

TOWN OF BAY HARBOR ISLANDS

May 13, 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:

SPECIAL PRESENTATION:

1. Legislative Update - Senator Jason Pizzo

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

TOWN MANAGER'S REPORT:

2. **Report** of the Town investment performance for the period ending March 31, 2019. Presentation will be provided by Gerardo Rodriguez of BNY Mellon.

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

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. **Approval** of the January 14th, 2019 Meeting Minutes. Enclosed is a copy of the draft Minutes.
4. **Consideration** and **Approval** of a Resolution re-appointing the Town Attorney and Assistant Town Attorneys. Enclosed is a copy of the proposed resolution and retainer agreement as requested by the Town Council.

5. **Consideration** and **Approval** of a resolution requested by Council Member Leonard to become a member of the American Flood Coalition. Enclosed is a copy of the proposed resolution.
6. **Consideration** and **Approval** to extend the Program Grant Agreement for Address Verification Plan between the Town and the School Board of Miami-Dade County for an additional two (2) schools years. Enclosed is a copy of the request for extension request and other supporting documents.

STAFF RECOMMENDATION: Approval

ORDINANCES ON SECOND READING:

7. **Consideration** and **approval** of an ordinance on **second reading** amending the Town Code to replace the current flood ordinance with a new model ordinance. The state has created a new “model” flood code for communities that participate in the FEMA NFIP program. Enclosed is a copy of the proposed ordinance and supporting documents.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN OF BAY HARBOR ISLANDS CODE OF ORDINANCES TO REPEAL THE TOWN’S EXISTING CHAPTER 7½ ENTITLED FLOOD DAMAGE PREVENTION; TO ADOPT A NEW UPDATED CHAPTER 7½ ENTITLED FLOOD DAMAGE PREVENTION; TO ADOPT UPDATED FLOOD PLAIN MAPS; TO DESIGNATE A FLOODPLAIN ADMINISTRATOR; TO ADOPT PROCEDURES AND CRITERIA FOR DEVELOPMENT IN FLOOD HAZARD AREAS; AND FOR OTHER PURPOSES; PROVIDING FOR APPLICABILITY; PROVING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Approval

POLL VOTE

ORDINANCES ON FIRST READING:

8. **Consideration** and **Approval** of an ordinance on **first** reading amending Section 23-11 of the Town Code regarding the open space 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 AS RELATED TO OPEN SPACE REQUIREMENTS IN THE RD SINGLE-FAMILY DISTRICT; 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.

STAFF RECOMMENDATION: Council Discretion

POLL VOTE

DEFERRED ITEMS:

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

9. **Consideration and Approval** of contract award BHI-202 to Persant Construction Co. Ltd. in the amount of \$22,700 for roadway milling and resurfacing for the intersection on 99th Street and East Bay Harbor Drive. Enclosed are the cost estimated and supporting documents.

STAFF RECOMMENDATION: Approval

POLL VOTE

10. **Appointment** of three Council Members to the Block 11 Parking Lot Lease Committee. The committee has not met in years, the last members were Council Member Salver and Council Members Yaffe. The committee originally had three members and it was a Council Committee (not open to resident participation).

STAFF RECOMMENDATION: Council Discretion

DISCUSSION ITEMS:

11. **Discussion** requested by Mayor Bruder to direct the Town Manager to budget for marketing, public relations, design guidelines, branding and/or other method of helping the Business District achieve the desire mixed of tenants and attract more people to the Town.
12. **Discussion** requested by Vice Mayor Fuller regarding the change in flight pattern by the Federal Aviation Administration (FAA).
13. **Discussion** requested by Council Member Leonard to renovate / enhance the 92th Street Park by re-sodding the green space. Enclosed is a copy of a proposal from Brightview Landscaping Services and other supporting documents.

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

May 13, 2019

ITEM NUMBER: 2.

ITEM: Report of the Town investment performance for the period ending March 31, 2019. Presentation will be provided by Gerardo Rodriguez of BNY Mellon.

DESCRIPTION:

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk

ATTACHMENTS

None

AGENDA ITEM REPORT

May 13, 2019

ITEM NUMBER: 3.

ITEM: Approval of the January 14th, 2019 Meeting Minutes. Enclosed is a copy of the draft Minutes.

DESCRIPTION:

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk

ATTACHMENTS

1. 1-14-19 Reg DRAFT

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

A Regular Meeting of the Town Council was held on Monday January 14, 2019 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

SPECIAL PRESENTATION:

Item 1. Certificate of Achievement for Excellence in Financial Reporting - Melissa Cruz, Finance Director.

Town Manager Jimenez explained that the Town was awarded the Certificate of Achievement for Excellence in Financial Reporting by the Financial Officers Association awarded by then Government Finance Officers Association for its comprehensive annual financial report (CAFR). The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting.

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

Town Manager Jimenez pulled item #15 from the agenda.

~~**Item 15. Consideration and Approval of contract award to Heavy Civil Inc. in the amount of \$548,413.50 for project BC 150 Broad Causeway Corridor Enhancements Project.**~~

Council Member Leonard would like to increase the funding amount for the Bay Harbor Islands Police Explorers' Program.

Vice Mayor Fuller pulled item #7 for discussion.

Council Member Leonard pulled item #5 for discussion.

TOWN MANAGER'S REPORT:

- Town Manager Jimenez will be meeting the State Legislators to seek additional funding for future projects in Town such as the sewer laterals.
- The December 30th, 2018 first Annual Concert was successful and thanked the Town staff for all their efforts.
- Reported of a recent arrest of an individual that participated in multiple robberies in the last 2 weeks. The Town helped recover 2 stolen vehicles by utilizing the License Plate Readers (LPR).

- Next month staff will provide cost estimates to address the 40-year re-certification for the Town Hall Facility.
- Staff is working to launch the new Town website which will allow new features that were not currently available such as live streaming of Town Meeting and a Transparency Portal.

Mayor Bruder suggested that an article on the monthly Town newsletter be advertised explaining the new website features.

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

Council Member Tricoche welcomed everyone back from Winter Break and wished everyone a happy new year.

Council Member Reid reminded the residents the Town was still accepting resumes from volunteers that would like to participate in the Sustainability and Resiliency Committee.

Council Member Salver reported he attended the litigation Committee meeting.

Council Member Yaffe reminded the residents to attend Pizza with the Police and the 5K/10K Race.

Vice Mayor Fuller thanked the staff on the amazing turnout at the December 30th end of the year Concert.

Mayor Bruder, thanked O'Lima Restaurant for their appetizers and encourage the residents to visit the local eatery.

O'Lima Restaurant owner German Gonzales came forward and stated he taken over the previous partnership and welcome the residents to his establishment.

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.

Kathy Srur, 10350 W. Bay Harbor Drive, came forward and she was in favor of the 1177 Kane Concourse project, but was concerned with the parking; traffic study; height limit and school crowding.

Judith Etzion, 10300 W. Bay Harbor Drive, came forward and was concerned with the parking study for the 1177 Kane Concourse project.

Johnathan Garcia, 10225 W. Bay Harbor Drive, came forward and explain that he spends a lot of time at the 98th Street Park but was concerned with the older kids interfering with the smaller kids at the

playground. He urged the Town Council to consider the installation of a net to protect the smaller kids from getting injured by the older kids playing.

Linda Zilber, 1231 95 Street, came forward and thanked the Town staff on their response to a recent fire at her home.

Kathleen Kennedy, 9180 W. Bay Harbor Drive, came forward and she was opposed to item #11. She felt that the Town should regulate the use of medical marijuana dispensing facilities. She felt that there were many people that could benefit from the medicine.

Mayor Bruder would like a future discussion on other events or concerts that could be held at the new 95th Street Park.

Frances Neuhut, 1060 Kane Concourse, came forward and she was concerned with the parking on the 1177 Kane Concourse.

John Corral, 9665 W. Bay Harbor Drive, came forward and asked why the Town can't we be more transparent.

COMITEE REPORTS:

Item 2. Report from the Parks and Recreation Committee.

Items 5 and 7 were taken out of the consent agenda for discussion.

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. Consideration and Approval of the following Meeting Minutes:

- a. May 1, 2018 - Joint Workshop
- b. May 11, 2018 - Regular Council Meeting
- c. June 11, 2018 - Regular Council Meeting
- d. July 19, 2018 - Special Council Meeting
- e. July 19, 2018 - Budget Workshop

Item 4. Consideration and Approval of the Council Meetings dates for the 2019 Calendar year.

Item 6. Consideration and Approval of a proposal from MediaTech in the amount of \$2,925 for the design and production of the Town's 2017-18 Annual Report.

Item 8. Consideration and approval of an expenditure not to exceed \$25,000 from the Law Enforcement Trust Fund for the purchase of a 8-12 passenger van to be used for the Bay Harbor Islands Police Explorer Program.

Item 9. Consideration and Approval of an Inter local Agreement with the Village of Bal Harbour for the access and use of the Bal Harbour Basketball Courts located at 701 96 Street.

Item 10. Approval to carry-forward appropriations from the 2017-2018 budget year into 2018-2019.

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

Item 5. Consideration and Approval requested by Council Member Leonard of a Memorandum of Understanding (MOU) with Our Kids of Miami -Dade / Monroe, Inc to establish a protocol for foster and adoptive parent recruitment within the Town. Enclosed is a copy of the proposed Agreement.

Council Member Leonard would like an amendment to include a provision that would allow employees to use flex time for the purpose of training to become a foster parent.

ACTION: Council Member Leonard made a motion to approve with agreement with the proposed amendment. Council Member Yaffe seconded the motion and it passed unanimously.

Item 7. Consideration and Approval for a proposal from LagomHR in the amount of \$4,250 to create a new employee policy manual for the Town. Enclosed is a copy of the proposal.

Council Member Salver asked the Council to consider a Council retreat to discuss the Town long term goals such as a mission statement and other items.

Town Manager Jimenez reported that the employee's policy manual has not been update since 1994.

ACTION: Vice Mayor Fuller made a motion to approve the proposal from LagomHR. Council Member Leonard seconded the motion and it passed unanimously.

ORDINANCES ON SECOND READING:

Item 11. Consideration and Approval of an ordinance on first reading to prohibit medical marijuana dispensing facilities within the Town.

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.

Vice Mayor Fuller, Council Member Leonard and Council Member Yaffe were opposed to the proposed ordinance to prohibit the medical marijuana treatment center.

Mayor Bruder felt that there was a medical dispensary that was accessible in North Miami.

Council Member Reid clarified that the Town Council can later overturn the ordinance should there be a demand for the Town to regulate the use.

Council Member Tricoche was concerned with not knowing what will happen in town. She was in favor of prohibiting the medical use of medical marijuana.

ACTION: Mayor Bruder made a motion to approve the proposed ordinance. Council Member Tricoche seconded the motion and it passed 4-3 with Vice Mayor Fuller, Council Member Leonard and Council Member Yaffe opposed.

DEFERRED ITEMS:

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

Item 12. Discussion and selection of the Town's first mission statement.

Item deferred to a later date.

Item 13. Discussion and Approval of a proposal from HR Compensation Consultants, LLC. in the amount of \$20,950 for classification and compensation consulting services.

PUBLIC COMMENT

Victor Maya, 1155 103 Street, came forward and was in favor of the proposed item to conduct and evaluate the employee's classification and compensation.

Kathy Bush came forward and explain that the company would gather the data from each employee job to determine their perspective classification. Each position will be assessed on their job description and the on the job training required.

CLOSED PUBLIC COMMENT

ACTION: Council Member Leonard made a motion to approve the proposed from HR Compensation Consultants, LLC. Council Member Tricoche seconded the motion and it passed by unanimous poll vote.

Item 14. Consideration and Approval of a request from EzFILL-FL, LLC to extend the hours of operation for an on-demand gas delivery service. The Business Owner is requesting to operate between the hours of 8:00 a.m. to 2:00 a.m.

Jonathan Gross of EzFILL-FL, LLC came forward and asked for the Town to consider their request to extend the hours of operation of 8:00 a.m. to 2:00 a.m. He explained that many of the Bay Harbor Islands residents were requesting service after the permissible hours of operation.

Council Member Salver suggested the times of extension of 8:00 a.m. to 12:00 a.m.

ACTION: Council Member Salver made a motion to extend the hours of operation to 8:00 a.m. to 12:00 a.m. Mayor Bruder seconded the motion and it failed 2-5, with Vice Mayor Fuller; Council Member Leonard; Council Member Reid; Council Member Tricoche and Council Member Yaffe opposed.

16. Consideration and Approval of contract award to Metro Express, Inc. in the amount of \$76,000.00 to perform work associated with Contract # BHI 197 Zone 3 Valley Gutter Repairs on the perimeter roadways of the West Island north of 96th Street.

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

Item 17. Consideration and Approval of contract award to Cone & Graham Heavy Construction in the amount of \$94,704.20 to perform work associated with Contract # BC 152 Tendon Repairs U Channel over Indian Creek Bridge.

ACTION: Council Member Leonard made a motion to approve the contract award to Cone & Graham Heavy Construction. Council Member Yaffe seconded the motion and it passed by unanimous poll vote.

Item 18. Consideration and approval of a proposal from Hazen and Sawyer in the amount of \$19,600.00 for engineering services for the preparation of the Town wastewater collection/transmission system model update due by April 1, 2019. Failure to meet this deadline would place the Town in a moratorium for non-compliance.

ACTION: Council Member Yaffe made a motion to approve the proposal from Hazen and Sawyer. Council Member Leonard seconded the motion and it passed unanimously.

DISCUSSION ITEMS:

There being no further business to discuss meeting was adjourned at 8:35 p.m.

MAYOR

ATTEST

TOWN CLERK

AGENDA ITEM REPORT

May 13, 2019

ITEM NUMBER: 4.

ITEM: Consideration and Approval of a Resolution re-appointing the Town Attorney and Assistant Town Attorneys. Enclosed is a copy of the proposed resolution and retainer agreement as requested by the Town Council.

DESCRIPTION:

At the April 8th, Organizational Meeting, the Town Council asked the office of the Town Attorney to update the existing agreement for legal services. Attach hereto, is the proposed updated agreement which provides a detail description of what is included as part of the retainer and the hourly fees for special matters.

Enclosed is a copy of the proposed resolution and supporting documents.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk
 Craig Sherman, Town Attorney
 Frank Simone, Assistant Town Attorney

ATTACHMENTS

1. Town Attorney Agreement
2. Sherman and Sherman analysis May 2019
3. Reso - appointing Town Attorneys - revised 2019

SHERMAN & SHERMAN, P.A.
Attorneys at Law

BANK OF AMERICA BUILDING
2000 GLADES ROAD
SUITE 204
BOCA RATON, FLORIDA 33431

TELEPHONE (561) 300-5888
TOLL FREE (855) 300-5888
TELEFAX (561) 300-5880
WEBSITE: ShermansLaw.com

May 9, 2019

Via e-mail: jcjimenez@bayharborislands-fl.gov

Town of Bay Harbor Islands
ATTN: JC Jimenez, Town
Manager 9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

RE: Town of Bay Harbor Islands - General Legal Matters / Special Matters / Retainer Agreement

Dear JC:

This letter will serve as a retainer agreement confirming our agreement to represent the Town as Town Attorney in connection with the above-referenced general and special matters, for the ensuing year through March, 2020.

As agreed, we will receive a monthly retainer of \$7,900.00, plus actual out-of-pocket expenses. The services to be provided for payment of this monthly retainer shall be:

- A. The submission of matters for inclusion in the ten (10) regular monthly Town Council meetings;
- B. Review of the agenda and exhibits for the regular monthly Town Council meetings;
- C. Attendance at the ten (10) regular monthly Town Council meetings (by two (2) attorneys - most months);
- D. Drafting of all Ordinances, Resolutions, and Variances required by or for the ten (10) regular monthly Town Council meetings;
- E. Attendance at six (6) Planning & Zoning meetings (per year) that require a site plan approval or other resolution for approval to be prepared by our office;

- F. Attendance at three (3) special master hearings (per year);
- G. Attendance at one (1) special Town Council meeting (per year);
- H. Availability during regular business hours to communicate with Town staff on Town general routine matters taking less than twenty (20) minutes of time, which may include review of routine contracts, and other attorneys' invoices.

Other than the matters set forth above, our services will be provided to the Town at the rate of \$295.00 per hour, plus out-of-pocket costs for Special Matters. "Special Matters" shall be defined as follows:

- A. Any additional hearings and meetings before any governmental/ administrative bodies including, but not limited to, the Planning & Zoning Board, Special Master, Town Council, Town Manager, Town Clerk, or any other Town Board or Committee;
- B. Attendance at preparation meetings with Code Department for all Special Master hearings;
- C. The preparation of all documents and approvals required by all Special Master hearings, Planning and Zoning Board meetings, Town Manager meetings, and Town Clerk meetings;
- D. Municipal prosecutions filed in the Miami-Dade County Court for matters not brought before the Town's Special Master Proceedings;
- E. Forfeiture proceedings;
- F. Co-Counsel activities, including insurance counsel assigned by the Town's insurance carrier, when necessary and appropriate, and other outside counsel;
- G. Labor negotiations and activities associated with statutory collective bargaining pursuant to Chapter 447, Florida Statutes, as amended, from time to time;
- H. Cable or Telecommunication matters, Franchise Agreements or Ordinances;
- I. Real Estate Transactions;
- J. Labor/Personnel matters;
- K. Pension Matters;
- L. BID matters;
- M. Comprehensive Planning and Land Development related matters;
- N. Construction related matters and issues relating thereto;

- O. Bankruptcy matters;
- P. Review and Revise Memoranda of Understandings; Inter local Agreements; and other contracts;
- Q. Lien matters, including electronic recording of liens;
- R. Ethics matters under the Miami-Dade County Ethics Code, including attendance at witness statements, hearings, and proceedings, and the preparation of all documents and responses requested, required, or otherwise advisable;
- S. Matters requiring twenty (20) minutes or more of time; and
- T. Other matters with prior authorization by the Town Manager or the Town Council.

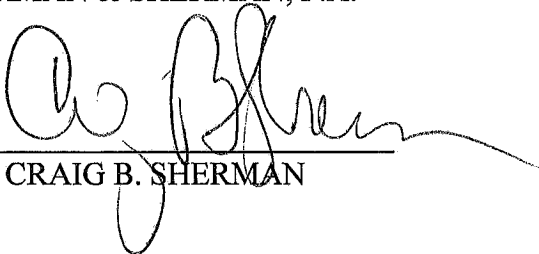
A bill for Special Matters is sent on a monthly basis and said bill indicates the date services were provided, a description of the services provided, and the time spent in tenths of an hour. In lieu of charges for actual telephone, telefax, and copying expenses, our firm charges three percent (3%) of the monthly fee charges to cover such services, which charge will appear on your monthly statement. Payment is due upon receipt of the bill. The Town agrees that if a bill is not paid promptly when due, or if we disagree on litigation strategy, we may withdraw without opposition.

If you are in agreement with the matters contained herein, please sign and date this letter below in the space provided, and return a copy to us by e-mail.

Thank you.

Sincerely yours,

SHERMAN & SHERMAN, P.A.

By: 
CRAIG B. SHERMAN

AGREED AND ACCEPTED this ____ day of _____, 2019.

TOWN OF BAY HARBOR ISLANDS

By: _____
JC JIMENEZ
Town Manager

Sherman and Sherman P.A. Agreement analysis
as of May 8, 2019

	2019 bills paid through April 2019	2019 Estimate using rates included in new retainer agreement*	Variance (\$'s)	Variance (%)
Retainer	39,655	56,700	17,045	43%
Special Matters	58,640	36,457	-22,184	-38%
Code Enforcement	6,968	5,105	-1,863	-27%
Total	\$ 105,263	\$ 98,261	\$ (7,002)	-7%

Notes:

Type	Current	New Agreement
Retainer	\$ 5,000.00	\$ 7,900.00
Hourly Rate	\$ 395.00	\$ 295.00
Monthly Admin cost	\$ 665.00	based on actual costs incurred for retainer services or 3% of total cost for special matters

* a \$200 monthly admin cost was assumed for the 2019 estimate.

RESOLUTION NO. _____

**A RESOLUTION OF THE TOWN COUNCIL OF THE
TOWN OF BAY HARBOR ISLANDS, FLORIDA
APPOINTING A TOWN ATTORNEY AND
ASSISTANT TOWN ATTORNEYS.**

WHEREAS, it is incumbent upon the newly elected Town Council to appoint a Town Attorney and Assistant Town Attorneys; and

WHEREAS, an appropriation for these officials has been provided for in the Operating Budget; and

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

Section 1. That the following shall be appointed to serve the Town as Town Attorney to handle all legal details for the current appointive year for an annual retainer of \$ 94,800 plus \$ 295.00 per hour for special matters:

CRAIG B. SHERMAN

Section 2. That the following be appointed as Assistant Town Attorneys to serve only in the absence of the Town Attorney under the supervision and direction of the Town Attorney as a single entity in accordance with the compensation established above.

FRANK C. SIMONE

DREW B. SHERMAN

PASSED and ADOPTED this 13th day of May 2019.

MAYOR

ATTEST:

TOWN CLERK

AGENDA ITEM REPORT

May 13, 2019

ITEM NUMBER: 5.

ITEM: Consideration and Approval of a resolution requested by Council Member Leonard to become a member of the American Flood Coalition. Enclosed is a copy of the proposed resolution.

DESCRIPTION:

The American Flood Coalition has invited the Town join the Coalition that advocates for flooding and sea level initiatives for coastal communities.

Benefits to citizens when a municipality joins American Flood Coalition:

- Bridge between local experience and federal advocacy. The aim of the American Flood Coalition is to bridge local challenges, leadership, and expertise in flood-affected communities with federal policy on sea level rise and flooding. Cities that join the coalition can provide input about their specific challenges, thus informing our federal advocacy. In this way, the experience of a citizen can flow through local leaders all the way to state and federal politicians. By way of example, the Coalition worked with our Virginia members to amend a federal program so that its funding could be used to address sea level rise and flooding on military access roads. We translated the experience of Virginia residents into a policy idea and ultimately, legislation.
- Support for select sea level rise adaptation initiatives. When possible, the coalition will support local leaders in our member cities in their flooding and sea level rise initiatives. For instance, local leaders in Charleston, South Carolina in developing a point of view, supporting materials, and advocacy strategy for protecting their hospitals from storm surge. Local initiatives raise awareness and move adaptation efforts forward, thus benefiting those living in our member cities.
- Enhanced communication between citizens and local government. The American Flood Coalition provides tips, best practices, and assistance to member cities as they engage with their citizens about sea level rise and flooding. Not only do we provide best practices for crucial elements of planning, such as hosting town halls, but we also emphasize community engagement in our educational resources. For cities that have not yet launched branded resilience campaigns the coalition provides assistance where possible in launching those efforts. Citizens benefit from more effective lines of communication with municipal staff and elected officials.
- Assistance to member cities in addressing citizen inquiries. Coalition members often reach out to our staff with inquiries from those in their community. Coalition staff support member cities as they respond to citizen inquiries about sea level rise and flooding, thereby enabling more thorough responses.

Enclosed is a copy of the proposed resolution and other supporting documents.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

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

ATTACHMENTS

1. American Flood Coalition DRAFT
2. The American Flood Coalition

RESOLUTION NO. _____

**A RESOLUTION OF THE TOWN COUNCIL OF THE
TOWN OF THE TOWN OF BAY HARBOR ISLANDS,
FLORIDA PROVIDING FOR THE TOWN OF BAY
HARBOR ISLANDS TO BECOME A MEMBER OF
THE AMERICAN FLOOD COALITION; PROVIDING
FOR TRANSMITTAL; AND PROVIDING FOR AN
EFFECTIVE DATE.**

WHEREAS, flooding during king tides is already a costly nuisance and a problem that if unaddressed will grow worse as sea levels continue to rise, and

WHEREAS, sea level rise has risen 8 inches since 1950 and its speed has increased threefold in recent years, with scientific projections forecasting another 8 inches of sea level rise in the next 20 years, and

WHEREAS, sea level rise of just 4 inches in the last 10 years has increased flooding state-wide by 400%, and

WHEREAS, sea level rise poses a unique threat to all Florida given the limestone bedrock beneath much of the state which allows rising sea water to infiltrate sewage systems and threaten groundwater supplies via salt water intrusion, and

WHEREAS, proactively investing to prevent flooding is a wiser use of resources than spending on flooding recovery, as exemplified by FEMA research showing that \$1 of spent on disaster prevention saves \$4 in recovery costs, and

WHEREAS, national coordination and support are necessary for coastal Towns to fully address the challenge of sea level rise and flooding, and the American Flood Coalition provides a platform advocating for national solutions to sea level rise and flooding that invest in and protect our coastal communities, and

WHEREAS, the American Flood Coalition is a forum for best practices and support in developing local and state-level responses to sea level rise and flooding that will enhance the Town's sea level rise effort, and

WHEREAS, sea level rise and flooding are important issues that our residents deserve to understand, and the American Flood Coalition provides opportunities and tools to communicate with residents on sea level rise challenges and solutions, and

WHEREAS, joining the American Flood Coalition will aid the Town's efforts to protect against flooding without requiring any financial support or dues from the Town Council, and

WHEREAS, the Town Council finds that joining the American Flood Coalition will promote the welfare of Town residents and ensure the prosperity of the Town economy by accelerating solutions to sea level rise and flooding, and

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN
OF BAY HARBOR ISLANDS, FLORIDA, AS FOLLOW:**

Section 1. **American Flood Coalition Membership.** The Town recognizing the need to advance national solutions to sea level rise and its effects, agrees to become a member of the Coalition. The Town will work as a member of the Coalition to safeguard the welfare of its residents.

Section 2. **Transmittal.** The Town Clerk is hereby directed to transmit a copy of this resolution to the Coalition.

Section 3. **Effective Date.** This resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this 13th day of May 2019.

TOWN OF BAY HARBOR ISLANDS

STEPHANIE BRUDER
MAYOR

ATTEST:

MARLENE M. SIEGEL
TOWN CLERK

The American Flood Coalition

Advocating for national solutions to flooding and sea level rise

The American Flood Coalition is a nonpartisan group of cities, elected officials, military leaders, businesses, and civic groups that have come together to drive adaptation to the reality of higher seas, stronger storms, and more frequent flooding through national solutions that support flood-affected communities and protect our nation's residents, economy, and military installations.

The coalition is a member-driven nonprofit organization. We heard time and again from local officials, stakeholders, and mayors about the need for a coalition to advocate for national solutions to flooding and sea level rise. The American Flood Coalition was created to fill that need and provides a platform for communities to advocate with a unified voice for solutions.

The American Flood Coalition focuses on policies that strengthen our economy, invest in our cities and towns, and safeguard our national security. We started in Florida, Virginia, and South Carolina, but are rapidly expanding to other flood-affected states, with the goal of expanding across the nation.

AGENDA ITEM REPORT

May 13, 2019

ITEM NUMBER: 6.

ITEM: Consideration and Approval to extend the Program Grant Agreement for Address Verification Plan between the Town and the School Board of Miami-Dade County for an additional two (2) schools years. Enclosed is a copy of the request for extension request and other supporting documents.

DESCRIPTION:

The proposed extension would renew the existing agreement on the same terms and conditions for an additional two (2) school years. The extension period shall be July 1, 2019 through June 30, 2021.

Enclosed is a copy of the agreement and extension request.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

The Town will reimburse the School Board up to \$1,500 per school year for all expenses related to the software.

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk
 Juan C Jimenez, Town Manager

ATTACHMENTS

1. School Board - Address verification agreement - 2018-19
2. First Extension Amendment - School Verification Plan

PROGRAM GRANT AGREEMENT
FOR
TOWN OF BAY HARBOR ISLANDS ADDRESS VERIFICATION PLAN

This Program Grant Agreement for the Town of Bay Harbor Islands Address Verification Plan ("Agreement") is entered into this _____ day of _____, 2018, by and between the Town of Bay Harbor Islands, a Florida municipal corporation ("Town") and the School Board of Miami-Dade County, Florida, a political subdivision of the State of Florida ("School Board"). (The Town and School Board shall be collectively referred to as the "Parties" or, individually, as a "Party").

In Consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged the Parties agree as follows:

Section 1. Implementation of Address Verification Plan

(a) The School Board and the Town agree that commencing June 1, 2018 and continuing during the Term, the Parties shall implement the Town of Bay Harbor Islands Address Verification Plan ("Plan") in accordance with School Board Policy 5112 for school year ending June 30, 2019, as set forth herein, and in Exhibit "A," hereto. Any amendments to the Plan must be agreed to in writing by the Parties. The funding amounts shall be finalized ninety (90) days prior to the commencement of a school year.

(b) The School Board agrees to administer the Plan commencing on June 1, 2018 at the Ruth K. Broad Bay Harbor K-8 Center (the "School"). The Plan shall apply to: 1) all children who seek to register as students at the School; 2) children who are already registered at the School; and 3) if the School Board receives information or learns of information that a child may have a Primary Residence (defined below) that is outside of the School's attendance boundaries ("Boundary"). (Each such child is referred to hereinafter as a "Student").

(c) Throughout the Term, the School Board shall provide the Town Manager with a report containing the number of Students enrolled in the School broken down by the aggregate number of Students by grade level whose Primary Residence (defined below) is inside and outside the Boundary, and number of **approved** Students whose Primary Residence is outside of the Boundary ("Report"). The School Board shall provide to the Town with an updated Report, quarterly, that shall include the progress and results of the implementation of the Plan and the items set forth in Section 1(c)(2), below. The Report shall break down the data for the School on the Boundary. The Parties agree that the Report(s), the Plan, and the activities required by this Agreement shall comply with the privacy requirements of the Federal Education Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, the Florida Education Code, and School Board Policies and Procedures. School Board Policies and Procedures, including any updates, can be found online at <http://www.neola.com/miamidade-fl/>. The Parties acknowledge and agree that other than as

contained in the Report(s), a Student's personal information "Personal Information") shall not be provided to the Town.

(1) The Report(s) shall include the following information, if applicable (Exhibit "D"):

- a. Number of letters mailed to Students enrolled;
- b. Number of letters returned after mailing;
- c. Number of students residing outside the Boundary;
- d. Number of transfer Students;
- e. Number of Students transferred to their home school;
- f. Number of Students granted an exemption to the Boundary requirements for the month.

(d) The Parties acknowledge and agree that the children of active military personnel who attend Miami-Dade County public school shall have equal priority, for enrollment purposes, with the Student's Primary Residence (defined below) is in the Boundary.

(e) For the purpose of this Agreement, the term Primary Residence shall mean "the home in which the Parent(s) (defined below) designate as their homestead or live with the Student a majority of the time during the School year. The term Parent(s) shall mean "either or both biological or adoptive parent(s) of the Student, the Student's legal guardian(s), or a person exercising supervisory authority over the Student in place of the Student's biological parent(s), pursuant to Section 1000.21(5), Florida Statutes (as amended)".

(f) By October 15 of every school year during the Term, address verification letters shall be mailed to all Parents by U.S. mail at the expense of the School Board. A sample address verification letter can be found under Exhibit "C".

Section 2. Funding

(a) The Parties agree that the School Board shall utilize the Lexis/Nexis software ("Software") for address verification purposes and the Town shall reimburse the School Board for all expenses related to the Software, up to the amount of \$1,500.00, each School year without prior written permission. After spending more than \$1,500.00 during each School year, the School Board shall seek approval of the Town, for block increments of \$1,000.00, per increment. The School Board shall obtain consent from the Parent(s) who register the Student prior to conducting an address verification using the Software. The sample consent form is attached hereto and incorporated herein as Exhibit "D". The consent form shall be included in the registration package.

All results obtained based on the address verification conducted utilizing the program must be verified prior to taking further action.

(b) The Parties agree that the School Board shall have no financial obligation or liability in connection with the Plan. If the Town fails to provide adequate funding for the use of Software in any School Year, the School Board shall have no obligation to carry out the

Plan.

(c) Town agrees to reimburse the School Board for the verification letters mailed by priority mail with a tracking number. The School Board shall invoice the Town with the aggregate number of letters mailed and cost per mailing.

Section 3. Resolution of Disputes

If the Parties are unable to resolve any dispute in which there may be a disagreement concerning their respective rights, duties or responsibilities under this Agreement, the Parties will employ dispute resolution procedures pursuant to Chapter 164 or Chapter 186, Florida Statutes, as amended from time to time, or any other mutually acceptable means of alternative dispute resolution. Each Party shall bear their own attorneys' fees and costs.

Section 4. Effective Date and Term

This Agreement shall become effective upon execution by the School Board and the Town, ("Effective Date"), and shall remain in full force and effect for the duration of this Agreement terminating on June 30, 2019. This Agreement may be cancelled by either party provided that sixty (60) days' notice is provided. The School Board may terminate this agreement with thirty (30) days' notice if the Town fails to provide Funding. This Agreement may be extended upon the mutual consent of the Parties for an additional two (2) School years, on the same terms and conditions as provided herein, provided that the Party seeking an extension gives written notice to the other Party of such intent to extend no later than ninety (90) days prior to the expiration of the then current term, and the other Party agrees in writing to such extension. The Town's financial obligation shall end upon the termination of this Agreement. If the Town is required to make a lump sum payment to cover its financial obligation, the Town is entitled to a refund if the Agreement is terminated prior to the end of 2018-2019 School year. The funding for renewal periods shall be finalized ninety (90) days prior to commencement of a School year.

Section 5. Severability

If any item or provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement shall not be affected and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

Section 6. Notice and General Condition

All notices which may be given pursuant to this Agreement, except notices for meetings provided for elsewhere in this Agreement, shall be in writing and shall be delivered by personal service or by certified mail return receipt requested addressed to the parties at their respective addresses indicated below or as the same may be changed in writing from time to time. Such notice shall be deemed given on the day on which personally served, or if by mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

Ronald J. Wasson
Town Manager
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154
Phone: 305-866-6241
Fax: 305-866-4863

cc: Frank C. Simone, Esq.
Assistant Town Attorney
701 Brickell Avenue, Suite 1550
Miami, FL 33131
Phone: 305-221-8000
Email: Frank@franksimone.com

Superintendent
The School Board of Miami-Dade County, Florida
1450 N.E. 2nd Avenue, Room 912
Miami, Florida 33132

Copy to:
School Board Attorney
1450 N.E. 2nd Avenue, Room 430
Miami, Florida 33132
Phone: 305-995-1304
Fax: 305-995-1412

Title and Paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the parties to this Agreement.

Section 7. Merger Clause

This Agreement, together with the Exhibits hereto, sets forth the entire agreement between the Parties and there are no promises or understandings other than those stated therein. It is further agreed that no modification, amendment or alteration of this Agreement shall be effective unless contained in a written document executed with the same formality and of equal dignity herein. The Exhibits to this Agreement will be deemed to be incorporated by reference as though set forth in full herein. In the event of a conflict or inconsistency between the body of this Agreement and the provisions in the incorporated Exhibits, then the body of this Agreement shall prevail. Words defined in the body of this Agreement, shall have the same meaning in the Exhibits.

Section 8. Counterparts Clause

This Agreement may be executed in counterparts and shall constitute originals documents for all purposes.

Section 9. Assignment

Neither party hereto may assign this Agreement without the prior written consent of the other Party hereto.

Section 10. Governing Law; Compliance with Laws

This Agreement will be interpreted and enforced in accordance with Florida law. The Parties agree that they shall comply with all applicable laws, ordinances and codes of all applicable governmental authorities. To the extent this Agreement conflicts with said laws, rules, ordinances or codes, said laws, rules, ordinances and codes shall prevail.

Section 11. Indemnification

Subject to the limitations of Florida Statute 768.28, the School Board agrees to indemnify and hold harmless the Town from and against any and all claims, suits, actions, damages, or causes of action arising out of the negligent acts of the School Board arising out of or in connection with the provisions of this Agreement. The School Board shall not be required to indemnify the Town for the Town's own negligence or intentional acts.

Subject to the limitations of Florida Statute 768.28, the Town agrees to indemnify and hold harmless the School Board from and against any and all claims, suits, actions, damages, or causes of action arising out of the negligent acts of the Town arising out of or in connection with the provisions of this Agreement. The Town shall not be required to indemnify the School Board for the School Board's own negligence or intentional acts.

Section 12. Enforcement of Agreement; Venue

In the event that either Party is required to enforce this Agreement by court proceedings or otherwise, then the Parties agree that each Party shall be responsible for all attorneys' fees and costs Venue shall be in Miami-Dade County, Florida.

Section 13. No Third Party Beneficiaries

This Agreement is solely for the benefit of the Board and the Town and no right or cause of action shall accrue upon or by reason, to or for the benefit of any third party not a formal party to this Agreement. Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person or corporation other than the Board and The Town any right, remedy, or claim under or by reason of this Agreement or any of the provisions or conditions of this Agreement; and all of the provisions, representations, covenants, and conditions contained in this Agreement shall inure to the sole benefit of and shall be binding upon the Board and the Town, and their respective representatives, successors, and assigns.

IN WITNESS WHEREOF, this Agreement has been executed by and on behalf of the Town of Bay Harbor Islands and the School Board of Miami-Dade County, Florida, on this _____ day of _____, 2018.

**PROGRAM GRANT AGREEMENT
FOR
TOWN OF BAY HARBOR ISLANDS ADDRESS VERIFICATION PLAN**

**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY**

(as to the School Board):



School Board Attorney Date 11/6/18

**THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA**

BY: 

(Superintendent of Schools or Designee)
Tabitha G. Fazzino
DESIGNEE

Date: 12/3/18

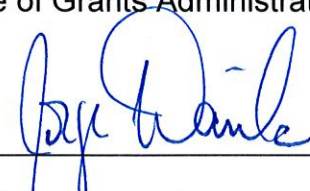
SUBMITTED BY:

Charge Location Administrator Date

 11/20/18  11/14/18

Office of Grants Administration Date Principal Date

Office of Grants Administration Date

 11/5/18

Risk Management Date

 11/19/18

Region Date

PROGRAM GRANT AGREEMENT
FOR
TOWN OF BAY HARBOR ISLANDS ADDRESS VERIFICATION PLAN

By: 
STEPHANIE BRUDER
MAYOR

ATTEST:


MARLENE M. SIEGEL
TOWN CLERK

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE BENEFIT OF THE TOWN OF BAY HARBOR ISLANDS**

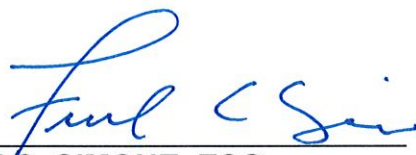

FRANK C. SIMONE, ESQ.,
ASSISTANT TOWN ATTORNEY

EXHIBIT "A"

Town of Bay Harbor Islands Address Verification Plan

Pursuant to School Board Policy 5112, the School Board shall verify the Primary Residence of all Students, except the School teachers' children, approved transfers, or Town employees approved pursuant to School Board Policy 5120, through Welcome Letters, Verification Letters, and the Software.

Welcome Letters

On or before March 1, 2018 and each School year thereafter, the School Board shall send the welcome letter similar to the letter attached hereto as Exhibit "B" to all Parent(s) ("Welcome Letter"). In the event that a Welcome Letter is returned to the School Board or School as undelivered (a "Returned Letter"), the School Board shall send a Verification Letter (Exhibit "C") within fourteen (14) days of its receipt of a Returned Letter.

Verification Letters

In the event that the School Board or School receives a Returned Letter or other information that may lead to a reasonable suspicion that a Student does not have a Primary Residence within the Boundary, the School Board shall verify the Primary Residence by sending a letter similar to the letter attached to Exhibit "B" to all Parent(s) ("Verification Letter"). The Verification Letter shall request information to verify the Primary Residence pursuant to School Board Policy 5112. Response to the Verification Letter shall be due no later than 30 days from date of mailing. The Verification Letter(s) shall be mailed to the residence designated by the Parents. If the content of the Verification attached Letter is revised substantially, the School Board shall provide a copy to the Town before mailing for the Town's review. The Verification Letter shall be mailed by priority mail with a tracking number to the Parents at the expense of the Town.

Review of Verification Documents

The School Board shall review all verification documents provided by Parents to determine if Students are properly assigned to the School. Post Office boxes, private mail box addresses or commercial establishment addresses are not valid to prove Primary Residence. If a Parent provides a post office box, private mail box address or commercial establishment address, the proper Primary Residence verification documentation shall be requested.

Investigation of Primary Residence

The School Board shall investigate in all instances in which there is a reasonable suspicion that a Student does not have a Primary Residence within the Boundary. Such a reasonable

suspicion may be prompted by return, as undeliverable, of the Welcome Letter or Verification Letter, unique feeder patterns based upon previous school attendance, search of property appraiser records, or other information provided by the Town or the residents of the Town. Reasonable suspicion shall not be based on actual or perceived race, color, religion, national origin, or immigration status. The School Board shall verify addresses by the Software, telephone calls to Parent(s) or house visits. The telephone calls or house visits shall commence no later than two (2) weeks from the deadline to respond to the Verification Letter. On an as needed basis, the School Board may utilize a School Resource Officer to conduct house visit(s) to gain access to multi-family buildings.

Withdrawal of Violators

If the Parent(s) cannot prove that they have a Primary Residence within the Boundary and if no valid School Board exception applies, the School Board shall follow School District protocol to withdraw the Student and refer the Student back to the Student's home school. Each transfer request will be reviewed on a case by case basis and the determination will be based on the hardship and in the best interest of the Student.

EXHIBIT "B"
(Sample Welcome Letter)

October 20, 2017

Via First Class U.S. Mail

Dear Bobcats,

It is hard to believe that we have already reached the end of the first marking period of the 2017-2018 school year! We are well on our way to a spectacular year full of achievements and accomplishments! I am so happy to be part of this dynamic, successful school community and appreciate the warm welcome, as I begin my first year as a Bobcat.

First and foremost, **CONGRATULATIONS** to every Bobcat for complete dedication to their academic courses of study, devotion to caring about each other and commitment to being the best students and human beings! For the 18th consecutive year, Bobcats rate at the top of the academic scale as they achieve another "A+" from the State of Florida Department of Education!!! This accomplishment proves that our entire community, with the guidance of our teachers, administration, and staff, support from parents and community organizations has and will continue to move us forward as we strive to assist all students to reach their full academic potential, through rigorous instruction and a student-centered classroom environment.

Our commitment is to provide the necessary tools for each of our students to learn academically, grow emotionally, and become self-confident with whom they are and the actions and decisions they make as they relate with the world around them. We promise to set high standards, challenge and motivate our students to put forth maximum effort and reach their personal and school wide goals.

We expect every Bobcat to show honesty, respect, responsibility, fairness, caring, and citizenship. We will model the same characteristics daily and together we will empower ourselves to make Ruth K. Broad Bay Harbor K-8 Center the absolute best school in the universe! We are committed to our "Start with Hello" program and promise to do whatever it takes to teach proper communication, patience, and tolerance.

I am very grateful to all our families, community partners, PTA, Shepard Broad Foundation, the Town of Bay Harbor, Village of Bal Harbour, and the Town of Surfside for all your continuous support of our children. A special "Thank You" goes out to our PTA, which coordinated a very successful booster-thon campaign, which will assist in enhancing the campus and repair items lost to Hurricane Irma. I thank those that are PTA members and encourage all families to join. We are blessed for all the tender loving care we receive on a daily basis. We ask you to once again be part of the winning combination we proudly call our Bobcat Family!

Lastly, enclosed please find the recently approved revised calendar for this school year. The School Board has added January 19 and April 20 as regular school days due to days lost during the storm.

Sincerely,

Scott Saperstein

Principal

Exhibit "C"
(Sample Verification Letter)

Date: _____

Dear Parent(s):

In a joint effort between the Town of Bay Harbor Islands and The School Board of Miami-Dade County, Florida, Ruth Broad/Bay Harbor K-8 Center is now conducting address verification meetings for each of the students enrolled at the school. It is imperative that you adhere to the schedule below and come to school with the required documents. Failure to comply with this request may place your child's enrollment at the school in jeopardy.

You have been scheduled for address verification during the week of _____

Please bring the following **original** and **current** documents to Ruth Broad/Bay Harbor K-8 Center office between 8:00 a.m. – 3:30 p.m. any day during this week.

- The most current FPL bill for residence with your name
- Lease/Deed or Rental Agreement
- Letter from home owner's association or leasing office

Your documents will be reviewed and copied by the address verification designee. If the appropriate documents verifying your address are not provided, your child may be withdrawn from this school.

Documents will not be accepted from students. If you have any questions, please contact _____ at (305) _____ - _____.

Thank you for your continued support and understanding concerning this matter.

Sincerely,

Principal

EXHIBIT "D"

TOWN OF BAY HARBOR MONTHLY SUMMARY DATA LOG

Ruth K. Broad Bay Harbor K-8									
Monthly Summary Data Log									
	Welcome Letters		Verification Letters		# of Home Visits	# of Students Residing Outside Boundaries	# of Transfer Students	# of Students Transferred to Home School	# of Students Granted Exemption to Boundary Requirements
	Mailed	Returned	Mailed	Returned					
MONTHLY TOTAL:	-	-	-	-		-	-	-	-
CUMMULATIVE TOTAL:	-	-	-	-		-	-	-	-

**FIRST EXTENSION AMENDMENT
TO
AGREEMENT FORM FOR CONTRACTED SERVICES**

BY AND BETWEEN

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

AND

TOWN OF BAY HARBOR ISLANDS

The School Board of Miami-Dade County, Florida, and the Town of Bay Harbor Islands, as of the 19 day of April, 2019 hereby amend the referenced Program Grant Agreement entered into as of the 6 day of November, 2018, by amending the following provisions as provided for herein:

- A. Pursuant to Section 4 Effective Date and Term, the Parties agree to exercise the renew term for an additional two (2) school years. The extension period shall be July 1, 2019 through and including June 30, 2021.

All other terms of the referenced Program Grant Agreement entered into as of the 6 day of November, 2018 shall remain in effect.

IN WITNESS WHEREOF, The Parties hereto have caused this First Extension Amendment to the Program Grant Agreement to be executed by their respective and duly authorized officers the day and year first above written.

[signature page follows]

**PROGRAM GRANT AGREEMENT
FOR
TOWN OF BAY HARBOR ISLANDS ADDRESS VERIFICATION PLAN**

**APPROVED AS TO FORM AND LEGAL
SUFFICIENCY**
(as to the School Board):

School Board Attorney Date

SUBMITTED BY:

Charge Location Administrator Date

Office of Grants Administration Date

**REVIEWED AND APPROVED AS TO
RISK MANAGEMENT:**

Risk Management Date

**THE SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA**

BY: _____
(Superintendent of Schools or Designee)

Date: _____

PROGRAM GRANT AGREEMENT
FOR
TOWN OF BAY HARBOR ISLANDS ADDRESS VERIFICATION PLAN

By: _____
Stephanie Bruder
MAYOR

ATTEST:

Marlene M. Siegel, TOWN CLERK

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE
SOLE BENEFIT OF THE TOWN OF BAY HARBOR ISLANDS**

**FRANK C. SIMONE, ESQ.,
ASSISTANT TOWN ATTORNEY**

AGENDA ITEM REPORT

May 13, 2019

ITEM NUMBER: 7.

ITEM: Consideration and approval of an ordinance on **second reading** amending the Town Code to replace the current flood ordinance with a new model ordinance. The state has created a new “model” flood code for communities that participate in the FEMA NFIP program. Enclosed is a copy of the proposed ordinance and supporting documents.

DESCRIPTION:

In 2010 the Town adopted its current Flood Prevention Code (Chapter 7½). In 2017 the Florida Building Code was updated to include more flood regulations. The state has created a new “model” flood code for communities that participate in the FEMA NFIP program. In December 2018 the Town received a letter from the state DEM informing us of this occurrence and notifying us they want the Town to repeal the existing 2010 Flood Code and adopt a new “model” Flood Code. The designated DEM contractor contacted the Town staff and we have worked on tweaking the draft Code since that time. We received the latest draft with a few additional edits – I incorporated those minor edits into the current draft (dated 3/26/19).

At this time the Town should move forward with the updated Flood Code adoption process.

Attached please find our TC staff report / backup materials and a copy of the latest draft Ordinance.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk

ATTACHMENTS

1. BHI Flood Code Update 2019 Final Draft Ord March 26 2019
2. Flood Ordinance Staff Report

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN OF BAY HARBOR ISLANDS CODE OF ORDINANCES TO REPEAL THE TOWN'S EXISTING CHAPTER 7½ ENTITLED FLOOD DAMAGE PREVENTION; TO ADOPT A NEW UPDATED CHAPTER 7½ ENTITLED FLOOD DAMAGE PREVENTION; TO ADOPT UPDATED FLOOD PLAIN MAPS; TO DESIGNATE A FLOODPLAIN ADMINISTRATOR; TO ADOPT PROCEDURES AND CRITERIA FOR DEVELOPMENT IN FLOOD HAZARD AREAS; AND FOR OTHER PURPOSES; PROVIDING FOR APPLICABILITY; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of Florida has, in Chapter 166, Florida Statutes, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Federal Emergency Management Agency (FEMA) has identified special flood hazard areas within the boundaries of the Town of Bay Harbor Islands and such areas may be subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare, and

WHEREAS, the Town of Bay Harbor Islands was accepted for participation in the National Flood Insurance Program on September 29, 1972 and the Town Council desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such participation; and

WHEREAS, Chapter 553, Florida Statutes, was adopted by the Florida Legislature to provide a mechanism for the uniform adoption, updating, amendment, interpretation and enforcement of a state building code, called the *Florida Building Code*; and

WHEREAS, the Town Council previously adopted a requirement to require buildings that sustain repetitive flood damage over a 10-year period to be included in the definition of "substantial damage" prior to July 1, 2010; and, pursuant to Chapter 8 Article III of the Miami-Dade County Code and Section 553.73(5), F. S., is formatting that requirement to coordinate with the Florida Building Code;

WHEREAS, the Town Council has determined that it is in the public interest to adopt the proposed floodplain management regulations that are coordinated with the *Florida Building Code*.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Bay Harbor Islands that the following floodplain management regulations are hereby adopted.

SECTION 1. RECITALS.

The foregoing whereas clauses are incorporated herein by reference and made a part hereof.

SECTION 2. This Ordinance specifically repeals and replaces the following ordinance(s) and regulation(s): Bay Harbor Islands Code of Ordinances Chapter 7½ Flood Damage Prevention.

ARTICLE I. ADMINISTRATION

SECTION 7½ - 1 GENERAL

(a) Title. These regulations shall be known as the *Floodplain Management Ordinance* of the Town of Bay Harbor Islands, hereinafter referred to as “this ordinance.”

(b) Scope. The provisions of this ordinance shall apply to all development that is wholly within or partially within any flood hazard area, including but not limited to the subdivision of land; filling, grading, and other site improvements and utility installations; construction, alteration, remodeling, enlargement, improvement, replacement, repair, relocation or demolition of buildings, structures, and facilities that are exempt from the *Florida Building Code*; placement, installation, or replacement of tanks; installation of swimming pools; and any other development.

(c) Intent. The purposes of this ordinance and the flood load and flood resistant construction requirements of the *Florida Building Code* are to establish minimum requirements to safeguard the public health, safety, and general welfare and to minimize public and private losses due to flooding through regulation of development in flood hazard areas to:

- (1) Minimize unnecessary disruption of commerce, access and public service during times of flooding;
- (2) Require the use of appropriate construction practices in order to prevent or minimize future flood damage;
- (3) Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development which may increase flood damage or erosion potential;
- (4) Manage the alteration of flood hazard areas, watercourses, and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain;
- (5) Minimize damage to public and private facilities and utilities;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas;
- (7) Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events; and
- (8) Meet the requirements of the National Flood Insurance Program for community participation as set forth in the Title 44 Code of Federal Regulations, Section 59.22.

(d) Coordination with the *Florida Building Code*. This ordinance is intended to be administered and enforced in conjunction with the *Florida Building Code*. Where cited, ASCE 24 refers to the edition of the standard that is referenced by the *Florida Building Code*.

(e) Warning. The degree of flood protection required by this ordinance and the *Florida Building Code*, as amended by this community, is considered the minimum reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside of mapped special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage. The flood hazard areas and base flood elevations contained in the Flood Insurance Study and shown on Flood Insurance Rate Maps and the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60 may be revised by the Federal Emergency Management Agency, requiring this community to revise these regulations to remain eligible for participation in the National Flood Insurance Program. No guaranty of vested use, existing use, or future use is implied or expressed by compliance with this ordinance.

(f) Disclaimer of Liability. This ordinance shall not create liability on the part of the Town Council of the Town of Bay Harbor Islands or by any officer or employee thereof for any flood damage that results from reliance on this ordinance or any administrative decision lawfully made thereunder.

SECTION 7½-2 APPLICABILITY

(a) General. Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

(b) Areas to which this ordinance applies. This ordinance shall apply to all flood hazard areas within the Town of Bay Harbor Islands, as established in Section 7½-2(c) of this ordinance.

(c) Basis for establishing flood hazard areas. The Flood Insurance Study for Miami-Dade County, Florida and Incorporated Areas dated September 11, 2009, and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of this ordinance and shall serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the Town Hall located at 9665 Bay Harbor Terrace, Bay Harbor Islands, 33154.

(d) Submission of additional data to establish flood hazard areas. To establish flood hazard areas and base flood elevations, pursuant to Section 7½-5 of this ordinance the Floodplain Administrator may require submission of additional data. Where field surveyed topography prepared by a Florida licensed professional surveyor or digital topography accepted by the community indicates that ground elevations:

- (1) Are below the closest applicable base flood elevation, even in areas not delineated as a

special flood hazard area on a FIRM, the area shall be considered as flood hazard area and subject to the requirements of this ordinance and, as applicable, the requirements of the *Florida Building Code*.

- (2) Are above the closest applicable base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the special flood hazard area.

(e) Other laws. The provisions of this ordinance shall not be deemed to nullify any provisions of local, state or federal law.

(f) Abrogation and greater restrictions. This ordinance supersedes any ordinance in effect for management of development in flood hazard areas. However, it is not intended to repeal or abrogate any existing ordinances including but not limited to land development regulations, zoning ordinances, stormwater management regulations, or the *Florida Building Code*. In the event of a conflict between this ordinance and any other ordinance, the more restrictive shall govern. This ordinance shall not impair any deed restriction, covenant or easement, but any land that is subject to such interests shall also be governed by this ordinance.

(g) Interpretation. In the interpretation and application of this ordinance, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

SECTION 7½-3 DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR

(a) Designation. The Town Manager is designated as the Floodplain Administrator. The Floodplain Administrator may delegate performance of certain duties to other employees. A designated Floodplain Administrator employee shall obtain training and obtain a certificate for such position.

(b) General. The Floodplain Administrator or their designee is authorized and directed to administer and enforce the provisions of this ordinance. The designated Floodplain Administrator shall have the authority to render interpretations of this ordinance consistent with the intent and purpose of this ordinance and may establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures shall not have the effect of waiving requirements specifically provided in this ordinance without the granting of a variance pursuant to Section 7½-7 of this ordinance.

(c) Applications and permits. The designated Floodplain Administrator, in coordination with other pertinent offices of the community, shall:

- (1) Review applications and plans to determine whether proposed new development will be located in flood hazard areas;
- (2) Review applications for modification of any existing development in flood hazard areas for compliance with the requirements of this ordinance;

- (3) Interpret flood hazard area boundaries where such interpretation is necessary to determine the exact location of boundaries; a person contesting the determination shall have the opportunity to appeal the interpretation;
- (4) Provide available flood elevation and flood hazard information;
- (5) Determine whether additional flood hazard data shall be obtained from other sources or shall be developed by an applicant;
- (6) Review applications to determine whether proposed development will be reasonably safe from flooding;
- (7) Issue floodplain development permits or approvals for development other than buildings and structures that are subject to the *Florida Building Code*, including buildings, structures and facilities exempt from the *Florida Building Code*, when compliance with this ordinance is demonstrated, or disapprove the same in the event of noncompliance; and
- (8) Coordinate with and provide comments to the Building Official to assure that applications, plan reviews, and inspections for buildings and structures in flood hazard areas comply with the applicable provisions of this ordinance.

(d) Substantial improvement and substantial damage determinations. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

- (1) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;
- (2) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; for proposed work to repair damage caused by flooding, the determination requires evaluation of previous permits issued to repair flood-related damage as specified in the definition of "substantial damage"; and
- (4) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the *Florida Building Code* and this ordinance is required.

(e) Modifications of the strict application of the requirements of the *Florida Building Code*. The Floodplain Administrator shall review requests submitted to the Building Official that seek approval to modify the strict application of the flood load and flood resistant construction requirements of the *Florida Building Code* to determine whether such requests require the granting of a variance pursuant to Section 7½-7 of this ordinance.

(f) Notices and orders. The Floodplain Administrator shall coordinate with appropriate local agencies for the issuance of all necessary notices or orders to ensure compliance with this ordinance.

(g) Inspections. The designated Floodplain Administrator shall make the required inspections as specified in Section 7½-6 of this ordinance for development that is not subject to the *Florida Building Code*, including buildings, structures and facilities exempt from the *Florida Building Code*. The designated Floodplain Administrator shall inspect flood hazard areas to determine if development is undertaken without issuance of a permit.

(h) Other duties of the Floodplain Administrator. The designated Floodplain Administrator shall have other duties, including but not limited to:

- (1) Establish, in coordination with the Building Official, procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to Section 7½-3(d) of this ordinance;
- (2) Require that applicants proposing alteration of a watercourse notify adjacent communities and the Florida Division of Emergency Management, State Floodplain Management Office, and submit copies of such notifications to the Federal Emergency Management Agency (FEMA);
- (3) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps if the analyses propose to change base flood elevations, or flood hazard area boundaries; such submissions shall be made within 6 months of such data becoming available;
- (4) Review required design certifications and documentation of elevations specified by this ordinance and the *Florida Building Code* to determine that such certifications and documentations are complete; and
- (5) Notify the Federal Emergency Management Agency when the corporate boundaries of the Town are modified.

(i) Floodplain management records. Regardless of any limitation on the period required for retention of public records, the designated Floodplain Administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of this ordinance and the flood resistant construction requirements of the *Florida Building Code*, including Flood Insurance Rate Maps; Letters of Map Change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations specified by the *Florida Building Code* and this ordinance; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurances that the flood carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to this ordinance and the flood resistant construction requirements of the *Florida Building Code*. These records shall be

available for public inspection at Town Hall at 9665 Bay Harbor Terrace, Bay Harbor Islands, 33154.

SECTION 7½-4 PERMITS

(a) Permits required. Any owner or owner's authorized agent (hereinafter "applicant") who intends to undertake any development activity within the scope of this ordinance, including buildings, structures and facilities exempt from the *Florida Building Code*, which is wholly within or partially within any flood hazard area shall first make application to the Floodplain Administrator, and the Building Official if applicable, and shall obtain the required permit(s) and approval(s). No such permit or approval shall be issued until compliance with the requirements of this ordinance and all other applicable codes and regulations has been satisfied.

(b) Floodplain development permits or approvals. Floodplain development permits or approvals shall be issued pursuant to this ordinance for any development activities not subject to the requirements of the *Florida Building Code*, including buildings, structures and facilities exempt from the *Florida Building Code*. Depending on the nature and extent of proposed development that includes a building or structure, the Floodplain Administrator may determine that a floodplain development permit or approval is required in addition to a building permit.

(c) Buildings, structures and facilities exempt from the *Florida Building Code*. Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), floodplain development permits or approvals shall be required for the following buildings, structures and facilities that are exempt from the *Florida Building Code* and any further exemptions provided by law, which are subject to the requirements of this ordinance:

- (1) Railroads and ancillary facilities associated with the railroad.
- (2) Nonresidential farm buildings on farms, as provided in section 604.50, F.S.
- (3) Temporary buildings or sheds used exclusively for construction purposes.
- (4) Mobile or modular structures used as temporary offices.
- (5) Those structures or facilities of electric utilities, as defined in section 366.02, F.S., which are directly involved in the generation, transmission, or distribution of electricity.
- (6) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other non-wood features.
- (7) Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble or reinforced concrete.
- (8) Temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.

- (9) Structures identified in section 553.73(10)(k), F.S., are not exempt from the *Florida Building Code* if such structures are located in flood hazard areas established on Flood Insurance Rate Maps.

(d) Application for a permit or approval. To obtain a floodplain development permit or approval the applicant shall first file an application in writing on a form furnished by the community. The information provided shall:

- (1) Identify and describe the development to be covered by the permit or approval.
- (2) Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitively locate the site.
- (3) Indicate the use and occupancy for which the proposed development is intended.
- (4) Be accompanied by a site plan or construction documents as specified in Section 7½-5 of this ordinance.
- (5) State the valuation of the proposed work.
- (6) Be signed by the applicant or the applicant's authorized agent.
- (7) Give such other data and information as required by the designated Floodplain Administrator.

(e) Validity of permit or approval. The issuance of a floodplain development permit or approval pursuant to this ordinance shall not be construed to be a permit for, or approval of, any violation of this ordinance, the *Florida Building Codes*, or any other ordinance of this community. The issuance of permits based on submitted applications, construction documents, and information shall not prevent the designated Floodplain Administrator from requiring the correction of errors and omissions.

(f) Expiration. A floodplain development permit or approval shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions for periods of not more than 180 days each shall be requested in writing and justifiable cause shall be demonstrated.

(g) Suspension or revocation. The designated Floodplain Administrator is authorized to suspend or revoke a floodplain development permit or approval if the permit was issued in error, on the basis of incorrect, inaccurate or incomplete information, or in violation of this ordinance or any other ordinance, regulation or requirement of this community.

(h) Other permits required. Floodplain development permits and building permits shall include a condition that all other applicable state or federal permits be obtained before commencement of the permitted development, including but not limited to the following:

- (1) The South Florida Water Management District; section 373.036, F.S.

- (2) Florida Department of Health for onsite sewage treatment and disposal systems; section 381.0065, F.S. and Chapter 64E-6, F.A.C.
- (3) Florida Department of Environmental Protection for activities subject to the Joint Coastal Permit; section 161.055, F.S.
- (4) Florida Department of Environmental Protection for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.
- (5) Federal permits and approvals.

SECTION 7½-5 SITE PLANS AND CONSTRUCTION DOCUMENTS

(a) Information for development in flood hazard areas. The site plan or construction documents for any development subject to the requirements of this ordinance shall be drawn to scale and shall include, as applicable to the proposed development:

- (1) Delineation of flood hazard areas and flood zone(s), base flood elevation(s), and ground elevations, if necessary, for review of the proposed development.
- (2) Location of the proposed activity and proposed structures, and locations of existing buildings and structures.
- (3) Location, extent, amount, and proposed final grades of any filling, grading, or excavation.
- (4) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.
- (5) Existing and proposed alignment of any proposed alteration of a watercourse.

The designated Floodplain Administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by this ordinance but that are not required to be prepared by a registered design professional if it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance with this ordinance.

(b) Additional analyses and certifications. As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses signed and sealed by a Florida licensed engineer for submission with the site plan and construction documents:

- (1) For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices which demonstrates that the flood-carrying capacity of

the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained in a manner which preserves the channel's flood-carrying capacity; the applicant shall submit the analysis to FEMA as specified in Section 7½-5(c) of this ordinance.

(c) Submission of additional data. When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a Letter of Map Change from FEMA to change the base flood elevations or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a Florida licensed engineer in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant.

SECTION 7½-6 INSPECTIONS

(a) General. Development for which a floodplain development permit or approval is required shall be subject to inspection.

(b) Development other than buildings and structures. The Floodplain Administrator shall inspect all development to determine compliance with the requirements of this ordinance and the conditions of issued floodplain development permits or approvals.

(c) Buildings, structures and facilities exempt from the *Florida Building Code*. The designated Floodplain Administrator shall inspect buildings, structures and facilities exempt from the *Florida Building Code* to determine compliance with the requirements of this ordinance and the conditions of issued floodplain development permits or approvals.

(d) Buildings, structures and facilities exempt from the *Florida Building Code*, lowest floor inspection. Upon placement of the lowest floor, including basement, and prior to further vertical construction, the owner of a building, structure or facility exempt from the *Florida Building Code*, or the owner's authorized agent, shall submit to the designated Floodplain Administrator:

- (1) The certification of elevation of the lowest floor prepared and sealed by a Florida licensed professional surveyor.

(e) Buildings, structures and facilities exempt from the *Florida Building Code*, final inspection. As part of the final inspection, the owner or owner's authorized agent shall submit to the Floodplain Administrator a final certification of elevation of the lowest floor or final documentation of the height of the lowest floor above the highest adjacent grade; such certifications and documentations shall be prepared as specified in Section 7½-6(d) of this ordinance.

SECTION 7½-7 VARIANCES AND APPEALS

(a) General. The Town Council shall hear and decide on requests for appeals and requests for variances from the strict application of this ordinance. Pursuant to section 553.73(5), F.S., the Town Council shall hear and decide on requests for appeals and requests for variances from the strict application of the flood resistant construction requirements of the *Florida Building Code*.

(b) Appeals. The Town Council shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the designated Floodplain Administrator in the administration and enforcement of this ordinance. Any person aggrieved by the decision may appeal such decision to the Circuit Court, as provided by Florida Statutes.

(c) Limitations on authority to grant variances. The Town Council shall base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in Section 7½-7(f) of this ordinance, the conditions of issuance set forth in Section 7½-7(g) of this ordinance, and the comments and recommendations of the designated Floodplain Administrator and the Building Official. The Town Council has the right to attach such conditions as it deems necessary to further the purposes and objectives of this ordinance.

(d) Historic buildings. A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building that is determined eligible for the exception to the flood resistant construction requirements of the *Florida Building Code, Existing Building*, Chapter 12 Historic Buildings, upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building's continued designation as a historic building, a variance shall not be granted and the building and any repair, improvement, and rehabilitation shall be subject to the requirements of the *Florida Building Code*.

(e) Functionally dependent uses. A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in this ordinance, provided the variance is the minimum necessary considering the flood hazard, and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.

(f) Considerations for issuance of variances. In reviewing requests for variances, the Town Council shall consider all technical evaluations, all relevant factors, all other applicable provisions of the *Florida Building Code*, this ordinance, and the following:

- (1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;

- (4) The importance of the services provided by the proposed development to the community;
- (5) The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;
- (6) The compatibility of the proposed development with existing and anticipated development;
- (7) The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;
- (8) The safety of access to the property in times of flooding for ordinary and emergency vehicles;
- (9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

(g) Conditions for issuance of variances. Variances shall be issued only upon:

- (1) Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of this ordinance or the required elevation standards;
- (2) Determination by the Town Council that:
 - (a) Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;
 - (b) The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and ordinances; and
 - (c) The variance is the minimum necessary, considering the flood hazard, to afford relief;
- (3) Receipt of a signed statement by the applicant that the variance, if granted, shall be recorded in the Office of the Clerk of the Court in such a manner that it appears in the chain of title of the affected parcel of land; and
- (4) If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the

record of a written notice from the Floodplain Administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as \$25 for \$100 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

SECTION 7½-8 VIOLATIONS

(a) Violations. Any development that is not within the scope of the *Florida Building Code* but that is regulated by this ordinance that is performed without an issued permit, that is in conflict with an issued permit, or that does not fully comply with this ordinance, shall be deemed a violation of this ordinance. A building or structure without the documentation of elevation of the lowest floor, other required design certifications, or other evidence of compliance required by this ordinance or the *Florida Building Code* is presumed to be a violation until such time as that documentation is provided.

(b) Authority. For development that is not within the scope of the *Florida Building Code* but that is regulated by this ordinance and that is determined to be a violation, the Floodplain Administrator is authorized to serve notices of violation or stop work orders to owners of the property involved, to the owner's agent, or to the person or persons performing the work.

(c) Unlawful continuance. Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties as prescribed by law.

SECTION 7½-9 GENERAL

(a) Scope. Unless otherwise expressly stated, the following words and terms shall, for the purposes of this ordinance, have the meanings shown in this section.

(b) Terms defined in the *Florida Building Code*. Where terms are not defined in this ordinance and are defined in the *Florida Building Code*, such terms shall have the meanings ascribed to them in that code.

(c) Terms not defined. Where terms are not defined in this ordinance or the *Florida Building Code*, such terms shall have ordinarily accepted meanings such as the context implies.

SECTION 7½-10 DEFINITIONS

Alteration of a watercourse. A dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel

capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

Appeal. A request for a review of the designated Floodplain Administrator's interpretation of any provision of this ordinance.

ASCE 24. A standard titled *Flood Resistant Design and Construction* that is referenced by the *Florida Building Code*. ASCE 24 is developed and published by the American Society of Civil Engineers, Reston, VA.

Base flood. A flood having a 1-percent chance of being equaled or exceeded in any given year. [Also defined in FBC, B, Section 202.] The base flood is commonly referred to as the "100-year flood" or the "1-percent-annual chance flood."

Base flood elevation. The elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM). [Also defined in FBC, B, Section 202.]

Basement. The portion of a building having its floor subgrade (below ground level) on all sides. [Also defined in FBC, B, Section 202; see "Basement (for flood loads)".]

Design flood. The flood associated with the greater of the following two areas: [Also defined in FBC, B, Section 202.]

- (1) Area with a floodplain subject to a 1-percent or greater chance of flooding in any year; or
- (2) Area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Design flood elevation. The elevation of the "design flood," including wave height, relative to the datum specified on the community's legally designated flood hazard map. In areas designated as Zone AO, the design flood elevation shall be the elevation of the highest existing grade of the building's perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as Zone AO where the depth number is not specified on the map, the depth number shall be taken as being equal to 2 feet. [Also defined in FBC, B, Section 202.]

Development. Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, tanks, temporary structures, temporary or permanent storage of equipment or materials, mining, dredging, filling, grading, paving, excavations, drilling operations or any other land disturbing activities.

Encroachment. The placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

Existing building and existing structure. Any buildings and structures for which the "start of construction" commenced before September 29, 1972. [Also defined in FBC, B, Section 202.]

Federal Emergency Management Agency (FEMA). The federal agency that, in addition to carrying out other functions, administers the National Flood Insurance Program.

Flood or flooding. A general and temporary condition of partial or complete inundation of normally dry land from: [Also defined in FBC, B, Section 202.]

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood damage-resistant materials. Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Also defined in FBC, B, Section 202.]

Flood hazard area. The greater of the following two areas: [Also defined in FBC, B, Section 202.]

- (1) The area within a floodplain subject to a 1-percent or greater chance of flooding in any year.
- (2) The area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Flood Insurance Rate Map (FIRM). The official map of the community on which the Federal Emergency Management Agency has delineated both special flood hazard areas and the risk premium zones applicable to the community. [Also defined in FBC, B, Section 202.]

Flood Insurance Study (FIS). The official report provided by the Federal Emergency Management Agency that contains the Flood Insurance Rate Map, the Flood Boundary and Floodway Map (if applicable), the water surface elevations of the base flood, and supporting technical data. [Also defined in FBC, B, Section 202.]

Floodplain Administrator. The office or position designated and charged with the administration and enforcement of this ordinance (may be referred to as the Floodplain Manager).

Floodplain development permit or approval. An official document or certificate issued by the community, or other evidence of approval or concurrence, which authorizes performance of specific development activities that are located in flood hazard areas and that are determined to be compliant with this ordinance.

Florida Building Code. The family of codes adopted by the Florida Building Commission, including: *Florida Building Code, Building*; *Florida Building Code, Residential*; *Florida Building Code, Existing Building*; *Florida Building Code, Mechanical*; *Florida Building Code, Plumbing*; *Florida Building Code, Fuel Gas*.

Functionally dependent use. A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and

ship repair facilities; the term does not include long-term storage or related manufacturing facilities.

Highest adjacent grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation of a structure.

Historic structure. Any structure that is determined eligible for the exception to the flood hazard area requirements of the *Florida Building Code, Existing Building*, Chapter 12 Historic Buildings.

Letter of Map Change (LOMC). An official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.

Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.

Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

Light-duty truck. As defined in 40 C.F.R. 86.082-2, any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is:

- (1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
- (2) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (3) Available with special features enabling off-street or off-highway operation and use.

Lowest floor. The lowest floor of the lowest enclosed area of a building or structure, including basement, but excluding any unfinished or flood-resistant enclosure, other than a basement, usable solely for vehicle parking, building access or limited storage provided that such enclosure is not built so as to render the structure in violation of the non-elevation requirements of the *Florida Building Code* or ASCE 24. [Also defined in FBC, B, Section 202.]

Market value. The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in this ordinance, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by a qualified independent appraiser (other than a limited or curbside appraisal, or one based on income approach), Actual Cash Value (replacement cost depreciated for age and quality of construction), or tax assessment value adjusted to approximate market value by a factor provided by the Property Appraiser.

New construction. For the purposes of administration of this ordinance and the flood resistant construction requirements of the *Florida Building Code*, structures for which the “start of construction” commenced on or after September 29, 1972 and includes any subsequent improvements to such structures.

Special flood hazard area. An area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V. [Also defined in FBC, B Section 202.]

Start of construction. The date of issuance of permits for new construction and substantial improvements, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days of the date of the issuance. The actual start of construction means either the first placement of permanent construction of a building on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns.

Permanent construction does not include land preparation (such as clearing, grading, or filling), the installation of streets or walkways, excavation for a basement, footings, piers, or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main buildings. For a substantial improvement, the actual “start of construction” means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Also defined in FBC, B Section 202.]

Substantial damage. Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. The term also includes flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. [Also defined in FBC, B Section 202.]

Substantial improvement. Any repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. If the structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either. [Also defined in FBC, B, Section 202.]

- (1) Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- (2) Any alteration of a historic structure provided the alteration will not preclude the structure's continued designation as a historic structure.

Variance. A grant of relief from the requirements of this ordinance, or the flood resistant construction requirements of the *Florida Building Code*, which permits construction in a manner that would not otherwise be permitted by this ordinance or the *Florida Building Code*.

Watercourse. A river, creek, stream, channel or other topographic feature in, on, through, or over which water flows at least periodically.

ARTICLE III FLOOD RESISTANT DEVELOPMENT

SECTION 7½-11 BUILDINGS AND STRUCTURES

(a) Design and construction of buildings, structures and facilities exempt from the *Florida Building Code*. Pursuant to Section 7½-4(c) of this ordinance, buildings, structures, and facilities that are exempt from the *Florida Building Code*, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, shall be designed and constructed in accordance with the flood load and flood resistant construction requirements of ASCE 24. Structures exempt from the *Florida Building Code* that are not walled and roofed buildings shall comply with the requirements of Section 7½-15 of this ordinance.

(b) Specific methods of construction and requirements. Pursuant to Chapter 8 Article III of the *Miami-Dade County Code*, the following specific methods of construction and requirements apply:

- (1) Repetitive Loss Flooding. In the Florida Building Code, Building and Florida Building Code, Existing Building, definitions for the term "Substantial damage" shall be as follows:

SUBSTANTIAL DAMAGE. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. The term also includes flood-related damage sustained by a structure on two separate occasions

during a 10-year period for which the cost of repairs at the time of each such flood event, on average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

SECTION 7½-12 SUBDIVISIONS

(a) Minimum requirements. Subdivision proposals and subdivisions, shall be reviewed to determine that:

- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
- (2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
- (3) Adequate drainage is provided to reduce exposure to flood hazards.

(b) Subdivision plats. Where any portion of proposed subdivisions lies within a flood hazard area, the following shall be required:

- (1) Delineation of flood hazard areas and flood zones, and design flood elevations, as appropriate, shall be shown on preliminary plats; and
- (2) Compliance with the site improvement and utilities requirements of Section 7½-13 of this ordinance.

SECTION 7½-13 SITE IMPROVEMENTS, UTILITIES AND LIMITATIONS

(a) Minimum requirements. All proposed new development shall be reviewed to determine that:

- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
- (2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
- (3) Adequate drainage is provided to reduce exposure to flood hazards.

(b) Sanitary sewage facilities. All new and replacement sanitary sewage facilities, private sewage treatment plants (including all pumping stations and collector systems), and on-site waste disposal systems shall be designed in accordance with the standards for onsite sewage treatment and disposal systems in Chapter 64E-6, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into flood waters, and impairment of the facilities and systems.

(c) Water supply facilities. All new and replacement water supply facilities shall be designed in accordance with the water well construction standards in Chapter 62-532.500, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the systems.

(d) Limitations on placement of fill. Subject to the limitations of this ordinance, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, if intended to support buildings and structures (Zone A only), fill shall comply with the requirements of the *Florida Building Code*.

SECTION 7½-14 TANKS

(a) Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty.

(b) Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of Section 7½-14(c) of this ordinance shall be permitted in flood hazard areas provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.

(c) Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be attached to and elevated to or above the design flood elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area.

(d) Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:

- (1) At or above the design flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
- (2) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

SECTION 7½-15 OTHER DEVELOPMENT

(a) General requirements for other development. All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this ordinance or the *Florida Building Code*, shall:

- (1) Be located and constructed to minimize flood damage;

- (2) Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;
- (3) Be constructed of flood damage-resistant materials; and
- (4) Have mechanical, plumbing, and electrical systems above the design flood elevation or meet the requirements of ASCE 24, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.

SECTION 3. FISCAL IMPACT STATEMENT.

In terms of design, plan application review, construction and inspection of buildings and structures, the cost impact as an overall average is negligible in regard to the local technical amendments because all development has been subject to the requirements of the local floodplain management ordinance adopted for participation in the National Flood Insurance Program (NFIP). In terms of lower potential for flood damage, there will be continued savings and benefits to consumers.

SECTION 4. APPLICABILITY.

For the purposes of jurisdictional applicability, this ordinance shall apply in the Town of Bay Harbor Islands. This ordinance shall apply to all applications for development, including building permit applications and subdivision proposals, submitted on or after the effective date of this ordinance.

SECTION 5. INCLUSION INTO THE CODE OF ORDINANCES.

It is the intent of the Town Council that the provisions of this ordinance shall become and be made a part of the Town of Bay Harbor Islands Code of Ordinances, and that the sections of this ordinance may be renumbered or re-lettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 6. SEVERABILITY.

If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

SECTION 7. EFFECTIVE DATE.

This ordinance shall take effect on immediately upon final adoption.

PASSED on first reading this _____ day of _____ 2019.

PASSED and ADOPTED in regular session, with a quorum present and voting, by the Town Council, upon second and final reading this _____ day of _____ 2019.

Town Council

Stephanie Bruder, Mayor

ATTEST:

Marlene M. Siegel, CMC - Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Craig Sherman, Esq. – Town Attorney

**TOWN OF BAY HARBOR ISLANDS
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Mayor and Town Council Members
Town of Bay Harbor Islands

CC: J. C. Jimenez - Town Manager
Craig Sherman, Esq. / Frank Simone, Esq. - Town Attorney
Marlene Seigel, CMC - Town Clerk

From: Michael J. Miller, AICP 
Consultant Town Planner

Date: March 26th, 2019

Subject: Town of Bay Harbor Islands, Florida
Flood Damage Prevention – Mandatory Code Update
Submittal of Draft Regulations
MMPA Acct. No. 01-0702-0800

ISSUE / ANALYSIS:

On January 11th, 2010, as required by the State of Florida Division of Emergency Management (DEM) and the Federal Emergency Management Agency (FEMA), the Town adopted a "model" Flood Prevention Code (Chapter 7½) via Ordinance No 896 that was tailored for the Town. This was done to comply with requirements of participating in the National Flood Insurance Program (NFIP). Since that time all land development activities have had to comply with those regulations, to other Town Code requirements, and the applicable Florida Building Code (FBC) requirements. In 2017 the State adopted updates to the FBC (6th Edition) which took effect January 1st, 2018. On December 14th, 2018 the Town Manager received a letter from the Florida Division of Emergency Management (DEM) requesting the Town to repeal the Town's current Flood Prevention Code and adopt a new updated "model" Code based on the FEMA-approved State model floodplain management ordinance. Since that time Town staff / our office has coordinated with the State's designated DEM Contractor (Ms. Leigh Chapman) on understanding the changes / impacts and customizing the new Code provisions to the Town's locale / situation. Recently the Town received the latest draft model ordinance with a few minor edits – which we have incorporated into the draft Ordinance attached hereto. The state has requested the Town move forward with adoption of the updated Flood Code.

Attached is the DEM Contractor's latest draft Ordinance. We have included some backup materials as well to help explain the changes.



STATE OF FLORIDA
DIVISION OF EMERGENCY MANAGEMENT

RICK SCOTT
Governor

WESLEY MAUL
Director

December 14, 2018

Mr. J.C. Jimenez, Town Manager
Town of Bay Harbor Islands
9665 Bay Harbor Ter.
Bay Harbor Islands, FL 33154-2005

RE: Adoption of State Model Flood Regulations Coordinated with Florida Building Code

Dear Mr. Jimenez:

Governor Scott designated DEM to help communities fulfill their responsibilities to participate in the voluntary National Flood Insurance Program (NFIP). DEM functions under an agreement with FEMA to administer the program in Florida. The agreement requires the State to provide technical support to communities, including review of floodplain management ordinances and amendments to ordinances.

We ask that your community repeal and replace its flood ordinance with one based on the FEMA-approved State model floodplain management ordinance to be NFIP-compliant and coordinated with the Florida Building Code. FEMA defers ordinances sent to them by Florida communities to DEM for review and approval. Please be advised that floodplain management regulations previously approved by FEMA may no longer meet current requirements. This will become more significant as FEMA is preparing revisions to the Flood Insurance Study and maps for Miami-Dade County and municipalities and, as part of that process, communities must demonstrate their regulations meet the appropriate criteria.

Since early 2012, the State has worked with more than 95% of Florida's 467 NFIP communities to tailor the FEMA-approved floodplain management ordinance that is written to rely on the Florida Building Code for requirements for buildings. By law, only the FBC governs the design of buildings. DEM's goal is to complete the transition of local flood ordinances by mid-2019.

Florida communities are advised to adopt the model flood ordinance because: (a) it ensures that local requirements are not duplicative with the State-required building regulations and eliminates the need to determine which more restrictive provisions prevail; (b) it helps prevent the local floodplain ordinance from being inconsistent with the FBC now and in the future when the FBC is updated; (c) it is based on the FEMA model ordinance that is coordinated with the International Building Code; and, (d) the model ordinance incorporates clarifying language from FEMA guidance documents that help interpret the NFIP regulations and refers to the FBC that incorporates design standards contained in the ASCE-24 flood building standards.

Please visit <https://www.floridadisaster.org/dem/mitigation/floodplain/community-resources/> to download the flood provisions of the 6th Ed. FBC (including a summary of changes from the 5th Edition), FEMA's "Highlights of ASCE 24," and fact sheets prepared by Building A Safer Florida (BASF) about the 6th Ed and the CCCL.

This is not a "one size fits all" approach. We work to tailor the model to each community's needs. In concert with action by the BORA, we tailor the ordinance for Miami-Dade communities slightly differently than for communities in other counties. Thirteen (13) Miami-Dade municipalities have adopted floodplain regulations based on the model ordinance and several are in review.

DEM sent at least two memos to the Floodplain Administrators in Miami-Dade communities which have not yet adopted regulations based on the model ordinance (one memo dated August 5, 2016 attached). Communities that participate in the Community Rating System (CRS) were sent at least three memos. When working with communities to prepare ordinances, we ensure that CRS communities retain their higher standards for which they receive CRS credit.

To facilitate your community moving forward, we are also sending this letter to your Floodplain Administrator with a copy of your community's floodplain management regulations annotated to identify some deficiencies and any City-specific provisions and requirements that exceed those in the FBC or the model ordinance. Also attached is a first draft of the model ordinance tailored to your community for your community staff and administrators to consider.

After a short call to review the attached and answer your questions, our flood ordinance technical support contractors are prepared to provide a final draft for you to move through your adoption process. Please contact our ordinance specialists at flood.ordinance@em.myflorida.com.

Sincerely,



Steve Martin
State Floodplain Manager
Bureau of Mitigation

SM/rq

cc: Marina Blanco-Pape, Chief, Division of Water Management, Miami-Dade County
Dale Lee, Building Official, dlee@bayharborislands-fl.gov

Attachments to email transmission:

Miami-Dade specific memo dated August 5, 2016
Annotated existing regulations
Draft tailored ordinance

FREQUENTLY ASKED QUESTIONS

ABOUT THE FLOODPLAIN MANAGEMENT MODEL ORDINANCE AND FLORIDA BUILDING CODE AMENDMENTS

November 5, 2018

Of Florida's 467 NFIP communities, 390 have adopted local regulations based on the State's model ordinance written to rely on the Florida Building Code for the design and construction of buildings in special flood hazard areas. FEMA approved this ordinance in 2012. Another 50 communities are in review and the State Floodplain Management Office expects to work with the remaining communities in the next few months.

Many common questions are answered in the FAQs that follow and the notes and instructions that accompany the model ordinance and code amendment packages.

Please see Building Code and Ordinance resources at

<https://www.floridadisaster.org/dem/mitigation/floodplain/community-resources/>.

For assistance, email Technical Support at flood.ordinance@em.myflorida.com (please put your community's name in the subject line).

Frequently Asked Questions

1. Are we required to do anything at all? 2
2. Has FEMA approved the floodplain management model ordinance? 2
3. Will DEM prepare the draft for us?..... 2
4. Will we have to modify our floodplain management ordinance every time the FBC is updated? 2
5. Does the Building Official have to be designated the Floodplain Administrator? 2
6. Can we delete provisions in the ordinance that apply only to specific flood hazard areas not shown on our maps? 3
7. How do we explain this code-coordinated ordinance to the public and local elected officials? 3
8. Some communities, especially smaller towns, have arrangements with other jurisdictions (or private companies) to perform some or all of their building permit and floodplain management responsibilities. Will those arrangements be affected?..... 3
9. What are "local technical code amendments"?..... 3

1. Are we required to do anything at all?

Yes. By law, the Florida Building Code (FBC) contains all laws and rules that pertain to and govern the design and construction of buildings (see section [553.73\(1\)\(a\)](#), F.S.). This means the flood provisions of the FBC that govern the flood-resistant design of buildings in mapped flood zones (special flood hazard areas) supersede local regulations that are not consistent with the FBC. Most of the differences between the flood provisions of the FBC and local regulations are relatively minor for most buildings. However, that does not alter the fact that the code governs the design of buildings.

Coordinating floodplain management regulations with the building code (making them “work together”) should be done as quickly as possible, otherwise inconsistencies and possible conflicts could occur. The model ordinance is specifically designed to repeal and replace existing regulations, to satisfy the NFIP, to coordinate with the FBC, and to meet the requirements of section 553.73(5), F.S.

2. Has FEMA approved the floodplain management model ordinance?

Yes. The NFIP Checklist that documents consistency is available at the above webpage.

FEMA's approval is important: it means communities that use the model as the basis for their local floodplain management regulations will have rules that are both consistent with the NFIP and also coordinated with the FBC.

3. Will DEM prepare the draft for us?

Yes. We will review your existing regulations to identify provisions that are specific to your community and that exceed the requirements of the FBC. Then we incorporate those community-specific provisions into the model ordinance. We can also add any new higher standards you may be considering.

We pay close attention to provisions that qualify for the NFIP Community Rating System. Section [553.73](#), F.S., was amended in 2010 to explicitly allow communities to retain higher standards, including those adopted for the CRS. Higher standards that are adopted as local technical amendments to the FBC and that satisfy specific conditions do not sunset every three years, as do other local amendments to the FBC.

4. Will we have to modify our floodplain management ordinance every time the FBC is updated?

No. However, as with every new edition of the FBC, local officials should pay attention to changes in flood provisions. For example, the 6th Edition FBC has a number of changes in the flood provisions of the FBC, Residential and FBC, Building (by reference to the 2014 edition of ASCE 24). The more significant changes are (a) freeboard in the FBC, Residential in all flood zones; (b) Coastal A Zone is treated like Zone V (if LiMWA delineated or otherwise designated by a community); (c) flood openings in breakaway walls; and (d) critical facilities (Flood Design Class 4/Risk Category IV) elevated or protected to BFE + 2 feet or 500-year flood elevation, whichever is higher. Excerpts of the 6th Edition FBC are on the above webpage, along with a list of changes.

5. Does the Building Official have to be designated the Floodplain Administrator?

No. Communities designate the position of a qualified staff member who is knowledgeable about floodplain management to fulfill the broad range of responsibilities of the Floodplain Administrator. It is common to designate a department head, planning manager, building official, or a town manager, who then delegates functions. By law, the building official is

responsible for enforcing the building code. If designated as the Floodplain Administrator, the building official functions under the authority of the FPM regulations.

Communities with interlocal agreements with other communities – and communities with private providers of building code services – must designate a position *from their communities* with ultimate authority to enforce the community's floodplain management ordinance and to fulfill commitments to the NFIP.

6. Can we delete provisions in the ordinance that apply only to specific flood hazard areas not shown on our maps?

Yes, but it must be done very carefully. Communities that are entirely coastal (without any riverine waterways) may remove floodway and some other provisions and communities that have BFEs in all flood zones may remove requirements for flood hazard areas without BFEs.

Another fairly common request is from communities that have no manufactured homes and do not allow placement of new manufactured homes. When documentation (e.g., citation of LDC section) is provided during review of the draft ordinance, the provisions for manufactured homes can be deleted. The documentation is retained in DEM's records in the event questions are raised about the deletion.

7. How do we explain this code-coordinated ordinance to the public and local elected officials?

Instructions and Notes that go with the model ordinance include brief background notes. Also, we prepared a short PowerPoint presentation for this purpose. It includes a brief explanation of the need for older ordinances to be repealed and replaced and explains some of the unique properties of the ordinance. Request a copy by emailing flood.ordinance@em.myflorida.com. You can customize it to meet your community's specific needs.

8. Some communities, especially smaller towns, have arrangements with other jurisdictions (or private companies) to perform some or all of their building permit and floodplain management responsibilities. Will those arrangements be affected?

No. Florida Statute Chapter 163, Intergovernmental Programs, authorizes local governments to enter into written inter-local agreements to have one jurisdiction perform some functions for another jurisdiction. We encourage communities with such arrangements to develop and adopt agreements that specifically address floodplain management. A model inter-local agreement designed to help communities adopt acceptable formal agreements and a handout that summarizes community responsibilities under the NFIP are available by emailing the State Floodplain Management Office at floods@em.myflorida.com.

9. What are "local technical code amendments"?

Chapter 1 of the FBC, Building contains administrative provisions. The remainder of the FBC, Building and all the other codes in the FBC family of codes contain the technical provisions that set forth the requirements for the design and construction of buildings and structures. Section [553.73\(4\)\(a\)](#), F.S., provides that local technical amendments must be more stringent than the code and that "(b) Local governments may, subject to the limitations of this section, adopt amendments to the technical provisions of the Florida Building Code which apply solely within the jurisdiction of such government and which provide for more stringent requirements than those specified in the Florida Building Code, not more than once every 6 months." Please note that there are several other requirements not copied here that must be met.

Also note section [553.73](#)(5) that was added in 2010 to explicitly address higher standards for flood. The requirements of section 553.73(4) do not apply in three specific circumstances, and technical amendments may not be rendered void every three years when a new edition of the FBC becomes effective. The three specific circumstances are:

1. "if the amendment is adopted for the purpose of participating in the Community Rating System promulgated pursuant to 42 U.S.C. s. 4022;"
2. "if the amendment had already been adopted by local ordinance prior to July 1, 2010;" and
3. "if the amendment requires a design flood elevation [i.e., freeboard] above the base flood elevation."

Even though section 553.73(4) does not apply to higher standards under those three circumstances, the higher standards need to be formatted to be consistent with the FBC to be useable by the public. We ensure ordinances with FBC amendments include whereas clauses and a fiscal impact statement to satisfy the statutory requirements.

Links:

State Floodplain Management Office

<https://www.floridadisaster.org/dem/mitigation/floodplain/>

DEM Local Ordinance & Building Code Resources:

<https://www.floridadisaster.org/dem/mitigation/floodplain/community-resources/>

FEMA Building Science webpage (click on "Building Code Resources")

<http://www.fema.gov/rebuild/buildingscience/index.shtm>



Flood Resistant Construction and the 6th Edition Florida Building Code (2017)

June 2017

Hurricanes and other storms that result in flooding have caused billions of dollars in damage across all parts of Florida. Local jurisdictions throughout the state recognize, plan for and manage development in flood hazard areas. To participate in the National Flood Insurance Program (NFIP), communities agree to regulate all development in flood hazard areas mapped by the Federal Emergency Management Agency (FEMA).

Once an owner or developer makes a decision to construct, add to or substantially improve a building in a flood hazard area, certain requirements intended to minimize future flood damage must be satisfied. Flood provisions for buildings are in the *Florida Building Code* (FBC), making it easier for design professionals and builders to address the requirements along with other applicable load and design requirements.

The flood provisions of the FBC achieve two broad objectives:

1. As with the rest of the code, the flood provisions help fulfill the purpose of safeguarding public health, safety, and general welfare. Many Florida communities and property owners can attest that designing and constructing buildings to account for flood loads and conditions significantly reduce damage. FEMA reports that structures built to NFIP criteria experience 80% less damage through reduced frequency and severity of losses. Buildings that sustain less damage are more quickly reoccupied, facilitating recovery.

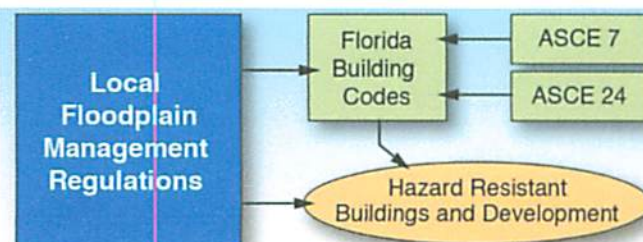
Access to the FBC. The FBC is accessible online through the Commission's webpage, listed under Resources.

Download excerpts of the 6th Edition FBC flood provisions from the Florida Division of Emergency Management webpage, listed under Resources.

2. The flood provisions fulfill some of the requirements necessary for communities that participate in the NFIP. FEMA states the flood provisions of the International Code Series®, which is the foundation of the FBC, meet or exceed the NFIP requirements for buildings and structures. However, NFIP communities are responsible for regulating all development, including activities that are not within the scope of the codes.

This is accomplished by the adoption of local floodplain management regulations (see graphic). Relying on the model ordinance developed by the Florida Division of Emergency Management (DEM) and approved by FEMA, nearly all Florida communities have adopted local regulations explicitly written to rely on the FBC to satisfy the NFIP requirements for buildings (see last page).

Degree of Safety Warning. The degree of flood protection afforded by the flood provisions in the FBC is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur, flooding land outside of mapped flood hazard areas.



Florida Statute s. 553.73(5) was amended in 2010 to allow communities to adopt local administrative amendments to implement the flood provisions of the FBC and local technical amendments to adopt flood provisions that are more stringent than the FBC (also called "higher standards"). Under most circumstances, local amendments will not sunset when the state adopts a new edition of the code. Model language for some higher standards is available on the DEM webpage (see Resources).

DISCLAIMER – This piece is intended to give the reader only general factual information current at the time of publication. This piece is not a substitute for professional advice and should not be used for guidance or decisions related to a specific design or construction project. This piece is not intended to reflect the opinion of any of the entities agencies or organizations identified in the materials and if any opinions appear are those of the individual author and should not be relied upon in any event. Applicable to 6th Edition Florida Building Code.

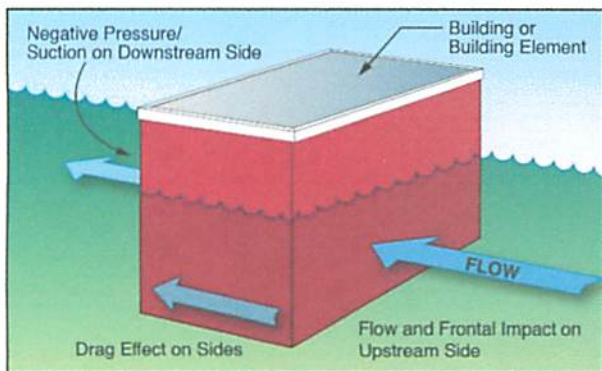
Flood Resistant Construction

The NFIP – and the FBC – requires communities to ensure that new buildings and structures in flood hazard areas are designed and constructed to resist the effects of flood hazards and flood loads. The same requirements apply to existing buildings if proposed work is determined to constitute substantial improvement or repair of substantial damage (both terms are defined in the FBC).

Chapter 16 of the *FBC, Building* requires designers to develop flood loads, which involves determining flood conditions (flood depth, velocity, scour/erosion, and wave/debris impact). Flood loads and load combinations are described in Chapter 5 of ASCE 7, *Minimum Design Loads for Buildings and Other Structures*. Section R322 of the FBC, Residential requires dwellings to be designed and constructed in accordance with specific provisions.

Although hydrostatic load, a function of water depth, is the most obvious load and the easiest to compute, other loads may be more important in final designs. Flood conditions necessary to compute hydrodynamic loads are more difficult to determine (see graphic) and may require consultation with civil or hydraulic engineers. The FBC, Residential requires a design professional to prepare designs for homes in coastal high-hazard areas and Coastal A Zones, but not in other flood zones (see next section for descriptions of flood zones). Designers and builders are cautioned to evaluate whether any flood conditions (such as velocities or waves) may warrant a closer look at flood loads.

Other aspects of flood-resistant construction found in the FBC include the use of flood damage-resistant materials, requirements for enclosures below elevated buildings, and the location of electrical, plumbing, heating, ventilation, and air-conditioning (HVAC) equipment, swimming pools, and tanks.



Flood Hazard Areas and Flood Conditions

Flood Insurance Rate Maps (FIRMs) prepared by FEMA are the most common flood hazard maps adopted by Florida communities. Designers and builders should check with individual communities to determine whether a locally-prepared map is used for regulatory purposes. FIRMs identify flood hazard areas associated with the base flood (the 1%-annual-chance or "100-year" flood). Some FIRMs also identify areas subject to flooding by the less frequent 500-year flood.

FIRMs identify flood hazard areas based on characteristics of flooding:

- Zone A, AE, A1–30, AO, and AH. These zones include flood hazard areas along rivers and streams, in isolated areas where floodwaters accumulate without draining to a waterway and in coastal areas inland of Zone V and along many shorelines. Floodways are designated along some rivers and streams.
- Zone V, VE, V1–30, and VO. These zones identify coastal high-hazard areas found along open coastlines where, during the base flood, waves are expected to be 3 feet and higher.

- Limit of Moderate Wave Action. When shown, the LiMWA identifies the inland extent of 1.5-foot waves and the area between the LiMWA and the Zone V boundary or shoreline is designated as Coastal A Zone.
- Zone X (shaded) identifies areas subject to flooding by the 500-year flood and Zone X (unshaded) identifies land areas that are outside of the 100- and 500-year flood hazard areas.

Coastal A Zone. Revised FIRMs for coastal communities may have a Limit of Moderate Wave Action (LiMWA) delivered. The area between the LiMWA and the Zone V boundary or the shore is designated the "Coastal A Zone."

Some site-specific flood conditions can be determined using FIRMs and associated Flood Insurance Studies, while others can be estimated using the best available information (for a general discussion, see the checklist in Appendix C in FEMA P-936, *Floodproofing Non-Residential Buildings*):

- Flood depth, used to compute lateral and vertical hydrostatic loads, is determined by subtracting the ground elevation from the base flood elevation (BFE) shown on the FIRM. Lateral hydrostatic loads need not be considered for enclosures below elevated buildings that have flood openings to allow floodwater to flow in and out automatically. Vertical (buoyant) hydrostatic loads are calculated for

elements below the BFE and may be important when soils are saturated.

- Flood velocity, used to compute hydrodynamic load, may be estimated in riverine areas if the Flood Insurance Study has a floodway data table or by using standard methods for estimating open-channel flow velocities (see FEMA's *Recommended Procedures for Flood Velocity Data Development*. In coastal areas there is more uncertainty in estimating flood velocity, which is speed of the mass movement of floodwater, not breaking waves (e.g., as a storm surge moves onshore or recedes). A number of FEMA references include a graph showing velocity as a function of stillwater flood depth (see FEMA P-55, *Coastal Construction Manual*).
- Debris in moving water can impart a considerable impact load when it collides with buildings. Whether debris is likely to be present, and the types and sizes of debris, cannot be determined from flood maps and studies. ASCE 7 Chapter 5 commentary provides guidance for consideration of debris impact loads.
- Wave loads, important in coastal areas, depend largely on wave height. Wave height is a function of stillwater flood depth and may be approximated using information in Flood Insurance Studies. The magnitude of wave loads can be 10 times or more than wind forces. ASCE 7 Chapter 5 commentary provides guidance on determining wave loads.
- Erosion and scour may affect the stability of foundations and the loss of supporting soils should be considered because it affects flood loads. Refer to FEMA P-55 for guidance on the effects of erosion and scour.
- Duration of flooding, although not a direct contribution to flood loads, is a condition that warrants consideration. Long-duration flooding is more likely to delay reoccupancy and is a factor in whether dry floodproofing measures can be used for nonresidential buildings (not allowed in Zone V). Also, long-duration flooding is likely to cause nonstructural damage even if flood damage-resistant materials are used.

If BFEs are not shown on the flood hazard map, the FBC gives the building official the authority to require the permit applicant to obtain and use data from another source or to determine the design flood elevation (DFE) using accepted engineering practices. Many communities provide applicants with BFE or flood depth information, and some communities may allow the use of approximation methods, such as interpolating the special flood hazard area boundary based on topographic mapping.

New Flood Requirements in the 6th Ed. FBC. For easy identification in the following descriptions, underlining identifies the flood requirements that are new to the 6th Edition FBC.

FBC, Building – Chapter 1 Administration

Chapter 1 establishes the applicability of the code and describes how the code is to be applied and enforced. This chapter includes flood provisions in a number of sections:

- Hunting “camps” are exempt from the FBC unless certain conditions apply, including location in the “100-year floodplain” (Sec. 102.2).
- Site plans should show flood hazard areas, floodways, and DFEs (Sec. 107.2.5).

BFE and DFE. The codes use the term DFE, which is the same as the BFE unless the community adopts a map showing a more extensive flood hazard area than the SFHA with flood elevations higher than the BFE. Some communities adopt additional maps to show areas prone to flooding outside of the SFHA.

- The minimum plan review criteria include flood hazard areas, flood zones, DFE, lowest floor elevations, enclosures and flood damage-resistant materials (Sec. 107.3.5).
- The authority to issue permits on the basis of affidavits (Sec. 105.1 and Sec. 107.6.1) does not extend to the flood load and flood resistant requirements of the FBC to preserve the NFIP requirement that local officials review and approve permits.
- As part of required inspections, submission of certifications (prepared by a Florida licensed professional surveyor) of the lowest floor elevation are required upon placement of the lowest floor and prior to further vertical construction. Final (“as-built”) certifications must be submitted as part of the final inspection (Sec. 110.3).
- Certificates of occupancy are to include a statement that the elevation certificate has been provided and is retained in the community’s records (Sec. 111.2).

Also see flood provisions in Sec. 102.2.5 (certain exemptions that may be adopted by enforcement districts), Sec. 102.7 (relocation of manufactured buildings), and Sec. 117.1 (variances in flood hazard areas, which refers to local floodplain management regulations).

FBC, Building

Most, but not all, flood provisions in the FBC, Building are found in Sec. 1612, Flood Loads (see Table 1612.1 for a listing of all flood provisions in the FBC). The following highlight key provisions:

- In Sec. 1612.3, flood hazard areas are established by local floodplain management ordinances, which adopt flood hazard maps and supporting data. FEMA Flood Insurance Studies and Flood Insurance Rate Maps (FIRMs) are specified. Some Florida communities adopt locally prepared studies and maps.
- Detailed specifications for flood-resistant design are not included in the code. Rather, Sec. 1612.4 refers to ASCE 24, Flood Resistant Design and Construction, for specific requirements. A number of requirements in ASCE 24 are based on the Flood Design Class that is assigned in Sec. 1603.1.7 (see ASCE 24 for Flood Design Classes, which are similar to risk categories).

Special Detailed Requirements Based on Use and Occupancy. Special detailed requirements (Chapter 4) based on use and occupancy include flood provisions in Sec. 449 (hospitals), Sec. 450 (nursing homes), Sec. 453 (educational facilities), and Sec. 454 (pools).

Notice of Local Higher Standards (Freeboard). Many Florida communities adopt requirements for additional elevation above the minimum in the FBC, ranging from 2 to 4 feet above the BFE. This added factor of safety is called "freeboard." Buildings that are higher than the BFE sustain less damage and owners pay lower Federal flood insurance premiums (see graphic).

- Elevation requirements depend on flood zone. See the summary of elevation requirements in Highlights of ASCE 24-14 prepared by FEMA. Elevation requirements above the BFE start at +1 foot (Flood Design Class 2) and go up to +2 feet or the 500-year flood elevation, whichever is higher (Flood Design Class 4).
- Coastal A Zones, if designated, are treated as Zone V, although backfilled stemwalls are permitted if foundation designs account for scour.
- Specific requirements for enclosures below elevated buildings are based on flood zone. All enclosure walls must have flood openings, including walls intended to breakaway under wave loads. Enclosures are limited to uses for parking, storage and building access.

- The use of dry floodproofing (only nonresidential occupancies in Zone A) is limited depending on flood velocities and adequate warning time to implement measures that require human intervention. A Florida amendment to ASCE 24 permits dry floodproofing in Coastal A Zones provided designs account for wave loads and potential erosion and scour.
- Utility equipment and machinery that serve buildings are required to be elevated or meet a specific performance expectation. Similar requirements are found in the *FBC, Mechanical; FBC, Plumbing; and FBC, Fuel Gas*.
- Sec. 1612.5 requires submission of elevation certification (also see Sec. 110.3, Inspections) and, if pertinent to specific buildings, design documentation for dry floodproofing, engineered openings, foundation and anchorage, and breakaway walls. Design documentation must be prepared and sealed by registered design professionals.
- Sec. 1804.4 includes requirements for grading and fill. Where allowed in flood hazard areas, fill shall be placed, compacted, and sloped to be stable under flood conditions.
- Sec. 3109 includes requirements for buildings seaward of the Coastal Construction Control Line (CCCL). Areas seaward of the CCCL that are also mapped as flood hazard areas are subject to the more restrictive of the flood requirements. This section is revised in the 6th Edition FBC to minimize differences with Sec. 1612 and ASCE 24.
- Buildings in "high-velocity hurricane zones" (Broward and Miami-Dade counties) are required to comply with the specific provisions for those zones and also the requirements of Sec. 1612, if located in flood hazard areas (Sec. 1601.1).

BASF CCCL Fact Sheet. Visit www.buildingasaferflorida.org to download a fact sheet summary of the revised CCCL requirements.

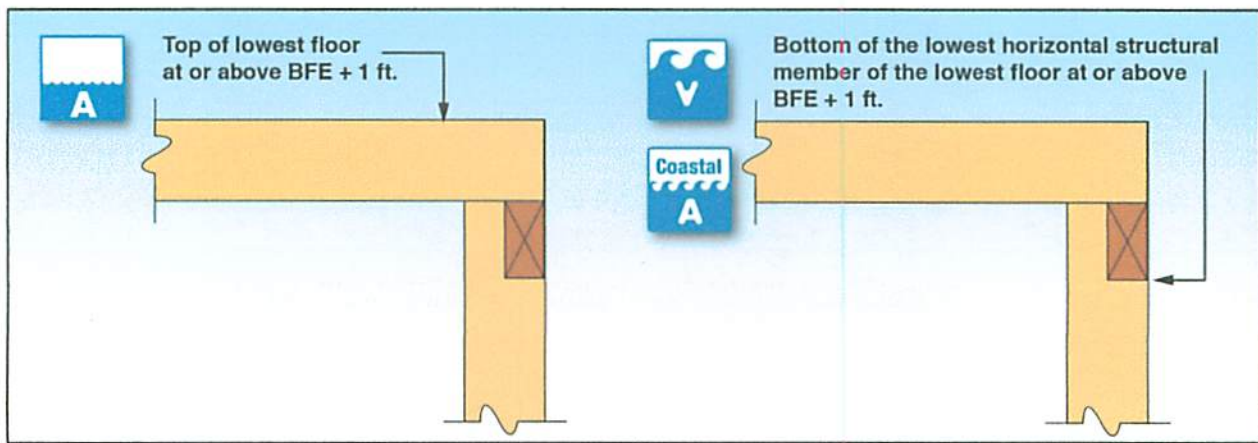
FBC, Residential

Most, but not all, flood provisions in the FBC, Residential are found in Sec. R322, *Flood-Resistant Construction* (see FBC, Building Table 1612.1 for a listing of all flood provisions in the *FBC, Residential*). Unlike the *FBC, Building*, which refers to ASCE 24, the *FBC, Residential* includes detailed requirements. Dwellings seaward of the CCCL must be in accordance with Sec. 3109 of the *FBC, Building*. The following highlight key provisions:

- New in the 6th Edition, areas subject to wave heights between 1 ½ and 3 feet are delineated (by Limit of Moderate Wave Action) or otherwise designated by the community as Coastal A Zones (CAZ). If CAZs are designated, dwellings in CAZs must comply with the requirements for Zone V in Sec. R322.3.
- In Table R301.2(1), communities adopt local floodplain management ordinances to specify the date of entry into the NFIP and the title and date of the current Flood Insurance Study and FIRMs.
- Sec. R309.3 requires garages to be elevated or, if below the BFE and used solely for parking, access or storage, meet the requirements of Sec. 322 (for enclosed areas below the BFE).
- Sec. R322.1 includes general provisions that apply to dwellings in all flood hazard areas (including Zone A, Zone V, and Coastal A Zones):
 - Dwellings proposed in identified floodways are required to be designed and constructed according to ASCE 24. This requirement recognizes that flooding is deeper and usually flows faster in floodways, which include the channel and adjacent lands that should be reserved to convey floodwaters. Obstructing flow in floodways can cause increases in flood depths, which may cause increased damage on adjacent properties.
 - Sec. R322.1.1 permits use of ASCE 24 in all flood hazard areas as an alternative to the requirements of Sec. R322.
 - In areas commonly referred to as "approximate Zone A" where FIRMs do not specify BFEs, the building official may require use of data available from another source or may require the applicant to

determine flood elevations using accepted engineering practices. Keeping a record of elevations used previously is a good practice so that future permit decisions can be based on the same data.

- The lowest floor is defined as the floor of the lowest enclosed area, but does not include unfinished enclosures below elevated dwellings that comply with the code (see graphic below).
- Unfinished enclosures under elevated buildings are permitted if used only for parking, building access or limited storage (or crawlspace). Building officials should ensure that plans specify enclosed areas are only for those uses. An owner who subsequently modifies an enclosure in any way that alters compliance with these requirements may be subject to higher Federal flood insurance premiums.
- Utility equipment and machinery that serve buildings must be elevated or meet a specific performance expectation that generally cannot be met by typical installations.
- Use of flood damage-resistant materials is required below the elevations required in R322.2 (Zone A) and R322.3 (Zone V and Coastal A Zone). These materials are capable of withstanding direct and prolonged contact with floodwaters without sustaining significant damage. FEMA Technical Bulletin 2, *Flood Damage-Resistant Materials Requirements*, is referenced for materials and installation methods.
- Dwellings seaward of the CCCL that are also in mapped flood hazard areas must comply with the more restrictive of Sec. 3109 of the *FBC, Building* and Sec. R322.



- Sec. R322.2 includes specific requirements that apply in flood hazard areas commonly referred to as “Zone A.” (except in Coastal A Zones, which are subject to Sec. R322.3). The Zone A requirements include:

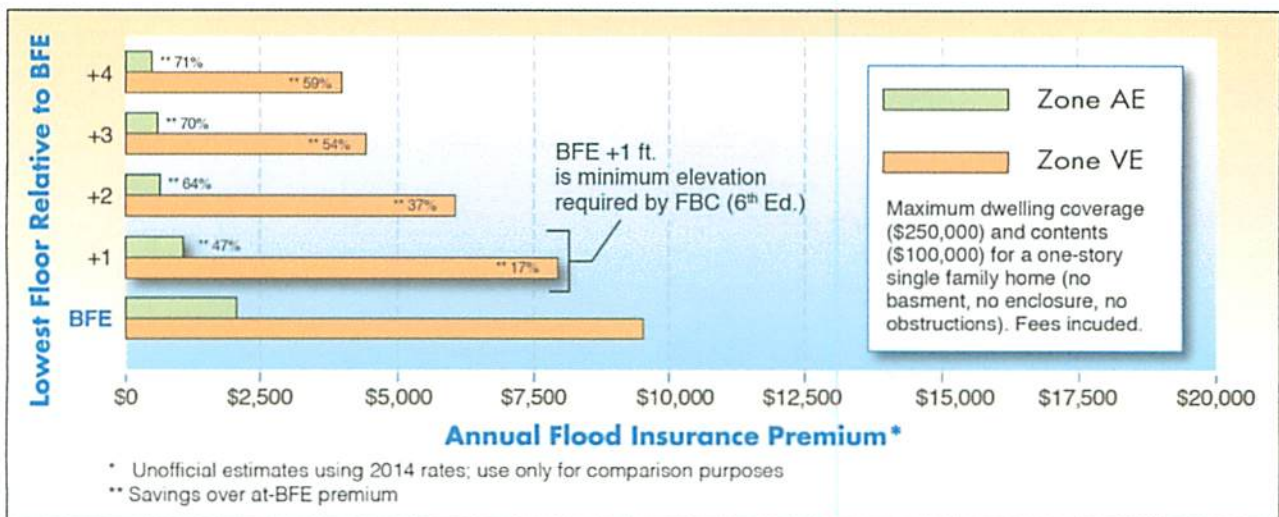
- Minimum elevation requirements call for the lowest floor (see graphic left, previous page), including basement, to be at or above the BFE plus 1 foot or DFE, whichever is higher. The additional elevation, called “freeboard,” is required in all flood hazard areas. (see graphic below) Basements and all areas that are below grade on all sides are not permitted.

- The area below elevated dwellings may be enclosed by foundation walls or framed walls. To minimize damage due to hydrostatic loads, flood openings are required (see FEMA Technical Bulletin 1, *Openings in Foundation Walls and Walls of Enclosures*). Flood openings may be prescriptive (providing 1 square inch of net open area for each square foot of enclosed area) or engineered (requires design certification). Measurement of net open area must account for the presence of louvers, blades, screens, and faceplates.
- Tanks may be installed underground or on-grade (if anchored to resist flood loads) or elevated on platforms.

Enclosures and Flood Insurance. Federal flood insurance is more expensive if Zone V buildings have enclosures below the BFE, even if the walls are compliant breakaway walls. Insurance is even more expensive if enclosures are larger than 300 square feet.

- Sec. R322.3 includes specific requirements that apply in coastal high-hazard areas, commonly referred to as “Zone V,” and Coastal A Zones:

- Minimum elevation requirements call for the bottom of the lowest horizontal structural member of the lowest floor (see graphic previous page, right) to be elevated to or above the BFE plus 1 foot or DFE, whichever is higher. The additional elevation, called “freeboard,” is required in all flood hazard areas. (see graphic below)
- Foundations are limited to pilings or columns because they present the least obstruction to the passage of waves. In CAZ, backfilled stemwalls are permitted if foundations have deep footings to account for scour. Foundation designs are required to be certified by a registered design professional.
- The area under elevated homes must be free of obstruction (see FEMA Technical Bulletin 5, *Free-of-Obstruction Requirements*). The area may be enclosed with insect screening or open lattice or, if enclosed by walls, the walls must be designed to break away under flood loads without causing damage to the foundation or elevated building. FEMA Technical Bulletin 9, *Design and Construction Guidance for Breakaway Walls Below Elevated Coastal Buildings*, includes prescriptive requirements for breakaway walls. The code specifies that utility components are not permitted to be mounted on or penetrate breakaway walls because post-flood investigations have determined that walls with such components do not break away cleanly. Flood openings are required in breakaway walls to minimize wall failure under relatively shallow flooding.



- An exterior door is required in the doorway at the top of stairways that provide access to dwellings and that are enclosed by breakaway walls.
- Tanks may be installed underground (if anchored to resist flood loads) or elevated on platforms.
- Dwellings in flood hazard areas in “high-velocity hurricane zones” (Broward and Miami-Dade counties) are required to comply with the specific provisions for those zones and also the requirements of Sec. R322 (also see Sec. R301.1 and Sec. R401.1).
- In Zone A, above-ground pools, on-ground pools and in-ground pools that involve placement of fill are allowed without any special requirements unless located in a floodway, in which case documentation must be provided to evaluate the effects of the encroachment on flood elevations. Pools in Zone V are required to conform to the requirements of ASCE 24, which preclude obstructing flow that causes damage to other buildings. For consistency, Chapter 41, Swimming Pools, cross-references to Sec. R322.
- Chapters with specifications for mechanical systems, HVAC systems, duct construction, combustion air, boilers and water heaters, special piping and storage systems, fuel gas, plumbing, plumbing fixtures, sanitary drainage and vent systems all include flood provisions. In general, the pertinent sections refer to Sec. R322.1.6.

FBC, Existing Building

A fundamental premise of the FBC, Existing Building is that work on an existing building does not lessen the compliance or conformance of the structure. It is important to keep this in mind when considering projects that repair, alter, add to, or otherwise improve buildings in flood hazard areas that were originally built to comply with flood-resistant requirements. For example, the open area under buildings required to be elevated on pilings is permitted to be enclosed by walls only if the walls comply with the flood-resistant construction requirements and if the use of the resulting enclosure is limited only to parking, building access or storage.

The first step when considering work on an existing building in a flood hazard area is to determine whether the proposed work constitutes “substantial improvement” (SI) or repair of “substantial damage” (SD). If a proposal is determined to be SI/SD, then the existing building is required to be brought into compliance with the requirements for new construction found in Sec. 1612 of the FBC, Building or R322 of the FBC, Residential, as applicable.

The SI/SD determination is made by comparing the cost of all of the proposed work to the market value of the building (excluding land) before the work is undertaken. If a proposal

is to repair a damaged building, the market value is the value of the building before the damage occurred. When the cost equals or exceeds 50% of the market value, the work is determined to be substantial improvement or repair of substantial damage. In 2010, FEMA published FEMA P-758, Substantial Improvement/Substantial Damage Desk Reference, to summarize extensive guidance, include sample letters and an informative sample packet for applicants, designers and builders (Appendix D). Communities should establish procedures for consistent handling of applications to do work on existing buildings.

Notice of Local Amendments (Cumulative SI). Some Florida communities enforce “cumulative” SI over a specified period of time (e.g., 1, 5 or 10 years or life of the building). These communities keep records and evaluate whether each subsequent proposal to improve or repair a building will trigger the SI requirement to bring the building into compliance with the requirements for new construction.

The flood provisions of the FBC, Existing Building are found in several chapters (see Table 1612.1 for a listing of all flood provisions in the FBC, Existing Building):

- Repairs. Chapter 6 has a general requirement that requires compliance when the repair of a building in a flood hazard area constitutes substantial improvement (Sec. 601.3). Sec. 606.2.4 also specifies that buildings that have sustained substantial damage shall be brought into compliance. Compliance refers to the requirements for new construction in Sec. 1612 of the FBC, Building or Sec. R322 of the FBC, Residential, as applicable.
- Alterations – Levels 1, 2, and 3. Chapter 7, Alterations – Level 1, has a general requirement that requires compliance when alterations constitute substantial improvement (Sec. 701.3). Because the requirements for alterations are cumulative, the requirement in Chapter 7 also applies to Level 2 alterations (Chapter 8) and Level 3 alterations (Chapter 9).
- Additions. Handling additions is complicated by the fact that some circumstances prompt compliance of the addition as well as the base building. Sec. 1103.5 distinguishes between horizontal additions that are structurally connected and those that are not structurally connected. It also specifies that if vertical additions or foundation work are determined to constitute substantial improvement, then base buildings must be brought into compliance. New or replacement foundations must

Reconstruction is New Construction. Reconstruction of a building that is demolished or so significantly damaged that it cannot be repaired is new construction, even if the old foundation can be reused.

comply, without requiring SI/SD determinations. DEM's guidance listed in Resources is based on FEMA P-758.

- **Historic Buildings.** The key to proper enforcement of the flood provisions is whether a historic building meets the exception in Sec. 1201.3. The FBC, Existing Building defines "historic buildings," however, the definition is not entirely consistent with the definition used by the NFIP. The NFIP allows historic buildings in flood hazard areas to be improved and repaired without bringing them into compliance provided the buildings are qualified. Importantly, any proposed work must not preclude such buildings from continued listing as historic. FEMA guidance suggests building officials require applicants to obtain evidence of continued designation from the appropriate authority or a qualified historic resources professional.
- **Relocated or Moved Buildings.** Sec. 1302.6 specifies that buildings relocated or moved into flood hazard areas are required to comply with the flood provisions of Sec. 1612 or R322, as applicable (no determination of substantial improvement). This means new foundations must meet the elevation and other requirements based on the flood zone of the new location.
- **Prescriptive Compliance.** The sections that articulate the prescriptive compliance method for additions, alterations, and repairs and each specify that if the work constitutes SI/SD, then the existing building must be brought into compliance with the requirements for new construction (Chapter 4). Similarly, the performance compliance method includes the same requirement (Chapter 14).

FBC, Mechanical, Plumbing, Fuel Gas

Each of the mechanical, plumbing and fuel gas codes includes similar provisions requiring equipment and systems to be located at or above the elevation specified in Sec. 1612.4 (thus matching the elevation of the building) or to meet a specific performance expectation that generally cannot be met by typical installations. See Table 1612.1 for a listing of all flood provisions in these codes. Of particular note:

- Each code specifies that systems and equipment shall not be mounted on or penetrate walls intended to break away under flood loads (applies in Zone V and Coastal A Zones).
- *FBC, Mechanical* requires ducts to be located above the elevation specified in Sec. 1612.4 or designed and constructed to prevent water from entering or accumulating and to resist flood loads.

Local Floodplain Management Regulations

Florida communities adopt local floodplain management regulations to regulate development activities in identified flood hazard areas. The regulations (typically called "ordinances"), in conjunction with the *Florida Building Code*, meet or exceed the minimum requirements of the NFIP. Development other than buildings includes subdivision of land; filling, grading, and other site improvements and utility installations; placement, installation, or replacement of manufactured homes and manufactured buildings; installation or replacement of tanks; placement of recreational vehicles; installation of swimming pools; and any other development. Importantly, to fulfill the NFIP requirements, floodplain management ordinances also regulate structures, and facilities that are exempt from the *Florida Building Code*.

Local floodplain management regulations are administered in conjunction with the *Florida Building Code*. Key features include:

- Adoption of Flood Insurance Studies and FIRMs to establish flood hazard areas (flood zones).
- Designation of the Floodplain Administrator; in many communities, the Building Official is designated the Floodplain Administrator, while in others the position is assigned to a different office.
- Duties of the Floodplain Administrator, including review of applications for development other than buildings, inspection of permitted development and flood hazard areas, maintenance of records.
- Details of the process for making substantial damage and substantial improvement determinations.
- Specifications for determining flood elevations in areas without BFEs on FIRMs.
- Procedures, limitations, and conditions for evaluating requests for variances, including variances from the flood provisions of the *Florida Building Code*.
- Requirements for the following:
 - Subdivisions, including manufactured home parks and subdivisions
 - Site improvements and utilities (sanitary sewage facilities and water supply facilities)
 - Placement of fill
 - Manufactured homes, recreational vehicles (including park trailers)
 - Tanks (above-ground and underground)

- Limitations on development in floodways, including fill, fences, retaining walls, roads and watercourses, in addition to buildings and structures. Applications must be accompanied by analyses to determine proposed activities do not increase flood levels.
- General requirements for any development not specifically addressed, including:
 - Anchoring to prevent flotation, collapse or lateral movement resulting from flood loads
 - Use of flood damage-resistant materials
 - Mechanical, plumbing and electrical systems elevated or protected

Assistance from DEM. DEM is designated by the Governor to be the link between Florida communities and the NFIP. Changes to floodplain management ordinances should be reviewed by DEM prior to adoption. Contact the State Floodplain Management Office for guidance.

Resources

DBPR Building Code Information System, 6th Edition
Florida Building Code (2017), International Code Council, Inc.; www.FloridaBuilding.org.

DEM Local Ordinance & Building Code Resources (excerpts of the FBC and Highlights of ASCE 24-14); www.floridadisaster.org/Mitigation/SFMP/lobc_resources.htm.

ASCE 7, Minimum Design Loads for Buildings and Other Structures (2010).

ASCE 24, Flood Resistant Design and Construction (2014).

FEMA, Recommended Procedures for Flood Velocity Data Development (November 2012); www.fema.gov/media-library/assets/documents/29944.

FEMA P-55, Coastal Construction Manual (Fourth Edition, April 2011); www.fema.gov/media-library/assets/documents/3293.

FEMA P-936, Floodproofing Non-Residential Buildings (July 2013); www.fema.gov/media-library/assets/documents/34270.

FEMA P-758, Substantial Improvement/Substantial Damage Desk Reference (May 2010); www.fema.gov/media-library/assets/documents/18562.

NFIP Technical Bulletins: A series of guidance on a variety of floodplain management topics; www.fema.gov/media-library/resources-documents/collections/4.

Answers to Specific Questions

Florida Division of Emergency Management, State Floodplain Program Office: 1-850-487-4556 and floods@em.myflorida.com.

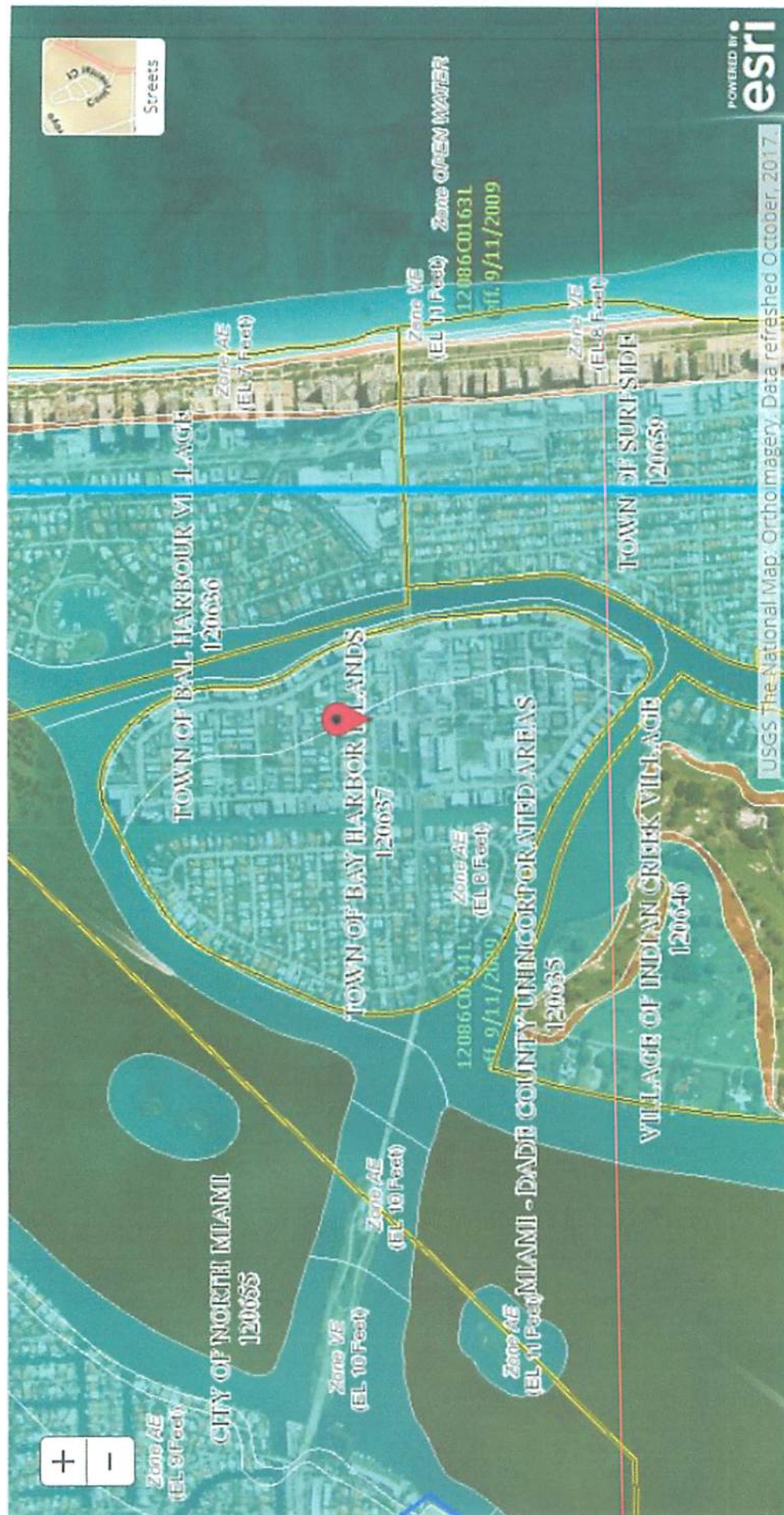
Florida Building Commission: 1-850-487-1824 and www.FloridaBuilding.org.

Don't know where to go for an answer to a specific question?

Contact Building A Safer Florida, Inc. 1-850-222-2772 and www.buildingasafeflorida.org.

Go To NFHL Viewer »

You can choose a new flood map or move the location pin by selecting a different location on the locator map below or by entering a new location in the search field above. It may take a minute or more during peak hours to generate a dynamic FIR/Mette.



PIN

Approximate location based on user input and does not represent an authoritative property location

Selected FloodMap Boundary

Digital Data Available

No Digital Data Available

Unmapped

MAP PANELS

Area of Minimal Flood Hazard Zone X

Effective LOMRs

Area of Undetermined Flood Hazard Zone D

OTHER AREAS

Area of Minimal Flood Hazard Zone X

Area of Undetermined Flood Hazard Zone D

SPECIAL FLOOD HAZARD AREAS

Without Base Flood Elevation (BFE) Zone A, V, AH, AR

With BFE or Depth Regulatory Floodway Zone AE, AO, AH, VE, AR

0.2% Annual Chance Flood Hazard. Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X

Future Conditions 1% Annual Chance Flood Hazard Zone X

Area with Reduced Flood Risk due to Levee. See Notes. Zone X

Area with Flood Risk due to Levee Zone D

Cross Sections with 1% Annual Chance

Water Surface Elevation

Coastal Transect

Base Flood Elevation Line (BFE)

Limit of Study

Jurisdiction Boundary

Coastal Transect Baseline

Profile Baseline

Hydrographic Feature

Channel, Culvert, or Storm Sewer

Levee, Dike, or Floodwall

OTHER FEATURES

GENERAL STRUCTURES

AGENDA ITEM REPORT

May 13, 2019

ITEM NUMBER: 8.

ITEM: Consideration and Approval of an ordinance on **first** reading amending Section 23-11 of the Town Code regarding the open space requirements in the RD Single-Family District. Enclosed is a copy of the proposed ordinance.

DESCRIPTION:

At a recent Planning & Zoning Board meeting the Board recommended the Town Council consider modifying the Town Code by requiring the 50% open space for the first 25 foot area for those lots directly abutting Kane Concourse. The existing Code requires that those lots provide 40 foot building setbacks versus the typical 25 foot setbacks for lots that do not abut Kane Concourse.

Enclosed is a copy of the proposed ordinance for first reading.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk
 Michael Miller, Town Planner

ATTACHMENTS

1. BHI TC Staff Report SFR OS Rev April 29 2019
2. Proposed Ord SF Front Yard OS Mod April 24 2019

**TOWN OF BAY HARBOR ISLANDS
COMMUNITY DEVELOPMENT
MEMORANDUM**

To: Mayor and Town Council Members
Town of Bay Harbor Islands

From: Michael J. Miller, AICP *mjm*
Consultant Town Planner

Date: April 29th, 2019

Subject: Town of Bay Harbor Islands
Land Development Code Update
Single-Family Home Design Standards
Front Yard Open Space - Revision
MMPA Acct. No. 01-0702-0500

ISSUE:

Recently the Town's Planning & Zoning Board / Town Council have studied / updated some of its Land Development Regulations (LDRs) related to single-family house designs / 2nd story massing / open space / etc. Most would agree these new LDRs have been effective in guiding architects / developers / owners in the designs of new homes.

One of the recent LDR modification added a provision that in front yard areas at least 50% of the area has to be landscaped. This has a result of reducing expansive front yard "parking courts" with large paved driveways. As now applied to normal single-family lots this has worked fine. Recently the Planning and Zoning Board reviewed a new single-family home design on a lot directly fronting onto Kane Concourse. For typical "non-Kane Concourse" lots the minimum front setback area is 25-feet deep – for Kane Concourse lots the minimum front yard setback is 40 feet. As a result, 50% of a 25-foot setback area is not the same as 50% of a 40-foot setback area – the Kane Concourse frontage lots are unfairly penalized. There will undoubtedly be more open space anyway in these "unique" front yard areas due to extended side yards and they must meet other landscape design criteria. The PZB members requested that the Town Council consider adopting a "clean-up" Code amendment to address this situation. As drafted the 50% open space rule would apply to the first 25 feet of a lot fronting onto Kane Concourse.

RECOMMENDATION

MMPA suggests the Town consider the adoption of the proposed Ordinance.

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA; AMENDING THE TOWN'S CODE OF ORDINANCES AS RELATED TO OPEN SPACE REQUIREMENTS IN THE RD SINGLE-FAMILY DISTRICT; 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.

WHEREAS, the Town Council periodically studies various land development trends and issues and amends the Town's Land Development Regulations accordingly; and

WHEREAS, the Town Council has studied the current Code provisions of the Town and find that certain modifications are necessary and desirable to modify current regulations for single-family home development; and

WHEREAS, the Town's Planning and Zoning Board discussed this issue and recommended the Code be modified so as to not penalize those single-family lots abutting Kane Concourse that must provide greater front setbacks than interior lot; and

WHEREAS, the Town Council held duly advertised public meetings to consider the proposed modifications to the Town's Land Development Regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA:

Section 1: That the Town of Bay Harbor Islands Code of Ordinances is hereby amended to modify Section 23-11, as more fully set forth in the attached Exhibit "A", and by reference are made a part hereof.

Section 2: That if any section, paragraph, sentence or word of this Ordinance or the application thereof to any person or circumstance is held invalid, that the invalidity shall not affect the other sections, paragraphs, sentences, words or application of this Ordinance.

Section 3: That it is the intention of the Town Council of the Town of Bay Harbor Islands, and it is therefore ordained, that the provisions of the Ordinance shall become and be made a part of the Town of Bay Harbor Islands' Code of Ordinances, that sections of this Ordinance may be re-numbered or re-lettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 4: That all Ordinances, parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith be and the same are hereby repealed to the extent of such conflict.

Section 5: That this Ordinance shall be in full force and take effect immediately upon its passage and adoption.

PASSED on First Reading this ____ day of _____, 2019.

PASSED on Second Reading this ____ day of _____, 2019.

STEPHANIE BRUDER
Mayor

ATTEST:

MARLENE SIEGEL
Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

CRAIG SHERMAN, ESQ.
Town Attorney

EXHIBIT A
Amendments to the Town of Bay Harbor Islands
Zoning and Planning Code – Chapter 23

Sec. 23-11. - Land development regulations.

In all area districts hereinabove set forth and designated, there shall be front, rear and side yard setbacks provided for of not less than the dimensions specified, and other land development standards, as follows, to wit:

(A) *RD-Single Family Area:*

- (1) Front yard setback (any street frontage including corner lots).
All lots except Kane Concourse frontage: 25 feet.
All lots fronting Kane Concourse: 40 feet.
- (2) Rear yard setbacks (waterfront).
Block 23, Lots 29-95: 40 feet measured from the outside bulkhead wall.
Block 23, Lots 1-28 and Lots 96-104: 25 feet measured from the outside bulkhead wall.
- (3) Rear yard setbacks (non-waterfront).
Lots fronting Kane Concourse: Ten feet.
All other lots: 15 feet.
- (4) Side yard setbacks (all lots).
All lots: Ten feet.
- (5) Notwithstanding the above, as to triangular or otherwise odd-shaped lots, the town shall have the power to adjust the street or front yard setback restrictions in the interest of proper, useful and equitable planning.
- (6) Height limits.
 - a. No building in RD-Single Family area, shall exceed two and one-half stories or 25 feet in height above the base flood elevation (BFE) prescribed by United States, state or county flood control laws or regulations.
 - b. Notwithstanding the above, roofs with a slope exceeding two and one-half inches per foot may exceed the above height restriction to a maximum height of 35 feet on waterfront properties and a maximum height of 30 feet on non-waterfront properties, provided that the point on the roof at which the slope begins such excess height is no closer to the property lines than as described below:

- i. On all lots in the RD-Single Family district: 15 feet from each side property line.
- ii. Block 23, Lots 29-95: 45 feet from the outside bulkhead wall, 60 feet from any street.
- iii. Block 23, Lots 1-28: 30 feet from the outside bulkhead wall, 55 feet from any street.
- iv. Lots facing Kane Concourse: 15 feet from the rear property line, 30 feet from any street.
- v. Corner lots in Blocks 30, 31, 33 and 34: 35 feet from any street.
- vi. On all other lots in the RD-Single Family district: 40 feet from any street (front) property line, 20 feet from any rear property line.

(7) Building Articulation. Architectural embellishments, including but not be limited to, windows, eyebrows, material changes, reliefs, reveals, ornamentation, banding, canopies, copings, etc. must be incorporated into the design to avoid large flat uninterrupted wall surfaces for at least 50% of the length of all elevations of the main house and any accessory structures.

(8) Open Space Requirements.

- a. Each plot shall provide for a minimum of 35 percent open space at ground level for one-story homes. Each plot shall provide for a minimum of 40 percent open space at ground level for homes with any portion of the home above one story.
- b. Each plot shall provide for a minimum of fifty (50) percent landscaped "green" pervious open space at ground level in the front yard area. Notwithstanding the above, for those lots directly abutting Kane Concourse that are required to provide 40-foot building setbacks versus the typical 25-foot building setbacks for lots that do not abut Kane Concourse, the above open space criteria shall apply only to the first 25-foot area abutting Kane Concourse. The use of pervious pavers or landscape strips in driveways or walkways shall not be included in the fifty (50) percent landscaping requirement. Within front setback areas sufficient open space and landscaping materials shall be provided to break large expanses of hardscapes, screen parking areas and provide shade.

- (9) Second story building area restrictions. For residences designed as two-story structures, the second story shall not exceed 80 percent of the first (ground) floor gross floor area inside exterior walls (air-conditioned/non-air-conditioned areas). The reduced secondary story percentage listed herein may be applied to the first floor, if approved by the Planning and Zoning Board. Notwithstanding the above, the Planning and Zoning Board may allow modifications to this requirement in instances where enhanced architectural articulation and detailing is provided on the exterior house façades to break the massing of the structure.

AGENDA ITEM REPORT

May 13, 2019

ITEM NUMBER: 9.

ITEM: Consideration and Approval of contract award BHI-202 to Persant Construction Co. Ltd. in the amount of \$22,700 for roadway milling and resurfacing for the intersection on 99th Street and East Bay Harbor Drive. Enclosed are the cost estimated and supporting documents.

DESCRIPTION:

The Town executed a street restoration agreement between the developers of properties located at 9901 East Bay Harbor Drive, 1000 99th Street and 9900 East Bay Harbor Drive to perform roadway milling and resurfacing for the intersection of 99th Street and East Bay Harbor Drive. The Town Engineer obtained three (3) cost estimates for the street restoration and is recommending to award the contract to Persant Construction Co. Ltd, the lowest bidder for said project.

Enclosed find a copy of the street restoration agreement and other supporting documents.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

There is not fiscal impact to the Town. The money for this work is being held in escrow by the office of the Town Attorney. The bid amount will be covered by escrow.

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk
 Randy Daniel, Town Engineer

ATTACHMENTS

1. RDaniel- Memo
2. Cost estimates - street restoration
3. Street Restoration - G. Boano_Redacted

interoffice
MEMORANDUM



Date: April 30, 2019

To: J.C. Jimenez - Town Manager

Copy: Melisa Cruz- Finance Director / Assistant Town Manager
Frank Simone, Esq. - Town Attorney
Douglas Armstrong - Director of Public Works

From: Randy L. Daniel, P.E. - Town Engineer *Randy Daniel*

Subject: Evaluation of Bids for Award of Contract BHI-202
Milling and Resurfacing the intersection of 99th St. and
East Bay Harbor Drive

1.0 Background

The Town signed a Street Restoration Agreement (the Agreement) with the developers of properties at 9901 East Bay Harbor Drive, 1000 99th Street and 9900 East Bay Harbor Drive, to perform roadway milling and resurfacing operations when all the projects have been completed. A signed copy of the agreement is attached.

In accordance with the Agreement, three (3) bids were solicited for the project.

2.0 Evaluation Criteria

This project was not advertised publicly. Bids were solicited from three (3) contractors. Responses were obtained from all three and bid amounts are presented in table # 1.

No.	Contractor	Bid Amount
1	Persant Construction Co. Inc.	\$22,700.00
2	Arrow Asphalt & Engineering	\$26,435.00
3	Renew Restoration	\$42,960.00

The three (3) Contractors who were invited to bid have all worked in the Town previously and justification for soliciting their bid is as follows:

- a. Arrow Asphalt has a longstanding relationship with the Town and recently performed Zone 2 Asphalt repairs.

- b. Renew worked as a subcontractor for FPL and milled and resurfaced the intersection at 102nd Street and West Bay Harbor Drive.
- c. Persant was recently awarded a Town Contract to resurface roads in Zone 3.

Based on the above the only criteria utilized in evaluating the bids received, is price.

3.0 Results & Analysis

Contractors were asked to allow a lump sum amount of \$1,850.00 for MOT in their bid.

According to the agreement, the estimated cost of street repairs for the project is \$29,313.00. An amount of \$5,862.60 was added to offset any administrative costs and this amount added work estimate results in a total cost baseline of \$35,175.60.

Persant Construction Co. Inc. submitted the lowest bid in the amount of \$22,700.00.

Persant was recently awarded Contract # BHI 199 - Zone 3 Asphalt Resurfacing project scheduled to begin soon on the West Island. Based on the evaluation process for the BHI 199 project Persant was adjudged as a duly competent and qualified contractor to perform milling and resurfacing projects.

4.0 Recommendation

It is recommended that the Contract to resurface the intersection of 99th Street and East Bay Harbor Drive, in accordance with the Street Restoration Agreement attached, be awarded to Persant Construction Co. Ltd. In the amount of \$22,700.00.



PERSANT CONSTRUCTION CO. INC.

13220 SW 132 Ave.

Unit 2

Miami, FL 33186

Estimate

Date	Estimate #
4/29/2019	19MISC-07

Name / Address

Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

Project

Description	Qty	Rate	Total
Notes; - The above price does not include performance and payment bond. Add 3% if required - All MOT, striping, testing, Engineering including QC, layout and/or as-builts in solely the responsibility of the client. - The above prices does not include protection of brick pavers or stamped concrete - New Asphalt pavement is subject to tire tracks and marking. Persant Construction is not responsible for these issues. - Unless indicated otherwise, this proposal is based on average thickness of asphalt, not minimum thickness - This proposal may be withdrawn by Persant Construction if not accepted within 30 days - Final payment will be based upon actual quantities installed as determined by field measurement after completion. - Persant Construction shall not be responsible for reflective cracking, birdbaths, drainage problems, or settlement of new asphalt overlay due to the existing asphalt. - Any punchlist items must be submitted in writing. No repairs will be made until 90% of the invoice amount has been paid. - Persant Construction is not responsible for birdbaths or water flow when projects are designed with less than 1% fall. - Customer agrees to pay asphalt over-runs at a price of \$186.00 per ton - Customer Agrees to pay for asphalt leveling at a price of \$173.00 per ton - This quote is based on the bituminous and material index from the Florida department of Transportation for liquid asphalt. Persant Construction shall be compensated for any increase in excess of the current month's index at the time of the asphalt placement. - No under roof paving is included unless specifically stated in the proposal. - No behind the curb paving is included unless specifically stated in the proposal			
		Total	\$22,700.00



PERSANT CONSTRUCTION CO., INC.

13220 SW 132 Ave.

Unit 2

Miami, FL 33186

Estimate

Date	Estimate #
4/29/2019	19MISC-07

Name / Address
Town of Bay Harbor Islands 9665 Bay Harbor Terrace Bay Harbor Islands, FL 33154

Project

Description	Qty	Rate	Total
Project; Town of Bay Harbor - 98th & Broadview Drive Road Restoration			
Scope of Work			
1. MOT setup & Police Officer onsite	1	1,800.00	1,800.00
2. Asphalt Milling & paving at 3/4" of S-3 (17,000 SqFt)	1	18,890.00	18,890.00
3. Temp paving markings per plan applied right after asphalt is laid	1	660.00	660.00
4. Thermoplastic pavement markings to plan	1	1,350.00	1,350.00
		Total	

PROPOSAL

CTL# 5743

Arrow Asphalt & Engineering, Inc.

3051 N.W. 129 Street Opa Locka, FL 33054
(305) 688-8686 Voice (305) 688-8484 Fax

PROPOSAL SUBMITTED TO:

Date: Wednesday, April 17, 2019

Client Information

Randy Daniel
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154
(305) 455-7248 Email: RDANIEL@BAYHARBORISLANDS.NET

Job Site Information

Street Restoration
9880-9901 E. Bay Harbor Drive
Bay Harbor Island, FL

We hereby submit specifications and estimates to perform work at the above job site:

1. Mill 3/4" existing asphalt from designated area of the streets. Load and dispose of debris. Apply RC-70 tack coat. Repave area with 3/4" thick type SP9.5 hot plant asphalt mix.

Approx. 17,000 SF.....\$ 22,100.00

2. Repaint all pavement markings to existing format using DOT approved latex traffic paint.....\$ 685.00

3. Install thermo plastic pavement markings to plan format.....\$ 1,800.00

4. 2 Police officers.....\$ 1,000.00

5. MOT.....\$ 850.00

Total: \$ 26,435.00

[Add cost of permit to total if required, any additional work will be an extra]

We hereby propose to furnish labor and materials -- complete in accordance with the above specifications, for the sum of:

Twenty Six Thousand Four Hundred Thirty Five Dollars and 00/100 (\$ 26,435.00) with 50% deposit, and remaining balance payment due upon completion of job.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are hereby accepted. We have reviewed the important Disclosures and have provided any special billing instructions on the reverse side. You are authorized to do the work as specified. Payment will be made as outlined above.

ACCEPTED:

AUTHORIZED SIGNATURE:

Signature: _____

Arrow Asphalt & Engineering, Inc

Date: _____

IMPORTANT DISCLOSURES AND DESIGNATION OF SPECIAL BILLING INSTRUCTIONS

Disclosures:

- 1.) Bid does not include fees for permits, bonds, engineering stakes layouts, as-builds or densities. A fee of \$500.00 will be added if Arrow Asphalt & Engineering Inc. is to apply and be responsible for procurement of permit. No import or export, excess fill or deteriorious materials included unless noted (cap-rock, muck, grass, trees, ect.) Not responsible for errors and/ or omissions by engineer or surveyor. **BID PRICE VALID FOR THIRTY (30) DAYS.**
- 2.) A 50% deposit is required upon signed contract to schedule work proposed, balance will be due upon job completion. DEPOSIT IS NON-RE FUNDABLE
- 3.) All material guaranteed to be specified, and the above work to be preformed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner.
- 4.) We guarantee our work not to flake, crack or unravel for a period of one year. We are not responsible for the wearing off of the material from the top of the asphalt aggregate due to traffic wear.
- 5.) Any alteration or deviation from the above specifications involving extra costs will be executed only upon written change order, and will become an extra charge over and above the contract. Bid is based on today's market price for materials. Any increase in material price at start of job will be extra cost. All agreements contingent upon strikes, accidents or delays beyond our control.
- 6.) Prices given without plans and specs are subject to price change when plans are available. Final payment will be based on actual quantities installed which will be verified by field measurements.
- 7.) Arrow Asphalt and Engineering is not responsible for delays created by other trades, material suppliers, labor strikes or acts of God.
- 8.) Arrow Asphalt and Engineering is not responsible for damage to underground sprinklers or utilities, sod, landscaping, dust removal, painting or stucco, during the normal course of construction.
- 9.) Claims for property damage must be made in writing 24 hours after the completion of the work. Job related complaints must be made within 48 hours of completion.
- 10.) Tree hedges and grass to be trimmed prior to the commencement of work.
- 11.) Seal Coating and striping to be completed in one mobilization. Additional mobilizations are additional costs to the contract. Additional mobilizations are \$900.00 per mobilization.
- 12.) Arrow Asphalt and Engineering is not responsible for the following but not limited to the tracking of the sealer on pavers, driveways, sidewalks or any other areas besides roadway. Sealed areas will be blocked off until dry.
- 13.) A 1.5% finance charge per month shall be added to any invoice 30 days past due.
- 14.) This proposal is based on work being completed during the hours of 8am- 5pm, Monday - Friday excluding Holidays and Weekends. No warranties are honored unless payment is made in full. Arrow Asphalt & Engineering will provide a one (1) year warranty on material and workmanship. Normal wear and tear is not covered under this warranty.

Paving Commercial/ Owner Responsibility & Conditions

1.) Barricaded Parking Lot: It is vital that all vehicles are removed from our area of work no later than 7:15am unless otherwise agreed. As you can imagine, our project costs are based on the property having all cars, people and objects off the area of work. Tow Trucks need to be arranged 5 days prior to the start of any work and be on call to remove cars from the scheduled work area. If any cars are left in the area of work, we cannot be held responsible for any damage to the vehicles. There will be additional costs if we are unable to access the work area billed at a minimum of \$2,500.00

2.) Site service: The management company / property owner is responsible to notify all landscapers and garbage companies to not show up in the area of work the day we are performing work. In the event of a reschedule due to unforeseen conditions, you are required to let all service providers know about the change.

3.) Rain: If it is raining the day of scheduled service, assume we will not be coming and we will contact you to reschedule as soon as possible. If it rains after our installation, please contact our representative. We monitor the weather closely and can generally predict this very well. In the event that an unexpected storm happens, we will touch up any areas any areas where sealer has not bonded.

4.) Sprinklers: Should be off 24 hours prior and 48 hours after service. Avoid lawn cutting during this same period of time. The surface must be dry for our arrival. Areas where the newly sealed pavement is wet may wear prematurely.

5.) Drainage: Arrow Asphalt and Engineering cannot guarantee 100% drainage in areas where the design grade is less than 1% fall.

6.) Asphalt Over-Runs: Will be billed to owner at \$125.00 per ton.
Pricing does not include asphalt leveling unless stated otherwise in the original scope of work. Owners agrees to leveling at \$185.00 per ton.

7.) Reflective Cracking: Arrow Asphalt and Engineering will not accept responsibility for reflective cracking of new asphalt overlay due to the cracked conditions of the existing asphalt pavement.

8.) Driving on surface: Once you start driving on paved/ sealed surface, avoid turning your wheels unless your car is moving. We understand this may be difficult to do, but understand that when wheels are turned on freshly paved/ sealed asphalt surface, scuffing and turn marks will be evident, no worries in time they will blend with surrounding surface.

Other Terms and Conditions:

1.) 90% of contract amount and change orders must be paid prior to completing punch list items and/ or any changes for additional work required by cities or municipalities.

2.) Towing fees, if necessary, billed as actual. Any vehicles left in the construction area at the commencement of the work will be relocated on site and billed to the Owner/Authorized Agent

3.) Change orders, additions or extras requested by Owner, Contractor or Municipality will be invoiced as an addition to the contract and shall not delay payment of the original contract sum. All Change Orders must be approved and signed by management/ Board President/ Building Owner (whichever applies.)

4.) Arrow Asphalt and Engineering will not be responsible for paint adhesion to car stops that have not been pressure cleaned.

5.) Cannot guarantee sealcoat longevity where there is standing water. Cracks in pavement will still be noticeable after sealcoating. Tire turning marks will be visible at first but will disappear over time.

8.) Additional mobilization to be billed at \$900.00 each for sealcoating. This charge may be billed due to, but not limited to: site unavailability for commencement of work due to vehicles encroaching on the work area, change of schedule by Other/ Authorized Agent without prior consent of contractor or repairs to work caused by trespassing.

9.) Additional mobilizations to be billed at \$2,300.00 each for Concrete Services. This charge may be billed due to, but not limited to site unavailability for commencement of work due to vehicles encroaching on the work area, change of schedule by Owner/ Authorized agent without prior consent of contractor or repairs to work caused by trespassing.

10.) Additional mobilizaions to be billed at \$1,500.00 for paving. This charge may be billed due to, but not limited to: site unavailability for commencement of the work to due to vehicles encroaching on the work area, change of schedule by Owner/ Authorized agent without prior consent of contractor or repairs to work caused by trespassing. Arrow Asphalt and Engineering will provide a schedule to be approved by Owner prior to any additional mobilizations.

11.) Arrow Asphalt and Engineering cannot guarantee 100% drainage in areas where the design grade is less than 1% fall.

Special Billing Instructions:

Please fill out the information below:

Specify Billing Information:

Company Name: _____

Contact Person: _____

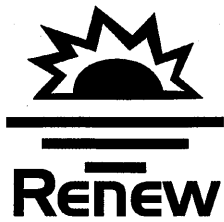
Address: _____

Phone Number: _____

Purchase Order: _____

Provide email for eBilling: _____

Please note any particular forms, documents, and/or procedures required prior to release of payment:



Renew Restoration
2655I SW 182 Ave,
Homestead, FL 33031

Estimate

Date	Estimate #
4/29/2019	BAY 001E

Bill To
Randy Daniel Town of Bay Harbor Islands 9665 Bay Harbor Terrace Bay Harbor Islands, FL 33154 (305) 455-7248

Job Address
9880-9901 E. Bay Harbor Drive Bay Harbor Island, Florida
WR #

		Vendor #	P.O. No.	Terms
Quantity	Description	Rate	Serviced	Amount
	We hereby submit specifications and estimates to perform work at the above job site: 1. Mill 3/4" existing asphalt from designated area of the streets. Load & dispose of debris. Apply RC-70 tackcoat. Repave area with 3/4" thick type SP9.5 hot plant asphalt mix Approx.. 17,000 square feet 2. Repaint all pavement markings to existing format using DOT approved latex traffic paint 3. install therm plastic pavement markings to plan format 4. 2 police offices 5. MOT Lump sum price is for normal working hours (Monday - Friday from 8 AM to 4 PM). Lump sum price does not include after hours work/night and weekends. Additional permits and customer complaints will be billed accordingly.	42,960.00		42,960.00
Thank you for allowing Renew Restoration to serve you!		Total		
		\$42,960.00		

Contact Information for Billing Inquiries:	
Direct Line: 786-734-6781	Email: Julia.Bales@allrestore.net
Office Phone: 305-238-2391	Office Fax: 305-238-3720

***DISCLAIMER:** Renew Restoration is not responsible for possible sinking of ground from backfilling and asphalt placement.

STREET RESTORATION AGREEMENT

THIS STREET RESTORATION AGREEMENT (this "Agreement") is entered into this ____ day of February, 2018, by and among Bay Harbor Investment Properties, LLC, Bay Harbor TH 1, LLC, and 9900 Bay Harbour, LLC (hereinafter collectively the "Parcel Owners") and the Town of Bay Harbor Islands ("Town") (hereinafter collectively referred to as the "Parties" and each a "Party").

BACKGROUND STATEMENTS:

- A. Bay Harbor Investment Properties, LLC owns that certain parcel of land located in Bay Harbor, Florida with a street address of 9901 East Bay Harbor Drive;
- B. Bay Harbor TH 1, LLC owns that certain parcel of land located in Bay Harbor, Florida with a street address of 1000 99 Street;
- C. 9900 Bay Harbour, LLC owns that certain parcel of land located in Bay Harbor, Florida with a street address of 9900 East Bay Harbor Drive;
- D. The Parcel Owners have all begun development of their respective parcels which have necessitated the need for repairs front of their parcels (the "Street Repairs"); and
- E. The Parties desire to enter into an agreement where the Parcel Owners are jointly responsible for the Street Repairs and pay only their respective share of the costs of the Street Repairs required by the Town.

NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant and agree as follows:

1) Shared Cost of the Street Repairs.

The total estimated cost of the Street Repairs is \$29,313.00, as reflected in the Proposals submitted by Arrow Asphalt & Engineering, Inc. (attached hereto as Exhibit "A"), together with administrative costs of \$5,862.60, for a total estimated cost of \$35,175.60 ("Estimated Cost"). The Parties agree that the Estimated Cost of the Street Repairs will be allocated as follows: (i) Bay Harbor Investment Properties, LLC will be responsible for \$9,349.67 of the Estimated Cost; (ii) Bay Harbor TH 1, LLC will be responsible for \$11,583.33 of the Estimated Cost; and (iii) 9900 Bay Harbour, LLC will be responsible for \$14,242.60 of the Estimated Cost.

2) Responsibility for Undertaking the Street Repairs.

In order to minimize the cost of the Street Repairs, the Parties agree that the Street Repairs should be undertaken by the Town within (10) business days after development of all parcels has been completed.

3) Escrow for Estimated Cost of Street Repairs.

The Parcel Owners agree to pay into escrow their respective portion of the Estimated Cost of the Street Repairs with Frank Simone, P.A. through the wire instructions set forth herein as Exhibit "B." Each Parcel Owner's payment is due by the close of business on February 26, 2018.

Frank Simone, P.A. shall distribute the escrow funds upon the Town's approval of the Street Repairs to the contractor chosen by the Town to effectuate the Street Repairs. The Parties release Frank Simone, P.A. from any liability in connection with its duty as escrow agent, except for any gross negligence or intentional acts.

4) Actual Cost.

The Parties understand and agree that after development of all parcels has been completed, the Town shall attempt to obtain three (3) bids for the Street Repairs, as the Town is not required to use Arrow Asphalt & Engineering, Inc. to effectuate the Street Repairs. The Parties also understand and agree that the actual costs of the Street Repairs may be more than the Estimated Costs, whether the Town uses the services of Arrow Asphalt & Engineering, Inc. or another contractor to effectuate the Street Repairs, whether due to market conditions or otherwise.

In the event that the actual cost of the Street Repairs is greater than the Estimated Cost, Bay Harbor Investment Properties, LLC, Bay Harbor TH 1, LLC, and 9900 Bay Harbour, LLC shall pay the Town the difference between the Estimated Cost and the actual cost based upon their respective allocations of 26.58%, 32.93%, and 40.49%, respectively, within ten (10) days of written notice from the Town.

5) Notice.

All notices required by this Agreement shall be sent via overnight delivery by a nationally known carrier (FedEx, UPS, DHI, etc.) and email as follows:

If to Town:

Town of Bay Harbor Island
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154
ATTN: Town Manager

with a copy to:

Frank C. Simone, Esq.
FRANK SIMONE, P.A.
701 Brickell Ave. Suite 1550
Miami, FL 33131
And by email to: Frank@franksimone.com

If to Bay Harbor Investment
Properties, LLC:



And by email to: gabriel@artandtec.net

If to Bay Harbor TH 1, LLC:

And by email to: _____

If to 9900 Bay Harbour, LLC:

And by email to: _____

6) Attorneys' Fees.

In event of any Litigation that arises out of or relates to the instant Agreement, the prevailing party(s) shall be entitled to recover from the non-prevailing party(s) all reasonable attorneys' fees and costs incurred at all levels, including those incurred in all trial and appellate courts. The prevailing party(s) shall also be entitled to receive from the non-prevailing party(s) all reasonable attorneys' fees and costs incurred in order to establish the amount of attorneys' fees and costs to be awarded pursuant to the instant paragraph.

7) Entire Agreement.

This Agreement constitutes the entire understanding and agreement of the Parties hereto with respect to the subject matter thereof, and supersedes all prior written and all prior and contemporaneous oral agreements, understandings, inducements, and conditions, express or implied, among the Parties with respect thereto. The express terms of this Agreement control and supersede any course of performance or usage of trade inconsistent with any of the terms hereof. Neither this Agreement, nor any term or provision hereof, may be changed, discharged, or terminated orally, unless by an instrument in writing signed by the party against whom enforcement of the change, discharge, or termination is sought.

8) Counterparts.

This Agreement may be executed in a number of counterparts and transmitted by facsimile or email as a .PDF attachment, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

[Signatures commence on following page]

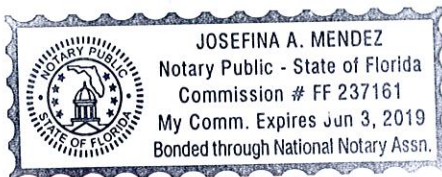
IN WITNESS WHEREOF, the Parties have set their hands and seals as of the day, month and year first above written.

Bay Harbor Investment Properties, LLC

By: [Signature]
Name: GABRIEL BOANO
Its: _____

STATE OF Florida
COUNTY OF Miami Dade

Sworn to and subscribed to before me on this day 28 of February 2018, by Gabriel Boano who is personally known to me _____ or who produced _____ as identification.



[Signature]
Notary Public, State of Florida

Bay Harbor TH 1, LLC

By: [Signature]

Name: Michael Labrill

Its: Manager

STATE OF Florida

COUNTY OF Dade

Sworn to and subscribed to before me on this day 1st of March 2018, by
_____ who is personally known to me ✓ or who produced
FL Dr. Licence as identification.



SINAI LAMUS

COMMISSION # FF142549

EXPIRES: July 16, 2018

WWW.AARONNOTARY.COM

[Signature]
Notary Public, State of Florida

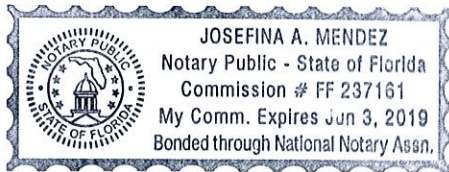
9900 Bay Harbour, LLC

By: _____
Name: Carlos Dora
Its: Minister

(CORPORATE SEAL)

STATE OF Florida
COUNTY OF Miami-Dade

Sworn to and subscribed to before me on this day 28 of February 2018, by
X who is personally known to me _____ or who produced
_____ as identification.



[Signature]
Notary Public, State of Florida

TOWN OF BAY HARBOR ISLANDS

By: Ronald Wasson
Ronald Wasson,
Town Manager

STATE OF FLORIDA

COUNTY OF MIAMI-DADE

Sworn to and subscribed to before me on this day 28th ^{February/2018} of ~~October~~ 2017, by Ronald Wasson who is personally known to me ✓ or who produced _____ as identification.

Marlene M. Siegel
Notary Public, State of Florida

Witness my hand and seal this 28th day of February, 201⁸~~7~~.



EXHIBIT "A"
(Proposals)

PROPOSAL

Arrow Asphalt & Engineering, Inc.

3051 N.W. 129 Street Opa Locka, FL 33054
(305) 688-8686 Voice (305) 688-8484 Fax

PROPOSAL SUBMITTED TO:

Date: Wednesday, November 15, 2017

Client Information

Florencia Montecchiarini
Art and Tec
1111 Kane Concourse
Bay Harbour, Florida 33154
(305) 987-6805 Phn Fax

Job Site Information

Street Repair
9880 E. Bay Harbour Drive
Bay Harbour, FL

We hereby submit specifications and estimates to perform work at the above job site:

1. Mill 1" existing asphalt from designated area of street. Load and dispose of debris. Apply tack coat.
Repave area with 1" thick type SP 9.5 asphalt. 3,361 SF.....\$7,562.25
2. Install temporary pavement markings in DOT approved latex traffic paint.....\$475.00
3. After asphalt cures, install thermoplastic markings.....\$1,200.00
4. After asphalt cures, furnish and install preform green bike path markings. 6 LF.....\$100.00
5. Furnish and install 21 RPMs.....\$315.00

Total: \$9,652.25

[Any additional work will be an extra]

We hereby propose to furnish labor and materials -- complete in accordance with the above specifications, for the sum of:

Nine Thousand Six Hundred Fifty Two and 25/100 (\$9,652.25) with a 50% deposit and the balance upon completion.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are hereby accepted. We have reviewed the important Disclosures and have provided any special billing instructions on the reverse side. You are authorized to do the work as specified. Payment will be made as outlined above.

ACCEPTED:

AUTHORIZED SIGNATURE:

Signature: _____

Arrow Asphalt & Engineering, Inc

Date: _____

Art and Tec 9880 E Bay Harbour Drive Street Repair 11-15-17

PROPOSAL

Arrow Asphalt & Engineering, Inc.

3051 N.W. 129 Street Opa Locka, FL 33054
(305) 688-8686 Voice (305) 688-8484 Fax

PROPOSAL SUBMITTED TO:

Date: Wednesday, November 15, 2017

Client Information

Florencia Montecchiarini
Art and Tec
1111 Kane Concourse
Bay Harbour, Florida 33154
(305) 987-6805 Phn Fax

Job Site Information

Street Repair
9900 E. Bay Harbour Drive
Bay Harbour, FL

We hereby submit specifications and estimates to perform work at the above job site:

1. Mill 1" existing asphalt from designated area of street. Load and dispose of debris. Apply tack coat.
Repave area with 1" thick type SP 9.5 asphalt. 4,291 SF.....\$9,654.75
2. Install temporary pavement markings in DOT approved latex traffic paint.....\$475.00
3. After asphalt cures, install thermoplastic markings.....\$1,200.00
4. Furnish and install 36 RPMs.....\$540.00

Total: \$11,869.75

[Any additional work will be an extra]

We hereby propose to furnish labor and materials -- complete in accordance with the above specifications, for the sum of:

Eleven Thousand Eight Hundred Sixty Nine and 75/100 (\$11,869.75) with a 50% deposit the balance upon completion.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are hereby accepted. We have reviewed the important Disclosures and have provided any special billing instructions on the reverse side. You are authorized to do the work as specified. Payment will be made as outlined above.

ACCEPTED:

AUTHORIZED SIGNATURE:

Signature: _____

Arrow Asphalt & Engineering, Inc

Date: _____

Art and Tec 9900 E Bay Harbour Drive Street Repair 11-15-17

PROPOSAL

Arrow Asphalt & Engineering, Inc.

3051 N.W. 129 Street Opa Locka, FL 33054
(305) 688-8686 Voice (305) 688-8484 Fax

PROPOSAL SUBMITTED TO:

Date: Wednesday, November 15, 2017

Client Information

Florencia Montecchiarini
Art and Tec
1111 Kane Concourse
Bay Harbour, Florida 33154
(305) 987-6805 Phn Fax

Job Site Information

Street Repair
9901 E. Bay Harbour Drive
Bay Hurbour, FL

We hereby submit specifications and estimates to perform work at the above job site:

1. Mill 1" existing asphalt from 88' x 17' section of street. Load and dispose of debris. Apply tack coat.
Repave area with 1" thick type SP 9.5 asphalt. 1,496 SF.....\$3,366.00
2. Install temporary pavement markings in DOT approved latex traffic paint.....\$475.00
3. After asphalt cures, install thermoplastic markings.....\$1,100.00
4. After asphalt cures, furnish and install preform green bike path markings. 88 LF.....\$2,850.00

Total: \$7,791.00

[Any additional work will be an extra]

We hereby propose to furnish labor and materials -- complete in accordance with the above specifications, for the sum of:

Seven Thousand Seven Hundred Ninety One and xx/100 (\$7,791.00) with a 50% deposit and the balance upon completion.

ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are hereby accepted. We have reviewed the important Disclosures and have provided any special billing instructions on the reverse side. You are authorized to do the work as specified. Payment will be made as outlined above.

ACCEPTED:

AUTHORIZED SIGNATURE:

Signature: _____

Arrow Asphalt & Engineering, Inc

Date: _____

Art and Tec 9901 E Bay Harbour Drive Street Repair 11-15-17

EXHIBIT "B"

WIRE INSTRUCTIONS FOR FRANK SIMONE, P.A. TRUST ACCOUNT

BENEFICIARY: FRANK SIMONE, P.A.

[REDACTED]

701 Brickell Avenue, Suite 1550 Miami, Florida 33131

BENEFICIAL
FINANCIAL
INSTITUTION:

BANK OF AMERICA BRICKELL

701 Brickell Avenue Miami, Florida 33131

[REDACTED]

© 2011 INTUIT INC. # 414 1-800-433-8810

CASH ONLY IF ALL CHECKLOCK SECURITY FEATURES TESTED ON BACK INDICATE NO TAMPERING OR COPIING

BAY HARBOR INVESTMENT PROPERTIES, LLC 03/12
Bay Harbor, FL 33154
(305)864-9393

Branch Banking and Trust Company
North Miami
Florida 33161
63-9138/2631

2226

2/28/2018

PAY TO THE ORDER OF Frank Simone, P.A. \$ **9,349.67

Nine Thousand Three Hundred Forty-Nine and 67/100 ***** DOLLARS

Frank Simone, P.A.

MEMO

Escrow: Street Restoration Agreement



[Handwritten Signature]

Details on Back
Intuit® CheckLock™ Secure Check

BAY HARBOR INVESTMENT PROPERTIES, LLC

2226

Frank Simone, P.A.

Street Restoration Agreement

2/28/2018

9,349.67

BB&T Escrow: Street Restoration Agreement

9,349.67

BAY HARBOR INVESTMENT PROPERTIES, LLC

2226

Frank Simone, P.A.

Street Restoration Agreement

2/28/2018

9,349.67

BB&T Escrow: Street Restoration Agreement

9,349.67



BAY HARBOR TH1 LLC
20900 NE 30TH AVE STE 510
MIAMI, FL 33180-2164

Pay To The
Order Of

Frank Simone P.A.

\$ *11,583.33*

Photo
Deposited
Details on back

2/21/12
Date

1077
63-4/630 FL
24130

Bank of America

ACH R/T 063100277

For *Polmville's*
Street restoration agreement

Harland Clarke

9900 BAY HARBOUR LLC

1111 Kane Concourse, Ste 517
 Bay Harbor, Florida 33154
 305-864-9393

EXECUTIVE NATIONAL BANK
 20900 NE 30 Avenue, Ste 103
 Aventura, FL 33180
 63-815/670

1377

7/3/2018

PAY TO THE ORDER OF Frank Simone P.A

\$ **14,242.60

Fourteen Thousand Two Hundred Forty-Two and 60/100*****

DOLLARS

Frank Simone P.A

MEMO

Escrow - Street Restoration Agreement



9900 BAY HARBOUR LLC

Frank Simone P.A
 8010 · Other Expenses

Escrow - Street Restoration Agreement

7/3/2018

14,242.60

1377

AGENDA ITEM REPORT

May 13, 2019

ITEM NUMBER: 10.

ITEM: Appointment of three Council Members to the Block 11 Parking Lot Lease Committee. The committee has not met in years, the last members were Council Member Salver and Council Members Yaffe. The committee originally had three members and it was a Council Committee (not open to resident participation).

DESCRIPTION:

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk

ATTACHMENTS

None

AGENDA ITEM REPORT

May 13, 2019

ITEM NUMBER: 11.

ITEM: Discussion requested by Mayor Bruder to direct the Town Manager to budget for marketing, public relations, design guidelines, branding and/or other method of helping the Business District achieve the desire mixed of tenants and attract more people to the Town.

DESCRIPTION:

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk

ATTACHMENTS

None

AGENDA ITEM REPORT

May 13, 2019

ITEM NUMBER: 12.

ITEM: Discussion requested by Vice Mayor Fuller regarding the change in flight pattern by the Federal Aviation Administration (FAA).

DESCRIPTION:

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk

ATTACHMENTS

None

AGENDA ITEM REPORT

May 13, 2019

ITEM NUMBER: 13.

ITEM: Discussion requested by Council Member Leonard to renovate / enhance the 92th Street Park by re-sodding the green space. Enclosed is a copy of a proposal from Brightview Landscaping Services and other supporting documents.

DESCRIPTION:

Due to the existing conditions of the 92th Street Park, a cost estimate was obtained from Brightview Landscaping Services to remove and install new sod. Attach are photographs of the current conditions of the 92 Street Park which exhibit the conditions of the landscaping around the Park.

Enclosed is a copy of the proposal from Brightview Landscaping on the amount of \$9,340.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

The funds for this project will be appropriated from Park Impact Fees.

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk
 Jordan Leonard, Council Member
 Juan C Jimenez, Town Manager

ATTACHMENTS

1. Proposal - 92ND ST PARK AND INSTALL NEW SOD. SO_ 6909521
2. 92 STREET PARK - pics

Proposal for Extra Work at Bay Harbor Islands

Property Name	Bay Harbor Islands	Contact	Doug Armstrong
Property Address	9665 Bay Harbor Terrace Bay Harbor Islands , FL 33154	To	Bay Harbor Islands
		Billing Address	9665 Bay Harbor Terr Bay Harbor Islands , FL 33154

Project Name REMOVE EXSITING DAMAGED SOD FROM 92ND ST PARK AND INSTALL NEW SOD.

Project Description REMOVE REMAINING DAMAGED SOD AND INSTALL NEW SOD 20 PALLETS.

Scope of Work

QTY	UoM/Size	Material/Description	Unit Price	Total
20.00	EACH	ST AUGUSTINE PALLET	\$425.00	\$8,500.00
24.00	EACH	REMOVAL , LANDSCAPER HOURS	\$25.00	\$600.00
6.00	EACH	TOP SOIL	\$40.00	\$240.00

For internal use only

SO# 6909521
JOB# 352707140
Service Line 130

Total Price \$9,340.00

THIS IS NOT AN INVOICE

This proposal is valid for 60 days unless otherwise approved by BrightView Landscape Services, Inc.
8191 NW 84 St, Medley, FL 33166 ph. (305) 863-0025 fax (305) 863-0255

TERMS & CONDITIONS

1. The Contractor shall recognize and perform in accordance with written terms, written specifications and drawings only, contained or referred to herein. All materials shall conform to bid specifications.
2. **Work Force:** Contractor shall designate a qualified representative with experience in landscape maintenance/construction upgrades or when applicable in tree management. The workforce shall be competent and qualified, and shall be legally authorized to work in the U.S.
3. **License and Permits:** Contractor shall maintain a Landscape Contractor's license, if required by State or local law, and will comply with all other license and permit requirements of the City, State and Federal Governments, as well as all other requirements of law.
4. **Taxes:** Contractor agrees to pay all applicable taxes, including sales tax where applicable on material supplied.
5. **Insurance:** Contractor agrees to provide General Liability Insurance, Automotive Liability Insurance, Worker's Compensation Insurance, and any other insurance required by law or Client/Owner, as specified in writing prior to commencement of work. If not specified, Contractor will furnish insurance with \$1,000,000 limit of liability.
6. **Liability:** Contractor shall indemnify the Client/Owner and its agents and employees from and against any third party liabilities that arise out of Contractor's work to the extent such liabilities are adjudicated to have been caused by Contractor's negligence or willful misconduct. Contractor shall not be liable for any damage that occurs from Acts of God are defined as those caused by windstorm, hail, fire, flood, earthquake, hurricane and freezing, etc. Under these circumstances, Contractor shall have the right to renegotiate the terms and prices of this agreement within sixty (60) days. Any illegal trespass, claims and/or damages resulting from work requested that is not on property owned by Client/Owner or not under Client/Owner management and control shall be the sole responsibility of the Client/Owner.
7. **Subcontractors:** Contractor reserves the right to hire qualified subcontractors to perform specialized functions or work requiring specialized equipment.
8. **Additional Services:** Any additional work not shown in the above specifications involving extra costs will be executed only upon signed written orders, and will become an extra charge over and above the estimate.
9. **Access to Jobsite:** Client/Owner shall provide all utilities to perform the work. Client/Owner shall furnish access to all parts of jobsite where Contractor is to perform work as required by the Contract or other functions related thereto, during normal business hours and other reasonable periods of time. Contractor will perform the work as reasonably practical after the owner makes the site available for performance of the work.
10. **Invoicing:** Client/Owner shall make payment to Contractor within fifteen (15) days upon receipt of invoice. In the event the schedule for the completion of the work shall require more than thirty (30) days, a progress bill will be presented by month end and shall be paid within fifteen (15) days upon receipt of invoice.
11. **Termination:** This Work Order may be terminated by the either party with or without cause, upon seven (7) work days advance written notice. Client/Owner will be required to pay for all materials purchased and work completed to the date of termination and reasonable charges incurred in demobilizing.
12. **Assignment:** The Owner/Client and the Contractor respectively, bind themselves, their partners, successors, assignees and legal representative to the other party with respect to all covenants of this Agreement. Neither the Owner/Client nor the Contractor shall assign or transfer any interest in this Agreement without the written consent of the other provided, however, that consent shall not be required to assign this Agreement to any company which controls, is controlled by, or is under common control with Contractor or in connection with assignment to an affiliate or pursuant to a merger, sale of all or substantially all of its assets or equity securities, consolidation, change of control or corporate reorganization.
13. **Disclaimer:** This proposal was estimated and priced based upon a site visit and visual inspection from ground level using ordinary means, at or about the time this proposal was prepared. The price quoted in this proposal for the work described, is the result of that ground level visual inspection and therefore our company will not be liable for any additional costs or damages for additional work not described herein, or liable for any incidents/accidents resulting from conditions, that were not ascertainable by said ground level visual inspection by ordinary means at the time said inspection was performed. Contractor cannot be held responsible for unknown or otherwise hidden defects. Any corrective work proposed herein cannot guarantee exact results. Professional engineering, architectural, and/or landscape design services ("Design Services") are not included in this Agreement and shall not be provided by the Contractor. Any design defects in the Contract Documents are the sole responsibility of the Owner. If the Client/Owner must engage a licensed engineer, architect and/or landscape design professional, any costs concerning these Design Services are to be paid by the Client/Owner directly to the designer involved.

14. **Cancellation:** Notice of Cancellation of work must be received in writing before the crew is dispatched to their location or Client/Owner will be liable for a minimum travel charge of \$150.00 and billed to Client/Owner.

The following sections shall apply where Contractor provides Customer with tree care services:

15. **Tree & Stump Removal:** Trees removed will be cut as close to the ground as possible based on conditions to or next to the bottom of the tree trunk. Additional charges will be levied for unseen hazards such as, but not limited to concrete brick filled trunks, metal rods, etc. If requested mechanical grinding of visible tree stump will be done to a defined width and depth below ground level at an additional charge to the Client/Owner. Defined backfill and landscape material may be specified. Client/Owner shall be responsible for contacting Underground Service Alert to locate underground utility lines prior to start of work. Contractor is not responsible damage done to underground utilities such as but not limited to, cables, wires, pipes, and irrigation parts. Contractor will repair damaged irrigation lines at the Client/Owner's expense.
16. **Waiver of Liability:** Requests for crown thinning in excess of twenty-five percent (25%) or work not in accordance with ISA (international Society of Arboricultural) standards will require a signed waiver of liability.

Acceptance of this Contract

Contractor is authorized to perform the work stated on the face of this Contract. Payment will be 100% due at time of billing. If payment has not been received by BrightView within fifteen (15) days after billing, BrightView shall be entitled to all costs of collection, including reasonable attorneys' fees and it shall be relieved of any obligation to continue performance under this or any other Contract with Client/Owner. Interest at a per annum rate of 1.5% per month (18% per year), or the highest rate permitted by law, may be charged on unpaid balance 30 days after billing.

NOTICE: FAILURE TO MAKE PAYMENT WHEN DUE FOR COMPLETED WORK ON CONSTRUCTION JOBS, MAY RESULT IN A MECHANIC'S LIEN ON THE TITLE TO YOUR PROPERTY

Customer

Public Works Director

Signature	Title
-----------	-------

Doug Armstrong

April 23, 2019

Printed Name	Date
--------------	------

BrightView Landscape Services, Inc. "BrightView"

Account Manager

Signature	Title
-----------	-------

Vanessa Quinonez

April 23, 2019

Printed Name	Date
--------------	------

Job #: 352707140

Proposed Price: \$9,340.00

SO # 6909521

92 STREET PARK







