quarterly, with such payments made within 20 days following the end of each calendar quarter. Payments received after the due date stated herein shall be subject to interest in accordance with the interest rate identified in F.S. § 55.03 or its successors.~~

(b) ~~— A registrant, that makes physical use of the public rights-of-way and who is not providing telecommunications services as defined in F.S. § 203.012(3) or, as of October 1, 2001, a registrant that makes physical use of the public rights-of-way and who is not directly providing communications services to a customer at retail within the jurisdictional limits of the town at the time the registrant begins to make physical use of the public rights-of-way, shall pay to the town annually no less than \$500.00 per linear mile of any cable, fiber optic, or other pathway that makes physical use of the public rights-of-way. The town may adopt additional fees or other consideration, provided that any fee or other consideration imposed by the town in excess of \$500.00 per linear mile shall be applied in a nondiscriminatory manner and shall not exceed the sum of:~~

- ~~(1) — Costs directly related to the inconvenience or impairment solely caused by the disturbance of the public rights-of-way;~~
- ~~(2) — The reasonable cost of the regulatory activity of the town; and~~
- ~~(3) — The proportionate share of cost of land for such street, alley or other public way attributable to utilization of the public rights-of-way by a telecommunications service provider.~~

~~The fee or other consideration imposed pursuant to this subsection shall not apply in any manner to any telecommunications company which provides telecommunications services as defined in F.S. § 203.012(3) for any services provided by such telecommunications company.~~

- ~~(c) — Notwithstanding anything herein to the contrary, the town shall at all times hereby require the maximum compensation allowed under applicable law.~~
- ~~(d) — Except to the extent prohibited by applicable law:~~
- ~~(1) — The fee payments to be made pursuant to this section shall not be deemed to be in the nature of a tax;~~
 - ~~(2) — Such fee payments shall be in addition to any and all taxes of a general applicability;~~
 - ~~(3) — A registrant shall not have or make any claim for any deduction or other credit of all or any part of the amount of said fee payments from or against any of said town taxes or other fees or charges of general applicability which registrant is required to pay to the town, except as required by law; and~~
 - ~~(4) — The fee specified herein is the consideration for use of the public rights-of-way, including all public easements, for the purpose of installing and maintaining a telecommunications facility.~~
- ~~(e) — The payments required under subsection (a) shall not apply as of October 1, 2001. Additionally, after October 1, 2001, subsection 5(b) shall continue to apply to any person or entity that does not directly provide communications services to a customer at retail within the jurisdictional limits of the town at the time the person or entity makes physical use of the rights-of-way.~~
- (a) In accordance with applicable law, Town ordinances, codes and regulations, including this Ordinance, a right-of-way use permit issued by the Town shall be required for any person to place or to maintain a communications facility in the public rights-of-way unless otherwise exempt pursuant to this Ordinance. An effective registration shall be a condition of obtaining a permit. A permit may be obtained by or on behalf of a registrant if all permitting requirements are met. The Town may grant to any person who is a resident of Florida, or to any corporation which is organized under the laws of Florida or licensed to do business within Florida, the use of a right-of-way for the communications facility in accordance with such rules or regulations as the Town may adopt. No communications facility shall be installed, located, or relocated unless authorized by a written permit issued by the Town, unless otherwise authorized herein. Permits shall apply only to the areas of public rights-of-way specifically identified in the permit. The Town may issue a blanket permit to cover certain activities, such as routine maintenance and repair activities, that may otherwise require individual permits or may impose lesser requirements.
- (b) Limited Exceptions to Permit Requirement.
- (1) A registrant shall be allowed to perform emergency maintenance within the public rights-of-way without first obtaining a permit or providing a performance bond. The term “emergency” shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service. Prior to performing such emergency maintenance, the Registrant shall notify the Town through

appropriate means, including through notification to the Town's Police Department if necessary, so that the Town could have an observer present. The registrant shall provide prompt notice to the Town of the placement or maintenance of a communications facility in public rights-of-way in the event of an emergency and, within ten (10) days of completing the emergency maintenance, apply for a permit if such activity required a permit.

- (2) A registrant shall be allowed to perform routine maintenance within the public rights-of-way if such proposed routine maintenance does not involve excavation, construction, or disruption of transportation in the public rights-of-way. In the case of routine maintenance, a registrant shall provide reasonable advance written notice to the Town identifying the areas where such maintenance will occur, scope of maintenance, date(s) and duration of work to be performed. If routine maintenance requires the closure of the public rights-of-way, a permit shall be required.
- (3) A permit shall not be required for replacement of existing wireless facilities with wireless facilities that are substantially similar or of the same or smaller size. Any maintenance or replacement that involves a Town utility pole or Town utility shall not be performed without providing reasonable prior notice, at least 72 hours, to the Town.
- (4) A registrant shall be allowed to place or to maintain a service drop within the public rights-of-way without first obtaining a permit if such proposed work does not involve excavation, construction, or the temporary closure of the public rights-of-way.
- (5) A registrant shall not be required to obtain a permit for the installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cable strung between existing utility poles in the public rights-of-way, in compliance with applicable codes by or for a communications services provider authorized to occupy the public rights-of-way and who is remitting Communications Services Tax under Chapter 202, Florida Statutes. Prior to placing a micro wireless facility in the public rights-of-way pursuant to this subsection, at least thirty (30) days prior to commencing said work, the registrant shall submit a certification or manufacturer's specifications with the micro wireless facility's dimensions to the Town for review. A registrant's submission to demonstrate a micro wireless facility's dimensions may apply to all identical micro wireless facilities sought to be placed in the public rights-of-way by such registrant, and the registrant is not required to submit a new certification or manufacturer's specifications unless the registrant seeks to place a micro wireless facility by a different manufacturer or with different dimensions in the public rights-of-way. If the micro wireless facility's dimensions exceed the dimensions to constitute a micro wireless facility, the registrant shall not

be authorized to place such facility in the public rights-of-way.

- (c) The Town Manager may cause an immediate stop work order where any permitted or unpermitted construction or other work in the public rights-of-way poses a serious threat to the health, safety or welfare of the public until such serious threat has been abated. Failure to comply with such order may subject a registrant, and its agents, employees, and contractors as applicable, to appropriate enforcement remedies as set forth in this Ordinance and applicable law.

Sec. 5¼-6. – Reports and Records: Permit Application Requirements and Review Procedures.

- (a) ~~— The town may, at its option, upon 60 days notice to the registrant, but in no event more often than once per year, examine the records and accounting files, and such other books and records, if such records relate to the calculation of fee payments. The examination of such books, accounts, records or other materials necessary for determination of compliance with the terms, provisions, and requirements of this chapter shall be during regular hours of business of the registrant at an office of the registrant located within the county, or at another location satisfactory to the town. In the event that the town, pursuant to an audit, determines that there exists a discrepancy in the amount paid and the amount owed to the town by the registrant in excess of two percent, registrant shall pay all reasonable costs, fees and expenses of the audit. This paragraph shall not apply for periods after October 1, 2001.~~
- (b) ~~— Upon reasonable request, a registrant shall provide the following documents to the town as received or filed:~~
- (1) ~~— Any pleadings, petitions, notices, and documents, regarding any legal proceeding involving any provisions of this chapter which are reasonably necessary for the town to protect its interests under this chapter.~~
- (2) ~~— Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy.~~
- (3) ~~— Nothing in this section shall affect the remedies the registrant has available under applicable law.~~
- (c) ~~— In addition, the town may, at its option, and upon reasonable notice to the registrant, inspect the facilities in the public rights-of-way to ensure the safety of its residents.~~
- (d) ~~— The town shall keep any documentation, books and records of the registrant confidential to the extent required under Florida Statutes.~~
- (a) Pre-application meeting. To minimize issues related to a permit application, prior to applying for a permit, to the extent not inconsistent with applicable law based on the facilities proposed to be place within the public rights-of-way, a registrant shall conduct a pre-submittal meeting with the Town to discuss the registrant’s plans and network goals for placing or maintaining facilities in the public rights-of-way. The

Town shall undertake efforts to accommodate a registrant's request for a pre-submittal meeting within ten (10) business days of a request. At a registrant's request, the Town, in its sole discretion, may waive the requirement of a pre-submittal meeting for good cause based on the scope of the proposed permit and registrant's compliance with this Ordinance. In no event shall a pre-submittal meeting be waived for a consolidated permit if applicable law does not prohibit such pre-application meeting for any of the facilities that are the subject of the consolidated permit. For example, if the consolidated permit includes a small wireless facility of 6 cubic feet, a pre-application meeting shall be required. Even if a pre-application meeting is inconsistent with applicable law, registrants are strongly encouraged to engage in a pre-application meeting.

(b) Application requirements for all communications facilities in the public rights-of-way. As part of any permit application to place or maintain any facility pursuant to this Ordinance in the public rights-of-way, a registrant or a registrant's agent or contractor shall provide four originals of a permit application in the designated format with the Town that sets forth information required on the Town's application form, including, at a minimum, the following:

(1) If the applicant for the permit is not the registrant, a statement of authority by the registrant for the applicant to act on behalf of the registrant. In addition, if the applicant is a contractor, the contractor's license or registration and insurance information confirming authority to perform construction in the Town and whether the contractor has any open permits with the Town, and if so, the permit identification number or information.

(2) Confirmation that the applicant engaged in a required pre-submission meeting or such meeting was waived by the Town and that the applicant has an effective registration with the Town.

(3) Engineering plan. An engineering plan signed and sealed by a licensed engineer, that includes the following:

(a) Except for applications to collocate small wireless facilities on existing utility poles in the public rights-of-way, an American Land Title Association (ALTA) survey or other survey that may be specified in the Town's application form demonstrating that the proposed location of the facility or utility pole is within the public rights-of-way, unless waived by the Town in its sole discretion, pursuant to information confirming the proposed facility is located with the public rights-of-way, as applicable;

(b) The type of proposed facility, location of the proposed facility, and the dimensions, height, footprint, stealth design, and concealment features of the proposed facility;

(c) The Global Positioning System (GPS) coordinates of the proposed facility. The GPS coordinates shall be based on the reading from a

handheld mobile GPS unit set to Datum NAD 83 or WGS84. GPS coordinates based on Google Earth or similar application may be used where areas of shading occur due to overhead canopy. GPS Coordinates shall be provided in decimal degrees at a six (6) decimal point precision;

- (d) Distances between the proposed facility and the edge of nearby pavement, sidewalks, driveways, ramps, the nearest residential properties, nearby drainage systems, trees, ground-mounted equipment, nearby structures in the public rights-of-way, and other above-grade structures and utilities within a 500 feet radius and below-grade structures and utilities located within a 50 foot radius;
 - (e) For new communications facilities, a sketch showing pavement, sidewalks, driveways, ramps, trees, below-grade utilities, and other above-grade and below-grade structures and facilities within the public rights-of-way located within a fifty (50) foot radius;
 - (f) Sufficient specificity demonstrating compliance with applicable codes, the Florida Greenbook, the Florida Building Code, most current edition, specifically including but not limited to compliance with the wind velocity standards for risk category III and IV buildings and structures specified in Section 1620 of the 2017 Florida Building Code, as amended, or as otherwise established in the Florida Building Code, as applicable; National Electrical Code, the National Electrical Safety Code and the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States, as may be amended, and OSHA standards;
 - (g) The routes of all proposed new transmission and distribution lines to be placed or maintained in the public rights-of-way in connection with the proposed facility (such lines may be subject to separate permit requirements);
 - (h) Certification that the proposed facility will not materially interfere with the safe operation of traffic control equipment;
 - (i) Certification that the proposed facility will not interfere with sight lines or clear zones for transportation, pedestrians, or public safety purposes or result in the public rights-of-way being inconsistent with the Florida Greenbook;
 - (j) Certification that the proposed facility will not materially interfere with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
and
 - (k) Other engineering information that may be requested by the Town to demonstrate compliance with this Ordinance.
- (4) Trees or landscaping proposed to be removed or impacted upon the placement or maintenance of the proposed facility.

- (5) Whether the proposed facility is proposed within a location subject to restrictions pursuant to this Ordinance, such as where the Town has determined that all such communications facilities should be placed underground or subject to a homeowner's association's covenants. If so, whether the applicant has obtained approvals that may be required or is seeking a waiver or such restrictions.
- (6) Photographic or video documentation of the pre-construction condition of the public rights-of-way in the area to be affected by the installation of the proposed facility.
- (7) Description of installation or construction and timetable. A description of the method by which the facility will be installed and/or modified (i.e. anticipated construction methods or techniques) and timetable for construction.
- (8) Temporary sidewalk closure plan. The applicant shall provide a temporary sidewalk closure plan, if appropriate, to accommodate placement or maintenance of the facility.
- (9) Temporary maintenance of traffic (MOT) plan. The applicant shall provide a temporary traffic lane closure and maintenance of traffic (MOT) plan, if appropriate, to accommodate placement or maintenance of the facility.
- (10) Restoration plan and estimated cost of restoration of the public rights-of-way. A restoration plan and a good faith estimate of the cost of restoration of the public rights-of-way. Such good faith estimate shall be accepted by the Town unless the Town determines such estimated costs are not representative of the actual costs of the restoration of the public rights-of-way. Estimates of the cost to restore the public rights-of-way shall include all costs necessary to restore the public rights-of-way to its original condition or better. Such good faith estimate may include, but shall not be limited to, costs to restore the paving, curbs/gutters, sidewalks, paths including paths indicated by painted lines in streets, markings, signage, and landscaping. All planted or naturally occurring shrubbery or vegetation, including sod, damaged or destroyed during work in the public rights-of-way shall be replaced. Tree or landscaping removal shown on the permit shall not be considered damage or impairment to be restored to the original condition provided the applicant complies with the approved mitigation plan, if any.
- (11) Indemnification. A statement shall be included with the permit application that by execution of the application and by applying for the permit, the applicant shall be bound to the Town with respect to the indemnification provision set forth in this Ordinance.

- (12) Airport airspace protection. If applicable, the applicant shall confirm compliance with Chapter 333, F.S. and all Town codes, State and federal laws and regulations pertaining to airport airspace protections.
- (13) Attestation. For applications by a wireless infrastructure provider or its contractor for the placement or maintenance of a utility pole in the public rights-of-way for collocation of a small wireless facility, the applicant shall provide an attestation by an officer of the registrant that a small wireless facility will be collocated on the utility pole and will be used by a wireless services provider to provide communication service within nine (9) months after the date the application is approved.
- (14) Pole attachment agreement. Except for pole attachments regulated pursuant to 47 U.S.C. §224, if applicable for the proposed facility, the applicant shall provide a copy of a fully executed valid pole attachment agreement between the owner of the utility pole and registrant. In lieu of providing the complete pole attachment agreement between the owner of the utility pole and registrant, the applicant may provide the first page of such agreement and the signature page or a notarized letter of authorization from the owner of the utility pole, providing adequate identifying information, acceptable to the Town, and indicating the registrant is authorized to install its facility on the identified utility pole.
- (15) Information regarding height limitations. For an application for a new utility pole to support the collocation of a small wireless facility, the applicant shall provide information regarding the location and height of the tallest utility pole located in the same public rights-of-way as of July 1, 2017, measured from grade in place within five hundred (500) feet of the proposed location of the utility pole. If there is no utility pole within five hundred (500) feet of the proposed utility pole as of July 1, 2017, the applicant shall so certify.
- (16) If the permit application includes a backup power supply, information to demonstrate that the backup power supply and proposed fuel storage satisfies the applicable law.
- (17) In addition to the requirements herein, as part of any permit application to place or maintain a small wireless facility in the public rights-of-way, the applicant shall provide the following:
- (a) Documentation to the satisfaction of the Town from a licensed engineer, that the structure and foundation of the utility pole intended to support the collocation of the small wireless facility can support the additional load of the proposed small wireless facility consistent with the requirements of the Florida Building Code;
 - (b) A description by the applicant to the satisfaction of the Town how

- the proposed small wireless facility complies with the objective design standards set forth in this Ordinance. For a proposed ground-mounted small wireless facility, such information shall include whether the proposed small wireless facility includes a wrap that has been approved by the Town or is of an architectural design that is substantially similar to other infrastructure in the area of the public rights-of-way or has been approved by the Town.
- (c) Accurate photo simulations of the proposed small wireless facility and if applicable, as collocated on the utility pole.
- (18) Consolidated permit application and single application for multiple locations. An applicant seeking to collocate multiple small wireless facilities may file a consolidated permit application and receive a single permit for the collocation of up to 30 small wireless facilities. The application must include the information required for an application for each of the proposed small wireless facilities. Such consolidated permit application is not available for multiple utility poles. If the application includes multiple small wireless facilities, the Town may separately address small wireless facility collocations for which incomplete information has been received or which are denied.
- (19) To the extent not inconsistent with applicable law, such additional information requested by the Town reasonably necessary to determine compliance with applicable codes.
- (20) The Town may require that the applicant for a permit perform the inspection of the work authorized by the permit to close out the permit at its costs and provide certification to the Town at its costs by a licensed engineer, that such work was performed consistent with the requirements of the permit.
- (c) Application Review and Procedures for Small Wireless Facilities and Utility Poles for Collocation of Small Wireless Facilities.
- (1) Time periods within this subsection may be extended for the period of time impacted by a force majeure event or by a declared State of Emergency by the Town or Governor of the State that impacts the Town (“force majeure extension”). If an applicant opposes a force majeure extension pursuant to this subsection, it shall notify the Town within 24 hours of such extension becoming effective or the applicant shall be deemed to have consented to the extension.
- (a) Unless extended by mutual consent of the applicant and Town, within 14 days after receiving an application, the Town Manager will notify the applicant by electronic mail as to whether the application is complete. If an application is deemed incomplete, the Town will specifically identify the missing information. An

application is deemed complete if the Town fails to provide notification to the applicant within 14 days.

(b) Negotiation Process.

- (1) Unless extended by mutual consent of the applicant and the Town, within 14 days after the date of filing the application, the Town may request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed on an alternative Town utility pole or support structure or may place a new utility pole. The Town and the applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days after the date of the request.
- (2) At the conclusion of the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the Town of such acceptance and the application shall be deemed granted for any new location for which there is agreement and all other locations in the application.
- (3) If an agreement is not reached, the applicant must notify the Town of such nonagreement and the Town must grant or deny the original application within 90 days after the date the application was filed unless extended by mutual consent of the applicant and Town. Failure of the applicant to so notify the Town as required herein shall be deemed to constitute the applicant's rejection of the Town's alternative location. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail.
- (4) The Town processes all applications on a nondiscriminatory basis. The Town will process applications in the order in which they are filed. If an earlier filed application that is extended would require the denial of a later filed application, such later filed application will be denied unless extended. Unless the Town and the applicant engage in negotiations as provided above, a force majeure extension applies, or the Town and the applicant mutually agree to an extension, the Town will approve or deny the application and will notify the applicant by electronic mail whether the application is approved or denied within 60 days after the receipt of an application. An application that is not complete shall not be deemed approved if the Town fails to grant or to deny the application within 60 days after receipt of the application.

- (c) Extension of time. If the Town and the applicant do not engage in negotiations, the applicant and Town may mutually agree to extend the 60-day application review period. The Town shall grant or deny the application at the end of the extended period.
- (d) The Town may deny a proposed collocation of a small wireless facility in the public rights-of-way if the proposed collocation:
 - (1) Materially interferes with the safe operation of traffic control equipment;
 - (2) Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
 - (3) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
 - (4) Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual; or
 - (5) Fails to comply with applicable codes.
- (e) Cure Procedure.
 - (1) If the application is denied, the Town will specify the basis for the denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the Town denies the application.
 - (2) The applicant may cure the deficiencies identified by the Town and resubmit the application within 30 days after the notice of denial is sent.
 - (3) If an attempt to cure is made by the applicant, the Town will approve or deny the revised application within 30 days after receipt of the revised application. If the applicant revises any information in the application other than to address expressly the deficiencies identified by the Town, the applicant shall submit a new application.
 - (4) The Town's second and subsequent reviews of revised applications will be limited to the deficiencies cited in the denial notice.

- (f) A permit issued pursuant to an approved application shall remain in effect for one (1) year unless otherwise extended, suspended, or revoked by the Town pursuant to this Ordinance. If a small wireless facility or utility pole is installed without a permit pursuant to applicable state or federal law, the applicant shall nevertheless be required to have an effective registration, comply with development standards and provide the performance bond required in this Ordinance prior to performing construction.
 - (g) A permit from the Town constitutes authorization to undertake only certain activities in the public rights-of-way in accordance with this Ordinance, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.
- (2) Review procedures for applications for all communications facilities other than small wireless facilities and utility poles for collocation of small wireless facilities.
The Town shall review and process applications for communications facilities other than small wireless facilities and utility poles for collocation of small wireless facilities consistent with applicable law and Town procedures. The Town may deny an application for a communications facility in the public rights-of-way if such facility does not comply with applicable codes, including this Ordinance.
- (3) Suspension and revocation of permits.
 - (a) The Town may order the suspension of work under a permit and ultimately may suspend or revoke any permit, in the event of a material breach of the terms and conditions of any applicable codes including but not limited to this Ordinance, State and federal laws and regulations, or any condition of the permit. A material breach by the permittee may include, but is not limited to:
 - (1) The violation of any material provision of the permit or applicable codes;
 - (2) An evasion or attempt to evade any material provision of the permit or the perpetration or attempt to perpetrate any fraud or deceit upon the Town;
 - (3) Any material misrepresentation of fact in the process of permittee's request for a permit or registration;
 - (4) The failure to maintain the required permanent performance bond or insurance;
 - (5) The failure to properly restore the public rights-of-way;
 - (6) The failure to comply within the specified time with an order issued by the Town

- (7) The failure to register, renew a registration, or provide notice of transfer in accordance with this Ordinance;
 - (8) The failure to relocate or remove facilities pursuant to this Ordinance and Sections 337.402, 337.403 and 337.404, F.S., as amended;
 - (9) Conducting work in the public rights-of-way without a permit, if required.
- (b) If the Town determines that a registrant has committed a substantial breach of a term or condition of the permit or violation of applicable codes including but not limited to this Ordinance, the Town shall make a written demand upon the registrant to remedy such violation. The demand shall state that the continued violation(s) may be cause for suspension or revocation of the permit. Further, the Town may place additional or revised permit conditions following a substantial breach. In addition, the Town may refuse to issue new permits to a registrant or registrant's contractor that has materially violated any provisions of a permit or applicable codes including but not limited to this Ordinance, until such time as the registrant cures the violation to the satisfaction of the Town, including paying any damages, costs or penalties that may have been assessed.
- (c) Within thirty (30) days of receiving notification of the breach, the permittee shall contact the Town and provide a plan, acceptable to the Town to remedy the breach. The Town shall provide additional time as reasonably necessary for a permittee to establish an acceptable plan taking into account the nature and scope of the alleged breach. The permittee's failure to so contact the Town, the permittee's failure to submit an acceptable plan, or the permittee's failure to reasonably implement the approved plan, shall be cause for revocation or suspension of the permit. A final determination to suspend or to revoke a permit may be appealed in accordance with the procedures set forth in this Ordinance. Nothing herein shall affect the Town's ability to take immediate action or to cause a registrant to take immediate action pursuant to this Ordinance or applicable law to address any condition that threatens the health, safety or welfare of persons or property.
- (d) If a permit is revoked, the permittee shall reimburse the Town for the Town's reasonable costs, including restoration costs, administrative costs, and the cost of collection. These cost may also be deducted from the registrant's permanent performance bond in the Town's discretion.
- (e) The Town may cause an immediate stop work order where the construction poses a serious threat to the health, safety or welfare

of the public until such time as such serious threat has been abated.

- (f) In the event of an emergency, if a registrant fails to do so in a timely manner, the Town may perform any work involving a communications facility in the public rights-of-way to prevent a threat to the health, safety or welfare of the public and charge all costs including collection costs to the registrant. Nothing herein shall operate as a waiver of the Town's police powers.

(4) Requests for waivers.

- (a) Nothing in this Ordinance shall be construed to prohibit or have the effect of prohibiting the nondiscriminatory and competitively neutral use of public rights-of-way by communications service providers, communications facility providers or pass-through providers, in violation of federal or state law.
- (b) The Town may grant a waiver in those circumstances where a competitively neutral use of the public rights-of-way that may be required by applicable law is impaired by strict application of the requirements of this Ordinance.
- (c) A request for a waiver shall be filed either prior to or contemporaneously with the permit application. The request for waiver shall contain each provision for which a waiver is sought. A request for a waiver shall include the following information:
 - (1) A detailed explanation, with supporting engineering information by a Florida licensed engineer or other data, as to why a waiver from the requirements of this Ordinance is required to allow the applicant to have nondiscriminatory and competitively neutral use of the public rights-of-way, including a detailed explanation addressing the relevant engineering criteria;
 - (2) Nature and characteristics of the surrounding neighborhood;
 - (3) Any special conditions and circumstances affecting the proposed site which prevent compliance with the Ordinance or subsection for which a waiver is being sought;
 - (4) If applicable, topography, tree coverage and foliage in the immediate surrounding area of the proposed facility or within the surrounding neighborhood;
 - (5) Design of the proposed facility with particular reference to

achieving compatibility with the surrounding neighborhood and other structures in the public rights-of-way and eliminating adverse visual impacts;

(6) If the proposed waiver is compliant with the Americans With Disabilities Act, 42 U.S.C. §12101, et seq., and applicable codes;

(7) Any other information the Town may reasonably require to process the request for waiver.

(d) The Town shall grant or deny a request for a waiver within forty-five (45) days after receiving the request for waiver or time frame under applicable law unless the applicant and Town consent to an extension. In granting any waiver, the Town may impose conditions to the extent the Town determines such conditions are necessary to minimize any adverse effects of the proposed facility on the surrounding neighborhood or to protect the health, safety and welfare of the public.

(e) Should a request for waiver, and ultimately a permit, be denied by the Town, the denial of the waiver may be appealed with an appeal of the permit denial in accordance with this Ordinance.

(5) Appeals.

(a) Final, written decisions of a designee of the Town Manager, including but not limited to, a decision suspending, revoking, or denying a permit, denying a registration, denying a renewal of a registration, suspending or terminating a registration, denying a waiver, or imposing costs or a fine, are subject to appeal to the Town Manager. An appeal must be filed with the Town Manager within thirty (30) days of the date of the final, written decision to be appealed. An applicant shall waive any appeal that is not timely filed as set forth herein. The Town Manager shall hear or may appoint a hearing officer to consider the appeal. The decision on appeal shall be based on the information submitted previously to the Town and no new information shall be considered. Subject to a force majeure event, the hearing shall occur within 30 days of the receipt of the appeal, unless waived by the applicant, and a written decision shall be rendered within 20 days of the hearing.

(b) An appeal from a decision of the Town Manager or a hearing officer may be appealed to the Town Council within 30 days, by filing a written notice of appeal with the Town clerk and providing copies to the Town Manager and the Town Attorney. Any appeal not timely filed shall be waived. The notice of appeal shall state the

decision which is being appealed, the grounds for appeal, a brief summary of the relief which is sought, and shall be accompanied by a nonrefundable fee to be established by administrative order of the Town Manager. The Town Council may affirm, modify or reverse the decision of the Town Manager or hearing officer. The Town Manager shall notify any party who has filed a written request for such notification of the date when the matter will be presented to the Town Council. Nothing contained herein shall preclude the Town Council from seeking additional information prior to rendering a final decision. The decision of the Town Council shall be by resolution and a copy of the decision shall be forwarded to the Town Manager and the appealing party. Within the time prescribed by the appropriate Florida Rules of Appellate Procedure, a party aggrieved by a decision of the Town Council may appeal an adverse decision to the Circuit Court In And For Miami-Dade County or applicable federal district court. The party making the appeal shall be required to pay to the Town clerk a fee to be established by administrative order of the Town Manager, to defray the costs of preparing the record on appeal.

Sec. 5¼-7. – ~~Underground installation; relocation.~~Performance construction bond.

- ~~(a) — A registrant shall install its facilities underground. This provision shall apply prospectively for all new facilities, to the extent that this obligation is not expressly prohibited by applicable federal law, state law or PSC rules and regulations.~~
- ~~(b) — Every registrant which places or constructs telecommunications facilities underground shall maintain appropriate participation in the regional notification center for subsurface installations.~~
- ~~(c) — Any telecommunications facilities heretofore or hereafter placed upon, under, over, or along any public rights-of-way that is found by the town to be unreasonably interfering in any way with the convenient, safe or continuous use or the maintenance, improvement, extension or expansion of such public rights-of-way shall, upon written notice to the registrant or its agent, be removed or relocated, within 30 days of such notice, by such registrant at its own expense in accordance with F.S. § 337.403. The town manager may extend the time within which a registrant shall remove or relocate a telecommunications facility, for good cause shown.~~
- ~~(d) — The registrant shall not in any way displace, damage, or destroy any facilities, including, but not limited to, gas, sewer, water main, pipe cable, conduit, fiber optic, or other pathway or any other facilities belonging to the town. The registrant shall be liable to the town for the costs of any repairs made necessary by any such displacement, damage or destruction, of facilities belonging to the~~

~~town, and the registrant shall pay such costs upon demand. In the case of an emergency, the town may commence repairs without any prior notice to the registrant. The term emergency shall mean a condition that may affect the public's health, safety or welfare. In the event of an emergency the town may cause the repairs to be made at the facility's owner expense, utilizing town employees, agents or contractors, charge any and all costs, and require reimbursement within 30 days after the submission of the bill by the town to the registrant. After 30 days, the town may obtain reimbursement from the security fund. In all other nonemergency circumstances, the registrant shall be given prior written notice. If such repairs are not performed in a reasonable and satisfactory manner within the 30 calendar days after receiving notice, the town may cause the repairs to be made at the facility owner's expense, utilizing town employees, agents or contractors, charge any and all costs, and require reimbursement within 30 days after the submission of the bill by the town to the registrant. Again, after 30 days, the town may obtain reimbursement from the security fund.~~

- ~~(e) — Subject to F.S. § 337.403, whenever an order of the town requires such removal or change in the location of any telecommunications facility from the public rights-of-way, and the facility owner fails to remove or change the same at its own expense to conform to the directive within the time stated in the notice, the town may proceed to cause the telecommunications facility to be removed. The expense thereby incurred except as provided in F.S. § 337.403(1)(a) — (c) shall be paid out of any money available therefor, and such expense shall be charged against the owner of the telecommunications facility and levied, collected and paid to the town.~~
- ~~(f) — Subject to F.S. § 337.404 whenever it shall be necessary for the town to remove or relocate any telecommunications facility, the owner of the telecommunications facility, or the owner's chief agent, shall be given written notice of such removal or relocation and requiring the payment of the costs thereof, and shall be given reasonable time, which shall not be less than 20 nor more than 30 days in which to file an appeal with the town council to contest the reasonableness of the order. Upon receipt of a written appeal, the town council shall place the matter on the council's agenda for consideration within 45 working days. Should the owner or the owner's representative not appear the determination of the cost to the owner shall be final, in accordance with F.S. § 337.404.~~
- ~~(g) — A final order of the town imposed pursuant to Florida Statutes, and applicable provisions of the Town Code, if any, shall constitute a lien on any property of the owner and may be enforced as provided therein.~~
- ~~(h) — The town retains the right and privilege to cut or move any facilities located within the public rights-of-way of the town, as the town manager in his/her reasonable discretion may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the~~

~~town shall attempt to notify the owner of the facility, if known, prior to cutting or removing a facility and shall notify the owner of the facility, if known, after cutting or removing a facility.~~

- ~~(i) Upon abandonment of a facility within the public rights-of-way of the town, the owner of the facility shall notify the town within 90 days. Following receipt of such notice, the town may direct the facility owner to remove all or any portion of the facility if the town determines that such removal will be in the best interest of the public health, safety and welfare. In the event that the town does not direct the removal of the abandoned facility by the owner of the facility, and the facility owner chooses not to remove its facilities, then such owner, by its notice of abandonment to the town, shall be deemed to consent to the alteration or removal of all or any portion of the facility by another utility or person.~~
- ~~(j) A registrant shall, on the request of any person holding a permit issued by the town, temporarily raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than 30 days advance notice to arrange for such temporary relocation.~~
- (a) Prior to the issuance of any permit in accordance with this Ordinance, or performing any work in the public rights-of-way, either pursuant to a permit or without a permit if authorized by applicable law except in the case of an emergency pursuant to this Ordinance, a registrant shall establish in the Town's favor a performance construction bond to secure the restoration of the public rights-of-way, and to ensure the registrant's faithful performance of the construction or other work in the public rights-of-way, in accordance with applicable sections of the Town Code and the permit. The performance construction bond must name the Town as obligee and be conditioned upon the full and faithful compliance by the registrant with all requirements, duties, and obligations imposed by the permit and provisions of this Ordinance during and through completion of the placement or maintenance project. The performance construction bond shall be in an amount as determined by the Town based on one-hundred and ten percent (110%) of the estimated costs of the restoration of the public rights-of-way. No performance construction shall be required if the estimated costs of the restoration of the public rights-of-way is less than one thousand dollars (\$1,000) provided the registrant has a fully replenished permanent performance bond on file with the Town. For a consolidated permit, the registrant shall provide a performance construction bond based on the amount of the total costs of the restoration of the public rights-of-way for all small wireless facilities to be collocated on utility poles within the public rights-of-way, but in no event shall be less than ten thousand dollars (\$10,000). The minimum amount of the performance construction bond for a new or replaced utility pole or ground-mounted small wireless facility up to twenty eight (28) cubic feet shall be twenty-five thousand (\$25,000) dollars. The construction bond shall be issued by a surety

licensed to operate in Florida having a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the Town Attorney and may be administratively accepted by the Town Manager.

- (b) In the event a registrant subject to such a performance construction bond fails to complete the work in a safe, timely and competent manner in accordance with the provisions of the permit or Town code, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the Town as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, or the cost of completing the work, plus a reasonable allowance for attorney's fees, up to the full amount of the bond.
- (c) The performance bond must be issued as non-cancelable and shall provide the following: "This bond may not be canceled, or allowed to lapse, until 60 days after receipt by the Town, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew." The performance bond shall be for a term of not less than one-year after the anticipated date of the later of completion of construction, restoration and Town inspection. In the event the term of any performance construction bond expires, or is reasonably expected to expire, prior to one-year after the completion of construction, restoration and Town inspection, the registrant shall immediately obtain, pay for, and file with the Town a replacement performance bond. No less than one-year after completion of the construction and satisfaction of all obligations in accordance with the bond, the registrant may request that the Town remove the requirement to continue the performance construction bond. Notwithstanding, the Town may require a new bond for any subsequent work performed in the public rights-of-way.
- (d) The rights reserved by the Town with respect to any performance construction bond established pursuant to this division are in addition to all other rights and remedies the Town may have under this Ordinance, or at law or equity, and no action, proceeding or exercise of a right with respect to the performance construction bond will affect any other right the Town may have.

Sec. 5¼-8. – Use of rights-of-way.Construction Methods.

- ~~(a) — A facility owner agrees at all times to comply with and abide by all applicable provisions of the state statutes and local laws including, but not limited to, applicable zoning regulations not inconsistent with state and federal laws.~~
- ~~(b) — Except in the case of an emergency, no telecommunications service provider shall construct any facility under or within any public right-of-way which disrupts the public rights-of-way without first filing an application with and obtaining a permit from the town therefor, pursuant to applicable permitting requirements of the town, and other applicable Town Code requirements, except as otherwise provided in this chapter. The term emergency shall mean a~~

~~condition that affects the public's health, safety or welfare, which includes unplanned out of service condition of a pre-existing service. Registrant shall still be required to provide prior notice to the town in the event of an emergency. For the purposes of the notice requirements herein, the town shall provide the registrant with a town contact. Unless otherwise required by the Town Code, the town may waive the permit requirement in cases where there will be no disruption of the public rights-of-way. When work is performed on an emergency basis, the registrant must still apply for a permit by the following business day in accordance with the town's permitting guidelines. In all instances, the registrant shall restore all damaged property and indemnify the town from any and all damages caused by the registrant's emergency work.~~

- ~~(c) — As part of any permit application, with respect to new or existing facilities, where applicable, in the public rights-of-way, the registrant shall provide a proposal for construction of the telecommunications facility that sets forth at least the following:
 - ~~(1) — An engineering plan signed and sealed by a Florida registered professional engineer or prepared by a person who is exempt from such registration requirements as provided in F.S. § 471.003 identifying the location of the proposed facility, including a description of the facilities to be installed, where it is to be located, and the approximate size of facilities and equipment that will be located in, on, over, or above the public rights-of-way.~~
 - ~~(2) — A description of the manner in which the facility will be installed (i.e. anticipated construction methods and/or techniques).~~
 - ~~(3) — The time required to place the facility.~~
 - ~~(4) — A maintenance of traffic plan for any disruption of the public rights-of-way.~~
 - ~~(5) — Information on the ability of the public rights-of-way to accommodate the proposed facility, if available (such information shall be provided without certification as to correctness, to the extent obtained from other users of the public rights-of-way).~~
 - ~~(6) — If appropriate, given the facility proposed, an estimate of the cost of restoration to the public rights-of-way.~~
 - ~~(7) — And, such plan shall include the timetable for construction for each phase of the project, and the areas of the town which will be affected.~~
 - ~~(8) — The town may request such additional information as it finds reasonably necessary to review an application for a permit to perform work in the public rights-of-way.~~~~
- ~~(d) — The town shall have the power to prohibit or limit the placement of new or additional facilities within the public rights-of-way, if there is insufficient space to accommodate all of the requests to occupy or use the rights-of-way, for the protection of existing facilities in the public rights-of-way, or for town plans for public improvements which have been determined by the town to be in the public interest. Nothing in this chapter shall affect the town's authority to add, vacate,~~

~~or abandon public rights-of-way, and the town makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for communications facilities.~~

- ~~(e) — All facilities shall be installed, located and maintained so as not to unreasonably interfere with the use of the public rights-of-way by the public and to cause unreasonable interference with the rights and convenience of property owners who adjoin any of the public rights-of-way. The registrant shall be liable for costs and expenses for the displacement, damage or destruction of any irrigation system or landscaping within the public rights-of-way, to the extent not covered by the construction bond. The registrant shall make such repairs upon request of the affected property owner. In the event the registrant fails to make the appropriate repairs, to restore such property to as good a condition as existed prior to commencement of work, the affected property owner may file a complaint with the town manager or a designee. In this instance, the registrant shall be given prior written notice of the necessary repairs by the town manager or the designee. If such repairs are not performed in a reasonable and satisfactory manner within the 30 calendar days after receiving notice, the town may cause the repairs to be made at the facility's owner expense, utilizing town employees, agents or contractors, charge any and all costs, and require reimbursement within 30 days after the submission of the bill by the town to the registrant. After 30 days, the town may obtain reimbursement from the security fund. The prior written notice described in this paragraph shall be considered a final written decision for purposes of the appellate rights outlined in subsection (p) of this section.~~
- ~~(f) — The use of trenchless technology (i.e., directional bore method) for the installation of facilities in the public rights-of-way as well as joint trenching and/or the co-location of facilities in existing conduit is strongly encouraged, and should be employed wherever possible.~~
- ~~(g) — The town manager may issue such additional rules and regulations concerning the placement or maintenance of a telecommunications facility in the public rights-of-way, as may be consistent with applicable law and not inconsistent with this chapter.~~
- ~~(h) — All safety practices required by applicable law or accepted industry practices and standards shall be used during construction, maintenance, and repair of the telecommunications facilities.~~
- ~~(i) — In the event that at any time during the term of the rights granted herein the town shall lawfully elect to alter or change the grade of any public rights-of-way, upon reasonable notice by the town, the registrant shall make any necessary removals, relaying and relocations of its telecommunications facilities at its own expense, in accordance with applicable law. The town reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric,~~

~~storm drainage, communications or other types of facilities, cables or conduits, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the town in the public rights-of-way occupied by the registrant.~~

- ~~(j) — A facility owner shall obtain any and all required permits and pay any and all required fees before commencing any construction on or otherwise disturbing any public rights-of-way as a result of its construction, except as provided herein. The facility owner shall, at its own expense, restore such property to a condition sufficient to guarantee the town and the public the safe continuity of pedestrian and vehicular traffic. A registrant shall guarantee its restoration for a period of 12 months after the completion of such restoration. If such restoration is not performed in a reasonable and satisfactory manner within 30 calendar days after the completion of construction, the town may, after prior written notice to registrant, cause the repairs to be made at the facility's owner expense, utilizing town employees, agents or contractors, charge any and all costs, and require reimbursement within 30 days after the submission of the bill by the town to the registrant. After 30 days, the town may obtain reimbursement from the security fund. A permit from the town constitutes authorization to undertake only certain activities on public rights-of-way in accordance with this chapter, and does not create a property right or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way.~~
- ~~(k) — All ongoing installation, construction and maintenance of a telecommunications facility located in the public rights-of-way shall be subject to the town's periodic inspection for compliance with this chapter or any applicable provisions of the Town Code.~~
- ~~(l) — The town makes no warranties or representations regarding the fitness, suitability or availability of the town's public rights-of-way for the registrant's communications facilities and any performance of work, costs incurred or services provided by registrant shall be at registrant's sole risk.~~
- ~~(m) — The registrant shall, at no cost to the town, produce and provide a complete set as-built plans including, but not limited to, horizontal and typical vertical profiles, within (60) days after construction of any portion of the system to the town manager. A facility owner shall cooperate with the town by providing timely and complete information requested under this subparagraph. Upon completion of any installation or construction of new facilities in public right-of-way, at no cost to the town, the facility owner shall provide such information, as may be requested, showing the exact location of its facilities and structures, including but not limited to, maps, geographical information systems, plats, construction documents, drawings and any other information the town may find reasonably necessary. Such plans shall be provided in digitized format showing the two-dimensional location of the facilities based on the town's geographical database datums, or other format acceptable to the town manager. All~~

information required by this section shall be maintained in accordance with the public record laws of the State of Florida.

~~(n) — Suspension or denial of permits. Subject to subsection (p) below, the town manager or a designee may suspend an existing permit or deny an application for a permit for work in the public rights-of-way for one or more of the following reasons:~~

- ~~(1) — Violation of permit conditions, including conditions set forth in this chapter or other applicable provisions of the Town Code or regulations governing use of public rights-of-way; or~~
- ~~(2) — Misrepresentation or fraud by registrant in a registration or permit application to the town; or~~
- ~~(3) — Failure to relocate or remove facilities as may be lawfully required by the town; or~~
- ~~(4) — Failure of the registrant, its employees, agents or subcontractors, in connection with the subject permit, to (a) place barricades or signs around the work area, (b) take reasonable safety precautions to alert the public of work at the work site, or (c) repair, replace and restore any sidewalk, street, alley, pavement, water, sewer or other utility line or appurtenance, soil, landscaping, dirt or other improvement, property or structure of any nature. In the event of such failure, the town may perform the work utilizing town employees, agents or contractors, charge any and all costs, and require reimbursement within 30 days after the submission of the bill by the town to registrant. After 30 days, the town may obtain reimbursement from the security fund. Upon payment to the town for the violations that gave rise to a suspension or denial of permit, the suspension or denial shall be lifted.~~

~~(o) — Immediately after the suspension or denial of permit pursuant to this section, the town shall provide written notice of the violation, which notice shall contain a description of the violation. A final written decision(s) of the town manager suspending a permit or denying an application is subject to appeal. Upon correction of any violation that gave rise to a suspension or denial of permit, the suspension or denial shall be lifted.~~

~~(p) — An appeal must be filed with the town within 30 days of the date of the final, written decision(s) to be appealed. Any appeal not timely filed shall be waived. The town council shall hear the appeal no later than 45 days from the end of the 30 day appeal period, unless waived by the registrant. All decisions of the town manager may be appealed to the town commission within 30 days, by filing a written notice of appeal with the town clerk and providing copies to the town manager and the town attorney. Any appeal not timely filed shall be waived. The notice of appeal shall state the decision which is being appealed, the grounds for appeal, a brief summary of the relief which is sought. The town commission may affirm, modify or reverse the decision of the town manager. The town manager shall notify any party who has filed a written request for such notification of the date when the matter will be presented to the town commission. Nothing~~

~~contained herein shall preclude the town commission from seeking additional information prior to rendering a final decision. The decision of the town commission shall be by resolution and a copy of the decision shall be forwarded to the town manager and the appealing party. Within the time prescribed by the appropriate Florida rules of appeal late procedure, a party aggrieved by a decision of the town commission may appeal an adverse decision to the circuit court or applicable federal or district court. The party making the appeal shall be required to pay to the town clerk a fee to be established by administrative order of the town manager, to defray the costs of preparing the record on appeal.~~

- ~~(q) — In the event a registrant desires to use its existing facilities or to construct new facilities for the purpose of providing other utility or non-utility services to existing or potential consumers or resellers, by providing cable services, or any other services other than the provision of telecommunications service, or for providing any other use to existing or potential consumers, a registrant shall seek such additional and separate authorization from town for such activities as may required by applicable law. In the event that a registrant is acting in its proprietary function as a retail provider of telecommunications equipment or appliances, the registrant shall seek the appropriate permits and licenses from the town.~~
- ~~(r) — To the extent that any person or registrant leases or otherwise uses the facilities of an entity that is duly registered or otherwise authorized to place and maintain facilities in the public rights-of-way of the town, the person or registrant shall make no claim, nor assert any right, which will impede the lawful exercise of the town's rights, including requiring the removal of such facilities from the public rights-of-way of the town, regardless of the effect on the persons ability to provide service or on the registrant's ability to maintain its own telecommunications facilities in the public rights-of-way of the town. Any person or registrant leasing or otherwise using the facilities of a registrant or other entity authorized to place and maintain facilities in the public rights-of-way, may provide the town with notice of its use of such facilities, describing the location of the facilities used and providing the town with an address to which notices from the town should be sent. In the event the town exercises its lawful authority to require the removal or relocation of any such facilities, under this provisions, such person or registrant leasing or otherwise using the facilities of a registrant or other entity authorized to place and maintain facilities in the public rights-of-way, shall receive notice from the town of such removal or relocation of such facilities. The failure of the town to provide notice, under this paragraph, shall not render the town's actions under this paragraph invalid.~~
- (a) A registrant shall place and maintain its communications facility in public rights-of-way in a manner that is at a minimum consistent with accepted industry practice and applicable codes. All safety practices required by applicable codes or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities, including but not limited to, Chapter 33 of the Florida

Building Code. Registrant shall use and exercise due caution, care and skill in performing work in the public rights-of-way, and shall take all reasonable steps to safeguard work site areas.

- (b) In connection with excavation in the public rights-of-way, a registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in F.S. Ch. 556, as it may be amended. In the event of any conflicts with existing utilities or utility service laterals, the proposed location of the communications facility will be adjusted, not the utility.
- (c) To the extent not inconsistent with applicable codes, underground cables shall have consistent alignment parallel with the edge of pavement, a thirty-six inch (36") depth of cover for the unpaved portion of roadways, and a thirty inch (30") to thirty-six inch (36") depth of cover in the paved portion of roadways, and shall have a three (3) foot horizontal clearance from other underground utilities and their appurtenances so as to not impede the maintenance or replacement of said utilities. The lowest wire on any poles or micro wireless facility placed in any right-of-way used by vehicle traffic shall be at a height from the ground in accordance with the National Electrical Safety Code and whenever telephone and electric power wires cross each other, wires shall cross and be maintained in accordance with the National Electrical Code, the National Electrical Safety Code and the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States, as all may be amended.
- (d) Grounding rods and pull boxes. The grounding rod may not extend above the top of the public right-of-way or sidewalk and must be placed in a pull box, and the ground wire between the pole and ground rod must be inside an underground conduit. All pull boxes shall be vehicle load bearing, comply with applicable codes and the applicable FDOT Standard specification and be listed on the FDOT Approved Products List, as applicable. A concrete pad shall be installed around all pull boxes not located in the sidewalk. No new or replacement pull boxes shall be located in pedestrian ramps.
- (e) In the event the registrant's work requires the obstruction of Town-owned, metered parking spaces, the registrant shall pay a reasonable fee to the Town as prescribed in any existing or subsequently enacted Town ordinance, or policy adopted thereto based on the revenues lost by the Town due to registrant's obstruction of metered parking spaces.
- (f) In the event that work to be conducted by the registrant requires streets or traffic lanes to be closed or obstructed, the registrant shall, pursuant to the requirements of the Town, obtain all permits from, and pay all fees therefor to, and obtain approval of its maintenance-of-traffic plan from the Town. In no event shall such obstruction be greater than twenty-four (24) hours unless approved by the Town.

- (g) The Town may require the use of trenchless technology (i.e., directional bore, hand digging or jack and bore method) for the installation of facilities underground in the public rights-of-way. Underground missile boring shall be prohibited unless waived by the Town. The registrant shall be solely liable for the displacement, damage or destruction of any property, public rights-of-way, irrigation system, utility, or landscaping as a result of the placement or maintenance of its facility within the public rights-of-way. The Town may issue such rules and regulations concerning the method for placement or maintenance of a communications facility in public rights-of-way as may be consistent with this Ordinance and other applicable codes and standards. The provisions of this subsection are not intended to prevent the use of any method of construction not specifically prescribed by this subsection, provided that any such method has been approved by the Town.
- (h) In an effort to minimize adverse impacts and disruption in the public rights-of-way and to other municipal improvements, the Town may require a communications services provider to coordinate the placement or maintenance of its facilities with any work, construction, installation in or repairs of the subject public rights-of-way or other facilities therein, that is occurring or is scheduled to occur within a reasonable time from the date(s) requested in the communications services provider's permit application. The Town may require a registrant to alter reasonably its placement or maintenance schedule as necessary to minimize disruptions and disturbance in the public rights-of-way. The Town may provide a more definite time frame based on specific Town construction or maintenance schedules. Within the public rights-of-way, every communications services provider shall make space available in its trench and/or conduit to other communications services providers consistent with the federal requirements of 47 U.S.C. §224. Every communications services provider shall utilize existing conduits, pathways and other facilities whenever possible, and shall not place or maintain any new, different, or additional poles, conduits, pathways or other facilities, whether in the public rights-of-way or on privately-owned property, until written approval is obtained from the Town or other appropriate governmental authority, and, where applicable, from the private property owner.
- (i) Limits on excavation in restored rights-of-way. In the interest of public safety and to avoid continual disruption and degradation to the public rights-of-way, an area of the public rights-of-way that has been subject to excavation that has been restored shall not be subject to re-excavation until at least two years following the completion of such restoration, to the extent not inconsistent with applicable law, unless waived by the Town. Registrants seeking to place communications facilities in the public rights-of-way through excavation are strongly encouraged to contact other registrants and communications services providers to coordinate the placement of communications facilities in the public rights-of-way. For the purpose of this subsection, excavation shall have the meaning set forth in Section 556.102(6), Florida Statutes, as it may be amended.
- (j) Trees. A registrant shall not prune, remove or materially damage trees during

placement or maintenance of communications facilities including but not limited to, small wireless facilities, micro wireless facility, or utility poles in the public rights-of-way unless approved by the Town. Tree removal or pruning is not permitted within the public rights-of-way to increase signal strength or to provide a line-of-sight for wireless facilities. Landscaping may only be damaged or removed during placement or maintenance of communications facilities pursuant to a permit issued by the Town. The Town may require that any landscaping or trees so removed shall be replaced or mitigated in accordance with the approved restoration plan. Any such trimming or removal shall be at registrant's sole expense, and registrant shall remove all trimmings from Town's right-of-way and shall not leave trimmings or debris on any public or private property.

- (k) Restoration of public rights-of-way. A registrant shall, at its own expense, restore the public rights-of-way to at least its original condition before such work in public rights-of-way was initiated, subject to the Town's satisfaction upon inspection. Registrant shall warrant its restoration for a period of 12 months after completion of such restoration. If the registrant fails to make such restoration within 30 calendar days after completion of construction, or such other time as may be required by the Town, the Town may, after written notice to the registrant, perform such restoration using Town employees, agents or contractors, and charge all costs of the restoration to the registrant in accordance with F.S. §337.402, as it may be amended, and require reimbursement within 30 days after the submission of the invoice by the Town to the registrant.
- (l) The Town reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other facilities, fiber, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the Town in public rights-of-way occupied by the registrant. The registrant shall not in any way displace, damage or destroy any sewer, water main, pipe or any other facilities belonging to the Town, or to any third party who placed such facilities therein by express authority of the Town, without the consent of the Town, and the registrant shall be liable to the Town or to the third party owner, as the case may be, for the cost of any repairs made necessary by any such displacement, damage or destruction and shall pay such costs upon demand. A registrant shall immediately notify the Town of any damage to Town utilities, Town fiber or other Town facilities as a result of a registrant's construction in the public rights-of-way. The registrant shall repair such damage at its expense within the time frame required by the Town given the nature of the damage and impact on Town services. In its discretion, the Town may repair or arrange for the repair of such damage and charge such expense to the registrant.
- (m) Any communications facilities heretofore or hereafter placed upon, under, over, or along any public rights-of-way that is found by the Town to be unreasonably interfering in any way with the convenient, safe or continuous use or the maintenance, improvement, extension or expansion of such public rights-of-way

shall, upon thirty (30) days' written notice to the registrant or its agent, be removed or relocated by such registrant at its own expense except as explicitly provided under F.S. §337.403. The Town may waive or extend the time within which a registrant shall remove or relocate a communications facility for good cause shown.

- (n) Removal or relocation at the direction of the Town of a registrant's communications facility in public rights-of-way shall be governed by the provisions of F.S. §§337.403 and 337.404, as they may be amended. Subject to F.S. §337.403, whenever an order of the Town requires such removal or change in the location of any communications facility from the public rights-of-way, and the facility owner fails to remove or charge the same at its own expense to conform to the order within the time stated in the notice, the Town may proceed to cause the communications facility to be removed. The expense thereby incurred except as provided in F.S. §337.403(1)(a)—(c), shall be paid out of any money available therefor, and such expense shall be charged against the registrant of the communications facility and levied, collected and paid to the Town.
- (o) Subject to F.S. §337.403, whenever it shall be necessary for the Town to remove or relocate any communications facility, the registrant of the communications facility shall be given notice of such removal or relocation and an order requiring the payment of the costs thereof, and shall be given reasonable time, which shall not be less than twenty (20) nor more than thirty (30) days in which to appear before the Town Council to contest the reasonableness of the order. Should the registrant not appear, the determination of the cost to the registrant shall be final, in accordance with F.S. §337.404.
- (p) A final order of the Town shall constitute a lien on any property of the registrant and may be enforced by filing an authenticated copy of the order in the office of the clerk of the circuit court of the county wherein the registrant's property is located and/or by drawing upon the registrant's permanent performance bond.
- (q) The Town retains the right and privilege to cut or move any communications facilities located within the public rights-of-way of the Town, as the Town may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the Town shall attempt to notify the registrant of the communications facility, if known, prior to cutting or removing a communications facility and shall notify the registrant of the communications facility, if known, after cutting or removing a facility.
- (r) The Town shall have the right to make such inspections of facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this Ordinance. The Town shall have access without charge to any manholes or handholes at any time, of a communications services provider in which the Town has facilities, provided the Town has given such provider reasonable prior notice so that such provider can have trained personnel present when the Town accesses such manholes. Notwithstanding the foregoing, the Town, in the proper exercise of

its municipal police powers and duties with respect to the public rights-of-way, shall have access to all manholes and handholes without charge of such provider. In the event the Town determines that a violation exists with respect to registrant's placement or maintenance of facilities in the public rights-of-way that is not considered to be an emergency or danger to the public health, safety or welfare, the Town will provide registrant no less than three days' written notice setting forth the violation and requesting correction.

- (s) Following the completion of construction to place a new or replace an existing communications facility in the public rights-of-way, the registrant shall promptly provide revised plans and as built plans including, but not limited to, horizontal and vertical profiles, within thirty (30) days after completion of any installation or construction. The plans shall be in a digitized format, showing the two-dimensional location of the facilities, based on the Town's geographical database or other format acceptable to the Town. The registrant shall provide such plans at no cost to the Town. The Town shall maintain the confidentiality of such plans and any other information provided in accordance with F.S. §202.195, as it may be amended.
- (t) To the extent not inconsistent with applicable law, a registrant shall allow Town facilities to be collocated within Town's public rights-of-way through the use of a joint trench during registrant's construction project. Such joint trench projects shall be negotiated in good faith by separate agreement between registrant and Town and may be subjected to other Town rights-of-way requirements. The Town further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation or width of the public rights-of-way within the limits of the Town and within said limits as same may from time to time be altered.
- (u) A registrant shall, on the request of any person holding a permit issued by the Town, temporarily raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than 30-days advance written notice to arrange for such temporary relocation. If the Town requests a temporary raising or lowering of a facility for a public purpose, the Town shall not be charged for the temporary raising or lowering of the facility.
- (v) Neither this Ordinance nor a permit issued by the Town authorizes a person to collocate or attach wireless facilities, including any antenna, micro wireless facility, or small wireless facility, on a privately owned utility pole, a utility pole owned by an electric cooperative or a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.
- (w) Abandonment. Upon determination by a registrant or communications services provider that one or more of its communications facilities in the public rights-of-

way is to be abandoned, the provider shall notify the Town no later than ninety (90) days from such determination, or no later than thirty (30) days following such abandonment, whichever is sooner. The Town may independently establish that a communications facility has been abandoned. In reaching such determination, the Town may request documentation and/or affidavits from the communications services provider or registrant regarding the active use of the facility. If the provider or registrant fails to provide the requested documentation within thirty (30) days, a rebuttable presumption shall exist that the provider or registrant has abandoned the communications facility. Any small wireless facility, micro wireless facility, utility pole for collocation of a small wireless facility, or other communications facility installed within the public rights-of-way that is abandoned shall be removed by the registrant or communications services provider at its expense within thirty (30) days of receipt of notice from the Town. Failure to remove an abandoned facility within the thirty (30) days' period shall be deemed to be the registrant's or communications provider's consent for the Town to remove the facility at the registrant's or provider's expense or for the Town to allow another person to remove the facility at the registrant's or provider's expense. The communications services provider or registrant shall be responsible for all damage to the public rights-of-way and any facilities or utilities damaged as a result of such removal, and shall restore the public rights-of-way as required in this subsection.

- (x) If there are two (2) or more users of a single facility, then this provision shall not become effective until all users cease using the facility. Notwithstanding the foregoing, if the facility is attached to an existing structure that has an independent function such as a light pole, intersection signal, pedestrian signal, utility pole or the like, said abandonment of the facility requires removal of the facility only and does not require the removal of the existing structure.

Sec. 5¼-9. – Termination of registration. Development And Objective Design Standards.

~~The involuntary termination of a registration may only be accomplished by an action of the town council. The town may declare the registration terminated and revoke and cancel all privileges granted under that registration if (a) a federal or state authority suspends, denies, or revokes a registrant's certification to provide telecommunications service, (b) the registrant is adjudicated bankrupt by a United States District Court or through any legal proceeding of any kind, or that a receiver is appointed to take possession of the assets of the registrant, (c) the registrant abandons all of its facilities. Prior to such termination by the town resulting from a violation of any of the provisions of this subparagraph, the registrant shall be notified by the town manager with a written notice setting forth all matters pertinent to such violation, and describing the action of the town with respect thereto. The registrant shall have 60 days after receipt of such notice within which to cure the violation, or within which to present a plan, satisfactory to the town council, to accomplish the same. In the event of an emergency, the town may take appropriate action in accordance with subsection 5¼-7(d) of this chapter. In the event of a vote by the town council to terminate, the registrant shall, within a reasonable time following such termination, remove or abandon the facilities and take such steps as are necessary to render every portion of the facilities remaining within the public right-of-way of the town safe. If the registrant has either~~

~~abandoned its facilities or chooses to abandon its facilities, the town may either (1) require the registrant's bonding company to remove some or all of the facilities from the public right-of-way and restore the public right-of-way to its proper condition or (2) the town may require that some or all of the facilities be removed and the public right-of-way restored to its proper condition at the registrant's expense, utilizing town employees, agents or contractors, and charge any and all costs, and require reimbursement. The obligations of the registrant and the bonding company hereunder shall survive, for a period of 24 months from, the termination of the registration. In the event of a termination of registration, this provision does not permit the town to cause the removal of any facilities that are used to provide another service for which the registrant holds a valid certification with the governing federal and state telecommunications agencies and is properly registered with the town, for such certificated service, under this chapter.~~

(a) Terms and conditions for collocation on Town utility poles.

- (1) The Town shall not enter into an exclusive arrangement with any person for the right to attach equipment to Town utility poles. The Town reserves the right to enter into agreements for collocation on Town utility poles in its discretion. A person shall not use Town-owned fiber, conduit, or other Town property without an agreement approved by the Town.
- (2) Reservation of space on Town utility poles. The Town may reserve space on Town utility poles for future public safety uses. However, a reservation of space may not preclude collocation of a small wireless facility. If replacement of the Town utility pole is necessary to accommodate the collocation of the small wireless facility and the future public safety use, the pole replacement is subject to make-ready provisions and the replaced pole shall accommodate the future public safety use. The replaced pole shall continue to be owned by the Town.
- (3) The rate to collocate a small wireless facility on a Town utility pole shall be one-hundred fifty dollars (\$150) per pole annually, or the highest rate authorized by applicable law. This amount shall not be deducted from any fees or taxes that may be due to the Town. The fee shall be paid upon the Town's issuance of a permit to collocate a small wireless facility on a Town utility pole and annually thereafter. By establishing the maximum amount currently allowed pursuant to Section 337.401(7), F.S., the Town is not indicating that such amount provides full compensation for the taking of Town property and does not waive any rights under the Florida Constitution.
- (4) Agreements between the Town and wireless providers that were in effect on July 1, 2017, and that relate to the collocation of small wireless facilities in the right-of-way, including the collocation of small wireless facilities on Town utility poles, remain in effect, subject to applicable termination provisions. The wireless provider may accept the rates, fees, and terms established under this Ordinance for small wireless facilities and utility

poles that are the subject of an application submitted after the rates, fees, and terms become effective.

- (5) For a Town utility pole that supports an aerial facility used to provide communications services or electric service, the parties shall comply with the process for make-ready work under 47 U.S.C. §224 and implementing regulations. The good faith estimate of the Town for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.
- (6) For a Town utility pole that does not support an aerial facility used to provide communications services or electric service, the Town shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, the Town may require the applicant seeking to collocate a small wireless facility to provide a make-ready estimate at the applicant's expense for the work necessary to support the small wireless facility, including pole replacement, and perform the make-ready work. If pole replacement is required, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition. The Town may not condition or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work subject to usual construction restoration standards for work in the right-of-way. The replaced or altered utility pole shall remain the property of the Town .
- (7) The Town may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to communications services providers other than wireless services providers for similar work and may not include any consultant fee or expense.
- (8) A collocation of a small wireless facility on a Town utility pole shall comply with all applicable codes, and shall not compromise the Town utility pole's finish, functionality, or structural integrity particularly with respect to vulnerability to high velocity wind conditions.
- (9) A collocation of a small wireless facility on a Town utility pole shall not affect the Town's ability to remove or to replace the pole in its sole discretion. Within thirty (30) days after receiving notification that the Town intends to remove or to replace the utility pole, the registrant shall remove

its collocated small wireless facility at its cost. If the registrant fails to do so, the Town may remove the facility and charge all costs, including collection costs to the registrant.

- (b) Location context and public safety regulations. A proposed communications facility shall comply with the following location context requirements unless waived by the Town. In conjunction with granting such waiver, the Town may require conditions on the permit approving such facility.
- (1) A registrant shall comply with all applicable provisions of state law and Town ordinances, applicable codes and regulations, quasi-judicially approved conditions for approvals, settlement agreements, applicable contracts, applicable court orders, and applicable provisions of federal statutes, including but not limited to, the Americans with Disabilities Act, FCC regulations and PSC regulations with respect to locations for placing or maintaining a communications facility in the public rights-of-way. Wireless Support Structures, small wireless facilities, micro wireless facilities, and utility poles for the collocation of small wireless facilities shall comply with the Florida Building Code, including wind velocity standards for risk categories III and IV for buildings and structures, specified in Chapter 16 Section 1620 of the 2017 Florida Building Code, as amended.
- (2) All communications facilities shall be placed and maintained so as not to interfere with, create any safety hazard, or create a visual or physical obstruction or otherwise violate applicable codes with respect to the traveling public's use of the public rights-of-way, or the use of bicycle lanes or designated walking paths within streets. To avoid such obstructions, no utility poles for collocation of small wireless facilities or ground-mounted small wireless facilities shall be located within traffic circles.
- (3) For public safety purposes, aboveground communications facilities, including but not limited to, small wireless facilities, micro wireless facilities and utility poles for collocation of small wireless facilities, shall not be placed or maintained on designated walking paths including such paths otherwise located within streets.
- (4) Communications facilities shall be placed between the property line and the curb line of a street and shall not be located within a clear zone, swale, and/or rain gutter, unless waived by the Town.
- (5) All communications facilities shall be placed and maintained so as not to cause unreasonable interference with the rights, access, and safety, including but not limited to, blocking permitted signs or address information, of property owners who abut any of the public rights-of-way.

- (6) A registrant shall not place or maintain its communications facilities to interfere, displace, damage or destroy any facilities, including but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the Town or any other person's facilities lawfully occupying the public rights-of-way of the Town.
- (7) The Town may prohibit or limit the placement of new or additional communications facilities within the public rights-of-way if there is insufficient space to accommodate all of the requests to place and maintain facilities and utilities in the proposed location of the public rights-of-way, or to accommodate Town plans for public improvements, capital improvements projects or projects the Town determines are in the public interest.
- (8) Facilities to be installed underground. All facilities shall be subject to the Town's non-discriminatory undergrounding requirements that prohibit above-ground utilities and structures in the public rights-of-way.
- (9) All new communications facilities shall be placed underground, to the extent that new utilities other than fire hydrants are required to be located underground, including new electric and communications utilities. In addition, to the extent required by applicable PSC rules and regulations, applicable codes, restrictive covenants, quasi-judicially approved conditions of a development, planned unit development, community development district, or court order, a registrant shall install its facilities underground unless waived by the Town. Additionally, a registrant shall endeavor to place all new facilities underground unless prevented from doing so by existing technology or by the physical characteristics of the installation location.
- a) A registrant shall not place or maintain new utility poles for the collocation of small wireless facilities or small wireless facilities in a location in the public rights-of-way where electric and communications utilities have been or are required to be installed underground, unless waived by the Town.
- b) Proposed new wireline fiber or coaxial backhaul facilities shall be installed underground consistent with applicable codes, unless waived by the Town.
- c) Conversion of overhead utilities to underground. No utility poles for the collocation of small wireless facilities, micro wireless facilities, ground-mounted small wireless facilities, or small wireless facilities collocated on utility poles shall be placed in a location in the public rights-of-way where the Town has determined that existing above-ground electric and communications utilities

should be removed and relocated underground, unless waived by the Town. The presence of small wireless facilities or micro wireless facilities shall not be a basis not to comply with the Town's requirements to convert above-ground utilities to underground. To comply with the Town's undergrounding requirements, subject to applicable law, a registrant shall remove its small wireless facilities, micro wireless facilities, and utility poles for collocation of small wireless facilities at its expense within 60 days of being notified by the Town that such facilities must be removed. The Town shall have the right to remove such facilities at the registrant's expense if the registrant fails to do so.

- (10) Communications facilities, including but not limited to small wireless facilities and utility poles for the collocation of small wireless facilities shall not be placed in a location which violates rules and regulations set by Occupational Safety and Health Administration or the National Electrical Safety Code or the North American Electric Reliability Corporation standards. By way of example and not limitation, a small wireless facility or utility pole intended to support the collocation of a small wireless facility may not be placed within a twenty (20) foot radius of an electric transmission line.
- (11) No communications facilities, including but not limited to small wireless facilities or utility poles for the collocation of small wireless facilities shall be placed or maintained in any location that is subject to or that would interfere with the Town's drainage plan or that would interfere with the Town's stormwater management facilities, or flood plain management areas.
- (12) Prohibition against placement within a location subject to homeowners' association restrictions. Small wireless facilities shall not be placed in a location subject to covenants, restrictions, articles of incorporation, or bylaws of a homeowners' association unless specifically authorized by the homeowners' association. For purposes of this subsection, a location in a public right-of-way that abuts parcels within a homeowners' association on both sides of its width shall be considered a location subject to covenants, restrictions, articles of incorporation, or bylaws of such homeowners' association. This subsection shall not apply to limit the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facility.
- (13) Placement in relation to adjacent uses of property and building facades thereon. Where parking and/or loading spaces are not permitted between a building façade and the corresponding property line (i.e. front façade and front property line, side street façade and side street property line) by design

standard, or such spaces do not exist in those locations on existing properties, new above-ground communication facilities and new utility poles for collocation of small wireless facilities shall be placed in the rear of the property within the public rights-of-way, or if the public rights-of-way is not located in the rear of the property, in-line with the common, interior side lot lines and shall not be placed in-line with the front/principal façade of a residence, place of business, or any other principal use building located on property that abuts the public-rights-of-way.

- (14) A structure granted a permit and installed pursuant to this Ordinance shall comply with Chapter 333, F.S., and any Town code, state and federal regulations pertaining to airport airspace protections.
- (15) Historic preservation. This Ordinance does not limit the Town's authority to enforce historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. §332(c)(7), the requirements for facility modifications under 47 U.S.C. §1455(a), or the National Historic Preservation Act of 1966, as amended, and the regulations adopted by ordinance. Communications facilities shall not be permitted to be collocated on or to interfere with historic properties or landmarks that may be within or adjacent to the public rights-of-way unless waived by the Town. The Town shall not allow small wireless facilities, utility poles for the collocation of small wireless facilities or micro wireless facilities to be located in a manner that would impact negatively historic properties or landmarks unless waived by the Town. Historic properties and landmarks may be so designated as being listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended, a property within a National Register-listed district, or individually listed in a Town Register of Historic Places, pursuant to Town ordinance or ordinance of Miami-Dade County in effect as of April 1, 2017, as it may be amended, that is applicable to the Town.

(c) Objective design standards.

- (1) Intent and purpose. Small wireless facilities in the public rights-of-way and utility poles installed or repurposed in the public rights-of-way for collocation of small wireless facilities shall be designed in such a manner to maximize compatibility and to minimize any negative visual impact on the surrounding neighborhood. The objective design standards contained in this Ordinance regulating the location context, color, stealth design, and concealment of the proposed small wireless facility shall apply, unless waived by the Town.
- (2) Applicants shall not place or maintain signage on communications facilities, in public rights-of-way, unless otherwise required by federal or State law, provided; however, existing structures that lawfully supported signage

before being repurposed may continue to support signage as otherwise permitted by law.

- (3) A small wireless facility shall not have any type of lighted signal, lights, or illuminations unless required by applicable codes, local codes or regulations, a permit issued by the Town, or state and federal laws and regulations.
- (4) Design standards for Utility Poles. Stealth design for new or replaced utility poles for collocation of small wireless facilities. All proposed new or replaced utility poles for collocation of small wireless facilities shall meet the design standards contained in this subsection unless waived by the Town. To limit the number of new utility poles installed for collocation of small wireless facilities, registrants are encouraged to share utility poles and to accommodate more than one small wireless facility on each utility pole.
 - (a) A replaced or restructured utility pole to accommodate the collocation of a small wireless facility shall be in substantially the same hole or location as the original utility pole.
 - (b) The replaced or restructured utility pole shall be substantially similar in finish, base and pole design, diameter, material and height as the original pole being replaced, unless the Town requires a different design, color or composition to be consistent with applicable Town standards for new utility poles.
 - (c) Unless waived by the Town, the height for a new utility pole or replaced utility pole installed pursuant to this Ordinance shall not exceed the height of the tallest existing utility pole as of July 1, 2017, in the same right-of-way, measured from grade, in place within 500 feet of the proposed location of the small wireless facility. If there is no utility pole within 500 feet in the same public right-of-way as of July 1, 2017, the height shall be limited to 50 feet measured from grade. Height shall include only the height of the utility pole and shall not include any light, antennas, masts or other attachments to the utility pole.
 - (d) Unless waived by the Town, a new utility pole shall be designed to be substantially similar in design to other utility poles in the same block or vicinity of the public rights-of-way. Such design aspects to follow include the material, base, substantially the same pole diameter and style, location and style of attachments, finish, and cap, as applicable. By way of example, if existing utility poles in the same area of the public rights-of-way are light poles, the new utility pole should be designed substantially similar to such light poles and to the extent consistent with location context regulations, equidistant

between existing poles. Unless waived by the Town, or prohibited by applicable law, any such stealth utility pole for collocation of a small wireless facility shall function in the same manner as the facility it is intended to resemble in compliance with the Town Code, at the expense of the registrant. By way of example, if a registrant installs a utility pole for collocation small wireless facility to resemble a nearby light pole, the registrant is encouraged to include a light operated in the same manner as other light poles, at the registrant's expense.

Notwithstanding this subsection, if the proposed location of a new utility pole for collocation of a small wireless facility is within a public right-of-way that is within a particular zoning district, planned unit development, community development district, or community redevelopment agency, that has design standards applicable to utility poles, such proposed utility pole shall substantially comply with such design standards.

- (e) If there are no existing utility poles in close proximity to a new utility pole, the new utility pole shall be designed to resemble other black metal utility poles found in the public rights-of-way.
- (f) Lighting System on SR-922. In 2008, the Town and the Florida Department of Transportation entered into a Memorandum of Agreement with respect to a roadway lighting system on SR-922 within the Town, in accordance with Town Resolution No. 1061, dated March 10, 2008 (FDOT MOA). Pursuant to the FDOT MOA, the Town is responsible for the maintenance, removal, disposal and replacement of the SR-922 lighting system. To the extent not inconsistent with applicable law, notwithstanding any provision of this Ordinance to the contrary, the Town shall be responsible for permitting any communications facilities on SR-922 within the Town, including but not limited to, the collocation of small wireless facilities on utility poles, placement and maintenance of ground-mounted equipment, replacement or make-ready work on utility poles, and the installation of new utility poles for the collocation of small wireless facilities. The Town reserves the right to deny applications for communications facilities in the area subject to the FDOT MOA if the proposed facilities would impair access to, conflict with, or interfere with the SR-922 lighting system. If a registrant applies to replace a light pole that is part of the SR-922 lighting system, such replaced pole must be identical to the pole being replaced, located in the same hole, and function in the same manner as the original pole at the registrant's expense. The registrant shall be responsible for maintaining such replaced pole at its expense during the term of the registrant's use of the pole. In the

event the registrant seeks to terminate use of a replaced pole that is part of the SR-922 lighting system, the registrant shall allow the Town without charge to continue the use of such pole in a manner that is consistent with the Town's obligations under the FDOT MOA. If the Town decides not to continue to use the pole, it shall be deemed abandoned and the registrant shall remove such pole at its expense consistent with this Ordinance.

(5) Stealth design for collocation of small wireless facilities.

- (a) Small wireless facilities of 6 cu. feet or less may be collocated on or within a utility pole and shall not be installed directly on the ground. Wires, cables and equipment to be collocated on a utility pole shall be within the utility pole or if not possible to being installed within the utility pole, covered with a shroud. No exposed wires or cables are permitted. Conduit shall not be installed on the exterior of a utility pole.
- (b) If the utility pole for the proposed collocation of a small wireless facility is a light pole, a street light fixture substantially similar in design to the existing street light fixture shall be used to camouflage the small wireless facility such as through replacement of the cobra head with a new cobra head containing the small wireless facility, or a side-mounted light may be replaced with a substantially similarly designed side mounted light containing the small wireless facility. Unless consistent with the design of the utility pole, a small wireless facility shall not be collocated on a mast of a utility pole. In no event shall a small wireless facility be collocated on the mast of a utility pole that serves as a traffic signal pole. Any street light fixture installed by the registrant shall be maintained in good working order by the registrant at its cost.
- (c) Unless waived by the Town, slim design shall be used wherein the top mounted antenna does not exceed the diameter of the supporting utility pole at the level of the antenna by more than 12 inches attachment, and side mounted enclosures, if any, do not extend more than twenty-four (24) inches beyond the exterior dimensions of the existing structure, repurposed structure or utility pole at the level of antenna attachment measured from the edge of the pole to the outermost surface of the antenna.
- (d) Maximum height restrictions. A small wireless facility, including any attached antennas, shall not exceed ten (10) feet above the existing structure, repurposed structure or utility pole upon which the small wireless facility is to be collocated. A small wireless facility in the public rights-of-way shall not be used for the

attachment of any communications facilities or fiber other than the equipment included within the small wireless facility.

- (e) To the extent not inconsistent with applicable law, notwithstanding any provision of this Ordinance to the contrary, a small wireless facility proposed to be collocated on a utility pole within the SR-922 lighting system, including but not limited to light poles, shall be designed to be identical to the light fixture that the small wireless facility will be replacing and function as the replaced light fixture, or concealed by the existing light fixture on such poles. All wiring must be within such poles or underground. Wiring, conduit and shrouds shall not be placed on the exterior of poles that are part of the SR-922 lighting system. The registrant shall be responsible for the costs of maintenance and functioning of the fixture containing the small wireless facility.

(6) Small wireless facilities not collocated on utility poles or existing structures.

- (a) With respect to location, ground-mounted small wireless facilities up to 28 cu. ft. in dimension shall be located within a ten (10) foot radius of the existing structure or utility pole for the collocated small wireless facility. Ground-mounted small wireless facilities up to 28 cu. ft. in dimension shall be located with reasonable spacing of at least three hundred (300) feet from other ground-mounted small wireless facilities up to 28 cu. feet in the public rights-of-way. Such ground-mounted small wireless facilities shall be installed in a location that is substantially similar to the location used for the installation of other ground-mounted equipment in the public rights-of-way. By way of example, if a ground-mounted equipment cabinet associated with a utility pole is installed in the bulb-out within the public rights-of-way, a ground-mounted small wireless facility shall be installed in a bulb-out and shall be concealed with substantially similar landscaping in accordance with the Town Code and maintained by the registrant at its cost and expense for as long as the facility remains in the public rights-of-way.
- (b) Ground-mounted equipment including small wireless facilities up to 28 cu. feet, may be installed below grade, or ground-mounted small wireless facility shall be architecturally designed to be substantially similar to other at-grade infrastructure within 500 feet of the proposed location in the public rights-of-way such as waste receptacles or utility facilities and shall be dark green finish and metal material to the extent consistent with existing ground-mounted utility facilities within the Town. If the proposed ground-mounted small wireless facility is not substantially similar to other at-grade infrastructure as set forth herein, the proposed small wireless facility shall be concealed with landscaping or a wrap as

otherwise provided in this Ordinance. Registrants are encouraged to submit the design of ground-mounted small wireless facilities to the Town for review prior to submitting an application.

- (c) To the extent not inconsistent with applicable codes, at the Town's direction, ground-mounted small wireless facilities shall be enclosed in a wrap the design for which has been approved by the Town and/or concealed with appropriate landscaping. The registrant shall maintain the wrap and landscaping in good condition at its expense.
- (d) To the extent not inconsistent with applicable codes, at the Town's direction based on the proposed location, the registrant owner of a ground-mounted small wireless facility in the public rights-of-way shall conceal the facility with landscaping and plantings, subject to the Town's approval and be maintained by the registrant at its sole cost and expense consistent with the Town Code for so long as the small wireless facility remains in the public rights-of-way.
- (e) The Town Manager is authorized to create a manual showing figures of acceptable and unacceptable designs for facilities to be placed or maintained in the public rights-of-way.
- (f) To the extent not inconsistent with applicable law, notwithstanding any provision of this Ordinance to the contrary, ground-mounted small wireless facilities shall not be placed or maintained in the area of the SR-922 lighting system, unless waived by the Town.

(7) Development standards for communications facilities other than small wireless facilities and utility poles.

- (a) Dimensional limits. No communications facility other than small wireless facilities located aboveground, excluding utility poles, having exterior dimensions greater than four feet high, by four and one-half feet long, by two and one-half feet wide, or having a total volume exceeding 45 cubic feet, shall be granted a permit for construction or installation nor shall be constructed on Town public rights-of-way unless:

 - (1) The communication service provider can properly demonstrate in its permit application for placement of communication facilities in the public rights-of-way that strict compliance with the dimensional limits in this subsection will prevent the communications service provider from installing, constructing, maintaining, or providing its communications network; and

- (2) The communication service provider demonstrates in its permit application that the proposed communications facilities it desires to construct which exceeds the dimensional limits set forth above in this subsection are necessary to provide adequate capacity to meet the requirements of the applicant at a specific location, or that said limits are otherwise technologically infeasible at the location, and that the proposed equipment the service provider desires to utilize is of the minimum size available to meet the requirements of the applicant's communications network; and
- (3) The communications service provider demonstrates in its permit application that the proposed communications facilities are located and composed in a manner to minimize adverse impacts to abutting properties and the surrounding neighborhood and does not create a hazard by impairment of visibility to motorists or pedestrians; and
- (4) The proposed communications facility does not otherwise create a hazard to the public health, safety and welfare
- (b) Notice to residential areas. Whenever a communications service provider subject to this subsection submits a permit application to locate communications equipment which exceeds the dimensional limits in this subsection within residentially-zoned districts in the Town, the applicant shall provide notice by posting for at least 14 days, an 18" x 24" sign, satisfactory to the Town, at the proposed location advising residents that they may review the permit application at the Town and provide their comments to the Town.

Sec. 5¼-10. ~~- Compliance with other laws; police power.~~ Fees and Taxes for Access to Public Rights-of-Way.

~~A facility owner shall at all times be subject to and shall comply with all applicable federal, state and local laws. A facility owner shall at all times be subject to all lawful exercises of the police power of the town, to the extent not inconsistent with applicable laws.~~

- (a) A registrant that places or maintains communications facilities in the public rights-of-way shall be required to pay fees and taxes as required by applicable law and ordinances of the Town, including this Ordinance. Nothing herein shall impact fees and taxes that may be owed to the Town under applicable codes and existing ordinances of the Town.
- (b) Pass-through providers and registrants that make physical use of the public rights-of-way and do not remit communications services taxes shall pay to the Town on

an annual basis an amount equal to five hundred dollars (\$500.00) per linear mile or portion thereof of communications facilities placed and/or maintained in the public rights-of-way. The amounts charged pursuant to this Ordinance shall be based on the linear miles of public rights-of-way or portion thereof, where communications facilities are placed, not based on a summation of the lengths of individual cables, conduits, strands or fibers. Notwithstanding anything herein to the contrary, the Town shall at all times hereby require the maximum compensation allowed under applicable law.

- (c) The Town shall discontinue charging pass-through provider fees to a person that has ceased being a pass-through provider. Any annual amounts charged shall be reduced for a prorated portion of any 12-month period during which the pass-through provider remits communications services taxes imposed by the Town pursuant to Chapter 202, F.S., as amended.
- (d) The initial amount of pass-through provider fees shall be paid prior to issuance of a permit based on the facilities authorized to be installed in the public rights-of-way pursuant to the permit. The amount due may be modified based upon the as-builts submitted by the pass-through provider. Subsequent annual payments of pass-through provider fees shall be due and payable on October 1 of each year. For registrants with existing facilities in the rights-of-way that owe rights-of-way fees, the Town reserves the right to collect amounts due from the date of the initial placement of facilities in the rights-of-way. Fees not paid within ten (10) days after the due date shall bear interest at the rate of one (1) percent per month from the date due until paid. The acceptance of any payment required hereunder by the Town shall not be construed as an acknowledgement that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the Town may have for additional sums due and payable. All fee payments shall be subject to audit by the Town, and assessment or refund if any payment is found to be in error. If such audit results in an assessment by and an additional payment to the Town, such additional payment shall be subject to interest at the rate of one (1) percent per month until the date payment is made.
- (e) If the payments required by this Section are not made within ninety (90) days after the due date, the Town may withhold the issuance of permits to the registrant until the amount past due is paid in full, in addition to any other remedies available pursuant to this Ordinance and applicable law, including but not limited to drawing upon a registrant's permanent performance bond.
- (f) To the extent consistent with applicable law, the Town reserves the right to charge fees for registrations and permits pursuant to this Ordinance.
- (g) Except to the extent prohibited by applicable law:
 - (1) The fee payments to be made pursuant to this section shall not be deemed to be in the nature of a tax;

- (2) Such fee payments shall be in addition to any and all taxes of a general applicability;
- (3) A registrant shall not have or make any claim for any deduction or other credit of all or any part of the amount of said fee payments from or against any of said town taxes or other fees or charges of general applicability which registrant is required to pay to the town, except as required by law; and
- (4) The fee specified herein is the consideration for use of the public rights-of-way, including all public easements, for the purpose of installing and maintaining a communications facility.

Sec. 5¼-11. – ~~Transfer of control; sale or assignment.~~Enforcement Remedies.

- ~~(a) — If the registrant transfers or assigns its registration incident to a sale or other transfer of the registrant's assets, the transferee or assignee shall be obligated to comply with the terms of this chapter. Written notice of any transfer, sale or assignment shall be provided to the town within 20 days of the effective date of the transfer, sale or assignment. In order for the transfer of registration to be effective, the transferee or assignee must comply with the registration requirements under section 5¼-4 of this chapter.~~
- ~~(b) — Notwithstanding anything in this chapter, pledges in trust or mortgages or other hypothecations of the assets of the registrant to secure the construction, operation or repair of its telecommunications facilities may be made to any person without notice to the town. Any mortgage, pledge, lease or other encumbrance of the telecommunications facilities shall be subject and subordinate to the rights of the town by virtue of this chapter or other applicable law.~~
- (a) Nothing in this Ordinance shall affect or limit the remedies the Town has available under applicable law. In addition to any other remedies available at law, including but not limited to the Town Code, F.S. §166.0415 (municipalities) and Ch. 162, (municipalities and counties), or equity or provided in this subsection, or the Town's Code of Ordinances, the Town may apply any one or combination of the following remedies in the event a person violates this Ordinance, or applicable law or order related to the public rights-of-way.
- (b) In addition to the Town's ability to terminate a registration pursuant to this Ordinance or to deny, suspend or revoke permits, the failure to comply with the provisions of this Ordinance or other law applicable to occupants of the public rights-of-way may result in imposition of penalties to be paid by the responsible person to the Town in an amount of not less than \$250.00 per day or part thereof that the violation continues for the first violation, or an amount of not less than \$500.00 per day or part thereof for a repeat violation. A registrant's or person's failure to obtain a permit before commencing work, except where a permit is not required pursuant to this Ordinance, may result in imposition of penalties to be paid to the Town in an amount of not less than \$250.00 per day or part thereof that the

violation continues for the first violation, or an amount of not less than \$500.00 per day or part thereof for a repeat violation.

- (c) In addition to or instead of any other remedy, the Town may seek legal or equitable relief from any court of competent jurisdiction.
- (d) Before imposing a fine, the Town shall give written notice of the violation and its intention to assess such penalties, which notice shall contain a description of the alleged violation. Following receipt of such notice, the person shall have 30 days either to:

 - i. Cure the violation to the Town's satisfaction, and the Town shall make good faith reasonable efforts to assist in resolving the violation; or
 - ii. File an appeal with the Town to contest the alleged violation pursuant to this Section, which shall govern such appeal. If no appeal is filed and if the violation is not cured within the 30-day period, the Town may collect all fines owed, beginning with the first day of the violation, through any means allowed by law.
- (e) In determining which remedy or remedies are appropriate, the Town or Special Master shall take into consideration the nature of the violation, the person or persons bearing the impact of the violation, the nature of the remedy required to prevent further violations, and such other matters as the Town or Special Master determines are appropriate to the public interest.
- (f) Failure of the Town to enforce any requirements of this Ordinance shall not constitute a waiver of the Town's rights. Nothing herein shall waive the Town's code enforcement authority, including but not limited to, establishing liens on a violator's property.
- (g) In any proceeding before the Town where there exists an issue with respect to a registrant's performance of its obligations, the registrant shall be given the opportunity to provide such information concerning its compliance with the terms and conditions of this Ordinance. The Town may find a registrant that does not demonstrate compliance with the terms and conditions of this Ordinance in default and apply any one or combination of the remedies otherwise authorized by this Section.
- (h) *Force majeure.* In the event a registrant's performance of or compliance with any of the provisions of this Ordinance is prevented by a *force majeure* cause or event not within the registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result, provided, however, that such registrant uses all practicable means to cure or correct any such inability to comply expeditiously.

Sec. 51/4-12. – ~~Insurance; surety; indemnification.~~Reserved.

- ~~(a) — A facility owner shall at all times maintain the following liability insurance coverage insuring the registrant and naming the town, its officers, boards, council, council members, agents and employees as an additional insured: worker's compensation and employer liability insurance to meet all requirements of Florida law and commercial general liability insurance with respect to the construction, operation and maintenance of the telecommunications facilities, and the conduct of registrant's business in the town, in the minimum amounts of:~~
- ~~(1) — Two hundred fifty thousand dollars for property damage in any one accident;~~
 - ~~(2) — Five hundred thousand dollars for personal bodily injury to any one person; and~~
 - ~~(3) — One million dollars for personal bodily injury in any one accident.~~
- ~~(b) — All insurance policies shall be with sureties qualified to do business in the State of Florida; shall be with sureties with a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition except as provided in subsection (d) below. The town may require coverage and amounts in excess of the above minimums where necessary to reflect changing liability exposure and limits or where required by law. A registrant may provide a portion of the insurance coverage required by subsection 514-12(a) through excess or umbrella policies of insurance and where such policies are in a form acceptable to the town's risk manager.~~
- ~~(c) — A registrant shall keep on file with the town certificates of insurance, which certificates shall indicate that the town, its officers, boards, council, council members, agents and employees are listed as additional insureds. In the event of a potential claim such that the town claims insurance coverage, the facility owner shall immediately respond to all reasonable requests by the town for information with respect to the scope of the insurance coverage.~~
- ~~(d) — The certificates of insurance shall further provide that any cancellation or reduction in coverage shall not be effective unless 30 days prior written notice there of has been given to the town. A registrant shall not cancel any required insurance policy without submission of proof that the registrant has obtained alternative insurance satisfactory to the town which complies with this chapter. A registrant that elects to self-insure all or a portion of the insurance coverage and limit requirements required by this section is not required, to the extent of such self-insurance, to comply with the requirement for the naming of additional insureds under this section. A registrant that elects to self-insure shall provide to the town evidence sufficient to demonstrate its financial ability to self-insure the insurance coverage and limit requirements required under this section, such as evidence that the registrant is a private self-insurer under the Workers Compensation Act, For purposes of this section, self-insure shall also include a registrant which insures through a captive insurer as defined in F.S. § 628.901.~~
- ~~(e) — A registrant shall, at its sole cost and expense, release, indemnify, hold harmless, and defend the town, its officials, boards, members, agents, and employees,~~

~~against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses, sustained by the town, arising out of the construction, maintenance or operation of its telecommunications system or facilities in the public rights-of-way, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this chapter, provided, however, that a facility owner's obligation hereunder shall not extend to any claims caused by the negligence of the town. The town agrees to notify the registrant, in writing, within a reasonable time of the town receiving notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the town from participating in the defense of any litigation by its own counsel and at its own cost if in the town's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this provision shall be construed or interpreted (1) as denying to either party any remedy or defense available to such party under the laws of the State of Florida, and (2) as a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28.~~

Sec. 5¼-13. – ~~Construction bond.~~Reserved.

- ~~(a) — Except in the case of an emergency, as described in subsection 5¼-8(b) of this chapter, prior to performing any work in the public rights-of-way, a registrant shall establish in the town's favor a construction bond in an amount specified in an engineering permit or other authorization as necessary to ensure the registrant's faithful performance of the construction in the public rights-of-way, in accordance with applicable sections of the Town Code. The amount of the construction bond shall be as set forth in the engineering permit, and may be modified in the town manager's reasonable discretion, based on the cost of the restoration to take place in the public rights-of-way, and any previous history of the registrant concerning restoration within the public rights-of-way of the town. The town, at its discretion, may request a certified estimate of the cost of restoration by a Florida registered professional civil engineer or certification by a person who is exempt from such requirements as provided in F.S. § 471.003.~~
- ~~(b) — In the event a registrant subject to such a construction bond fails to complete the work in a safe, timely and competent manner in accordance with the provisions of the permit, there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the town as a result, including the full amount of any compensation, indemnification or cost of removal or abandonment of any property of the registrant, or the cost of completing the work, plus a reasonable allowance for attorneys' fees, up to the full amount of the bond.~~
- ~~(c) — Twelve months after completion of the construction and satisfaction of all obligations, in accordance with the bond, the town shall eliminate the bond. Notwithstanding, the town may require a new bond for any subsequent work performed in the public right-of-way.~~

- (d) ~~The construction bond shall be issued by a surety having a minimum rating of A-1 in Best's Key Rating Guide, Property/Casualty Edition; shall be subject to the approval of the town attorney; and shall provide that:
"This bond may not be canceled, or allowed to lapse, until 60 days after receipt by the town, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew."~~
- (e) ~~The rights reserved by the town with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the town may have under this chapter, or at law or equity.~~
- (f) ~~The rights reserved to the town under this section are in addition to all other rights of the town, whether reserved in this chapter, or authorized by other law, and no action, proceeding or exercise of a right with respect to the construction bond will affect any other right the town may have.~~

Sec. 5¼-14. – Security Fund Reserved.

~~At the time of the registrant's application, the registrant shall file with the town, for town approval, a cash security, a bond, or irrevocable letter of credit, in the sum of \$25,000.00, in a form acceptable to the town manager or a designee. For purposes of the bond and irrevocable letter of credit, the registrant must have as a surety a company qualified and registered to do business in the State of Florida. The cash security, bond, or irrevocable letter of credit, shall be to secure the full and faithful performance by the registrant of all requirements, duties and obligations imposed upon registrant by the provisions of this chapter, and to pay any taxes, fees, fines or liens. The bond or irrevocable letter of credit shall be furnished annually, or as frequently as necessary, and shall provide a continuing guarantee of the registrant's full and faithful performance at all times. Should the town draw upon the cash security, bond, or irrevocable letter of credit, the town shall promptly notify the registrant, and the registrant shall within 30 calendar days restore the cash security, annual bond, or irrevocable letter of credit, to full required amount. In the event a registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this chapter there shall be recoverable, jointly and severally from the principal and surety of the bond, any damages or loss suffered by the town as a result, including the full amount of any compensation or indemnification, plus a reasonable allowance for attorneys' fees, up to the full amount of the fund. The cash security, bond or letter of credit may be waived by the town where the town determines that the security fund is not necessary to secure the required performance under this chapter. The town may from time to time increase the amount of the security fund to reflect the increased risks to the town and to the public.~~

Sec. 5¼-15. – Enforcement Remedies Reserved.

- (a) ~~In addition to any other remedies available at law or equity or provided in this chapter, the town may apply any one or combination of the following remedies in the event a registrant violates this chapter, or applicable local law or order related to use of the public rights-of-way:
 - (1) ~~Failure to comply with the provisions of this chapter or other law applicable to users and/or occupants of the public rights of way, may~~~~

- ~~result in imposition of penalties to be paid by the registrant to the town in an amount of not less than \$100.00 per day or part thereof that the violation continues.~~
- (2) ~~— A registrant's failure to obtain a permit before commencing work, except in cases of an emergency, may result in imposition of penalties to be paid to the town in an amount of not less than \$1,000.00 per day or part thereof that the violation continues.~~
- (3) ~~— In addition to or instead of any other remedy, the town may seek legal or equitable relief from any court of competent jurisdiction.~~
- (b) ~~— Before imposing a fine pursuant to this section, the town shall give written notice of the violation and its intention to assess such penalties, which notice shall contain a description of the alleged violation. Following receipt of such notice, the registrant shall have 30 days to either: (1) cure the violation, or (2) file an appeal in accordance with subsection 5¼-8(p). If the violation is not cured within that 30 day period, and no appeal is filed, the town may collect all fines owed, beginning with the first day of the violation, either by removing such amount from the security fund or through any other means allowed by law.~~
- (c) ~~— In determining which remedy or remedies are appropriate, the town shall take into consideration the nature of the violation, the person or persons hearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the town determines are appropriate to the public interest.~~
- (d) ~~— Failure of the town to enforce any requirements of this chapter shall not constitute a waiver of the town's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.~~
- (e) ~~— In any proceeding before the town council wherein there exists an issue with respect to a registrant's performance of its obligations pursuant to this chapter, the registrant shall be given the opportunity to provide such information as it may have concerning its compliance with the terms of the chapter. The town council may find a registrant that does not demonstrate compliance with the terms and conditions of this chapter in default and apply any one or combination of the remedies otherwise authorized by this chapter.~~
- (f) ~~— The town manager or his/her designee shall be responsible for administration and enforcement of this chapter, and is authorized to give any notice required by law.~~
- (g) ~~— Nothing in this chapter shall affect the remedies the registrant has available under applicable law.~~

Sec. 5¼-16. – ~~Force majeure.~~Reserved.

~~In the event a registrant's performance of or compliance with any of the provisions of this chapter is prevented by a cause or event not within the facility owner's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof, provided, however, that such owner uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this chapter, causes or events not within a facility owners control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within registrant's control, and thus not falling within this section, shall include, without limitation, registrant's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of registrant's directors, officers, employees, contractors or agents.~~

Sec. 5¹/₄-17. – ~~Reservation of rights.~~Reserved.

- ~~(a) — The town reserves the right to amend this chapter as it shall find necessary in the lawful exercise of its police powers.~~
- ~~(b) — This chapter shall be applicable to all telecommunications facilities permitted to be placed in the public rights-of-way, on or after the effective date of this chapter, and shall apply to all existing telecommunications facilities in the public rights-of-way prior to the effective date of this chapter, to the full extent permitted by state and federal law. Providers with existing lines and cables have 120 days from the effective date of this chapter to comply with the terms of this chapter, or be in violation thereof.~~
- ~~(c) — The town reserves to itself the right to intervene in any suit, action or proceeding involving any provision of this chapter, the registrant agrees to advise town of any such suits.~~

SECTION 3. Inclusion in Code.

It is the intention of the Town Council that the provisions of this Ordinance shall become and be made a part of the Town Code, which provisions may be renumbered or re-lettered and the ordinance be changed to “section,” “article,” or other appropriate word to accomplish such intention.

SECTION 4. Repeal of Laws in Conflict.

All local laws, resolutions, and/or ordinances in conflict with any provision of this ordinance are hereby repealed to the extent of any conflict. The temporary moratorium adopted

by Resolution No. 2139, and extended by Resolution No. 2151, is repealed upon the effective date of this Ordinance.

SECTION 5. **Severability.**

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared severable.

SECTION 6. **Effective Date.** This ordinance shall become effective upon adoption on second reading.

PASSED AND ADOPTED on first reading on this ____ day of _____ 2019.

PASSED AND ADOPTED on second reading on this ____ day of _____ 2019.

Stephanie Bruder, Mayor

Attest:

Marlene M. Siegel, Town Clerk

Approved as to form:

Town Attorney

Gary I. Resnick

954-761-8111

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NAPLES
ORLANDO
TALLAHASSEE
TAMPA
WEST PALM BEACH

MEMORANDUM

TO: Town Council, Bay Harbor Islands
J.C. Jimenez, Town Manager
Marlene M. Siegel, CMC, Town Clerk
Frank Simone, Town Attorney

FROM: Gary I. Resnick, Esq.

DATE: January 28, 2019

SUBJECT: Executive Summary: Proposed Communications Rights-of-Way Ordinance

This Memorandum provides an executive summary of the proposed Ordinance amending the Town Code to create the Communications Rights-of-Way Ordinance.

Background: In 2017, Florida enacted the Advanced Wireless Infrastructure Deployment Act (the “Act”), codified in Subsection 337.401(7), Florida Statutes. The Act sets forth a process for wireless providers and infrastructure providers to gain access to public rights-of-way for communications infrastructure, including new technology known as small wireless facilities. In addition, several years ago, Florida preempted local cable franchising authority and created Chapter 610, Florida Statutes, which governs the provision of cable service. The proposed Ordinance creates the Communications Rights-of-Way Ordinance, which implements the Act, creates requirements for all communications facilities in the public rights-of-way, including cable television facilities and small wireless facilities, and repeals inconsistent provisions of the Town Code.

This Ordinance was prepared with significant input and participation of the Town staff. In addition, we submitted a draft of the Ordinance to industry members, including cable and wireless industries and other communications industry members that seek to install and to maintain communications infrastructure in the public rights-of-way for their input. We obtained detailed comments from such industry members. We modified the proposed Ordinance in response to many comments. However, there are still areas where we did not agree with proposed modifications submitted by the industry.

Town Council, Bay Harbor Islands
January 28, 2019
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Ordinance Sections: The Ordinance amends Chapter 5¼, Sections 5¼-1 through 5¼-17, of the existing Code.

The Ordinance includes the following:

- **Applicable Definitions:** Consistent with Florida and federal law. “Utility Pole” for collocation includes light poles, traffic poles, as well as electric utility poles.
- **Registration Requirements:** All owners of facilities must be registered, which requires contact information including for emergencies, authority to provide services, proof of insurance naming Town as an additional insured, and a permanent performance bond in the form of cash or letter of credit, in the amount of \$25,000 to ensure compliance. Registrants must indemnify the Town for damage or claims.
- **Permit Requirements:** An effective registration is required to obtain permits and with limited exceptions, all construction requires a Town permit.
- **Permit Application Requirements and Procedures:** Includes detailed application contents and a pre-application meeting, because of short timeframes to process and ability to apply for 30 locations in one application. Staff must review applications for completeness within 14 days, and grant or deny applications within 60 days, or applications are deemed granted. The Town can negotiate locations and design standards, which extends the timeframe 30 days. The Town may deny an application if the proposed facility interferes with traffic devices, transportation, pedestrians, or ADA compliance, does not comply with FDOT’s utility standards, or does not comply with applicable codes, including this Ordinance.
- **Construction Requirements and Construction Bond:** Includes limits on excavation, removing trees or landscaping, restoration of rights-of-way, and removal of abandoned facilities.
- **Collocation on Town-Owned Poles.** Fee is \$150/year/pole.
- **Objective Design Standards:** Town can waive these restrictions.
 - Facilities may not be located where they would interfere with abutting property owners, utilities, drainage or where all utilities are underground.
 - Utility poles cannot be taller than other utility poles in rights-of-way within 500 feet, or if none, than 50 feet, and must be designed to match existing utility poles.
 - Collocated small wireless facilities (6 cu. ft. or less) must blend into the poles and have no exposed cables or wires.

Town Council, Bay Harbor Islands
January 28, 2019
Page 3

- Ground-mounted small wireless facilities (28 cu. ft. or less) must be stealth – enclosed in a wrap or concealed with landscaping.
 - Undergrounding: Requires new fiber and cable to be installed underground. To support the Town’s undergrounding project, above-ground facilities will not be allowed in areas where the Town has determined to underground communications utilities.
-
- Pursuant to several provisions of the Ordinance, including, but not limited to, Section 5¼-9(c)(4)(f), the Ordinance maintains the Town’s authority with respect to the lighting system on SR-922 (Kane Concourse), pursuant to the Memorandum of Agreement (“MOU”) between the Town and FDOT. The Town remains responsible for maintenance, removal and replacement of the SR-922 lighting system. The Town may deny permits to collocate small wireless facilities on such utility poles, to replace poles, and for the placement and maintenance of new utility poles and ground equipment in the area subject to the MOU, if such facilities would impair access to, conflict with, or interfere with the lighting system. In addition, collocation of a small wireless facility on such poles must be consistent with the design of such poles and light fixtures.
 - Repeal of Moratorium: Section 4 of the Ordinance repeals the temporary moratorium adopted by Resolution No. 2139 and extended by Resolution No. 2151, upon the effective date of the Ordinance.

Town of Bay Harbor Islands Town Council Meeting

1

February 11, 2019

Amending Cable Ordinance &
Creating Communications Rights-of-Way Ordinance

GARY I. RESNICK, ESQ.
GrayRobinson, P.A.

401 East Las Olas Blvd., Suite 1000, Fort Lauderdale, Florida 33301

Phone: (954) 761-8111 | Fax: (954) 761-8112

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Advanced Wireless Infrastructure Deployment Act

2

Wireless industry priority to obtain access to public rights-of-way and government-owned poles to collocate "small wireless facilities"

Establishes process for "wireless providers" – which includes both service providers and infrastructure companies (that install and manage such facilities) – to place "small wireless facilities" in municipality public rights-of-way.

Specifically excludes Florida Department of Transportation rights-of-way.

The Act became effective July 1, 2017, and is codified in Section 337.401(7), Florida Statutes.

Similar Legislation In Other States

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- ▶ Similar legislation was enacted in **Arizona, Colorado, Delaware, Indiana, Iowa, Kansas, Minnesota, North Carolina, Ohio, Texas and Virginia.**
- ▶ Court challenges in Texas by local governments on grounds that the legislation is unconstitutional.

The Act provides:

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Preempts local authority. Except as provided in the Statute, a City or county cannot:

- ▶ Prohibit, Regulate, or Charge for the collocation of **small wireless facilities** in the public rights-of-way.
- ▶ 4 Types of Installations that May Occur in the ROW:
 - Collocate a small wireless facility on an existing utility pole/structure
 - Install a new utility pole for collocation of a small wireless facility
 - Install micro wireless facilities on existing aerial cable, and
 - Install a ground mounted small wireless facility for equipment

A Utility Pole includes a pole used for communications or electric distribution, **lighting**, traffic control, or signage.

What is a “Small Wireless Facility”?

5

The Act defines small wireless facility as:

- ▶ Deployments with **enclosed or exposed antennas no more than 6 cubic feet in volume**; and
- ▶ All other associated wireless **equipment that is no more than 28 cubic feet** in volume

Time Frames to Process Applications

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- ▶ A local government has 14 days to determine if an application is complete, and, if not, to provide notice to the applicant of the *specifically identified* missing information.
- ▶ A complete application must be approved or denied within 60 days or it is “deemed granted.”
- ▶ The parties may mutually agree to extend the 60-day application review process.

May Deny An Application For A Small Wireless Facility If It:

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- ▶ Materially interferes with the safe operation of traffic control equipment;
- ▶ Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes;
- ▶ Materially interferes with the ADA or similar federal or state standards concerning pedestrian access or movement;
- ▶ Materially fails to comply with the 2010 edition of the FL DOT Utility Accommodation Manual; or
- ▶ **Fails to comply with applicable codes.**

What are Applicable Codes?

8

- ▶ Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes solely to address threats of destruction of property or injury to persons.
- ▶ **Local codes or ordinances adopted to implement this Act. This proposed Ordinance constitutes an applicable code.**
- ▶ **Objective design standards adopted by ordinance.**

Objective Design Standards

9

- ▶ May require new or replacement poles be of similar design, material, and color as existing poles;
- ▶ May require ground-mounted equipment to meet reasonable spacing requirements;
- ▶ May require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements.

NOTE: May waive such standards if not reasonably compatible to a particular location or impose an excessive expense. Any waiver request must be granted or denied within 45 days of receipt.

Proposed Ordinance

10

- ▶ The proposed Ordinance implements the Act and provides requirements for **all communications facilities** in the ROW.
- ▶ The proposed Ordinance contains, consistent with the Act:
 - ▶ New definitions;
 - ▶ Requirements for registration, insurance, security fund, indemnification, warranties, abandoned facilities & performance bond for construction;
 - ▶ Application requirements & procedures:
 - ▶ Pre-application meeting; engineering plans; no permit fees
 - ▶ Construction requirements, excavation and restoration.

Collocation on Government Poles

11

- ▶ Terms for collocation on government utility poles.
 - ▶ Reservation of space for public safety.
 - ▶ Fee: \$150 per pole per year
 - ▶ Cannot compromise the utility pole's finish, functionality or structural integrity.
 - ▶ Make ready work or replacement is at communication provider's cost.
 - ▶ Maintain discretion to remove poles.

Proposed Ordinance & Design Requirements

12

- ▶ Objective Design Standards for such facilities;
 - ▶ Location context regulations. Facilities shall not be approved in locations:
 - ▶ Where they would interfere with traffic, pedestrians or other ROW users.
 - ▶ Where they would interfere with adjacent property owners and must be placed on common lot line.
 - ▶ Where would interfere with drainage or other utilities.
 - ▶ If within HOA, must comply with HOA restrictions.
 - ▶ Not allowed in locations where utilities must be underground.
 - ▶ Not allowed in locations where would interfere with capital improvement projects.

13



Objective Design Requirements

14

- ▶ Can Waive These Requirements.
- ▶ Utility Poles: Replaced poles must be in substantially same location and similar to original pole in terms of finish, material, size and design.
 - ▶ Height is limited to height of the tallest existing utility pole as of July 1, 2017 within 500 feet or if no such poles, 50 feet.
- ▶ Collocated Small Wireless Facilities (6 cu. ft. or less)
 - ▶ Cables and wires either within the pole or a shroud on the pole. No exposed cables.
 - ▶ Stealth design – slim design if on top of a pole, or attached to resemble other pole attachments, cannot extend more than 10 feet above the pole.
- ▶ Ground Mounted Small Wireless Facility (28 cu. ft. or less)
 - ▶ Must be within 10 ft. of pole; reasonable spacing requirements – not within 500 feet of other such cabinets
 - ▶ Stealth and concealment requirements.

15



Sample of Small Cell Solutions in Urban Landscape (Before and After)

16



Sample of Small Cell Solutions in Urban Landscape

17



Pole Mounted vs. Ground Cabinets

18

**Pole Mounted Cabinets (Shrouds)**

Mounted at a minimum of 10' above ground level.
 Used on concrete and metal pole applications.
 48" tall and will conceal and house all radios and equipment.
 Secure and out of reach from vandalism and graffiti.
 Do not require additional excavation during installation.
 No additional structure added to right of way.

**Ground Cabinets**

Placed within 10' of pole depending on existing obstructions (sidewalks, driveways, utilities).
 Conceal and house all radios and equipment, allow for power meter to be mounted.
 Secures equipment but vulnerable to vandalism and graffiti.
 Requires additional digging for installation and path to pole for power and fiber transport lines.
 Height is between 36" to 48" tall.



Shrouds

19

Antenna Shrouds

Used at the top of pole to conceal mounting brackets and coax wires.
Create a smooth transition from pole to antenna.
Can be painted to match pole, antenna or both.



New Metal Stealth Pole



Existing JEA Streetlight Pole

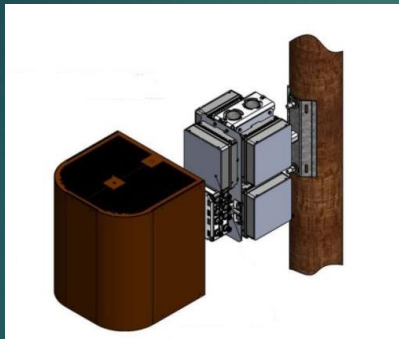


New Concrete Pole

Radio Shrouds

Used on wood pole applications at mid-pole location (15' above ground).
Enables concealment of radios, power units and wire connections.
Galvanized brown finish to match pole color (other colors available).

20



- **Standard Wooden Utility Pole**
50' or 32' top of antenna depending on desired coverage area.
Placed by AT&T Mobility or Co-located on existing JEA poles.

21



- **Standard Concrete Utility Pole**
50' or 32' top of antenna depending on desired coverage area.
Placed by AT&T Mobility or Co-located on existing JEA poles.

22



❑ Standard Metal Utility Pole - Stealth Design (New Pole Placement)

50' or 32' top of antenna depending on desired coverage area.
Placed by AT&T Mobility, used in downtown area where no existing poles are present. Painted to match color of surrounding lighting structures.

23



❑ Alternate Stealth Examples (Streetlight Co-location)

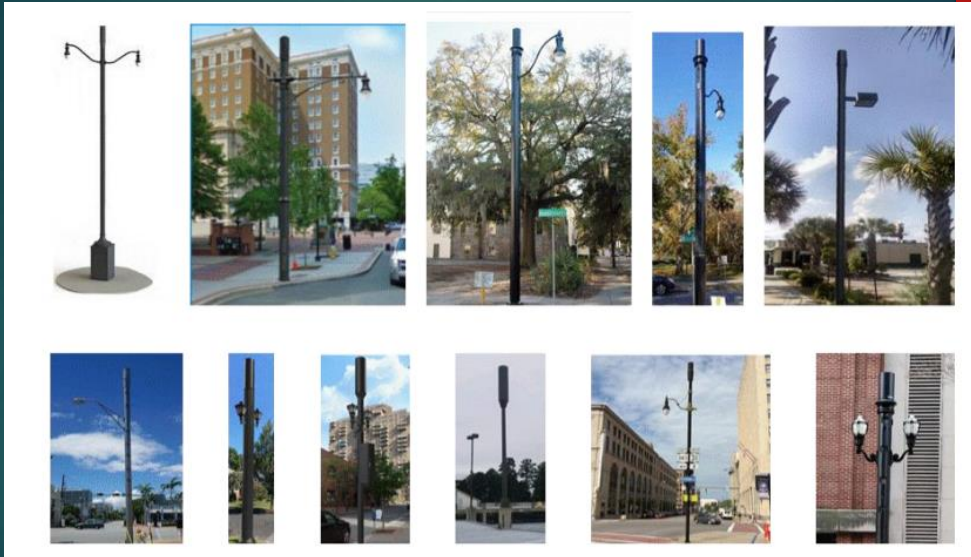
47' or 37' top of antenna depending on desired coverage area.
Co-located on existing JEA poles.

24



Decorative Installation Examples

25



Decorative Installation Examples

26



27



28



29



30



Examples: Installations and Locations

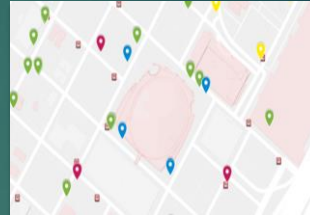
31



Photo Sim
Submitted With
Application



Picture of Actually
Installed



Locations Within
Urban Downtown
Area

32

Excavation Issues Are Common



May 12, 2018, contractor for a wireless carrier installing fiber via directional bore struck a water main, which caused a flood and the road collapsed, creating a sink hole which blocked the entrance to a neighborhood in Cooper City. (Sun Sentinel picture)

FCC Order On Small Cell

33

- ▶ FCC Released Order On September 28, Providing Federal Regulations for Deployment of Small Cell Infrastructure In The Public Rights-of-way.
- ▶ FCC Adopted Broader Reading Of Its Own Authority and the Telecom Act's "Prohibition Of Service" Than Previously Afforded By Courts.
- ▶ Does Not Expressly Preempt State Statutes And In Large Part Consistent With Florida Statute. Preserves Local Authority To Manage Rights-of-Way, Address Public Safety, and to Adopt Aesthetic Standards by ordinance.
- ▶ May Affect Carve Outs In Florida And Other States' Laws -- FDOT, Coastal Communities, Retirement Communities, and HOAs.
- ▶ Order Became Effective Jan. 14, 2019. Over 100 local governments and organizations filed Appeals. Pending in US Court of Appeals for 9th Circuit.

Available For Any Questions.

AGENDA ITEM REPORT

February 11, 2019

ITEM NUMBER: 11.

ITEM: Consideration and approval of contract award to People's Choice Pressure Cleaning & Painting in the amount of \$18,975 for the exterior cleaning and painting of the Town Hall Complex. This is require to comply with the forty-year inspection. Enclosed is a copy of the Inspection results and proposals.

DESCRIPTION:

The recent forty-year inspection for the Town Hall Complex cited the requirement to clean, repair the surface cracking, and paint the exterior of the building and two interior stairwells. Three proposals were obtained and are attached to this item. The lowest responsible bid was provided by People's Choice Pressure Cleaning and Painting in the amount of \$18,975.00. The forty-year inspection report is also included in the attachments People's Choice is a know entity with the Public Works Department. They currently provide monthly Kane Concourse pressure cleaning services for the Town, are dependable, and consistently perform to Town standards. This item was not budgeted for the current fiscal year and will require appropriation from the General Reserve Fund.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

This item was not budgeted for the 2018-19 Fiscal Year and funding will need to be appropriated from the General Reserve Fund to cover this cost.

BUDGET IMPACT:

Submitted By: Douglas Armstrong, Assistant Public Works Director
Juan C Jimenez, Town Manager
Melissa Cruz, Finance Director

ATTACHMENTS

1. 40 YEAR INSPECTION 18SEP2018
2. TOWN HALL COMPLEX PAINTING PROPOSALS 16JAN2018

Folio: 13-2227-001-2220
Project Name:
Location: 9665 Bay Harbor Ter
Ayanidys Martinez (305) 993 - 1786

SE1809-02

WEATHER INFORMATION

Temperature at time of inspection: 81 °F
☐ Clear ☒ Cloudy ☐ Rain
Time: 12:40 PM

Inspector: Jose Subero

Inspection Date: 9/18/2018

Inspection Item	Pass	Fail	N/A	Comments	Photo
Structurals					
Front		F		Poor Paint	
Right		F		Remove the moisture & repair cracks	
Left	P				
Rear		F		Remove the moisture & repair cracks	
Window	P				
Door	P				
Roof		F		Repair Ceiling	
Gutter	P				
Foundation	P				
Masonry		F		Remove the moisture & repair cracks	
Floor and Roof System	P				
Steel & Concrete Framing System	P				
Electrical					
Amperage	P				
Gutters	P				
Electrical Panel		F		Some breakers are missing -Panel D	
Branch Circuits	P				
Grounding of Service & Equipment	P				
Emergency Lighting	P				
Building Egress Illumination	P				
Fire Alarm System	P			The location of main Panel?	
Smoke detectors	P				
PL Lighting	P				
Exit Sign		F		Repair Exit Sign	
Re-Certification Recommended		F			



PEOPLE'S CHOICE PRESSURE
CLEANING & PAINTING

4341 SW 73 TERRACE
DAVIE, FL 33314

Estimate

Phone #	Fax #	Date
954-445-8033	954-382-9267	1/11/2019

License #11-P-16356-X

Name / Address	
CARTMAN COMMERCIAL SERVICES, INC. ATTN. DOUG ARMSTRONG 11763 SW 92nd LANE MIAMI, FL 33186	
Phone	305-389-5794

Project
BAY HARBOR ISLANDS 9665 BAY HARBOR TERRACE BAY HARBOR ISLANDS, FL 33154

Description	Qty	Rate	Total
CITY HALL-POLICE STATION (COMPLEX) PAINT EXTERIOR STUCCO WALLS OF BUILDINGS TO INCLUDE 2 CONCRETE ROOFS, OUTSIDE STAIRWAY, SOFFITS, CEILINGS, PAINTED CONDUIT, PAINTED METAL DOORS, DOOR FRAMES, NORTH OVERHEAD DOORS, SOUTH INSIDE STAIRWELL AND ROOF ACCESS STAIRWELL (PREP & TOUCH UP ONLY) PRESSURE CLEAN SURFACES THOROUGHLY PRIOR TO COATING APPLICATION-TO REMOVE MILDEW, OIL, GREASE, DIRT, RUST AND LOOSE PAINT. PREPARE SURFACE TO REMOVE ANY IRREGULARITIES BY SCRAPING OR SANDING TO PRODUCE A UNIFORM SUBSTRATE FOR COATING APPLICATION MASONRY SURFACES: FILL ALL CRACKS LESS THAN 1/16" SHALL BE FILLED WITH BRUSH GRADE SEALANT AND THE EDGES FEATHERED TO INSURE UNIFORM SURFACE. ALL MASONRY CRACKS GREATER THAN 1/16" SHALL BE TOOLED OUT TO FORM A 'V' SHAPE. COMPLETELY FILL ALL CRACKS WITH BRUSH GRADE SEALANT OVER THE ELASTOMERIC VERTICAL PATCH TO COVER TO A DEPTH 1/16" THEN FEATHERED TO BLEND WITH THE SURROUNDING STUCCO AND TEXTURE AS CLOSELY AS POSSIBLE. STUCCO REPAIR AS NEEDED.		18,975.00	18,975.00

Total

Steve Landis or
Al Terwilliger

Customer Signature



PEOPLE'S CHOICE PRESSURE
CLEANING & PAINTING

4341 SW 73 TERRACE
DAVIE, FL 33314

Estimate

Phone #	Fax #	Date
954-445-8033	954-382-9267	1/11/2019

License #11-P-16356-X

Name / Address	
CARTMAN COMMERCIAL SERVICES, INC. ATTN. DOUG ARMSTRONG 11763 SW 92nd LANE MIAMI, FL 33186	
Phone	305-389-5794

Project
BAY HARBOR ISLANDS 9665 BAY HARBOR TERRACE BAY HARBOR ISLANDS, FL 33154

Description	Qty	Rate	Total
CAULKING: ALL PERIMETER JOINTS ARE TO BE INSPECTED. ALL THE DETERIORATING CAULKING SHALL BE REMOVED AS WELL AS ANY DIRT AND OR FOREIGN MATTER, AND THEN PROPERLY REPLACE WITH JOINT SEALANT. SEAL ALL PERIMETER JOINTS, STUCCO BANDS EXPANSION JOINTS AND ALL OTHER AREAS WHERE WATER INTRUSION MAY RESULT AS NEEDED. TOOL AFTER APPLICATION TO MATCH SURROUNDING SURFACES. METALS-SCUFF, SAND, POWER GRIND AS NEEDED AND WIPE DOWN. APPLY RUST INHIBITOR WHERE NEEDED ON METAL COATINGS: SHERWIN WILLIAMS PRODUCTS APPLY 1 COAT OF LOXON CONDITIONER CLEAR SEALER APPLY FINISH COAT OF SUPER PAINT ACRYLIC LATEX FLAT FINISH ON STUCCO WALLS AND CEILINGS. APPLY FINISH COAT OF DTM (DIRECT TO METAL) ACRYLIC LATEX SEMI GLOSS ON OVERHEAD DOOR, METAL DOORS AND DOOR FRAMES NOTE: THIS PRICE INCLUDES ALL LABOR& MATERIALS DEPOSIT TO BE DETERMINED ON SIGNING OF PROPOSAL			

Signing this Estimate indicates all terms and conditions have been accepted. Please
sign and email or fax back to 954-382-9267. A 50% deposit is required.

Total

\$18,975.00

Steve Landis or
Al Terwilliger

Customer Signature



H 3 J Construction Corp.
1350 NW 77 ST
Miami FL 33147
(786)-391-7101



PROPOSAL

DATE: 12/26/18

TO: Sr: Sergey Koretko

Building 9665 Bay Harbor Terrace

this is the proposal for exterior paint of the building and the stairs, walls, ceiling, only

SUBMITTED TO Bay Harbor Island

Name: Sergey Koretko

ARTICLE I

SCOPE OF WORK

Exterior Painting Building

1. The scope of work presented in accordance with Sherwin Williams

Specifications for the purpose of offering a ten (10) year

Prorated (material) warranty on the painting of the exterior and interior of this

Building by the Paint Manufacturer

Seal all exposed stucco surfaces.

Patch all cracks as specified within.

Paint parapet roof top.

Paint all exterior masonry walls window seals.

Paint the stairs interior

Paint masonry walls and ceilings



H & J Construction Corp.
1350 NW 77 ST
Miami FL 33147
(786)-391-7101



ARTICLE II

EXCLUSIONS

All Light Fixtures.

All hurricane shutters.

All pool area concrete floors.

All balcony floor

Any area not specified

ARTICLE III

EXTRAS & CHANGES

It is anticipated that the aforementioned work shall be inclusive and that
There will not be extras or changes. The need for extra work and changes
In the specifications will be the sole responsibility and determination of the
Owner and will be submitted on a written work order to the painting
Contractor no additional work shall be done or changes made in the
Work as specified without a written work order from the Owner.

ARTICLE IV

EMPLOYEES

1. H & J CONSTRUCTION CORP shall provide a supervisor for the overall Supervision and performance of the work and a foreman for the duration of the project.



H & J Construction Corp.
1350 NW 77 ST
Miami FL 33147
(786)-391-7101



ARTICLE V

CLEAN UP

Upon the completion of the work on each phase H&J CONSTRUCTION CORP. will Promptly remove all debris material, equipment, etc. and will leave the Premises clean, including the ground level area. Due to the nature of this

Warranty

10year warranty by manufacturer

H&J CONSTRUCTION CORP hereby proposes to furnish all labor and material to complete the job.

Base Price 10year warranty by Manufacturer

Building Exterior and interior Price Total \$ 19,650.00

Including

Painting all stucco surface, and including Perimetral wall

Total \$ 19,650.00

Nineteen thousand six hundred fifty

PRICE / CONTRACT APPROVAL

H & J CONSTRUCTION CORP, hereby proposes to furnish all labor, equipment and material to complete

Base Price:

(per scope of work of this Agreement)

All of the work is to be completed in a substantial and workmanlike manner for the sum of:
\$19,650.00

Nineteen thousand six hundred fifty



1060 Kane Concourse
Suite D
Bay Harbor Island, FL 33154
Phone: 707 690 1084
Website: www.metropolis-builders.net

BID

DATE	12/12/18
BID #	759

BILL TO

City of Bay Harbor Islands

DESCRIPTION	AMOUNT
Pressure clean surfaces thoroughly prior to coating application to remove mildew, oil, grease, dirt, rust and loose paint. Prepare surface to remove any irregularities by scraping or sanding to produce a uniform substrate for coating application. Masonry surfaces: Fill all cracks less than 1/16" shall be filled with brush grade sealant and the edges feathered to insure uniform surface. All masonry cracks greater than 1/16" shall be tooled out to form a "V" shape. Completely fill all cracks with brush grade sealant over the elastomeric vertical patch to cover to a depth 1/16" then feathered to blend with the surrounding stucco and texture as closely as possible. Stucco repair as needed Masonry surfaces: Fill all cracks less than 1/16" shall be filled with brush grade sealant and the edges feathered to insure uniform surface. All masonry cracks greater than 1/16" shall be tooled out to form a "V" shape. Completely fill all cracks with brush grade sealant over the elastomeric vertical patch to cover to a depth 1/16" then feathered to blend with the surrounding stucco and texture as closely as possible. Stucco repair as needed Caulking: All perimeter joints are to be inspected. All the deteriorating caulking shall be removed as well as any dirt and or foreign matter, and then properly replace with joint sealant. Seal all perimeter joints, stucco bands expansion joints and all other areas where water intrusion may result as needed. Tool after application to match surrounding surfaces. Metals-scuff, sand, power grind as needed and wipe down. Apply rust inhibitor where needed on metal Paint exterior stucco walls of buildings to include outside stairway, soffits, ceilings, painted conduit, painted metal doors, door frames, north overhead door, south inside stairwell and roof access stairwell (Prep & Touch up only) Coatings: Sherwin Williams Products Apply 1 coat of Loxon conditioner clear sealer Apply finish coat of super paint acrylic latex flat finish on stucco walls and ceilings. Apply finish coat of DTM (Direct to Metal) acrylic latex semi gloss on overhead door, metal doors and door frames Customer to choose colors. This price includes all labor and materials Includes the Roofs of the Two Water Towers	

Subtotal \$19,900.00

Tax

TOTAL \$19,900.00

Credit Card transactions are subject to a 2.9% convenience fee

If you have any questions about this invoice, please contact
our Billing Department, 707-690-1084, billing@metropolis-builders.com

Make all checks payable to
Metropolis Builders, LLC

Thank You For Your Business!

AGENDA ITEM REPORT

February 11, 2019

ITEM NUMBER: 12.

ITEM: Approval of an assignment/transfer of the Town's solid waste and recycling contract from World Waste Recycling to Coastal Waste and Recycling Holdco, LLC. Enclosed is the letter from World Waste and Coastal Waste and Recycling.

DESCRIPTION:

On January 7, 2019 World Waste Recycling, Inc., the Town's current solid waste and recycling service provider, entered into a Stock Purchase Agreement with Coastal Waste and Recycling. Upon closing of the transaction, Coastal will become the parent entity, and sole shareholder of World Waste Recycling.

According to our contract with World Waste Recycling, all contract assignments must be approved by the Town Council. The current contract expires on March 31, 2022 but includes two additional 2-year extensions that may be utilized at the Town's sole discretion. All of the terms and conditions will remain the same. Coastal has informed staff that all of World's personnel will remain unchanged and will continue to serve the Town.

Attached is a letter from World Waste Recycling as well as information on Coastal Waste and Recycling.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

If approved, the contract assignment to Coastal Waste and Recycling will have no additional fiscal impact on the Town. All of the terms and conditions of our current contract with World Waste Recycling would remain unchanged. Should the Council elect not to approve this item, we would need to re-bid this service. The bid results in 2017 were as follows:

World Waste: \$52,070.50 / month

Waste Connections: \$88,193.46 / month

Waste Management: \$127,919 / month

BUDGET IMPACT:

Submitted By: Juan C Jimenez, Town Manager

ATTACHMENTS

1. World Waste acquisition letter



January 11, 2019

JC Jimenez
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands FL 33154

Re: Transfer of Interest in the Agreements (as defined below)

Mr. Jimenez,

I am writing to inform Town of Bay Harbor Islands (the "Contract Party") that on January 7, 2019 World Waste Recycling, Inc. ("World") entered into a Stock Purchase Agreement with Coastal Waste & Recycling Holdco, LLC ("Coastal") whereby Coastal will acquire all of the issued and outstanding stock of both World and Big Apple (the "Transaction"). This letter is to inform you that upon the closing of the Transaction, Coastal will become the parent entity, and sole shareholder, of World. Pursuant to the terms and conditions of the Transaction, Coastal will thereafter have an interest in World's customer and vendor agreements, including the following agreements with the Contract Party (the "Agreements"):

Residential Solid Waste, Bulk Waste, and Recycling Collection and Disposal Services Agreement by and between World Waste Recycling, Inc. and Town of Bay Harbor Islands, dated March 23, 2017, as amended.

In connection with the acquisition of such interest, the Contract Party agrees and acknowledges that:

1. The Contract Party hereby acknowledges the transfer of the interest in the Agreements to Coastal pursuant to the Transaction and agrees that the Agreements shall remain in full force and effect following the consummation of the Transaction.
2. As of the date hereof, there is no default or event of default under any of the Agreements and no set of facts or circumstances exists which would, but for the passage of time, or the giving of notice, or both, constitute a default under any of the Agreements.

3. There are no other representations, warranties, agreements, concessions, commitments or other understandings between World and the Contract Party, other than as set forth in the Agreements.

4. Neither the Contract Party nor the Company has commenced any action or given or received any notice for the purpose of terminating the Agreements.

5. The Agreements are in full force and effect, and have not been amended, modified, or supplemented in any way.

[Remainder of Page Intentionally Left Blank]

Please sign the enclosed copy of this letter in the space provided below, and return it to me by scan and email to edamaso@worldwasterecycling.com to acknowledge your consent to the assignment of the interest in Agreement by World to Coastal.

Sincerely,

Eileen Damaso
Vice President

AGREED AND ACKNOWLEDGED BY
Town of Bay Harbor Islands

Name

Title



Coastal Waste & Recycling was formed in August of 2017 by its CEO **Brendon J. Pantano** and industry veteran investors Summer Street Capital. Summer Street has been investing in the waste and recycling sector since 2004 partnering with talented leadership teams with several successful investments including, Action Environmental, Interstate Waste Services, Apple Valley Waste, Curtis Bay Medical Waste Services and now Coastal Waste & Recycling.

As a third-generation operator, Brendon grew up working in his family's waste hauling company. He continued his career in the industry, working at both large public and private waste and recycling companies. Most recently Brendon served as District Manager in Miami Dade County for Progressive Waste Solutions/Waste Connections from 2012-2017, prior to that he served as Vice President of Operations at Environmental Logistic Services from 2007-2012 and General Manager of Regus Industries from 2005-2007. From riding on the back of a truck, to environmental compliance and operations, Brendon has experience in every aspect of the business.

Since Coastal's inception we have completed several acquisitions including Nu-Way & Riteway Recycling in Martin County in November of 2017 (Hauling and Processing) , Aquarius Development in Palm Beach County in March 2018 (Processing), Thoroughbred Waste Services June 2018 (Commercial Hauling including Broward County Schools Recycling), Lindimar and Mammoth Recycling in Broward County (Hauling and Processing) in August of 2018 and CCR Recycling in August of 2018 (Hauling including Palm Beach County Schools Recycling) and most recently we were awarded and started implementation of Miami Dade County Schools Recycling.

In the short time from our inception Coastal has been growing and building a superior network of assets and operators. We are now over 70 employees strong with 4 operating locations and 3 post collection processing facilities over 3 counties with expansions coming in Miami Dade County. Not only have we been growing and acquiring assets, but we have been stacking our team with local industry professionals with a long list of accomplishments within south east Florida. In addition to our CEO mentioned above, our senior leadership team includes:

Brian Fleming, Corporate Controller

Brian is a finance and accounting professional with 8 years of experience in waste & recycling collection and disposal. Most recently with Republic services where he had oversight of the Hillsborough County hauling contract from 2010 to 2013 and Palm Beach County SWA zone 3 contract from 2013 to 2016. Brian is responsible for monitoring and maintaining an effective finance and accounting department to support Coastal Waste & Recycling's operations.

Chad Abell, Vice President of Operations

Chad began his operational role within the solid waste industry at Waste Management in Northeast Ohio as a Transfer Station Manager in 2003 and was soon transferred into the landfill line of business where he spent 10 years. He completed his tenure with Waste Management overseeing the construction and opening of a commercial recycling center in Cleveland, Ohio in 2014. Most recently, Chad relocated to South Florida with Waste Connections and was responsible for the operations of 5 transfer stations and 1 material recovery facility from 2014-2018 prior to joining the Coastal Waste & Recycling team.

John Casagrande, Vice President of Business Development

John brings over 40 years of proven experience in the solid waste and recycling industry to Coastal Waste and Recycling L.L.C. As part of the Executive team he is instrumental in the strategic planning and operation of all companies. John came to the South Florida market in 1979 to begin a family owned waste hauling company where he was instrumental in the growth and success of the business which led to the company being purchased by one of the world's largest public waste companies, Attwoods, PLC. In 1999 he moved to Waste Management where he joined the executive team as General Manager for the Southern Group. Throughout his 14-year career with WM, he was placed in roles of increasing levels of responsibility including General Manager, District Manager and ultimately Market Area Vice President. He was responsible for the strategic planning and complete operational execution of the hauling company, landfills, Material Recovery Facilities and transfer stations.

Kristin Stock, Director Billing and Customer Experience

Kristin joined Coastal in August 2018 bringing with her over 25 years of experience in the waste industry. Kristin has worked for many of the top companies such as BFI, Waste Management, Progressive Waste and Waste Connections, in positions ranging from Revenue Manager to Manager, Operations Applications, at Waste Connections (predecessor companies Progressive Waste, Waste Services of FL, Inc.). In her role as Revenue Manager at Waste Connections, Kristin and her team were responsible for billing and collection of large contracts such as Miami-Dade Curbside Recycling, City of Miami Beach residential contract, City of Fort Lauderdale residential contract and over 10,000 individual commercial customers. Kristin was responsible for developing standard policy & procedure,

spanning the entire customer life cycle from billing and routing to collections. Kristin has been able to function as liaison to both Operation and Finance, while supporting end users with the software. Kristin hails from SW Pennsylvania and has made her home in South Florida with her family since 2010.

Gerardo Cardona, Division Hauling Manager

Gerardo Cardona has almost 20 years of experience in the waste industry. Gerardo has focused his career in operations maximizing the efficiency of commercial, residential, roll off operations and running large facilities with a high degree of business expertise. Prior to joining Coastal Waste & Recycling, Inc. in 2018, Gerardo served as Operations Manager with Waste Connections where he managed operations in both Broward and Miami Dade County from 2010-2018. Prior to that he was an Operations Route Manager with Waste Management supervising both the city of Fort Lauderdale, Davie, and Cooper City 2000-2010. In addition to Coastal's robust management team discussed above we have placed a high level of importance on creating a Board of Director's that further compliments and adds to the overall experience of the team. Below are the Bio's of Coastal's current board members.

Michael DiBella, COO and Chairman of the Board of Directors, Action Environmental Group

Mike's career in the solid waste industry spans more than twenty-five years. In 1985, he started as a driver for a family-owned business, DiBella Sanitation, Inc. and eventually worked his way through all aspects of the operation. Mike left Di Bella in 1998 as General Manager. In 1992, Mike started his own solid waste collection company, Environmental Waste Industries, Inc. in Albany, NY where he was Chief Operating Officer until 1998. That same year, he founded Interstate Waste

Services, which serves northern New Jersey and southern New York State. Mike was Chief Operating Officer at Interstate for nearly six years. He joined Action in April 2007 and expanded the company into one of the largest private and innovative provider of non-hazardous waste management services for the City of New York. Today, the Action Environmental Group is a regional company with the purchase of Interstate Waste Services. Mike also led the innovation for the purchase and implementation of the Optical Sorter, a state-of-the-art recycling facility that will allow Action to divert more waste from the landfill.

John Decker, CEO, Oakridge Waste Services

John is a 25-year waste industry veteran who started out on collection routes, operating a transfer station, and working around the shop during the summers for a close family friend and the owner of Bria Carting Company located in the suburbs of New York City. While continuing to work his way through Mr. Bria's company John was also putting himself through college and eventually graduate school earning a BS from DeSales University and an MBA from Lehigh University. Never wanting to leave the industry, John went on to the New England market to develop a "startup" company in Massachusetts/ Cape Cod and has since held high level leadership positions with both public and private waste companies. Most recently, John was the Vice President of Operations for Casella Waste one of the nation's leading solid waste and recycling organizations. In 2010, John partnered with Summer Street Capital and acquired Apple Valley Waste, at the time a West Virginia based solid waste and recycling company, with a commitment to building a regional solid waste and recycling company founded on combining new technology with old fashion values. Apple Valley Waste (AVW) has since quadrupled in size, now ranks in the top 60 waste and recycling companies in the country and has been able to assemble a first-class management team that maintains collection and transfer operations in West

Virginia, Pennsylvania, and Maryland (including the Baltimore/ DC areas). In 2015, Apple Valley constructed and opened the first single stream MRF in its area and John was named the National Waste & Recycling Associations Leader of the Year for his efforts to promote the "Slow Down to get Around" employee safety program. Apple Valley and its business partners also recently broke ground on the first MBT waste to solid fuel plant in the Mid-Atlantic area.

Brian D'Amico, Managing Partner, Summer Street Capital Partners

Brian D' Amico is a founding and managing partner of Summer Street Capital Partners, a Buffalo, NY-based private equity fund focused on the environmental services industry. At Summer Street, Brian oversees the firm's investment activities, operations, and investor relations. Brian leads the firm's Environmental Services Investment Team and serves as Director at Summer Street portfolio companies Action Environmental Services, Apple Valley Waste and Curtis Bay Medical Waste Services. With his substantial experience in solid waste companies, Brian partners with talented managers, bringing capital and resources to support acquisitions and aggressive growth strategies of small to mid-market companies. Brian is a member of several industry associations, including WASTEC, NSWMA, and SWANA.

AGENDA ITEM REPORT

February 11, 2019

ITEM NUMBER: 13.

ITEM: Consideration of a request by Council Member Leonard of a scholarship donation to the Rotary Club of Bal Harbour. Enclosed is a copy of the Funding Request form and supporting documents.

DESCRIPTION:

The Rotary Club of Bal Harbour and the Bal Harbour Police Department is once again co-sponsoring the 5K Run / Walk race that benefits the Chief Mark N. Overton and Chief Miguel De La Rosa Memorial Legacy Scholarship Funds. The Rotary Club of Bal Harbour is seeking a scholarship donation in the amount of \$5,000 that will be granted to individuals seeking a career in law enforcement. C

Council Member Leonard supports a donation, but would like to further discuss the amount being requested.

Enclosed is a copy of the funding request form and supporting documents.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

This is not a budgeted expense and will require appropriations from the General Reserve Fund.

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk
Jordan Leonard, Council Member

ATTACHMENTS

1. Rotary Club BH



TOWN OF BAY HARBOR ISLANDS

FUNDING REQUEST FORM

Name of Organization: <u>ROTARY CLUB OF BAY HARBOR ISLANDS</u>		Amount Requested: <u>5000</u>
Address: <u>9909 COLLINS DUE BAY HARBOR ISLANDS</u>		Phone Number: <u>305-865-0433</u>
Mission Statement: <u>See attached</u>		
Tax Status: <u>NON-PROFIT</u>	Employer ID Number: <u>59-6159047</u>	

Purpose of Request (Name of the project this request fill fund): <u>Scholarship for individual aspiring to a career in law enforcement</u>	
Anticipated Project Start Date: <u>3/17/19</u>	Completion Date: <u>3/17/19</u>
Total Cost of the Project (a detailed budget must be attached): <u>5000</u>	

Have other cities or private entities donated money to this project? ☒ Yes ☐ No

If yes, please list the cities/entities with the amount donated by each: COMMISSIONER HEYMAN
Town of Bay Harbor Islands \$7500 (in the past)
To be increased to 5000 for 2019

Will this request have a direct impact on the Town of Bay Harbor Islands? ☒ Yes ☐ No

If yes, explain how? It may have an impact if any of the selected candidates lives in Bay Harbor Islands.

Will this be a recurring request (Is a future donation request likely)? ☒ Yes ☐ No

If yes, please explain why?

It is not a fixed amount

BOYLE MINTZ
Name and Title of Individual Filing Request (printed)

Signature

Date

Please note: All organizations that are awarded funding will be required to provide a follow-up report no later than two weeks after project completion.

ABOUT ROTARY CLUB OF BAL HARBOUR

Chartered in May 1953, the Rotary Club of Bal Harbour, Florida, lists business and professional leaders dedicated to carrying out the Rotary International vision of "Service Above Self". The club is a representative sample of professional and business life of our town. All Rotary clubs worldwide meet weekly and are nonpolitical nonsectarian and open to all cultures, races and creeds.

Rotarians are men and women belonging to a Rotary Club dependent on which we perform with a service internally promoting friendship and fellowship and acting externally towards the improvements of quality of life in our community and throughout the world. Our responsibility and commitment to society is growing every day, we must be attentive to their needs and try to reverse the causes that motivate them.

Our Community Service focus on activities in the areas of Education of the Ruth K. Broad Bay Harbor K-8 Center supporting the Police Athletic League (PAL) program, participating on the annual Bay Harbor 5/10K Run, the Island Beach Bash event, the Kite Festival at Haulover Park, the annual award to the Police Officer of the year for the Village of Bal Harbour and the Township of Bay Harbor, Surfside and Indian Creek Village Police Department as well as the award to the best Teacher of the Year of our local school and also to the local businessman who has performed an outstanding dedicated service to the people in this community.

February 1, 2019

Stephanie Bruder

Mayor of the Town of Bay Harbor Islands

Members of the Town Council of Bay Harbor Islands

Dear Members of the Town Council of Bay Harbor Islands:

The Rotary Club of Bal Harbour and the Bal Harbour Police Dept will be co-sponsoring again our yearly 5K RUN/WALK race to benefit the Chief Mark N. Overton and Chief Miguel De La Rosa Memorial Legacy Scholarship Fund.

The goal of this event is to raise money to fund at least 10 scholarships for individuals aspiring to a career in **law enforcement**. These scholarships will help them to cover police academy training certification costs, (\$5000 is the estimated cost per individual). Your support will help needy applicants perpetuate the memories and legacies of Chief Overton and Chief Miguel De la Rosa.

We respectfully, request that the Town of Bay Harbor Islands provide support for this worthy project.

Specifically, we are requesting that the Town of Bay Harbor Islands provide \$5000. This will fully fund one scholarship for one student.

We thank you for your time and consideration for this noble cause.

We look forward to your support.

If you would like further information, please contact Rabbi Chaim Casper, our secretary at (305)865-0433 or via email: info@surfflorist.com

Yours in Rotary,

Gayle Mintz

Treasurer and Bay Harbor Islands Resident

Rotary Club of Bal Harbour, Florida



1 February 2019

To Whom It May Concern:

Rotary International, a non-profit organization incorporated in Illinois, is exempt from federal income tax under 501 (c) (4) of the Internal Revenue Code. This exemption applies to all subordinate units, i.e. districts and clubs that are properly registered with the Internal Revenue Service.

The Rotary Club of Bal Harbour, Florida, USA, is a member in good standing of Rotary International and has been since its admission on 4 May 1953.

Rotary International's group exemption number is 0573. The Employer Identification Number (EIN) for the Rotary Club of Bal Harbour, FL, as reported annually to the IRS, is: 59-6159047.

Sincerely,

A handwritten signature in black ink, appearing to read "Deanna Cankar", with a stylized, flowing script.

Deanna Cankar
Manager, The Americas
Club and District Support

AGENDA ITEM REPORT

February 11, 2019

ITEM NUMBER: 14.

ITEM: Discussion and **direction** requested by Town Manager Jimenez regarding the manner of bidding for the this year's holiday decorations.

DESCRIPTION:

The annual holiday decoration contract needs to be put out to bid; however the Town Manager proposes to change the traditional bid process and would like to discuss it further with the Town Council.

RECOMMENDED ACTION:

For Town Council discussion.

FINANCIAL ANALYSIS:

Expense budgeted FY 2018-2019 in the amount of \$80,000.

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk
 Juan C Jimenez, Town Manager

ATTACHMENTS

None