

TOWN OF BAY HARBOR ISLANDS

August 8, 2016

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 PM

PLEDGE OF ALLEGIANCE:

ROLL CALL

SPECIAL PRESENTATION:

1. Student of the Year Award
Miami Beach Senior High School - Alex Radick
Nautilus Middle School - David Frankel
Ruth K. Broad K-8 Center - Katherine Garcia

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

TOWN MANAGER'S REPORT:

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:

2. **Re-consideration** of a request for an appointment to fill a vacancy to the Planning & Zoning Board by residents Terri D'Amico and Robert Saland. Enclosed find copies of the applicants resumes.

STAFF RECOMMENDATION: Council Discretion

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

3. **Approval** of the following Meeting Minutes:
 - a. May 5, 2016 - Special Council Meeting
 - b. May 9, 2016 - Regular Council Meeting
4. **Approval** of an expenditure in the amount of \$35,498.28, for emergency repairs to water main /fire hydrant supply, at the corner of East Broadview Drive and 99th Street. Enclosed find a copy of the invoice from Solo Construction Co.
5. **Approval** of a proposal from Plant Professionals in the amount of \$49,087 for this year's holiday decoration display. Enclosed find a copy of the proposal.
6. **Approval** of a resolution opposing the passage of the Miami Dade County ordinance creating a mandatory Work Force Housing Development Program. Enclosed find the proposed resolution and supporting documents.

STAFF RECOMMENDATION: Council Discretion.

POLL VOTE

ORDINANCES ON SECOND READING:

7. **Approval** of an ordinance on **second** reading amending section 23-12 entitled general provisions to modify sub-section 23-12(6)(a) related to the allowable height of docks. Enclosed is a staff report from Town Planner Michael Miller and a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 23 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED ZONING AND PLANNING; AMENDING SECTION 23-12 ENTITLED GENERAL PROVISIONS TO MODIFY SUB-SECTION 23-12(6)(a) RELATED TO THE ALLOWABLE HEIGHT OF DOCKS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Approval

POLL VOTE

8. **Approval** of an ordinance on **second** reading amending Section 24-16 entitled minimum landscape standards, to modify the landscape requirements for compliance by nonconforming properties. Enclosed is a report from the Town Planner Michael Miller and a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 23 OF THE TOWN'S CODE OF ORDINANCES ENTITLED PROPERTY MAINTENANCE STANDARDS; AMENDING SECTION 24-16 ENTITLED MINIMUM LANDSCAPE STANDARDS, TO MODIFY THE LANDSCAPE REQUIREMENTS FOR COMPLIANCE BY NONCONFORMING PROPERTIES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Approval

POLL VOTE

9. **Approval** of an ordinance on **second** reading amending Chapter 16 of the Town Code, providing for a renewed eligibility window for the participation of the Town Manager to the Employees Retirement System. Enclosed find a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 16, THE TOWN OF BAY HARBOR ISLANDS EMPLOYEES RETIREMENT SYSTEM, OF THE TOWN OF BAY HARBOR ISLANDS CODE OF ORDINANCES, PROVIDING FOR A RENEWED ELIGIBILITY WINDOW FOR THE PARTICIPATION OF THE TOWN MANAGER IN THE RETIREMENT SYSTEM; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Approval

POLL VOTE

10. **Approval** of an ordinance on **second** reading amending Chapter 16, of the Town Code entitled Employees Retirement System providing for compliance requirements for prior military and police service. Enclosed find a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 16, THE TOWN OF BAY HARBOR ISLANDS EMPLOYEES RETIREMENT SYSTEM, OF THE TOWN OF BAY HARBOR ISLANDS CODE OF ORDINANCES, PROVIDING FOR THE USE OF PREMIUM TAX REVENUES PURSUANT TO CHAPTER 185, FLORIDA STATUTES; PROVIDING FOR CONTINUED COMPLIANCE WITH THE REQUIREMENTS FOR QUALIFIED PLANS UNDER SECTION 401(a) OF THE INTERNAL REVENUE CODE; PROVIDING FOR PURCHASE OF CREDITED SERVICE FOR PRIOR MILITARY AND POLICE SERVICE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Approval

POLL VOTE

ORDINANCES ON FIRST READING:

11. **Approval** of an **ordinance** on **first reading** amending Chapter 16, the Employees Retirement System to implement the recommendations of the Board of Trustees (Retirement Board) regarding enhancements to the General Employees benefits under the retirement plan. Enclosed is a copy of the proposed ordinance and actuarial impact statement.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 16, THE TOWN OF BAY HARBOR ISLANDS EMPLOYEES RETIREMENT SYSTEM, OF THE TOWN OF BAY HARBOR ISLANDS CODE OF ORDINANCES, PROVIDING FOR AN INCREASED BENEFIT MULTIPLIER FOR GENERAL EMPLOYEES; PROVIDING FOR AN INCREASE IN THE RETIREMENT SUBSIDY FOR GENERAL EMPLOYEES; PROVIDING FOR A PARTIAL LUMP SUM PAYMENT OPTION FOR GENERAL EMPLOYEES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Approval

POLL VOTE

12. **Approval** of an ordinance on **first** reading authorizing the Town's participation in a Florida Municipal Loan Council (Florida League of Cities) Bond Issue to refund the remaining bonds from the 2003 Community Enhancements bonds issue. Enclosed find a copy of the proposed ordinance and supporting documents.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AUTHORIZING THE NEGOTIATION OF A LOAN IN AN AGGREGATE AMOUNT NOT TO EXCEED \$3,250,000 FROM THE FLORIDA MUNICIPAL LOAN COUNCIL TO REFUND A PRIOR LOAN, AS DESCRIBED HEREIN; APPROVING THE FORM OF AND THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT WITH THE FLORIDA MUNICIPAL LOAN COUNCIL; APPROVING THE FORM OF AND THE EXECUTION AND DELIVERY OF A BOND PURCHASE CONTRACT; APPROVING THE FORM OF AND THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION WITH THE MAKING OF SUCH LOAN; AND PROVIDING AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Approval

POLL VOTE

13. **Approval** of an ordinance on **first** reading requested by Council Member Reid amending Section 23 of the Town Code entitled zoning and planning to regulate vacation rentals on the East Island. Enclosed find 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'S CODE OF ORDINANCES; AMENDING CHAPTER 23 ENTITLED ZONING AND PLANNING TO CREATE ARTICLE VI TO BE ENTITLED VACATION RENTALS; PROVIDING FOR THE REGULATION OF VACATION RENTALS ON THE EAST ISLAND IN THE MULTI-FAMILY RESIDENTIAL DISTRICTS; PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS AND STANDARDS FOR SAFETY AND OPERATION OF VACATION RENTALS; PROVIDING A PROCESS FOR ISSUANCE OF CERTIFICATES OF COMPLIANCE, ADMINISTRATION, PENALTIES, ENFORCEMENT, AND VESTING; UPDATING THE LIST OF PERMITTED USES IN THE RM-1, RM-2, AND RM-3 ZONING DISTRICTS; 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)*

14. **Request for extension** to close on a agreement for the sale and purchase of a Transfer of Development Rights (TDR) between the Town and Global Reach Investments, LLC. The Town approved the TDR transaction on August 10, 2015 for the transfer of two (2) TDR's to property located at 9290 W. Bay Harbor Drive. Enclosed find supporting documents.

STAFF RECOMMENDATION: Council Discretion

15. **Approval** of Change Order in favor of FXP Corporation in the amount of \$38,750 to replace the condensers that are associated with project number BHI-171 for the installation of a new A/C chiller for Town Hall. Enclosed find a copy of the change order.

STAFF RECOMMENDATION: Approval

POLL VOTE

16. **Approval** of Change Order 21 in favor of M&J Construction of Pinellas County Inc., in the amount of \$16,502.59 for steel reinforcement to the bent caps & plinths of the Broad Causeway Bridge. Enclosed find a copy of the change order and supporting documents.

STAFF RECOMMENDATION: Approval

POLL VOTE

17. **Discussion** and possible **approval** of the attached Gift Agreement between the Town of Bay Harbor Islands and Shirley Martinelli Restated Revocable Trust (the Donor) for a donation in the amount of \$5,000 to be used for new computers at the Town's new community center. Enclosed find a copy of the gift agreement.

STAFF RECOMMENDATION: Approval.

18. Town Manager Wasson requests **authorization** to negotiate the possibility of acquiring a waterfront lot on the corner of W. Bay Harbor Drive and Kane Concourse. Attached is an appraisal ordered to determine the value of the property being considered.

STAFF RECOMMENDATION: Council Discretion

DISCUSSION ITEMS:

19. **Discussion and possible action** requested by Mayor Leonard to obtain cost estimates for the painting and striping of dedicated bike lanes. Enclosed find a copy of an initial cost estimate and supporting documents.

STAFF RECOMMENDATION: Council Discretion

20. **Discussion and possible action** requested by Mayor Leonard regarding the purchase of three (3) Soofa Core solar powered stand alone phone charging stations at a total cost of \$7,875. The proposal is attached.

STAFF RECOMMENDATION: Council Discretion.

21. **Discussion** requested by Council Member Yaffe regarding the adoption of a Town policy on expenditure of Town funds on projects outside of Bay Harbor Islands.

STAFF RECOMMENDATION: Council Discretion

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

August 8, 2016

ITEM NUMBER: 2.

ITEM: Re-consideration of a request for an appointment to fill a vacancy to the Planning & Zoning Board by residents Terri D'Amico and Robert Saland. Enclosed find copies of the applicants resumes.

DESCRIPTION:

At the June 13th, Regular Council Meeting, the Town Council voted and was unable to obtain 5 affirmative votes to appoint a member to the Planning & Zoning Board. Consensus was to bring back the two (2) applicants (Terri D'Amico & Roberto Saland) with the most votes for re-consideration to the August Regular Meeting.

Attached find the applicants resume and supporting documents.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk

ATTACHMENTS

1.	PnZ Applicants	PnZ Applicants - D'amico - Saland.pdf
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Marlene Siegel

From: Teri D'amico - D'amico Design Associates <teri@dadausa.com>
Sent: Wednesday, February 17, 2016 1:24 AM
To: Marlene Siegel
Subject: Application for Planning and Zoning board

Marlene, I would like to apply for the open position on the P&Z board. Please submit my credentials below. Thank you. Teri

Dear Bay Harbor Island Commissioners-

I have been a resident of Bay Harbor Island for over 23 years and I would like to be considered for the open position on the town's Planning and Zoning Board.

I have three design related degrees in Architectural Studies, Interior Design and Art & Design Education. I am a Florida registered Interior Design, as well as NCIDQ certified. I have been working for NYC, Miami and International, award winning Architects for over 29 years. I was an Adjunct Professor at FIU School of Architecture, where I taught Construction Drawings in AutoCAD, Hospitality Design and course on and with renown Miami architect, Morris Lapidus. I received the key from the City of Miami Beach for my outstanding work on the city's architectural Design Review Board.

I am principle and owner of an award winning design firm specializing in South Florida and Caribbean Luxury resorts. I have provided project management for condos and hotels that have exceeded 60 million dollars. Many of our projects are continuously on Travel & Leisure, Conde Naste Traveler, NY Times Travel, Robb Report, Fodors, (just to name a few) Top Hotel lists and featured on CBS Morning News, Luxury Hotelier Magazine and Architectural Digest.
<http://www.petitstvincent.com/press-news/press/2011.html>

In 2007, Journalist Nina Korman and I volunteered to surveyed and identified the significant buildings of the Mid-Century period in Bay Harbor Islands. We researched the building dates and architects, which lead to a non-profit organization publishing a book written by both of us. My research gave me the unique opportunity to interview Shepard Broad, founder of the BHI, on his concepts and theory on how he developed the island.
<http://www.docfoc.com/bay-harbor-islands-mimo-architecture-of-a-mid-century-town>

In 2012 I was hired by the Town of Lauderdale by the Sea, LBTS, to write their Architectural guidelines and create the city official paint color chart. LBTS is also a small waterfront town that has a similar architectural style.
http://www.lauderdalebythesea-fl.gov/webfilemag/DAX_lbtsADS2015.html#p=1

I was also a professional consulted for the City of Miami Beach Planning Department's architectural guideline for their Mid-Century architecture and website.
<http://www.mimoonthebeach.com/index.html>

In 2001, I curated a traveling architectural photography exhibition and was editor of the first publication on Miami Mid-century architecture, Beyond the box.
<http://mimoonthebeach.com/beyondthebox/intro.html> and a contributor to MiMo Revealed,
<http://www.amazon.com/MiMo-Revealed-Eric-P-Nash/dp/0811842045>
<http://miamimodern.net/what-is-mimo/>

Please consider my educational, professional, my volunteer work and expertise in Bay Harbor Island architecture. I have applied for the Planning and Zoning Board position since its inception, since that time only one woman has been appointed to a Planning & Zoning Board. I feel that more woman, as well as residents of the East Island on the town's board would benefit the town and should be represented in the development decision making of the East Island.

Thank you for your time and consideration.

Teri D'Amico,
9101 East Bay Harbor Drive- 206
Bay Harbor Islands, FL 33154

Phone: 305-527-5455
Email: teri@dadausa.com

Marlene Siegel

From: Robert Saland <bobby@landmarkco.net>
Sent: Tuesday, May 10, 2016 2:47 PM
To: Marlene Siegel
Subject: Planning and Zoning Board
Attachments: RFS Resume.pdf; 9448 W Broadview Front.JPG; 9448 W Broadview Rear.JPG; City Crossing.jpg; Circle Creek.jpg; Woodside Oaks.jpg

Marlene

I have been a property owner in Bay Harbor since 2010 and completed our home at 9448 West Broadview in 2014, which is our full time residence. I have been developing properties in South Florida for over 30 years. Attached is a brief resume, front and rear photo of our Bay Harbor home and some multifamily projects I developed. I usually sit on the other side of the table when it comes to planning and zoning but I have been through the process many times. We are proud to call Bay Harbor our home and I would like to volunteer for the position on the planning and zoning board.

Thank you

Robert Saland
Landmark Companies
3050 Biscayne Blvd. Suite 300
Miami, Florida 33137
Work 305 538 9552 ext 108
Cell 305 502 9552

ROBERT F. SALAND

3050 Biscayne Blvd. Suite 300
Miami, Florida 33137
(305) 538-9552, Ext. 108

Key Accomplishments

- Founder of LANDMARK COMPANIES, INC. & LANDMARK DEVELOPMENT CORP.
- Historic restoration of over 300 units in Miami Beach's Art Deco District
- Acquisition and restoration of over 300 units in New York City.
- Developed an environmentally sensitive 50 acre ocean-front sub-division in East Hampton, N.Y.
- Developed over 4,000 apartments in South Florida

Professional and Community Affiliations

- Founder – Jackson Memorial Hospital
- Founder - Mount Sinai Hospital
- Member - Westview Country Club
- Lecturer - University of Miami Law School
- Affordable Housing Advisory Committee

Properties Developed Condominium

Meridian Court Condominium Miami Beach, FL	28 Units	The Roosevelt Condominium Miami Beach, FL	37 Units
900 Meridian Condominium Miami Beach, FL	24 Units	The Chelsea Condominium Miami Beach, FL	24 Units
The Sails Condominium Miami Beach FL	52 Units	Coral Key Condominium Margate, FL	364 Units
Mirassou Condominium Miami, FL	310 Units		

Affordable Housing Developments

Sunrise Commons Miami-Dade County, FL	106 Units	Woodside Oaks Miami-Dade County, FL	103 Units
Emerald Dunes Miami Gardens, FL	141 Units	Pine Meadows Jacksonville, FL	224 Units
London Arms Miami Beach, FL	58 Units	Stirling Apartments Davie, FL	251 Units
Riviera Plaza Miami Beach, FL	56 Units	Running Brook Miami-Dade County, FL	186 Units
Cedar Grove Miami Gardens, FL	288 Units	Park Villas Titusville, FL	160 Units
Lakeside Commons West Palm Beach, FL, FL	99 Units	City Vista Fort Lauderdale, FL	108 Units

City Heights Miami, FL	98 Units	Westgate Plaza West Palm Beach, FL	80 Units
City Crossings Miami, FL	103 Units	Quiet Waters Palm Beach County, FL	93 Units
Hampton Village Miami, FL	100 Units	Circle Creek Miami-Dade County, FL	100 Units
Willow Lake Miami-Dade County, FL	121 Units	Keys Crossing Miami-Dade County, FL	100 Units
Portland St. Petersburg, FL	68 Units	Dunbar Village West Palm Beach, FL	340 Units
Malibu Gardens Miami-Dade County, FL	259 Units		











AGENDA ITEM REPORT

August 8, 2016

ITEM NUMBER: 3.

ITEM:

Approval of the following Meeting Minutes:

- a. May 5, 2016 - Special Council Meeting
- b. May 9, 2016 - Regular Council Meeting

DESCRIPTION:

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk

ATTACHMENTS

1.	Special Meeting - 5-5-16	5-5-16 Spc. Mtg.pdf
2.	Regular Council Meeting 5-9-16	5-9-16 DRAFT.pdf

**TOWN OF BAY HARBOR ISLANDS
SPECIAL COUNCIL MEETING AGENDA**

A special Council meeting was held on May 5, 2016 at 9:03 a.m. in the Council Chambers. Upon roll call the following members responded:

Mayor Jordan Leonard

Vice Mayor Stephanie Bruder

Council Member Joshua Fuller

Council Member Kelly Reid

Council Member Elizabeth Tricoche

Council Member Robert Yaffe

Item 1. Discussion and possible action regarding Town Manager Wasson's annual evaluation.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and felt there was no due process given on the proposed religious institutions. She also reminded the Town Council that Former Council Member Marano asked the Town Manager to place new election signs and benches.

Victor Maya, 1155 103 St., came forward and was disappointed on the format the Town Council evaluated the Town Manager work performance. He asked for the Town Council to ask themselves, if the Assistant Town Manager was capable of running the Town in his absence.

John Corral 9660 W. Bay Harbor Drive, came forward and suggested for additional personnel be added to the Code Compliance Department.

CLOSED PUBLIC COMMENT

Town Manager Wasson came forward to address the Council. This was the Manager 10th Year as the Town Manager for Bay Harbor Islands. He stated that he had a great support staff and they made it easier to come to work every day. He explained that on past years there were many budget cuts, but he pushed to continue to provide excellent service to the residents and added that there no staff lay offs, but there were some projects that were routed to the private sector, like the landscaping maintenance service.

He felt that the Town was experiencing a renaissance, and many people were relocating to Town to raise a family here. The upcoming years would place the Town in a spotlight due to the new modern and

luxurious developments. He explained that among his accomplishments was the purchase of Scott Winter Park on 98th St, which was renovated and was a local hot spot for residents. In 2007, the parking garage was proposed and has since been completed. The addition of the Fire Department was great, since they pay for 50 percent of the mortgage. Phase II of road improvements and realigning was completed on the West and East Island. The water main, irrigation, lighting, drainage, and parking enhancements have also been completed.

The 92nd Street Park enhancements included an upgrade to the exercise equipment and the addition of a new doggie park.

In recent years, legislation was passed on the local Toll Plazas, which geared the Town to implement the Sunpass system, the traffic count continues to be on target and the revenue remain stable.

The Community Center was in the process of implementing a library; He felt that it would be a great feature to the residents.

The most recent project that was completed was the landscaping improvements to Kane Concourse.

He was happy to report that the Town Halloween Parade; Egg Hunt Event and Snow Day Events were a big success and have been added to the annual events.

He reported that the Police Department was doing great with the direction of Chief Hemingway, as he continues to push for new technology to continue to provide an excellence police service. He announced that the Police Department recently received State Accreditation. He added that the Town continued to have on the lowest crime rates in the area.

The Parks & Recreation Department currently has approximately 300 kids in the program, and has won many local and state championships. The department continues to research for more activities to cater to the residents as the new Community Center opens.

He also stated that he would be presenting the next project for the renovation of Town Hall that would be added to the 2016-2017 budget year.

In the last 10 years, the Town has received over \$7,000,000 in grants and continues to work to obtain \$2,000,000 for the bridge repairs.

Lastly, he thanked his support staff, Town Clerk Siegel; Finance Director Short; Assistant Manager Jimenez; Human Resources Manager Motola; Community Services Director Choute; Building Official Lee and Town Planner Miller.

Council Member Fuller stated that he personally met with the Town Manager to review all of the concerns and felt that the one issue that continued to come was Code Compliance. Town Manager Wasson stated that Administrative Assistant, Scherrie Griffin has been added to relief the Code Compliance officer. He added that the Code Compliance Department recently down size in personnel, but continue to produce and correct code violations. The department was gear to have the resident comply with violations. He felt that another Code Officer was not needed at this time and would not want to over enforce.

Town Clerk / Director of Code Compliance Siegel stated that the Code Enforcement was increased to the Business District on Kane Concourse and stated there would be more staff available soon as Scherrie becomes a Certified Code Officer.

There was a detailed discussion on the need for one more Code Officer; construction activity early and after hours; police involvement with Code Compliance; the lack of room for parking for the lunch trucks that visit the construction sites; trash that was being left behind by the neighboring construction site workers; and the construction site that were allowed to work on Saturdays with the Town Manager permission.

Town Clerk / Director of Code Compliance Siegel stated that the Code Enforcement concerns will be addressed, but the need for more personnel will be require more time.

Council Member Yaffe stated that he has sat on the Town Council for long enough to see the improvements and felt that Assistant Manager Jimenez was capable of being a Town Manager. The format and forms for the Manager evaluation need to be updated for future reference. Lastly, he thanked Town Manager Wasson for his service.

Vice Mayor Bruder requested for the Town Manager to provide more updates on the project improvements in Town.

There was a brief discussion on the police body cameras; researching for a possible independent Town Planner on future Town project; the ongoing bridge repairs and a suggestion for the Town Manager to obtain more training on ICMA.

Town Manager Wasson requested the following modifications to his contract that would allow for him more flexibility and continue to work 40 hours a week, 4 days a week; join the Employee Retirement Board Pension; an increase to vehicle allowance by \$75 to \$425 per month and the language modification to when and how the Manager was evaluated.

Council Member Reid suggested the Town Manager take 40 hours in training for ICMA and asked for Staff to move forward with a Crime Watch workshop and also requested more updates on the ongoing projects in Town. She also requested for some of the Town Manager requested items to be deferred to another meeting, as she would like a financial impact on the benefits. Finance Director Short responded that there was no financial impact for the Town Manager joining the General Employee Retirement System. He clarified that the Town Manager has requested for the 10 percent that the Town usually pays be directed to the Retirement System.

Town Manager Wasson clarified that he was also requesting flexibility to have time off, since there are times where he comes to work early or stays until late. He added that on his day off, he would coordinate for Assistant Manager Jimenez to be available. He also explained that the reason for the car allowance increase was because he purchased a new car and the car payment was slightly higher.

Mayor Leonard stated that many of the Town project have been accomplished under Town Manager Wasson management and congratulated him for a job well done. He was concerned with the communication and agreed with the Town Council request for more updates on the ongoing projects in Town. He felt that it was appropriate to give the Town Manager Wasson a 5 percent merit increase.

ACTION: Mayor Leonard made a motion to approve the proposed contract modification and a 5 percent merit increase. Council Member Fuller seconded the motion.

Council Member Reid felt that the 5% merit increase should not have been a topic of discussion and should be placed on a regular council meeting agenda for public comment.

There was a brief discussion from the Council on the proposed items requested from Town Manager Wasson and the proposal of a 5% merit increase made by Mayor Leonard.

Town Manager Wasson thanked Mayor Leonard on his proposal of a 5% merit increase, and stated that he was not seeking a merit increase, but deeply appreciated the offer. He explained that he was only seeking approval on the 4 previously discussed items.

ACTION: Council Member Reid made a motion to approve the vehicle allowance increase, remove items 2 and 3, and defer Item 1 to another meeting. There being no seconded motion failed.

ACTION: Council Member Yaffe made a motion to approve all 4 items as follow:

1. Town Manager Wasson to join the General Employee Retirement System.
2. Modify Section 2(c) Salary & Evaluation; to add language "if deemed necessary by the Council".
3. Modify Section 3(b) Duties and Obligations; to allow the manager the flexibility to work 4 or 5 day, 40 hour work week as determined by the needs of the Town, Monday through Friday. The Manager will continue to work on weekends as needed or required by the needs of the Town.
4. To increase the Town Manager vehicle allowance under Section 4 (a) Auto Allowance; increase of \$75 to \$425 per month.

Council Member Fuller seconded the motion and it passed 5-1, with Council Member Reid opposed.

There being no further business to discuss meeting was adjourned at 11:03 a.m.

MAYOR

ATTEST

TOWN CLERK

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

A Regular meeting of the Town Council was held on Monday May 9th, 2016 at 7:00 p.m. in the Council Chambers. Upon roll call the following members responded:

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

Item 1. Miami-Dade County Circuit Court Judge Jason Bloch

The Honorable Judge Robert Luck from the Miami-Dade County Circuit Court came forward and introduced himself to the Council. He stated that he continued to serve the community at the Courthouse located on Flagler Street and welcome anyone to come to the Courthouse and ask any questions.

The Honorable Judge Jason Bloch came forward to address the Council. He thanked the Town Council for the invitation to meet the residents and was privilege to continue to serve the community. He asked the resident to go out and vote on the next County elections and consider him and Judge Loch as candidates to continue to serve on the Miami-Dade County Circuit Court.

SPECIAL PRESENTATION:

Florida League of Cities Representative, Carol Westmorelong, came forward to greet the Town Council. She presented Council Member Yaffe with a resolution from the Florida League of Cities, Board of Directors, with the John Land Recognition Award for his 20 years in public service.

Item 1. Legislative Report - State Representative, Joseph Geller

State Representative Joseph Geller, came forward to address the Council. He provided a legislative update on recent bills from the state. He explained that on Healthcare, a recent bill that was passed for Nurse Practitioners, they are now allowed to give prescription medication; state funds were allocated for Charter schools; the Senate passed a bill on anti-bullying to require school district to revisit the anti-bullying policies; and the senate voted against the death penalty.

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

Vice Mayor Bruder pulled Item # 7 from Consent Agenda for discussion.

Council Member Fuller pulled Item #4 from Consent Agenda for discussion.

Council Member Reid requested a discussion item for future items on vacation rentals.

TOWN MANAGER'S REPORT:

Item 2. Report on investment performance for quarter ending March 31, 2016. Mr. Dan Brea of BNY Mellon will provide a report.

Dan Brea of BNY Mellon, came forward to address the Council. He reported on the Town's Investments portfolio for the quarter ending in March 31, 2016.

Council Member Salved asked Mr. Brea if the Town Council needed to consider any changes on the market conditions. Mr. Brea did not recommend any changes at the present time.

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

Council Member Reid attended the monthly meetings with the Miami Dade County League of Cities and also attended an all-day event to the Good Government Initiative on public and private partnership.

Council Member Salver attended the monthly meeting with the Miami Dade County League of Cities and the Children's Trust Budget Meeting.

Council Member Fuller attended the Miami Dade County League of Cities monthly meeting and the Manager Performance Evaluation.

Council Member Yaffe reported he too attended the County League of Cities meeting. He asked for Staff to work together with FPL to remove the trees that were growing into the power lines to prevent future power outages. He asked for a monthly updates on the topic.

Vice Mayor Bruder reminded the residents to be vigilant when the kids are out of school and also stated that Summer Camp was available at the school.

Mayor Leonard, attended the monthly meeting from the Miami Dade County League of Cities and the Town Manager Performance Evaluation meeting.

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.

Former Mayor, Stanley Tate, came forward to address the Council. He stated that he was before the Town Council because of a possible Church in Kane Concourse. He stated that the United Church of Christ was a sponsor and a major affiliate of the Church by the Sea. He felt that the church was sponsoring a boycott against Judaism and Israel.

There was a brief discussion from the Council on the invitation that was extended to the Church by the Sea for a Workshop; possible cancelation on the Planning & Zoning Meeting to review the Church by the Sea site plans and legal opinion to cancel the Planning & Zoning Board Meeting.

Kathleen Kennedy, 9900 W. Bay Harbor Drive, She was shocked on the recent remarks from Former Mayor Tate and she supported the proposed Church by the Sea.

Kelly Stoppa, 77 Camptom Drive, She came forward and reminded the Town Council of the recent adopted ordinance that prohibits any business that boycott religion.

Victor Maya, 1155 103 St, came forward and was opposed to the proposed Church by the Sea proposed plans. He stated that he has try to contact the church representatives and was unsuccessful.

Frances Neuhut, 1060 Kane Concourse, came forward and was opposed to the proposed Church by the Sea.

Jay Meiselman, 10231 E. Broadview, came forward to address the Council. He stated that he was opposed to the current process and requirements to go to the Planning & Zoning Board.

Lynne Blockmolen, 10101 Collins Ave, came forward to address the Council. She was a former member of the Church by the Sea and was not aware of the boycott on Israel. She was shocked on the association with the United Church of Christ and the Church by the Sea.

The Town Council requested a legal opinion from Special Legal Counsel, Stanley Price on the possible meeting cancelation.

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

Item 3. Approval of Minutes of a Regular Council Meeting held on March 14th, 2016.

Item 5. Approval of a Resolution to set the Toll rates for the Broad Causeway. The proposed amendment is a mathematical correction to the previously adopted resolution to increase the rates for the Toll-by-Plate charges.

Item 6. Approval of a resolution requested by Vice Mayor Bruder urging the Miami-Dade County Public Schools Board to construct permanent classrooms for the MAST Academy at Florida International University in North Miami.

Item 8. Consideration and Approval of a renewal of a mutual aid agreement with the Village of Bal Harbour Police Department and the Town of Bay Harbor Islands Police Department.

ACTION: Council Member Fuller made a motion to approve the Consent Agenda. Vice Mayor Bruder seconded the motion and it passed unanimously.

4. Approval of a resolution requested by Mayor Leonard designating the Bay Harbor Islands Police Station as a safe place to conduct Craig's list transactions or similar website transactions.

Council Member Fuller requested to add language on the proposed resolution to clarified the safe haven for private, non-commercial transaction and that there shall be no storage at the Police Department.

ACTION: Mayor Leonard made a motion to approve the proposed resolution subject to the language clarification. Council Member Fuller seconded the motion and it passed unanimously.

Item 7. Request for Approval of a resolution and Memorandum of Understanding between the City of Miami Beach, North Bay Village, Town of Surfside, Bal Harbour Village, and the Miami Beach Chamber Education Foundation to implement a Nurse Initiative for the 2016-2017 school year.

Council Member Reid stated that she was on the Board of the Healthcare Task Force and they were looking to expand the program to include dental care for the kids.

ACTION: Vice Mayor Bruder made a motion to approve the resolution. Council Member Yaffe seconded the motion and it passed unanimously.

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

Item 9. Request for an extension to close on an agreement for the sale and purchase of Transfer of Development Rights (TDR) between the Town and JCG Bay Harbor, LLC. The Town approved the TDR sale transaction on May 11, 2015 for the transfer of five (5) TDRs to property located at 9521-9541 East Bay Harbor Drive.

Attorney Matthew Amster, came forward to address the Council. He was representing the applicant JCG Bay Harbor, LLC. He explained that the applicant obtained a foundation permit and would be obtaining the full building permit soon. He respectfully asked for the Town Council to approve a 6 month extension to close.

PUBLIC COMMENT

Victor Maya, 1155 103 Street, came forward to address the Council. He asked the Town Council to consider for the applicant to pay for the full amount of the TDR's up front.

CLOSED PUBLIC COMMENT

Assistant Town Attorney Simone, clarified that the with this TDR agreement the applicant would be required to pay 5% of the purchase price for an extension.

ACTION: Council Member Fuller made a motion to approve the extension to close on TDR agreement. Council Member Yaffe seconded the motion and it passed 6-1 with Council Member Reid opposed.

Item 10. Approval of a final agreement from the Florida Power & Light in the amount of \$201,931 for the underground conversion of all of the FPL overhead facilities from the intersection of Kane Concourse & W. Bay Harbor Drive to the Intersection of Kane Concourse & East Broadview Drive.

Town Manager Wasson stated the expenditure was for the underground conversion of all of the FPL overhead facilities from West Bay Harbor Drive to East Broadview Drive on Kane Concourse.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward to address the Council. She asked who was funding the project and why wasn't FPL paying for this expense.

CLOSED PUBLIC COMMENT

ACTION: Council Member Yaffe made a motion to approve the expenditure. Vice Mayor Bruder seconded the motion and it passed unanimously by poll vote, with Vice Mayor Bruder out of the dias.

Item 11. Approval of expenditure for a portable sewer by-pass pump from United Rentals in the amount of \$45,091.27.

PUBLIC COMMENT

Victor Maya, 1155 103 St., came forward to address the Council. He had an issue on the way it was budgeted and asked why the bidding contain such a short advertising range.

CLOSED PUBLIC COMMENT

ACTION: Vice Mayor Bruder made a motion for approval. Council Member Tricoche seconded the motion and it passed by unanimous poll vote.

DISCUSSION ITEMS:

Item 12. Discussion requested by Mayor Leonard to direct the Town Manager to obtain a price to replace the grass field at the Officer Scott Winters (98 Street) Park with field turf.

Mayor Leonard stated that the 98th Street had some wear and tear and asked the Town Council to consider replacing the grass with field turf. He clarified that the funding for such expense would come from impact fees.

Vice Mayor Bruder was concerned with the filing underneath the turf and asked for staff to research for a non-toxic filler on the field.

PUBLIC COMMENT

Victor Maya, 1155 103 St., came forward and was opposed to replacing the field grass with field turf. He felt that funds could be better used on a basketball gym at the community center.

CLOSED PUBLIC COMMENT

ACTION: Vice Mayor Bruder made a motion obtain cost estimates to replace the grass for the 98th Street Park to field turf using nontoxic filler. Council Member Tricoche seconded the motion and it passed unanimously.

Item 13. Discussion requested by Council Member Fuller regarding the possibility to develop a dog park on the southwest corner of West Broadview Drive and 96th Street.

Council Member Fuller stated that he was approach by a few residents regarding a dog park on the west island. He asked the Town Council to consider a doggie park on the vacant land on the southwest corner of West Broadview Drive and 96 street.

There was a brief discussion on other possible locations for a doggie park; suggestion of a combination of a doggie park and a waterfront view for residents to relax and the drainage problems on the lot when it rains.

ACTION: Consensus was for staff to research and obtain cost estimates for the proposed park.

Item 14. Discussion requested by Town Manager Wasson regarding Section 24-16(a) which requires that existing properties comply with the current landscape minimum standards when they add 100 square of impervious area or spend an aggregate of \$10,000 in hardscape improvements.

Town Manager Wasson stated that there were a few properties that made property enhancements that resulted in an increase of square footage. The added square footage requires the homeowners to comply with the minimum landscape standards. He asked the Town Council to consider an amendment to the Code, to give the homeowners a relief on the landscape requirements, if they are making minor enhancements.

There was a brief discussion from the Council on the current properties effect, new developments landscaping requirements; drainage requirements and the existing homes.

PUBLIC COMMENT

Frances Neuht, 9920 W. Broadview Drive, came forward to address the Council. She felt that Code Compliance should be addressing the issue.

CLOSED PUBLIC COMMENT

ACTION: Consensus was for staff to bring an ordinance on first reading for the code amendment.

Item 15. Discussion on possibly increasing the allowable boat docks height as it crosses the seawalls.

Town Manager Wasson asked for the Town Council consideration on the possible code amendment to raise the seawall to 5 ½ to 6 feet.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and asked the Town Council why was the ordinance was being changed.

CLOSED PUBLIC COMMENT

ACTION: Consensus was for Staff to bring back an ordinance for first reading amending the dock heights requirements.

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

MAYOR

ATTEST

TOWN CLERK

DRAFT

AGENDA ITEM REPORT

August 8, 2016

ITEM NUMBER: 4.

ITEM: Approval of an expenditure in the amount of \$35,498.28, for emergency repairs to water main /fire hydrant supply, at the corner of East Broadview Drive and 99th Street. Enclosed find a copy of the invoice from Solo Construction Co.

DESCRIPTION:

On Thursday June 9th 2016, around 8:00 P.M. a water main break was reported to Public Works. Staff responded immediately and after investigation determined that the break was on the supply line for the fire hydrant on the North West Corner of the 99th Street/ East Broad View Drive intersection. It was difficult to isolate the leak because the roadway was flooded; the leak was eventually isolated around 10:00 P.M. by shutting down the hydrant valve.

The tremendous volume of water that escaped created a significant damage to the roadway, the adjacent storm-water culvert crossing, the roadside drainage gutter, and the landscaped corner where the hydrant is located. Solo Construction Corporation (Solo) agreed to provide emergency services to the Town to repair the broken service line and repair all the collateral damage, and work started the next day.

The old cast iron service line that had become broken was abandoned and a new service was provided from the C900 PVC main on 99th Street. The hydrant was replaced with new.

The water break caused undermining of the asphalt surfacing, adjacent drainage structure, and the landscaped corner. Two of the Royal Palms in the landscaped corner were compromised and had to be removed. The adjacent valley gutter collapsed as a result of the wash out and had to be re-poured. The affected asphalt surfacing had to be removed, and the base course re-compacted before installing the new surface.

The repair cost includes ancillary services such as maintenance of traffic for the road closure, traffic plates to cover the trench for safety, flowable fill for the excavation and installing new pipe and hydrant. There were at least three days lost due to inclement weather. The fire hydrant is back in service, and all collateral damage was successfully repaired.

The entire repair was performed over a period of three weeks, and the associated repair bill in the amount of \$35,498.28 is based on the "Time and Material" method of measurement.

Staff recommends approval of the expenditure in favor of Solo Construction Corporation, in the amount of \$35,498.28

RECOMMENDED ACTION:

Approval.

FINANCIAL ANALYSIS:

Appropriations in the amount of \$35,498.28 will be required from the Water Fund Reserves.

BUDGET IMPACT:

Submitted By: Randy Daniel, Town Engineer

ATTACHMENTS

1.	Emergency repairs	Emergency Repairs.pdf
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CONSTRUCTION CORPORATION

Date: 6/27/2016

Project:

Date Approved:

Pco #:

062716-01

Description of Work

Emergency work on water main break at fire hydrant
at East Broadview Dr. and 99th Street for the Town of
Bay Harbour

Foreman-\$40.00	Supervisor-\$55.00	Operators-\$35.00	Pipe Layers-\$30.00	Laborers-\$12.00	Total Manhours:	264
88	88	88			Total Cost: 7920	\$ 10,560.00
					Labor Burden:	\$ 4,752.00
					Total Labor: 11,104	\$ 15,312.00

Materials -Description	Qty	Price	Total
Concrete	20	\$3.80	\$76.00
limerock	1	\$181.16	\$181.16
Sandbags	8	\$3.40	\$27.20
6inch Bell Restraint	1	\$101.11	\$101.11
			\$0.00
		Total:	\$385.47

Services - Description	Qty	Price	Total
Hauling	1	\$855.00	\$855.00
Trench Plate	1	\$1,152.00	\$1,152.00
Flow Fill	1	\$2,646.60	\$2,646.60
Crub & Gutter	1	\$1,900.00	\$1,900.00
Milling & Ashalt	1	\$8,320.00	\$8,320.00
			\$0.00
		Total:	\$14,873.60

Equipment - Description	Qty	Price	Total
Excavator	55	\$75.00	\$4,125.00
Compacter			\$0.00
Water Pump			\$0.00
Streetsaw			\$0.00
Testing of water pipe			\$0.00
			\$0.00
			\$0.00
			\$0.00
Total:			\$4,125.00

Subtotal		\$ 34,696.07
Sales Tax	7.00%	\$ 2,698
Mark up	15.0%	\$ 5,204.41
Subtotal		\$ 39,927.46
Bond	0.0%	\$ -
Grand Total		\$ 39,927.46

#35, 498.21

AGENDA ITEM REPORT

August 8, 2016

ITEM NUMBER: 5.

ITEM: Approval of a proposal from Plant Professionals in the amount of \$49,087 for this year's holiday decoration display. Enclosed find a copy of the proposal.

DESCRIPTION:

The attached proposal includes the same decorations as last year with some modifications:

- This proposal includes a new 20' tower Christmas tree which will replace our old one.
- This proposal includes the garland and lights around the short light poles on Kane Concourse. Last year we only had the garland without lights.
- The "Season's Greetings Sign" has been removed.
- The pole mounted decorations remain the same.
- The lights on the Ligustrum trees on Kane Concourse will remain the same.
- The lights on the palm trees on 96th Street (West Islands) will remain the same.
- The lights on the palm trees entering the Causeway will remain the same.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

The total cost of the proposal is \$49,087. This amount is under the amount budgeted.

BUDGET IMPACT:

Submitted By: Juan Jimenez, Assistant Town Manager

ATTACHMENTS

1.	Plant Professionals Proposal	2016 Plant Professionals Proposal.pdf
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Estimate

Date	Estimate #
7/5/2016	67370

Sales Rep
Brittany Aniol

LANDSCAPE DESIGN, INSTALLATION, & MAINTENANCE

145 SW 3rd Avenue
Homestead, FL 33030

Customer
Bay Harbor Islands Juan C. Jimenez 9665 Bay Harbor Terrace Bay Harbor Islands, FL 33154



Holiday Decorating & Lighting

Location	Qty	Description
Downtown North/South Median	19	6.5' LED lit pole mount with metal frame Pole Mounts are to be alternating Blue Double Snowflake design and Green Sparkle Design
	6	Spiral wrap trunks of Ligustrum Trees with LED warm white miniature lights
	36	18 small black light poles to be tightly spiral wrapped with two pieces of 9' X 14" garland with LED warm white miniature lights Garland will have red ribbon with red handmade bows. Gold matte balls to be installed on garland
Center Median	17	Light canopy of Ligustrum Trees with LED warm white twinkle miniature lights
Cross Bridge	4	6.5' LED lit pole mount with metal frame Pole Mounts are to be alternating Blue Double Snowflake design and Green Sparkle Design
Single Family Island North/South Median	20	6.5' LED lit pole mount with metal frame Pole Mounts are to be alternating Blue Double Snowflake design and Green Sparkle Design
Center Median 1	5	Spiral wrap trunk of Roebelinii Palms with LED warm white miniature lights
	12	Spiral wrap trunk of Montgomery Palms with LED warm white miniature lights

Subtotal

Sales Tax (7.0%)

Total Lease Per Season

Date

Phone #

Fax #

E-mail

Web Site

305-259-0503

305-245-0309

Micke@plantprofessionals.com

www.plantprofessionals.com



Estimate

Date	Estimate #
7/5/2016	67370

Sales Rep Brittany Aniol

LANDSCAPE DESIGN, INSTALLATION, & MAINTENANCE

145 SW 3rd Avenue
Homestead, FL 33030

Customer
Bay Harbor Islands Juan C. Jimenez 9665 Bay Harbor Terrace Bay Harbor Islands, FL 33154



Holiday Decorating & Lighting

Location	Qty	Description
Center Median 2	3	Spiral wrap trunk of Queen Palms with LED warm white miniature lights
	6	Spiral wrap trunk of Roebelinii Palms with LED warm white miniature lights
	20	Spiral wrap trunk of Montgomery Palms with LED warm white miniature lights
	4	Spiral wrap trunk of Queen Palms with LED warm white miniature lights
Broad Causeway	12	Spiral wrap trunk of Royal Palms with LED warm white miniature lights
	1	20' Tower Tree with lights, decorations, ribbon, and bows. Lights to be LED warm white miniature lights Decorations to be traditional red and gold Assorted globe lights to be installed around tree. Colors TBD
Disclaimers	1	Total price below reflects signing a three season contract for 2016-2017-2018
	1	City is responsible for making sure all power is functioning and available where it is needed
	1	Payment schedule as follows: - 50% due upon signature - 50% due upon removal of all decorations
	1	Schedule as follows: - Lights installation in October - Pole Mount/garland installation and lights to be turned on during week before Thanksgiving - Removal off all decorations and lights after mid- January

	Subtotal
	Sales Tax (7.0%)
	Total Lease Per Season

Date

Phone #

Fax #

E-mail

Web Site

305-259-0503

305-245-0309

Micke@plantprofessionals.com

www.plantprofessionals.com



Estimate

Date	Estimate #
7/5/2016	67370

Sales Rep
Brittany Aniol

LANDSCAPE DESIGN, INSTALLATION, & MAINTENANCE

145 SW 3rd Avenue
Homestead, FL 33030

Customer
Bay Harbor Islands Juan C. Jimenez 9665 Bay Harbor Terrace Bay Harbor Islands, FL 33154



Holiday Decorating & Lighting

Location	Qty	Description
	1	City has opportunity to cancel service if they are unhappy for any reason. Cancellation must be made by certified mail by end of February. If no cancellation notice is received, the contract will be automatically renewed. All lease prices include delivery, installation and take down. Any theft or damage incurred will be charged accordingly. Installation dates are booked upon receiving your signed contract. *Functioning electrical receptacles are necessary for each area to be lit. *It is the customer's responsibility to reset GFI circuit breakers if needed. *All trees and palms must be pruned prior to installation of lights. *Installation dates are booked upon receiving your signed contract. Lighting installation begins in early October. All lights will be retested and powered up within 48 hours of your requested date. *All lights are guaranteed to be in working order upon installation. *All lighting outages, that we have no control over, i.e. vandalism, damage from lawn maintenance equipment, severe weather, electrical surges, or unpruned palm fronds will be documented and billed as an additional charge. *All lease prices include delivery, set up, maintenance and take down. *We will make every effort to repair any lights not working within 24 hours, but no more than 72 hours of notification. 50% deposit required upon signing, balance due upon installation.

	Subtotal	\$49,087.00
Signature _____	Sales Tax (7.0%)	\$1,067.50
Print Name _____	Total Lease Per Season	\$50,154.50
Date _____		

Phone #

Fax #

E-mail

Web Site

305-259-0503

305-245-0309

Micke@plantprofessionals.com

www.plantprofessionals.com

AGENDA ITEM REPORT

August 8, 2016

ITEM NUMBER: 6.

ITEM: Approval of a resolution opposing the passage of the Miami Dade County ordinance creating a mandatory Work Force Housing Development Program. Enclosed find the proposed resolution and supporting documents.

DESCRIPTION:

At the June 7th, Miami-Dade County Commission Meeting, The Board passed on first reading a proposed ordinance, which would require all new residential developments within Miami-Dade County, which contain 20 or more dwelling units, to set aside 10% of its units for work force housing.

Enclosed find a Memorandum and supporting documents from Special Counsel, Stanley Price with his legal opinion on the impacts of the proposed ordinance for the Town.

RECOMMENDED ACTION:

Council Discretion.

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk

ATTACHMENTS

1.	Proposed Resolution	Workforce Resolution - August 2016.pdf
2.	Supporting documents	mandatory work force house -back up.pdf

RESOLUTION NO. _____

**A RESOLUTION OF THE TOWN OF BAY HARBOR ISLANDS
OPPOSING THE IMPLEMENTATION AND PASSAGE OF THE
COUNTY ORDINANCE CREATING A MANDATORY WORKFORCE
HOUSING DEVELOPMENT PROGRAM ON A COUNTY-WIDE
BASIS**

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

WHEREAS, the Town Council, through its Charter and its Land Development Regulations, is empowered to make land use decisions which are in the best interests of its citizens; and

WHEREAS, Miami-Dade County is seeking to implement a county-wide ordinance which seeks to create a mandatory workforce housing development program which contains provisions in direct conflict with the Town's Land Development Regulations and Comprehensive Plan; and

WHEREAS, the Town Council understands and appreciates a regional approach to address workforce housing, but firmly believes that the proposed ordinance is fraught with legal issues and does not serve the interests of its citizens; and

WHEREAS, after careful study and review of the aforementioned ordinance, the Town Council opposes the ordinance based upon:

- (1) An intrusion into the land use regulations of the Town.
- (2) A lack of clarity of the financial and legislative responsibilities of the Town to implement and enforce the proposed ordinance.

- (3) The proposed ordinance's mandates are in violation and inconsistent with the Town's Comprehensive Plan and land use regulations.
- (4) The potential liability of the Town against claims made by the development community for illegal exactions, possible claims of improper and illegal taxation, and lack of a rational nexus between the construction of new housing and the causation to build workforce housing.
- (5) That the proposed ordinance will increase the cost of housing as a result of the inability of developers to utilize density bonuses based upon the Town's Comprehensive Plan, Land Development Regulations and the Town's Charter which limits the maximum heights of buildings to 75 feet. Developers will be compelled to contribute to a housing trust fund, which will be passed through to the ultimate purchaser of a unit to be built, thereby increasing the cost of housing in the Town.
- (6) The Town is a fully developed community which does not possess any large open space areas for future development.
- (7) The Town was neither consulted nor advised that this ordinance will be advanced. This is in clear violation of Florida Statutes which encourage intergovernmental cooperation.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF BAY HARBOR ISLANDS AS FOLLOWS:

That the Town Council urges to Miami-Dade County Board of County Commissioners to vote against the proposed ordinance seeking a mandatory workforce housing program for all of Miami-Dade County, Florida until such time as the municipalities are consulted in order that a

uniform program, respecting the rights of municipalities, the development community, and the ultimate consumer of housing units are addressed.

PASSED and ADOPTED this _____ day of _____ 2016.

TOWN OF BAY HARBOR ISLANDS

By: _____
MAYOR

ATTEST:

TOWN CLERK

Stanley B. Price, Esq.
Tel 305-350-2374
Fax 305-351-2204
sprice@bilzin.com

June 20, 2016

Honorable Mayor and Members of the Town Council
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

Re: Proposed County Ordinance: Mandatory Work Force Housing

Dear Mr. Mayor and Members of the Town Council:

The Miami-Dade County Board of County Commissioners has passed, on first reading, a proposed ordinance which applies to every municipality within Miami-Dade County, which will require that all new residential development within the County, which contains 20 or more dwelling units, must set aside at ten percent (10%) of its units for work force housing.¹ This mandatory ordinance contains legislative intent, defined terms, and guidelines for municipalities as to compliance with the proposed ordinance. (A copy of the proposed ordinance is attached as Exhibit "A" to this letter). The Town Manager has asked me to address the proposed ordinance and its implication as to legal issues and the ordinance's possible impacts to the Town.

In exercising its powers contained within The Home Rule Charter, the County is requiring each municipality to enforce the minimum standards contained within the ordinance. A municipality can opt-out of the ordinance by adopting its own ordinance, supported by the detailed data and analysis of the workforce housing needs of the community.

Workforce housing is defined in the ordinance as a residential unit for those whose income range is established at sixty percent (60%) up to one-hundred forty percent (140%) of the most recent area median income. At today's levels, the income range is approximately \$49,000. The ordinance contains certain density bonuses as incentives to developers to develop workforce units. Based upon the existing Town's Comprehensive Plan, the land development regulations, as well as the 75' height limitations in the Charter, it is highly doubtful whether a developer in the Town could avail itself of any density bonus and, therefore, the developer would be required to donate \$205,000 per unit into the Workforce Housing Fund.

While the ordinance is well intended and seeks to address a serious housing issue, based upon preliminary research, the proposed ordinance is fraught with many legal issues:

- (a) The entire burden of addressing the problem is placed upon the residential development community. The issue of workforce housing has been created by the high cost of land, especially in the coastal areas of the County. The

MIAMI 5042955.1 73248/10390
6/17/2016

Honorable Mayor and Members of the Town Council
June 20, 2016
Page 2

construction of new residential units have no causal relationship to the existing need of workforce housing.

- (b) Mandatory inclusionary zoning has resulted in many unintended economic and social issues. While inclusionary zoning has been successful in certain areas of the country, a recent study prepared by the University of Hawaii (a copy of which is attached as Exhibit "B"), is very critical of the concept and has recommended that it should not be implemented in Oahu, Hawaii.ⁱⁱ
- (c) The legal implications of mandatory workforce housing (a/k/a inclusionary zoning) include an illegal tax upon developers, a regulatory taking of real property without just compensation, as well as an illegal exaction under Florida law. For your edification, I am attaching, as Exhibit "C", an article entitled "the Florida Bar Journal": An analysis of affordable/workforce housing initiatives and their legality in the State of Florida." This Article clearly articulates the legal impediments to initiating this housing policy.

As noted earlier, providing housing units for all income strata in our community is a laudable goal, but the issue is not easily addressed by a mandatory inclusionary zoning ordinance. A more comprehensive solution must be studied. Any analysis should include governments role in resolving the cost of land seeking public-private solutions to the housing problem, and other economic incentives for building workforce housing units, including waiver of impact fees, ad valorem adjustments, and meaningful, not illusory, zoning incentives.

Very truly yours,


Stanley B. Price

SBP/mp/Encl.

C: Ron Wasson
Craig Sherman, Esq.
Frank Simone, Esq.

ⁱ In the alternative, a residential developer can donate a sum of approximately \$205,000 per unit into a Workforce Housing Fund. A project which requires 10 units of workforce housing can pay over \$2 million into that Fund in lieu of building the units.

ⁱⁱ In addition, traditional housing units will now by responsibility be the entire cost of the cash in lieu of building the housing units. In the earlier example, where a developer contributes \$2 million in a trust fund, the unit owners in the building must absorb that donation into the price of the each individual unit. This will have the direct causation of increasing the cost of traditional residential units.

MEMORANDUM

Agenda Item No. 4(J)

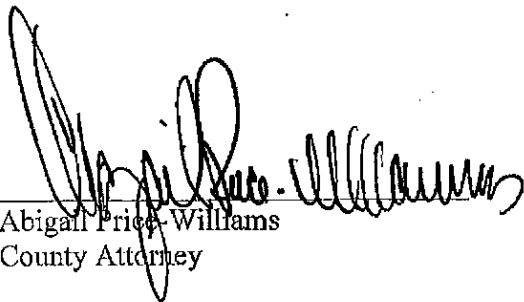
TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: June 7, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Ordinance relating to zoning, housing, and impact fees; creating mandatory Workforce Housing Development Program; amending requirements for workforce housing units and modifying density bonus and development intensity standards; amending requirements for declarations of restrictive covenants regarding workforce housing units; providing for deferral of road impact fees for development of workforce housing units; amending eligibility requirements relating to Workforce Housing Development Program administration; amending Article XIIA of Chapter 33, Article IX of Chapter 17, and sections 33E-6.1 and 33E-18 of the Code

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Barbara J. Jordan.



Abigail Price-Williams
County Attorney

APW/smm



MEMORANDUM

(Revised)

TO: Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

DATE: June 7, 2016

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 4(J)

Please note any items checked.

- ☒ "3-Day Rule" for committees applicable if raised
- ☒ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 4(J)
6-7-16

ORDINANCE NO. _____

ORDINANCE RELATING TO ZONING, HOUSING, AND
IMPACT FEES; CREATING MANDATORY WORKFORCE
HOUSING DEVELOPMENT PROGRAM; AMENDING
REQUIREMENTS FOR WORKFORCE HOUSING UNITS
AND MODIFYING DENSITY BONUS AND
DEVELOPMENT INTENSITY STANDARDS; AMENDING
REQUIREMENTS FOR DECLARATIONS OF RESTRICTIVE
COVENANTS REGARDING WORKFORCE HOUSING
UNITS; PROVIDING FOR DEFERRAL OF ROAD IMPACT
FEES FOR DEVELOPMENT OF WORKFORCE HOUSING
UNITS; AMENDING ELIGIBILITY REQUIREMENTS
RELATING TO WORKFORCE HOUSING DEVELOPMENT
PROGRAM ADMINISTRATION; AMENDING ARTICLE
XIIA OF CHAPTER 33, ARTICLE IX OF CHAPTER 17, AND
SECTIONS 33E-6.1 AND 33E-18 OF THE CODE OF MIAMI-
DADE COUNTY, FLORIDA; PROVIDING SEVERABILITY,
INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

**BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
MIAMI-DADE COUNTY, FLORIDA:**

Section 1. Chapter 33, Article XXIIA of the Code of Miami-Dade County, Florida,
is hereby amended to read as follows:¹

**ARTICLE XIIA. - WORKFORCE HOUSING
DEVELOPMENT PROGRAM**

Sec. 33-193.3. - Short title.

This article shall be known as the "Workforce Housing
Development Program of Miami-Dade County, Florida."

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words
underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining
provisions are now in effect and remain unchanged.

Sec. 33-193.4. - Legislative intent, findings, and purpose.

- A. *Need for workforce housing in Miami-Dade County.* The health, safety, and welfare of the present and future residents of Miami-Dade County depend on the availability of a range of housing choices affordable to persons and families of all income levels in all areas of Miami-Dade County >>in both the incorporated and unincorporated areas<<. ~~[[Current]]~~ >>As of 2007, when the Board of County Commissioners adopted Ordinance No. 07-05 to establish a voluntary workforce housing development program ("WHU program" or Workforce Housing Development Program)<< patterns of development ~~[[have]]~~ >>had<< resulted in a persistent shortage of housing for certain sectors of the community. >>Since then, the shortage has increased<< Studies of market demand show that ~~[[for the foreseeable future more than 50% of the new]]~~ >>the<< labor force in Miami-Dade County ~~[[will]]~~ >>continues to<< require moderately priced housing units. Currently, there exists in Miami-Dade County a shortage of housing affordable to individuals and families of moderate incomes, particularly those whose earnings range from >>60 percent up<< ~~[[65%]]~~ to ~~140[[%]]~~>>percent<< of the County's median income, the "workforce target income group." The workforce target income group includes many public employees and others employed in key occupations that support the local community. Increasingly, the high cost and short supply of housing affordable to persons and families of moderate income mean that many employees in the workforce target income group cannot afford to live in Miami-Dade County, while others can only afford to live in areas concentrated according to price and income level.

The uneven distribution of moderately-priced housing results in additional stratification of housing according to price and income level. It is in the best interests of the public health, safety, and welfare of the present and future residents of Miami-Dade County to reduce or eliminate such economic stratification by adopting land use regulations that encourage development of land available for residential use in Miami-Dade County in a manner that emphasizes integration of new housing for individuals and families in the workforce target income group into new, expanding, or redeveloping neighborhoods.

The uneven geographic distribution of housing affordable to the workforce target income group, as well as the distance between jobs and available housing, also increase traffic congestion and decrease economic productivity. Traffic and roadway congestion in turn adversely affect the environment and diminish air quality, increasing the burden on the public health care system and resulting in rising health care costs. The public health, safety, and welfare of the present and future residents of Miami-Dade County can best be protected by adopting land use policies to ensure that housing affordable to the workforce target income group is distributed throughout the county near workplaces, rather than being concentrated in enclaves separate from jobs and higher-priced housing.

The Florida Growth Management Act requires Miami-Dade County to adopt a comprehensive plan to guide future development and growth, including a housing element consisting of standards, plans, and principles to be followed in the provision of housing for all current and anticipated future residents. Exercising the authority conferred by the Miami-Dade County Home Rule Charter, and in furtherance of the Growth Management Act, the Board of County Commissioners has adopted the Comprehensive Development Master Plan ("CDMP"), including a housing element which establishes goals, objectives, and policies to ensure the provision of all variations of affordable housing products to meet the spatial and economic necessities of all current and future residents regardless of household type or income.

- B. *Causes and consequences of lack of sufficient workforce housing supply.* In order to assess the extent of the housing shortage, identify the most severely affected sectors of the community, and ascertain the need for a workforce housing development program, the Board of County Commissioners established a task force consisting of county housing, zoning, and planning professionals, and representatives of the private, for-profit, development community. The mission of the task force was to analyze the current and anticipated future make-up of Miami-Dade County's workforce and population, the geographic distribution of moderately-priced housing, historical and current patterns of development applications and approvals, the distance between jobs and housing for the workforce target income group, the overall impact of the housing shortage on the economy of Miami-Dade County, and the adverse consequences failure to act would have on the health,

safety, welfare, comfort, and convenience of the present and future residents of Miami-Dade County. The need for the workforce housing development program as identified by the task force is the result of a variety of factors, including, but not limited to, those noted below. >>Since the task force concluded its analysis in 2007, various studies have demonstrated the continued need for a workforce housing development program.<<

- (1) Increasing population pressure. Miami-Dade County, in both the incorporated and unincorporated areas, ~~[[is experiencing a rapid]]~~ >>continues to experience an<< increase in the numbers of residents in the workforce target income group, including persons with fixed or reduced incomes, young adults forming new households, minority households, single adults, and many public employees and others in key occupations serving the entire community including teachers, police and public safety personnel, health care workers and mid-level management workers. Studies show that, as a result of this population increase, for the foreseeable future of the new labor force in Miami-Dade County will require workforce housing.
- (2) Cost burdens. >>Since 2007, households<< ~~[[Households]]~~ in Miami-Dade County >>have continued to<< suffer from a high and increasing housing cost burden. Households have traditionally been regarded as "cost burdened" if they spend more than 30~~[[%]]~~ >>percent<< of their gross income on housing costs. ~~[[In Miami-Dade County, nearly 51% of all renter households pay more than 30% of their income in gross rent. In owner-occupied units, more than 36% of all households pay more than 30% of their income on housing.]]~~
- (3) Inadequate housing supply for the workforce target income group. Current patterns of development, the costs of acquiring land suitable for residential development, and the disposition of remaining developable land have resulted in an abundance of higher-priced housing and a shortage of housing economically attainable by the workforce target income group. With the exception of housing developed with government subsidies, privately developed new residential housing being built in Miami-Dade County generally is not affordable to the workforce target income group. Experience

indicates that state and federal funds for the construction of affordable housing will not address the housing needs of the workforce target income group.

- (4) Overcrowding. Overcrowding is a major problem in Miami-Dade County. The problem is acute in low to moderate income households and households in the workforce target income group. ~~[[Analyses indicate nearly 20% of all housing units in Miami-Dade County are overcrowded.]]~~
- (5) Concentration of housing based on economic status. Demographic analyses indicate that development applications and approvals that reduce the supply of land developable for residential use, and which result in a disproportionate amount of higher-priced housing, result in a reduced supply of housing for individuals and families in the workforce target income group, including young families, retired and elderly persons, single adults, female heads of houses, and minority households. Such development activity produces the undesirable and unacceptable effect of concentrating housing according to price, thus frustrating the policies and goals of the housing element of the CDMP, and increasing the threat to the public health, safety, welfare, comfort, and convenience of the present and future residents of Miami-Dade County.
- (6) Need for involvement of private development community. Existing efforts to encourage private, for-profit, developers to construct housing within the economic reach of the workforce target income group >>, including the voluntary workforce housing development program established in Ordinance No. 07-05, << have met with very limited success. It is apparent that the need for housing for the workforce target income group can only be addressed if the responsibility for ensuring a diverse and adequate supply of housing is shared by Miami-Dade County, and the private, for-profit, development community >>through a mandatory program <<.

- C. Authority to establish and administer a workforce housing development program. The Miami-Dade County Home Rule Charter specifically authorizes the Board of County Commissioners to prepare and enforce comprehensive plans for the development of Miami-Dade County in the incorporated and unincorporated areas, to establish, coordinate, and enforce such zoning regulations as are necessary for the protection of the public, to exercise all powers and privileges granted to municipalities, counties and county officers by the Constitution and laws of the State, to exercise all powers not prohibited by the Constitution or by the Charter, and to perform any other acts consistent with law which are required by the Charter or which are in the common interest of the people of the County. The ~~[[workforce housing development program of]]~~ Miami-Dade County >>Workforce Housing Development Program<< is declared to be a proper and necessary exercise of the powers conferred upon the Board of County Commissioners for the protection of the health, safety, welfare, comfort, and convenience of the present and future residents of Miami-Dade County.

Consistent with the goals, objectives, and policies of the land use and housing elements of the CDMP, the objective of the ~~[[workforce housing development program]]~~ >>Workforce Housing Development Program<< is to increase the supply of housing affordable to the workforce target income group, and to address many of the problems associated with the short supply of housing affordable to the workforce target income group and with the uneven, poor geographic distribution of such housing throughout Miami-Dade County. Through utilization of a combination of density bonuses, relaxation of intensity standards, flexible design criteria, and other incentives, the workforce housing program established herein will help alleviate the existing housing shortage by making it more feasible for the private, for-profit, development community to create and deliver a greater number of housing units affordable to the workforce target income group. Dispersal of workforce housing units throughout this community will avoid overconcentration of such housing.

- D. Joint effort of private development community, public sector, and not-for-profit sector. It is the further intent of the Board of County Commissioners that ~~[[workforce housing development program]]~~ >>the Workforce Housing Development Program<< established herein will foster and encourage the private, for-profit, development community

to join with the public sector and the nonprofit sector to further the goal of meeting the housing needs of the workforce target income group.

- E. Adoption of legislative intent, findings and purpose. The foregoing statements are declared to be the legislative intent, findings and purpose of the Board of County Commissioners and are hereby adopted and made a part hereof.

Sec. 33-193.5. - Adoption of land use regulations and procedures for operation of Miami-Dade County's Workforce Housing Development Program.

The Board of County Commissioners hereby adopts land use regulations and procedures >>for the incorporated and unincorporated areas<< for the operation of the Miami-Dade County ~~[[workforce-housing development program]]~~ >>Workforce Housing Development Program<<. The ~~[[workforce-housing development program]]~~ >>Workforce Housing Development Program<<, including all land use regulations and operating procedures, is deemed to be essential to assure the protection of the public health, safety, welfare, comfort, and convenience of the present and future residents of Miami-Dade County. All land use regulations adopted in connection with the ~~[[workforce-housing development program]]~~ >>Workforce Housing Development Program<< shall be supplemental to existing zoning on affected properties and shall be construed to be consistent therewith.

The Board of County Commissioners >>may<< ~~[[shall]]~~ adopt by resolution >>, or the Director may establish, << such administrative procedures as may be necessary or proper to further the purposes of this article and thereby protect the public health, safety, welfare, comfort, and convenience of the present and future residents of Miami-Dade County.

Sec. 33-193.6. - Definitions.

The following words and phrases, as used in this article, have the following meanings:

- (1) >>"<<Application>>"<< means any request for zoning action, building permit, administrative site plan review, or administrative modification under Chapter 33, or any request for approval or extension of approval of any type of application for subdivision of land pursuant to Chapter 28, where such request seeks approval to develop residential or mixed uses subject to the requirements of this article.

- (2) >>“<<At one location>>”<< means all land owned by the applicant, including:
- (a) All adjacent parcels, the property lines of which are contiguous at any point; or
 - (b) All adjacent parcels, the property lines of which are separated only by a public or private street, road, highway or utility right-of-way, or other public or private right-of-way at any point; or
 - (c) All adjacent parcels, under common ownership or control of the applicant, including land owned or controlled by any business entities in which the applicant or immediate family members of the applicant possesses any form of management control.
- (3) >>“Department” means the Miami-Dade County Department of Regulatory and Economic Resources or successor department.
- (4) “Director” means the Director of the Department, or the Director’s designee.
- (5) “<<Transit corridor area>>”<< is the area which lies within a one-half mile radius of the Metrorail stations.
- >>(6)<< [[(4)]] >>“<<Urban Infill Area (UIA) >>”<< is the area as defined in the Comprehensive Development Master Plan (CDMP).
- >>(7)<< [[(5)]] >>“<<Work-force housing unit>>”<< or >>“<<WHU>>”<< shall mean a dwelling unit, the sale, rental or pricing of which in accordance with this article is restricted to households whose income is within the workforce housing target income range.
- >>(8)<< [[(6)]] >>“<<Workforce housing target income range>>”<< means households whose income range is established at >>60 percent<< [[65%]] up to 140[[%]]>>percent<< of the most recent >>area<< median [[family]] income >> (“AMI”)<< for the County reported by the U.S. HUD as maintained by the Department [[of Planning and Zoning]].
- >>(9) “Workforce housing unit cost” or “WHU unit cost” refers to the estimated cost of each workforce housing unit. This variable is used to calculate the monetary contribution that applicants may make to the affordable housing trust fund, established in Chapter 17, Article VIII of this code, in lieu of constructing workforce housing units.<<

Sec. 33-193.7. - Applicability >>in the Incorporated and Unincorporated Areas; Minimum Standards; Exemptions; Administrative Modifications and Appeals<<.

- ~~[(1) An application seeking to utilize the density bonus and intensity standards available under this article (a "WHU application") shall:~~
- ~~(A) (1) For WHU applications seeking approval of 20 or more dwelling units provide workforce housing units or a monetary contribution as provided in Section 33-193.9; and~~
 - ~~(2) For WHU applications seeking approval of fewer than 20 dwelling units, provide a monetary contribution as provided in Section 33-193.9.1.~~
 - ~~(B) A WHU application seeking to develop property improved with one or more existing dwelling units priced to sell or rent to persons in the workforce housing target income range (Existing WHUs) shall provide for a total number of WHUs equal to the greater of the (1) Existing WHUs or (2) the number of WHUs that would have been required had there been no Existing WHUs on the property;~~

~~Each WHU application to develop improved property shall provide evidence satisfactory to the Director as to whether Existing WHUs are on the property.]]~~

>>(A) Countywide applicability and minimum standard. The requirements of the Workforce Housing Development Program shall be applicable as a minimum standard in the unincorporated and incorporated areas of Miami-Dade County. It shall be the duty and responsibility of each municipality and all municipal departments, officials, and employees to enforce the minimum standards prescribed by the provisions of this article within the territorial limits of their respective municipalities, except that this article shall not apply in those municipalities that by ordinance have opted out of the Workforce Housing Development Program in the manner set forth in this section.

- (1) Opt-Out Option. A municipality may opt out of the requirements of this article by adopting an ordinance addressing the need for workforce housing within its territorial jurisdiction. Said

ordinance shall be accompanied by data and analysis considering the need for workforce housing within its jurisdiction and demonstrating that the ordinance will address the identified needs.

- (2) Time for compliance by municipalities. Municipalities shall have 90 days from the effective date of this ordinance to adopt a workforce housing ordinance that complies with the minimum standards set forth in this article or that satisfies the opt-out requirements. Each municipal workforce housing ordinance shall be filed with the Director within 15 days after adoption by the municipality.

(B) The Workforce Housing Development Program shall be applied as follows:

- (1) 20 or more dwelling units. Residential developments with 20 or more dwelling units shall be required to provide workforce housing units in accordance with the following. Administrative Site Plan Review shall be required of all such developments in accordance with the requirements of this article. Except as provided in Section 33-193.8, all workforce housing units will be provided on the site of the proposed development.

- (a) New developments. All new developments shall provide at least 10 percent of the total units in the development as WHUs. The development shall thereafter be entitled to a density bonus of 15 percent over the maximum number of units allowed by the applicable CDMP land use designation and to the increased intensity standards provided in Section 33-193.11 of this article.

For every one percent increase in WHUs provided, a development shall be entitled to an additional one percent density bonus, up to a maximum density bonus of 25 percent, as follows:

<u>WHU Set-Aside</u>	<u>Density Bonus</u>	<u>Type of Set-Aside</u>
<u>10%</u>	<u>15%</u>	<u>Mandatory</u>
<u>11%</u>	<u>16%</u>	<u>Bonus</u>
<u>12%</u>	<u>17%</u>	<u>Bonus</u>
<u>13%</u>	<u>18%</u>	<u>Bonus</u>
<u>14%</u>	<u>19%</u>	<u>Bonus</u>
<u>15%</u>	<u>20%</u>	<u>Bonus</u>
<u>16%</u>	<u>21%</u>	<u>Bonus</u>
<u>17%</u>	<u>22%</u>	<u>Bonus</u>
<u>18%</u>	<u>23%</u>	<u>Bonus</u>
<u>19%</u>	<u>24%</u>	<u>Bonus</u>
<u>20%</u>	<u>25%</u>	<u>Bonus</u>

The mix of WHUs shall be as follows:

- (i) No less than 50% of the WHUs shall target the income range of 60% to 79% of the AML.
 - (ii) The remaining 50% of the WHUs may target the income range of 80% to 140% of the AML.
- (b) Renovation or Expansion of Existing Residential Structures or Developments.
- (i) If an existing multi-family residential structure with 20 or more units is expanded by 50 percent or more of the structure's net square footage, the structure shall be required to provide WHUs in accordance with this article.
 - (ii) If an existing single-family or two-family residential development is renovated or expanded by adding 20 or more units, then the new units shall be required to provide WHUs in accordance with this article. The number of required WHUs shall be based only on the number of new units.

(2) Less than 20 dwelling units. Residential developments with fewer than 20 dwelling units are not required to provide WHUs, but they may develop in accordance with the density and intensity bonuses set forth in this section and Sec. 33-193.11 of this article by either:

- (a) Providing one of the alternatives described in Sec. 33-193.8; or
- (b) Setting aside 100 percent of the proposed housing units for workforce housing and complying with other applicable requirements of this article.

Except for developments of individual single-family or two-family homes, all developments of less than 20 units that participate in the WHU program shall require Administrative Site Plan Review in accordance with the requirements of this article.

(3) Nonconforming residential lots. Applicants with legally-established nonconforming single-family residential lots that set aside 100 percent of the proposed dwelling units for workforce housing may develop in accordance with the intensity standards in Sec. 33-193.11 instead of the minimum lot area requirements in Sec. 33-7 of this chapter, without the need for Administrative Site Plan Review, provided that the development otherwise complies with the applicable requirements of this chapter.

(4) Residential developments within Urban Center or Urban Area Districts, Planned Area Development Districts, Traditional Neighborhood Development Districts, or other urban overlay districts shall provide workforce housing as specified in the applicable zoning district regulations.

(C) Exemptions. << [[(2)]] The provisions of this article shall not apply to property located outside the Urban Development Boundary, as designated in the Land Use Plan (LUP) map of the CDMP, as amended from time to time.

>>(D) Administrative Modifications and Appeals.

- (1) The Director may waive, adjust, or reduce the minimum WHU set-asides, applicable density bonus provisions or intensity standards, or the amount of any alternative monetary contribution for a development if, in reviewing the lot size, product type, and other elements of the development plan, the Director determines that:
 - (a) 100 percent of the development has been set aside for households at or below 140 percent of AMI; or
 - (b) Developing the property with the density bonus permitted in this article would :
 - (i) cause a violation of applicable environmental standards or other regulations; or
 - (ii) be incompatible with the surrounding area; or
 - (c) There is no reasonable relationship between the impact of the proposed residential development and the requirements of this article; or
 - (d) Applying the requirements of this article would constitute a taking or an abrogation of vested rights.
- (2) The requirements of this article may only be waived, adjusted, or reduced upon a determination that the waiver, adjustment, or reduction is the minimum needed.
- (3) Procedures.
 - (a) Applications. A request for administrative modification of the requirements of the Workforce Housing Development Program shall be submitted in writing to the Department on a form required by the Director.
 - (b) Notice. Within 15 days after the determination, notice of the Director's determination shall be published in a newspaper of general circulation.
 - (c) Appeals. Any aggrieved person may appeal the Director's determination to the Board of County Commissioners pursuant to Section 33-314 within 30 days after the date of

newspaper publication, except that an applicant claiming that the Director's determination constitutes a taking or abrogation of vested rights shall follow the procedures for challenging a development permit provided in Sections 2-114.1 through 2-114.4 of this code. If no timely appeal is taken, the Director's determination shall become final, and the necessary changes shall be made upon the zoning maps and records.<<

**Sec. 33-193.8. - Alternatives to on-site construction of WHUs[~~;~~
~~variances~~]].**

~~[(A)] Alternatives. An applicant [[for a WHU application ("WHU applicant")]] may satisfy the requirement of on-site construction of all of the required WHUs or of a portion of required WHUs by one of the means described below [[upon demonstrating, after public hearing, that where, owing to special conditions, allowing the alternative will observe the spirit of this article, and that approving the alternative requested will further the development of housing for the workforce target income group in the unincorporated area of Miami-Dade County to an equal or greater extent than construction of the required WHUs on-site]].~~
>>Where the proposed development is a condominium or other form of residential development requiring unit owners to pay assessments for the maintenance of common areas or other purposes, WHUs shall be provided through one of the alternatives set forth in this section.<<

- (1) Off-site construction of WHUs. ~~[[If an approval is obtained after public hearing in accordance with the standards in this section, a WHU]]~~ >>An<< applicant may comply with the requirements of this article by construction of ~~[[110%-of]]~~ the number of WHUs required by this article at one or more alternative sites within a >>1-<< ~~[[2]]~~ mile radius of the proposed location of the market rate units (the "Off-site WHUs").

>>(a) The alternative site must contain both its market rate and workforce housing units in addition to the Off-site WHUs.

~~(b)<< The Off-site WHUs [[shall be provided within the same Community Council jurisdiction as the market rate units being proposed, and the construction of the Off-site WHUs on the alternative site]] shall occur concurrently with the market rate units on the primary site.~~

~~>>(c) The density bonus for the primary site shall not be transferable to the off-site property.<<~~

(2) Monetary contribution in lieu of construction of WHUs. ~~[[If an approval is obtained after public hearing in accordance with the standards in this section, or if permitted as of right pursuant to section 33-193.9, a WHU]]~~ >>An<< applicant may satisfy the requirements of this article by providing a monetary contribution to the affordable housing trust fund established in Chapter 17, Article VIII of this code, in lieu of construction of the required on-site workforce housing units. Any monetary contributions received by the County shall not be commingled with any other funds deposited into the affordable housing trust fund that are not associated with the WHU program, but shall be deposited into a separate account. The amount of such required monetary contribution shall be as established in section 33-193.9~~[[.4]]~~. All monetary contributions shall be made prior to the issuance of the first building permit on the market rate units.

(3) Combination of off-site construction of WHUs and monetary contributions. ~~[[If an approval is obtained after public hearing in accordance with the standards in this section, a WHU]]~~ >>An<< applicant may comply with the requirements of this article >>by<< employing a combination of the alternatives (1) and (2) above in accordance with the standards of this section.

~~[(B) Variances. The following provisions of this article may be varied after public hearing, only upon demonstration that a literal enforcement of the provision of this article will result in an unnecessary hardship, that allowing the variance will observe the spirit of this article, that the degree to which the variance is granted is the minimum needed to avoid the hardship, and that the objectives of this article to increase the supply of housing for the workforce housing target group within the Community Council area will continue to be met if the requested variance is granted.]~~

- (1) ~~The applicable density bonus provisions or intensity standards;~~
 - (2) ~~The number of WHUs required for a WHU application;~~
 - (3) ~~The amount of the monetary contribution in lieu pursuant to Section 33-193.9.1.~~
- (C) ~~If zoning approval is required, the application for such approval shall be filed together with the application for approval of any off-site WHUs and shall be considered and approved or denied at the same public hearing.~~

Sec. 33-193.9. -- Required Workforce Housing Units.

- (A) ~~All applications seeking to utilize the density or intensity bonus available pursuant to this article for developments shall include a minimum percentage of workforce housing units based on the following:~~

CDMP Land Use Category	Proposed Gross Density of Development	Percentage of All Residential Units Required To Be Work Force Units
Estate	Up to and Including 2.5 Units Per Gross Acre.	5 Percent ¹
	From 2.5 up to and Including 3.125 Units Per Gross Acre	12.5 Percent ²
Low-Density Residential	From 3 up to and Including 6 Units Per Gross Acre.	5 Percent ¹
	From 6 to 7.5 Units Per Gross Acre.	12.5 Percent ²
Low-Medium Density Residential	From 6 up to and Including 13 Units Per Gross Acre.	5 Percent ¹
	From 13 up to and Including 16.25 Units Per Gross Acre.	12.5 Percent ²
Medium-Density Residential	From 13 up to and Including 20 Units Per Gross Acre.	5 Percent ¹
	From 20 up to and Including 31.25 Units Per Gross Acre.	No Required Work Force Units. Contribution in lieu of workforce housing units required pursuant to Section 33-193.9.1 equal to 5% of the market rate units.
Medium-High Density Residential	From 25 up to and including 75 Units Per Gross Acre	No Required Work Force Units. Contribution in lieu of workforce housing

		units required pursuant to Section 33-193.9.1 equal to 5% of the market rate units.
High-Density Residential	From 50 up to and including 156 Units Per Gross Acre	No-Required Work-Force Units. Contribution in lieu of workforce housing units required pursuant to Section 33-193.9.1 equal to 5% of the market rate units.
Office/Residential	In accordance with applicable CDMP provisions ³	Refer to applicable residential category above
Business and Office	In accordance with applicable CDMP provisions ⁴	Refer to applicable residential category above
Industrial	In accordance with applicable CDMP provisions	20 Percent ¹
Urban-Center	Those urban centers not rezoned as of February 4, 2007 (the effective date of this ordinance)	12.5 Percent ²

~~1The number of WHUs to be provided shall be 5% of the total number of market rate units.~~

~~2The percentage of WHUs to be provided shall be a percentage of the total number of units.~~

~~3Office/Residential — One density category higher than that allowed in the adjoining or adjacent residentially designated area on the same side of the abutting principal roadway, or up to the density of existing adjoining or adjacent residential development, or zoning if the adjacent or adjoining land is undeveloped whichever is higher. If there is no adjacent or adjoining residential development existing, zoned or designated on the same side of the abutting principal roadway, then the allowable maximum residential density shall be based on that which exists or which the plan allows across the roadway. Where there is no residential use, zoning or designation on either side of the roadway, the intensity of residential development, including height, bulk and floor area ratio shall be no greater than that which would be permitted for an exclusively office use of the site.~~

~~4Business and Office — One density category higher than the LUP-designated density of the adjacent or adjoining residentially designated area on the same side of the abutting principal roadway, or up to the density of any such existing residential development, or zoning if the adjacent or adjoining land is undeveloped,~~

~~whichever is higher. If there is no adjacent or adjoining residential use existing, zoned or designated on the same side of the roadway, the maximum allowable residential density will be that which exists or which this plan allows across the roadway. Where there is no residential use, zoning or designation on either side of the roadway, the intensity of residential development, including height, bulk and floor area ratio shall be no greater than that which would be permitted for an exclusively commercial use of the site.~~

- (B) ~~All applications for residential developments within Urban Centers depicted on the Land Use Plan (LUP) map of the CDMP that are zoned as an urban center as of the effective date of this article shall not be required to provide workforce housing units.~~
- (C) ~~Applicants seeking to utilize the 12.5% density bonus shall not seek approval of any application or proffer any declaration of restrictive covenants providing for a density below 95% of the total maximum density permitted by the underlying zoning district regulations, all zoning actions approved on the property and the maximum allowable density bonuses.]]~~

Sec. 33-193.9[[.1]]. - Monetary contribution in lieu of construction of WHUs.

- (A) WHU developments of fewer than 20 residential units seeking to utilize the density or intensity bonus available pursuant to this article shall pay an amount as follows:

$$>>(\# \text{ of market rate units } \times \text{ WHU unit cost})/20 = \text{Total contribution}<<$$

$$\begin{array}{r} \text{[[Number of market rate units to be developed}} \\ \times \\ \$110,000 \\ 20 \\ = \\ \text{Total Contribution]]}. \end{array}$$

- (B) Developments for which a monetary contribution has been approved in accordance with section 33-193.8[[(-A) or 33-193.8(D)]] and developments required to contribute pursuant to section >>33-193.7<< [[33-193.9(A)]] shall pay an amount as follows:

>># of WHU units x WHU unit cost = Total contribution<<

[[Number of WHUs required to be developed (fractions rounded
down)
×
\$110,000
=
Total contribution]].

>>(C) The WHU unit cost shall be established by implementing order approved by the Board of County Commissioners and shall be published annually by the Housing Director, as defined in Chapter 17 of this code. The WHU unit cost shall be reviewed annually.<<

Sec. 33-193.10. - [[Density bonuses:]] >>Administrative Site Plan Review.

Except for individual single-family and two-family homes, which shall be approved if deemed to be in compliance with this article and other applicable provisions of this chapter, all applications for development approval shall comply with the requirements of this article and with the site plan and architectural review criteria contained herein. Developments shall be processed and approved administratively as follows:

(A) Administrative site plan review. The Department shall review plans, including the exhibits listed below for completeness and compliance with the provisions of this article and the design and site plan review criteria provided herein. Additionally, all applications shall be reviewed by the following departments of Miami-Dade County and other public entities for potential impacts on infrastructure and other services resulting from the application: Department of Transportation and Public Works, Department of Waste Management, Department of Regulatory and Economic Resources, Miami-Dade Fire Rescue Department, and Miami-Dade Public Housing and Community Development Department or the successor agencies, as well as the Miami-Dade County School Board.

- (1) If a department's review indicates impacts on services and infrastructure provided by any of the foregoing, the applicant shall meet with the affected department or entity to discuss potential mitigation of the impacts and shall submit evidence to the Department as to the resolution of the impact.
 - (2) The Director shall issue a final decision within 21 days of the date of submission of the completed application. The applicant shall have the right to extend the 21-day period by an additional 21 days upon timely request made in writing to the Department. The Department shall have the right to extend the 21-day period by written notice to the applicant that additional information is needed. Denials shall be in writing and shall specifically set forth the grounds for the denial. Any final decision of the Director may be appealed in accordance with the procedures established in this chapter for appeals of administrative decisions.
- (B) Applications for administrative site plan review under this article shall be accompanied by exhibits prepared by registered architects and landscape architects which shall be submitted to the Department and shall include the following:
- (1) Site plan(s) including:
 - a. Locations, shape, size, and height of existing and proposed buildings, decorative walls and entrance features;
 - b. Building exterior finish material;
 - c. Indication of street vistas;
 - d. Lot lines and setbacks;
 - e. Location of WHUs and market rate units by bedroom count
 - f. Location of open spaces including anchor points if applicable;
 - g. Location of on-street and off-street parking including type of permeable materials if used on parking lots, loading facilities, and waste collection areas;
 - h. Indication of signage;
 - i. Indication of any site or building design methods used to conserve energy; and

- i. Locations of backflow prevention devices and connections.
- (2) Indication of the placement and type(s) of lighting fixtures to illuminate roadways and parking areas.
- (3) Landscape plans, including specifications of species of plant material, location, and size in accordance with this article and Chapter 18A of this code.
- (4) Street cross-sections, including adjacent buildings and open space.
- (5) Floor plans for WHU and market rate units, elevations, and sections of all buildings, including total gross square feet of area for each floor and all dimensions relating to the requirements of this article.
- (6) Figures indicating the following:
 - a. Gross and net acreage;
 - b. Total square footage for each use by type;
 - c. Total number of dwelling units (including WHU and market rate units);
 - d. Amount of passive and active open space in square feet;
 - e. Parking required and provided;
 - f. Such other design data as may be needed to evaluate the project.
- (C) As a condition for approval, a Declaration of Restrictions shall be submitted in compliance with Sec. 33-193.11.<<
- ~~[(A) Any application providing a minimum of 12.5 percent WHUs on site, or otherwise complying with Section 33-193.8 of this article, shall be entitled to a residential density bonus of 25 percent above the applicable CDMP Land Use map maximum density (provided the application satisfies all of the requirements of this article) as well as the benefit of the intensity standards provided in section 33-193.11. The density bonus for the primary site shall not be transferable to the off site property, where an alternative site is approved after public hearing for the development of off site WHUs.~~
- (B) ~~WHU applicants providing 5% workforce housing units or an approved contribution in lieu thereof shall be entitled to~~

~~a density bonus above the CDMP maximum density to such increased density as is required to provide the 5% WHUs, as well as the benefit of the intensity standards provided in section 33-193.11.~~

- (C) ~~The total number of dwelling units permitted, including bonus units, market rate units, and WHUs may exceed the permitted maximum density allowed in the zoning district in accordance with the foregoing provisions, provided that in no event shall the density exceed the maximum densities, including applicable bonuses, set forth in the CDMP, as amended.~~
- (D) ~~Severable use rights, as provided in Chapter 33B of this code, shall not be utilized in conjunction with the density bonuses contained in this article.]]~~

Sec. 33-193.11. - Intensity standards.

- (A) Notwithstanding zoning district regulations to the contrary, the following maximum intensity standards shall apply to >>developments that include WHUs on-site and to alternative sites providing Off-site WHUs in accordance with Section 33-193.8 of this article.<< ~~[[applications seeking approval of a WHU application that provides either the WHUs required to obtain a density bonus or a monetary contribution in lieu thereof, under the provision of this Article:]]~~

>>(1) Single Family Residential Intensity Standards

<u>Zoning District</u>	<u>Minimum Lot Size</u>	<u>Maximum Lot Coverage</u>	<u>Minimum Lot Frontage</u>
<u>EU-2</u>	<u>4 Acres</u> <u>(with r/w)</u>	<u>20%</u>	<u>165 ft</u>
<u>EU-1C</u>	<u>2 Acres</u> <u>(with r/w)</u>	<u>20%</u>	<u>125 ft</u>
<u>EU-1</u>	<u>29,040 sq. ft.</u>	<u>20%</u>	<u>110 ft</u>
<u>EU-S</u>	<u>17,424sq. ft.</u> <u>(with r/w)</u>	<u>30%</u>	<u>110 ft</u> <u>No minimum depth</u>
<u>EU-M</u>	<u>12,000 sq. ft.</u>	<u>30%</u>	<u>100 ft</u> <u>No minimum depth</u>
<u>RU-1</u>	<u>5,000 sq. ft. of net area;</u> <u>10% of development</u>	<u>Platted on or before 3/8/02 -</u> <u>42%</u>	<u>50 ft</u> <u>10% may have 40 ft</u>

<u>Zoning District</u>	<u>Minimum Lot Size</u>	<u>Maximum Lot Coverage</u>	<u>Minimum Lot Frontage</u>
	may have 3,750 sq. ft.	Platted after 3/8/02 – 48%	
<u>RU-2</u>	5,000 sq. ft. of net area; 10% of development may have 3,750 sq. ft.	Platted on or before 3/8/02 – 42% Platted after 3/8/02 – 48%	50 ft 10% may have 40 ft
<u>RU-1M(a)</u> <u>and</u> <u>RU-1M(b)</u>	4,000 sq. ft. of net area	Platted on or before 3/8/02 – 48% Platted after 3/8/02 – 54%	40 feet

(2) Multi-Family Residential Intensity Standards

<u>Zoning District</u>	<u>Minimum Lot Size</u>	<u>Maximum FAR</u>	<u>Max Height</u>	<u>Maximum Lot Coverage</u>	<u>Minimum Open Space</u>
<u>RU-TH</u>	1,250 sq. ft. of net area	As per RU-TH	40'	As per RU-TH	20% of net area
<u>RU-RH</u>	1,000 sq. ft. of net area Density 15 DU/net acre	As per RU-RH	As per RU-RH	As per RU-RH	10% common space No private open space
<u>RU-3M</u>	As per RU-3M	0.60	3 stories (40 ft)	35% of net lot area	20% of net area
<u>RU-4L</u>	As per RU-4L	1.00	6 stories	35% of net lot area	As per RU-4L
<u>RU-4M</u>	As per RU-4M	1.50	9 stories	35% of net lot area	As per RU-4M
<u>RU-4 and RU-4A</u>	As per RU-4 and RU-4A	2.00 if more than 9 stories	1 additional story	As per RU-4 and RU-4A	As per RU-4 and RU-4A
<u>BU-1 and BU-1A with Public Hearing</u>	As per BU-1 and BU-1A	Add .015/acre above permitted FAR	As per BU-1 and BU-1A	45% of net lot area	Open space requirements for one story building
<u>BU-2 with Public Hearing</u>	As per BU-2	Add .015/acre above permitted	As per BU-2	50% of net lot area	Open space requirements for one story building

<u>Zoning District</u>	<u>Minimum Lot Size</u>	<u>Maximum FAR</u>	<u>Max Height</u>	<u>Maximum Lot Coverage</u>	<u>Minimum Open Space</u>
		FAR			

(B) PAD Districts, Urban Centers, and other overlay or special districts: The density and intensity of the development shall be established in accordance with the applicable zoning district regulations or in a development agreement which is consistent with a proposed site plan.

(C) The total number of dwelling units permitted, including market rate units, bonus units, and WHUs, may exceed the permitted maximum density allowed in the zoning district in accordance with the foregoing provisions, provided that the density shall not exceed the maximum allowable density bonuses set forth in the CDMP.<<

[(1) In the EU-2 District:

- (a) ~~Minimum lot size—Four (4) acres;~~
- (b) ~~Minimum lot frontage—One hundred sixty five (165) feet;~~
- (c) ~~Maximum lot coverage—Twenty (20) percent.~~

(2) In the EU-1C District:

- (a) ~~Minimum lot size—Two (2) acres;~~
- (b) ~~Minimum lot frontage—One hundred twenty five (125) feet.~~

(3) In the EU-1 District:

- (a) ~~Minimum lot size—Thirty two thousand five hundred (32,500) square feet;~~
- (b) ~~Minimum lot frontage—One hundred ten (110) feet.~~

(4) In the EU-S District:

- (a) ~~Minimum lot size—Twenty thousand (20,000) square feet;~~
- (b) ~~Minimum lot frontage—One hundred ten (110) feet.~~

(5) In the EU-M District:

- (a) ~~Minimum lot size—Twelve thousand five hundred (12,500) square feet;~~
- (b) ~~Minimum lot frontage—One hundred (100) feet.~~

(6) In the RU-1 and RU-2 Districts:

- (a) ~~Minimum net lot area of residential lots shall be 5,000 square feet and the minimum lot frontage shall be 50 feet, except that a maximum of 10 percent of the residential lots may be reduced to a~~

- ~~minimum of 4,000 square feet and a minimum lot frontage of 40 feet; and~~
- (b) ~~Maximum lot coverage shall not exceed the lot coverage permitted by the underlying district regulations by more than 20%.~~
- (7) In the RU-1M(a), and RU-1M(b) Districts:
- (a) ~~The minimum net lot area of residential lots shall be 4,000 square feet; and the minimum lot frontage shall be 40 feet; and~~
- (b) ~~Maximum lot coverage shall not exceed the lot coverage permitted by the underlying district regulations by more than 20%.~~
- (8) In the RU-TH district:
- (a) ~~Minimum lot size shall be 1,250 square feet of net lot area; and~~
- (b) ~~Minimum open space shall be 20 percent of the net lot area.~~
- (9) In the RU-RH district:
- (a) ~~Minimum lot size shall be 1,000 square feet of net lot area; and~~
- (b) ~~Density shall not exceed 15 dwelling units per net acre; and~~
- (c) ~~No private open space shall be required; and~~
- (d) ~~A minimum of 10 percent common open space shall be provided in the way of greens.~~
- (10) In the RU-3M district:
- (a) ~~Maximum floor area ratio shall be 0.60; and~~
- (b) ~~Maximum height shall be 3 stories not to exceed 40 feet in overall height; and~~
- (c) ~~Maximum lot coverage shall be 35% of net lot area; and~~
- (d) ~~Minimum open space shall be 20 percent of the net land area.~~
- (11) In the RU-4L district:
- (a) ~~Maximum floor area ratio shall be 0.9;~~
- (b) ~~Maximum height shall be 6 stories;~~
- (c) ~~Maximum lot coverage shall be 35% of net lot area.~~
- (12) In the RU-4M district:
- (a) ~~Maximum floor area ratio shall be 1.0;~~
- (b) ~~Maximum height shall be 9 stories;~~
- (c) ~~Maximum lot coverage shall be 35% of net lot area.~~
- (13) In the RU-4 and RU-4A districts:
- (a) ~~Maximum height shall be one additional story;~~
- (b) ~~Maximum floor area ratio shall be 2.2 for a development over 9 stories.~~
- (14) In the BU-1 and BU-1A districts if approved after public hearing:

- (a) ~~Maximum floor area ratio — Add .015 per acre above that permitted by the district regulations;~~
 - (b) ~~Maximum lot coverage shall be 45% of net lot area;~~
 - (c) ~~Landscaped open space shall be the open space percentage required by the underlying district regulations for a one story building.~~
- (15) In the BU-2 district if approved after public hearing:
- (a) ~~Maximum floor area ratio — Add .015 per acre above that permitted by the district regulations~~
 - (b) ~~Maximum lot coverage shall be 50% of net lot area;~~
 - (c) ~~Landscaped open space shall be the open space percentage required by the underlying district regulations for a one story building.~~
- (16) In all transit corridor areas, parking shall be provided as required by section 33-124 of this code, except as follows:
- (a) ~~the minimum parking required shall be:~~
 - i. ~~Residential One (1) parking space per dwelling unit.~~
 - ii. ~~Office One (1) parking space per four hundred (400) square feet of gross floor area.~~
 - iii. ~~Hotel One (1) parking space for every two (2) guest rooms.~~

(B)]>>(D)<< Severable use rights, as provided in Chapter 33B of this code, shall not be utilized in conjunction with the >>density or<< intensity standards contained in this article.

Sec. 33-193.12. - Design ~~[[and unit placement.]]~~ >>criteria and development parameters.<<

- (A) Workforce housing units shall be comparable in design and materials to market-rate units within the development in terms of exterior appearance. ~~[[Workforce housing units may be grouped or dispersed throughout the development.]]~~
>>All workforce housing units constructed or rehabilitated under this program shall be integrated within the development so as not to be in less desirable locations than market-rate units and shall, on average, be no less accessible to public amenities, such as open space, as the market-rate units.

- (B) All development projects shall be designed so as to reduce energy consumption. Energy conservation methods may include, without limitation, the natural ventilation of structures, the siting of structures in relation to prevailing breezes and sun angles, and the provision of landscaping for shade and transpiration.
- (C) The architectural design and scale of each proposed structure shall be compatible with surrounding existing or proposed uses or shall be made compatible by the use of building height transitions and screening elements. Screening elements can include trees and shrubs, walls and fencing, or any combination of these elements. Visual buffering shall be provided between parking and service areas and adjacent uses.
- (D) Single-Family or Two-Family Residential Design Standards. << [[(B)]] Notwithstanding underlying zoning regulations that limit the number of residential units that may be constructed on a single platted lot, residential developments incorporating workforce housing units >>in EU, RU-1, RU-1M(a), RU-1M(b), and RU-2 districts<< may utilize the following flexible design provisions, provided that the total development density shall not exceed that allowed by this article. Units to be developed in accordance with this section shall be approved only upon demonstration that a declaration of condominium has been filed in accordance with state law (if any unit is to be sold.
- (1) No more than 3 total residential units may be placed on a single platted lot, of which no more than one unit may be, but shall not be required to be, a market rate unit; and
- (2) The entrance to each of the units on a single platted lot shall be >>through<< [[:
- (a) Through]] a common hall/foyer area in the front of the building, which shall be concealed by a building wall with 1 entrance door, giving the appearance of a single-family >>home or, where applicable, two-family home<< [[residential unit; or
- (b) ~~The entrance to the workforce housing unit(s) shall be clearly designed to be subordinate to the principal entrance of the~~

~~building for the market rate unit. When the entrance is configured in this manner, the design shall incorporate architectural features and elements that clearly distinguish and develop the market rate unit entrance as the predominant entrance from the other entrances]].~~

- (3) Buildings designed under these parameters shall not be located on the periphery of a development, adjacent to or across the street from previously established single-family residential neighborhoods.
- (4) The locations of the parking spaces for the units within the building shall be dispersed around the building so as not to create a parking field for all of the spaces in the front of the building.

>>(5) The footprint of the residential structure shall have the appearance of a single-family or, where applicable, two-family home.

- (6) Unless the plumbing system of the residential building is connected to a sanitary sewer, lots that have a septic tank with field drains shall have a rear yard with an area of at least 25 percent of the total lot area. The rear lot area required to care for a septic tank drain field shall not be occupied by an accessory building or other structure.

(E) Multi-Family Residential Design Standards: The following Multi-Family design standards shall apply to WHUs in development projects within RU-3M; RU-4L; RU-4M; RU-4; RU-4A; RU-5; RU-5A; BU-1; BU-1A; BU-2; and BU-3 Zoning Districts:

- (1) In a multi-family residential development, the ratio of efficiency, one-bedroom, and larger WHUs shall not exceed the ratio of efficiency, one-bedroom, and larger dwelling units among the market rate units.
- (2) All buildings shall have their main entrance opening to a street or meaningful open space, such as a square, park, green, plaza or promenade.

- (3) All developments shall have unobstructed sidewalks or pedestrian paths a minimum six feet wide providing pedestrian linkages to adjacent neighborhoods.
- (4) Buildings shall be oriented towards the street.
- (5) Building architecture, exterior finish materials and textures, architectural elements, and ornamentation shall be selected to produce human scale at street level.
- (6) Open Space. A minimum percent of open space shall be provided pursuant to Sec. 33-193.11.

Open spaces and landscaping shall be incorporated into the design of all developments to allow sufficient light and air to penetrate the development, to direct wind movements, to shade and cool, to visually enhance architectural features and relate the structure design to the site, and to functionally enhance the development; outdoor graphics and exterior art displays and water features are encouraged to be designed as an integral part of the open spaces and landscaped areas.
- (7) Service areas shall be located and screened to minimize negative visual impacts from the street and adjacent properties.
- (8) Mechanical equipment installed on roofs shall be screened from view by parapets or other architectural elements. Mechanical equipment installed at ground level shall be screened by walls or by similar landscape and architectural elements.
- (9) Dumpsters shall not be visible from the street.
- (10) Architectural elements at street level shall have human scale, abundant windows, doors and design variations to create interest for the pedestrian. Blank walls at street level and above the ground floor of buildings are not permitted.
- (11) All parking garages shall have all architectural expressions facing public open spaces consistent and harmonious with that of habitable space.

(F) Other Development Parameters

- (1) Design considerations shall include: the placement, orientation and scale of buildings and building elements particularly at street level, sidewalks and connections, and provisions of weather protection, landscape, and lighting.
- (2) All on-site utilities shall be buried underground.
- (3) Adequate circulation to accommodate emergency vehicles shall be provided throughout the development.
- (4) The development shall be designed with a coordinated, outdoor, pedestrian-scaled lighting system that is adequate, integrated into the development, and compatible and harmonious with the surrounding areas.
- (5) Street furniture such as trash containers and benches shall be permanently secured to the sidewalk. Street furniture shall not obstruct sight visibility triangles at street intersections.<<

Sec. 33-193.13. - Required declaration of restrictive covenants

Prior to final approval of any >>development<< ~~[[application]]~~ seeking to utilize the density or intensity bonus available pursuant to this article >>, including applications for single-family homes and duplexes<<, the applicant shall submit a separate declaration of restrictive covenants, encumbering the entire >>development<< ~~[[project]]~~, approved in form by the Director >>and the Housing Director in accordance with Chapter 17, Article IX of this code<< and sufficient for recording in the public records of Miami-Dade County, Florida, including provisions requiring development of a specified number, type, and location of all dwelling units, a general plan for staging construction of all units, and such other provisions as the Department may require to demonstrate the applicant's compliance with this article. The development and the WHU staging plan must be consistent with the CDMP and any applicable land use, subdivision regulations, zoning and site plan approval for the property. The declaration of restrictive covenants shall require the property to be developed in accordance with the following specifications:

- (A) A general description of the covered development, including whether the covered development will contain rental dwelling units or owner-occupied dwelling units, or both;
- (B) The total number of market rate dwelling units and WHUs in the development and the timetable for construction; and
- (C) The location of the WHUs in the development and phasing, if any, and construction schedule for the development sequence demonstrating that:
 - (1) WHUs will be built and made available for occupancy simultaneously with or before market-rate dwelling units, except that building permits for the last 10[[%]] >>percent<< of the market-rate units shall be withheld until building permits have been issued for all of the WHUs; and
 - (2) The last building shall not contain only WHUs.
- (D) If the requirements of this article are to be satisfied through the use of an alternative to on-site construction as provided in section 33-193.8 >>of this article<<, ~~[[of this code,]]~~ the declaration of restrictive covenants shall identify and commit to the development of WHUs on an approved alternative site. A separate declaration of restrictive covenants encumbering the alternative site shall identify and commit to the development of the approved off-site WHUs, and shall further provide appropriate assurances that the required WHUs for the alternative site itself will be provided.
- (E) The declaration of restrictive covenants may be modified by mutual consent of the applicant and the >>Director<< ~~[[Department of Planning and Zoning and the Miami-Dade Housing Agency]]~~ and the ~~[[Miami-Dade Public]]~~ Housing >>Director in accordance with Chapter 17, Article IX of ~~this code, << [[and Community Development Department]]~~, as long as the modified agreement remains in conformity with this article and substantially conforms to the recorded declaration's provisions relating to number, location, distribution and timing or construction of WHUs.

Sec. 33-193.14. - Workforce housing agreement.

Prior to the earlier of final plat approval or application for building permit for the first residential unit on the property subject to the requirements of this article >>,<< the applicant shall submit a declaration of restrictive covenants, approved in form by the Director >>and the Housing Director in accordance with Chapter 17, Article IX of this code.<< and sufficient for recording in the public records of Miami-Dade County, Florida, encumbering the individual WHUs in the entire development, specifying the restrictions of the WHUs and such further arrangements, ~~[[and]]~~ restrictive covenants, >>and resale restrictions<< as are necessary to carry out the purposes of Chapter 17, Article IX of the code, sections 17-142 through 17-144 inclusive, and shall include the following:

- (a) A binding commitment that the restrictions of this article shall run with the land for the entire control period, and
- (b) A binding commitment that the covenants will bind the applicant, any assignee, mortgagee, or buyer, and all other parties that receive title to or an interest in the property, and
- (c) These covenants shall be senior to all other liens or encumbrances on the property including all instruments securing permanent financing, except that tax and assessment liens shall be superior to these covenants >>,and except as may be provided in Chapter 17, Article IX of this code<<, and
- (d) A binding commitment that incorporates all terms and conditions regarding WHUs, including without limitation, the required shared equity agreement, eligibility standards, appropriate sale and rental price standards and affordability controls required of purchasers of WHUs pursuant to Chapter 17, Article VIII of this code.
- >>(e) Where WHUs are to be provided as part of a rental development, the declaration and agreement required by this section and Section 11-193.13 may specify the total number of WHU rental units to be made available on the property and provide for an annual inventory of WHUs, instead of encumbering each individual WHU.<<

Sec. 33-193.15. -Penalties and enforcement.

This article shall be enforceable in accordance with the provisions of Chapter 8CC of this code. Violations of this article shall also be punishable by a fine not to exceed >>the value of the in lieu contribution for the mandatory workforce housing units<<

~~[[one thousand dollars (\$1,000.00)]]~~ or by imprisonment in the county jail for a period not to exceed ~~[[sixty-]]~~60[[9]] days, or by both such fine and imprisonment, in the discretion of the county court. Any continuing violations of the provisions of this article may be enjoined and restrained by injunctive order ~~[[of the circuit court]]~~ in appropriate proceedings instituted for such purpose.

>>Sec. 33-193.16. - Nonconforming Lots, Uses, and Structures.

Nonconforming lots, uses, and structures shall be governed by Section 33-35 of this chapter. A development approved pursuant to the voluntary Workforce Housing Development Program adopted by Ordinance No. 07-05, as amended, shall be deemed to be legally established and may be developed as approved but shall thereafter be subject to the requirements of Section 33-35 of this chapter.<<

Section 2. Chapter 17, Article IX of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

**ARTICLE IX. - WORKFORCE HOUSING DEVELOPMENT PROGRAM
ADMINISTRATION**

* * *

Sec. 17-140. - Definitions.

The definitions contained in Chapter 33, Article XIIA of the Code of Miami-Dade County, shall apply to this chapter in addition to the following:

- (1) "Area median income" means the median income level for the Miami-Dade County Metropolitan Statistical Area, as established and defined in the annual schedule published by the Secretary of the U.S. Department of Housing and Urban Development, and adjusted for household size.
- (2) "Certificate of qualification" means a certificate issued by the Department establishing a qualified household's eligibility to purchase or rent a workforce housing unit ("WHU"). Certificates of qualification shall be valid for 12 months. The certification criteria are set by implementing order.

(3) ~~[[“Condominium” means that form of ownership of real property created pursuant to Chapter 718 of the Florida Statutes, which is comprised entirely of units that are owned by one or more persons, and which there is, appurtenant to each unit, an undivided share in common elements.~~

(4) ~~“Condominium conversion” has the meaning established by sections 718.604—718.622 of the Florida Statutes.~~

(5)] “Control period” means each 20-year period during which the affordability restrictions imposed by this article shall apply. The control period begins at the time of any sale or resale of the affected unit by every new WHU owner.

[[~~(6)~~]]>>(4)<<“Covered development” means all developments providing WHUs or monetary contributions in lieu thereof pursuant to Chapter 33, Article XIIA of the Code of Miami-Dade County.

[[~~(7)~~]]>>(5)<<“Department” means, unless otherwise indicated, the ~~[[Office of Community and Economic Development for the]]~~ Miami-Dade >>Public<< Housing ~~[[Agency]]~~ >>and Community Development Department<< or any successor agency.

[[~~(8)~~]]>>(6)<<“Developer” means any person, firm, corporation, partnership, limited liability company, association, joint venture, or any entity or combination of entities that apply for development orders or permits for residential dwelling units seeking to utilize the density or intensity bonus available pursuant to Chapter 33, Article XIIA of the Code of Miami-Dade County Florida, but does not include the state or any county, municipality, or any governmental entity.

[[~~(9)~~]]>>(7)<<“>>Housing<< Director” means, unless otherwise indicated, the Director of the ~~[[Office of Community and Economic Development for the Director of]]~~ the Miami-Dade >>Public<< Housing ~~[[Agency]]~~ >>and Community Development Department<<, or designee.

[(10)]>>(8)<< "Eligible household" means, subject to the provisions of section 17-134 hereof, a household whose total income is between >>60 percent up to<< [[65% and]] 140[[1%]]>>percent<< of Area Median Income.

[(11)]>>(9)<< "Eligible household income" means any income derived from any proposed occupants of a WHU who are 18 years of age or older and who will use the WHU as their primary residence.

[(12)]>>(10)<< "Household" means any natural person who occupies a WHU as [[his or her]] >>their<< primary residence.

[(13)]>>(11)<< "Market rate dwelling units" means all dwelling units in a covered development that are not WHUs as defined herein.

[(14)]>>(12)<< "Qualified household" means an eligible household that has received a certificate of qualification from the Department.

[(15)]>>(13)<< "Workforce housing unit rent" or "WHU rent" means rents that do not exceed the maximum monthly Rent Limits as determined for Miami-Dade County by the U.S. Department of Housing and Urban Development in its annual Income Limits and Rent Limits and as used by Florida Housing Finance Corporation for its multifamily rental programs (published annually at <http://www.floridahousing.org>).

[(16)]>>(14)<< "Workforce housing unit sales price" or "WHU sales price" shall mean the sales price set by the Board pursuant to an implementing order, not to exceed an amount affordable at the maximum workforce housing target income range, as defined in Chapter 33, Article XIIA of the Code of Miami-Dade County, taking into account (a) family size; (b) an annual fixed interest rate [[based on a thirty (30) year mortgage term]]; (c) payment of up to five percent [[(5%)] down payment by a qualified household; and (d) an estimation of annual property taxes, assessments, loan insurance and financing fees, allowances for property maintenance and repairs, homeowners insurances, homeowner association fees, if any, and allowances for utilities.

Sec. 17-141. - Applicability.

The provisions of this article shall apply to all WHU development >>in the incorporated and unincorporated area<< subject to the provisions of Chapter 33, Article XIIA of the Code of Miami-Dade County.

Sec. 17-142. - Compliance procedures.

- (A) Workforce Housing Declaration of Restrictive Covenants and Workforce housing agreement
- (1) Every WHU established pursuant to Chapter 33, Article XIIA of the Code of Miami-Dade County shall be offered for sale or rental to a qualified household to be used for ~~[[his or her]]~~>>their<< own primary residence. The ~~[[County, through the]]~~ >>Housing<< Director~~[[s]]~~ shall publish a pricing schedule of rental and sales prices for WHUs in accordance with this article.
 - (2) Any developer or other property owner offering a WHU for initial sale or rental shall record in the public records one or more covenants or declarations of restrictions in a form approved by the >>Housing Director<< ~~[[County]]~~. Such covenants or declarations of restrictions shall include the WHU Agreement, and such further arrangements, restrictive covenants, and resale or rental restrictions as are necessary to carry out the purposes of this article. The developer or other property owner must execute and record a declaration of restrictive covenants assuring that:
 - (a) the restrictions of this article shall run with the land for the entire control period;
 - (b) the covenants will bind the applicant, any assignee, mortgagee, or buyer, and all other parties that receive title to or interest in the property. These covenants shall be senior to all instruments securing permanent financing >>, except as provided in this article<<.

- (3) Each qualified household purchasing a WHU shall be required to record a mortgage in favor of Miami-Dade County in an amount of \$100.00 or such other amount that may be borrowed by a qualified household from the County. A promissory note shall be executed by each qualified household and secured by said mortgage. Said mortgage shall set forth the same covenants, along with the refinancing and resale restrictions as those included in the restrictive covenants required by this section, and shall require acknowledgment of the County's right of first refusal as set forth in section 17-144(B) and (C).
- (B) WHUs offered for sale during the initial or any control period shall not be offered for a price greater than the current maximum WHU sales price as determined by the >>Housing Director<< [[Department]] at the time of sale.
- (C) A new twenty (20) year control period shall commence upon any resale and/or transfer to a new owner of such WHU within the initial 20-year control period. Any WHU that is owned for an entire 20>>-<<year control period by the same individual(s), shall be released from the sales price restrictions under the program. Upon the expiration of the control period the >>Housing Director<< [[County]] shall record in the public records of Miami-Dade County an instrument or document releasing the WHU from the restrictive covenant required by this program

A WHU may not be resold during the control period set forth herein for an amount that exceeds the WHU sales price set by implementing order. Prior to offering the dwelling unit for sale during the control period, the WHU owner shall obtain the >>Housing<< Director's written approval of the WHU sales price.

The covenants recorded by each developer or other property owner of WHUs shall state in said covenant that the unit is subject to the following provisions:

1. The covenants shall be senior to all instruments securing permanent financing, >>unless due to the requirements of such permanent financing, such as financing from the Federal Housing Administration, the Housing Director

agrees to subordinate such covenants.<< and shall bind all assignees, mortgagees, purchasers and other successors in interest.

2. The total aggregate amount of principal and accrued interest for all financing secured by an individual upon ~~[[his or her]]~~ >>their<< initial purchase of a WHU shall not exceed 105~~[[%]]~~>>percent<< of the loan-to-value. Any financing in excess of the lesser of (1) Department's maximum WHU sales price at the time of closing; or (2) the property's appraised value shall not be secured by any interest in the applicable individual WHU.

No sale, transfer or foreclosure shall affect the validity of the covenants except as expressly set forth in the provisions of this article. >>It is provided that, where necessary to obtain permanent financing, such as financing from the Federal Housing Administration or similar senior lender, the Housing Director may provide that the control period and other restrictions on the WHU shall not survive the foreclosure in accordance with such senior lender's guidelines and restrictions.<<

* * *

Sec. 17-144. - Affordability controls.

(A) Initial sale or rental.

- (1) Every WHU established under this article and Chapter 33, Article XIIA of the Code of Miami-Dade County, shall be offered for sale or rental to an eligible household to be used for ~~[[his or her]]~~ >>their<< own primary residence.

* * *

(B) Right of first refusal.

- (1) Initial Sale. The developer or other property owner of a WHU shall agree to execute a document consistent with a model restriction prepared by the Department, granting to the County, among other things, the County's right of first refusal to purchase the WHU in the event that a qualified household does not execute a contract for purchase within six ~~[[6]]~~ months from the

date the WHU is offered for sale. In the event that no qualified household purchases a WHU within six ~~[[6]]~~ months from the date the WHU is first offered by the developer or other property owner, the >>Housing<< Director shall recommend to the County Mayor or the County Mayor's designee whether the County should exercise its right of first refusal to purchase the WHU at the WHU sales price. ~~[[If the County Mayor or the County Mayor's designee concurs, the]]~~ >>The<< >>Housing<< Director shall notify the developer or other property owner of the County's decision. >>If the County rejects the offer or otherwise does not respond to the offer, the developer or property owner shall remain obligated to sell or rent the WHU to a qualified household and to comply with the declaration of restrictive covenants and workforce housing agreement required by this article and Chapter 33, Article XIIA of this code.<< The County Mayor or the County Mayor's designee is authorized to exercise the right of first refusal provided hereunder, with funds allocated from the Affordable Housing Trust Fund established pursuant to >>Chapter 17, Article VIII of this code<< ~~[[Section 17-129, et seq., Code of Miami-Dade County]]~~ or any other authorized source >>of funding<<, for the direct and exclusive purpose of providing workforce housing for those households meeting the workforce housing eligibility requirements. Notwithstanding this authorization to purchase, the County Mayor or the County Mayor's designee shall bring to the Board of County Commissioners a resolution seeking ratification of said purchase at the next available Board meeting following the purchase of the WHU.

* * *

(E) Foreclosures and other proceedings.

- (1) If any qualified household of a WHU defaults on its mortgage with the County and said default is not cured within the applicable time periods, then the whole debt secured by said mortgage, with all interest thereon, and all other amounts thereby

secured shall, at the option of the County, become immediately due and payable. In the event any qualified household of a WHU fails to cure the default, the County shall have the right to legally enforce the term of the mortgage or collect the debt in any action at law, including but not limited to a proceeding in foreclosure. Any proceeds, including any expenses or expenditures incurred and recovered by the County, shall be deposited in the Affordable Housing Trust Fund, which has been established pursuant to >>Chapter 17, Article VIII of this code<< ~~[[Section 17-129 et seq. of the Code of Miami-Dade County]]~~. These funds shall not be commingled with any other funds deposited into the Affordable Housing Trust Fund that are not associated with the WHU program, but shall be deposited into a separate account.

- (2) In any suit, action or proceeding, including without limitation bankruptcy, probate or any other suit, action or proceeding affecting the WHU, any monies recovered by the County shall be deposited into the Affordable Housing Trust Fund.
- (3) Notwithstanding subsection E (1) and (2), in the event of default by a qualified household on any senior mortgage associated with a WHU, the County Mayor or the County Mayor's designee is authorized to pay off said senior mortgage and assume ownership of the WHU by using funds from the Affordable Housing Trust Fund for resale to an eligible household. The defaulting qualified household shall be required to vacate the WHU as authorized by law. The County Mayor or the County Mayor's designee is further authorized to purchase any WHU that is sold as a result of any suit, action or proceeding, including but not limited to foreclosure, bankruptcy, probate or any

other suit, action or proceeding affecting the WHU. Notwithstanding this authorization to purchase, the County Mayor or the County Mayor's designee shall bring to the Board of County Commissioners a resolution seeking ratification of said purchase at the next available Board meeting following the purchase of the WHU.

* * *

Sec. 17-145. - Trust Fund Expenditures.

Funds from the ~~[[workforce housing development program]]~~ >> Workforce Housing Development Program ("WHU program") established in Chapter 33, Article XXIIA of this code that are << deposited into the Affordable Housing Trust Fund ~~[[; which has been established pursuant to Section 17-129 et seq. of the Code of Miami-Dade County]]~~, including, without limitation, monetary contributions in lieu of development of workforce housing units, shall only be used >> for the purposes set forth in Chapter 33, Article XIIA and Chapter 17, Article VIII of this code. << ~~[[to increase opportunities to obtain workforce housing for households earning 65% to 80% of the area median income. Notwithstanding the foregoing, when exercising the right of first refusal pursuant to Section 17-144, the County Mayor or the County Mayor's designee may utilize monies deposited into the Affordable Housing Trust Fund from the workforce housing development program without limitation.]]~~

* * *

Section 3. Section 33E-6.1 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 33E-6.1. Payment of road impact fees.

* * *

- (g) >> Deferral of fees. << Road impact fees exceeding ~~[[twenty-five thousand dollars-(\$25,000.00[[]])] >>~~, and road impact fees assessed for development of workforce housing units provided in accordance with Chapter 33, Article XIIA of this code, << may be deferred >> in accordance with Section 33E-18 of this article. <<

provided that the feepayer submits either a surety performance bond (the bond) or an automatically renewable, irrevocable letter of credit (the bond), for the total amount of the impact fee. Upon acceptance of the bond by the County Planning and Zoning Director the building permit may be issued.

* * *

Section 4. Section 33E-18 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:

Sec. 33E-18. - Road Impact Fee Deferral For Certain Land Use Types.

- (A) Notwithstanding anything in the code to the contrary>>, (i)<< an applicant for a building permit requiring payment of a road impact fee >>that exceeds \$25,000.00<< may request a deferral of road impact fee payment for one-half $[(1/2)]$ of the assessed road impact fee for a period of up to $[[three-()3[]]]$ years >>, or (ii) an applicant for a building permit for workforce housing units provided in accordance with Chapter 33, Article XIIA of this code may request a deferral of 90 percent of the road impact fees assessed for those units for a period of up to two years,<< subject to the following terms, conditions, requirements and limitations:
- (1) The deferral program shall not be used to defer road impact for uses under Section 33E-8 for ITE Land Use Types that are categorized as Residential, Recreational or Institutional according to Tables 100 & 100A>>; except for workforce housing units as provided herein<<.
 - (2) As condition of deferral of road impact fees pursuant to this section, the owner of the property that is subject to the road impact fee shall execute a voluntary lien securing payment of the deferred portion of the road impact fee on a form provided by the County Public Works Director and filed in the Public Records of Miami-Dade County.

- (3) A notice that said voluntary lien has been satisfied shall be promptly filed in the Public Records by Miami-Dade County upon final payment of all outstanding road impact fees including associated administrative fees and penalties, if any that may be owed in connection with the road impact fee.
- (4) The total amount of the road impact fee owed shall be assessed at the time the building permit is issued.
- (5) Prior to issuance of the building permit, the applicant shall pay >>(i)<< the sum of one-half (1/2) of the total road impact fee assessed against the property >>or, for workforce housing units, the sum of 10 percent of the road impact fees assessed for those units<< ("initial payment"), plus >>(ii)<< the total administrative fee for the assessed road impact fee, plus >>(iii)<< the total administrative fee for deferral as provided under this section.
- (6) An administrative fee of ~~[[(\$)]\$100~~>>.00<< ~~[[(\$)]]~~ or ~~[[two]]~~ >>2<< percent ~~[[(%2%)]]~~ of the deferred portion of the road impact fee, whichever amount is greater, shall be charged in connection with the application for deferred payment of road impact fees under this section.
- (7) No deferral amount under this section>>, except for amounts assessed for workforce housing units,<< shall exceed ~~[[twenty-five thousand dollars—(\$)]\$25,000~~>>.00<< ~~[[(\$)]]~~ for a single application.
- (8) The schedule of payment for the deferred portion of the road impact fee shall be set as follows:
 - a. No schedule authorized under this section may exceed ~~[[three—(3)]]~~ years >>, except that the deferral period for workforce housing units shall be a maximum of 2 years<<; and
 - b. The payment schedule shall provide for collection of a minimum of one-third of the deferred amount for each year>>, except that no interim payment for workforce housing units shall be required<<; and
 - c. All road impact fees deferred pursuant to this section shall become immediately due upon a sale, conveyance or other transfer of title of the property that is the subject of

the road impact fee >> except for road impact fees deferred for workforce housing units<<.

- (9) No interest shall be charged against road impact fees deferred under this section>>,<< provided that they are paid on time in accordance with the payment schedule. It is provided, however, that payments made later than ~~[[thirty—(1)30(1)]]~~ calendar days from the date that payment of the impact fee installment is due shall be charged interest at the rate of ~~[[twelve]]~~ >>12<< percent ~~[[12%]]~~ per annum simple interest>>,<< accruing from the date of the initial payment up to the date of the late payment>>,<< plus cost of collection established by implementing order of the Board of County Commissioners.
- (10) The County Public Works Director>>,<< is authorized to foreclose on the lien for any deferred impact fees>>,<< including any accrued interest>>,<< that remain unpaid for more than ~~[[one hundred and eighty—(1)180(1)]]~~ calendar days beyond the date when deferred impact fees are due>>,<< and may assess reasonable fees associated with the foreclosure of the lien and collection of the road impact fee payment>>,<< including reasonable attorney's fees and court costs.
- (B) The County Planning and Zoning Director shall provide an annual report on the status of this program to the Board of County Commissioners.
- (C) The maximum total amount of road impact funds that may be deferred pursuant to this program is ~~[[one million dollars—(1)\$1,000,000>>.00<< (1)]]~~, whereupon this program shall not be available to defer impact fees until such time as the total deferred amount has been reduced by payment of impact fees below the maximum set forth herein. It is provided, however, ~~[[the amount of deferred road impact fees shall not include]]~~ >>that this limitation shall not apply to: (i) road impact fees assessed for development of workforce housing units provided in accordance with Chapter 33, Article XH of this code; or (ii)<< deferred impact fees that are secured by a bond or letter of credit pursuant to Section 33E-6.1(g).

Section 5. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

Section 6. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 7. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

Dennis A. Kerbel
Terrence A. Smith

Prime Sponsor: Commissioner Barbara J. Jordan

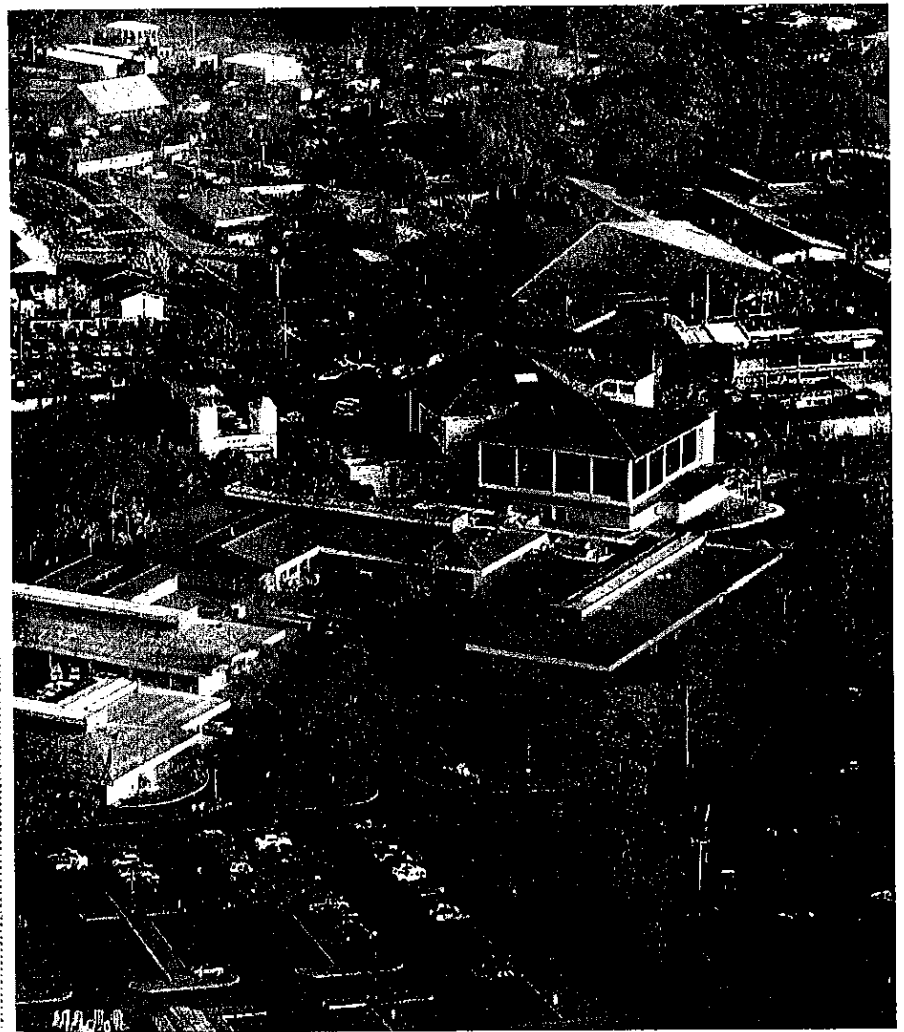
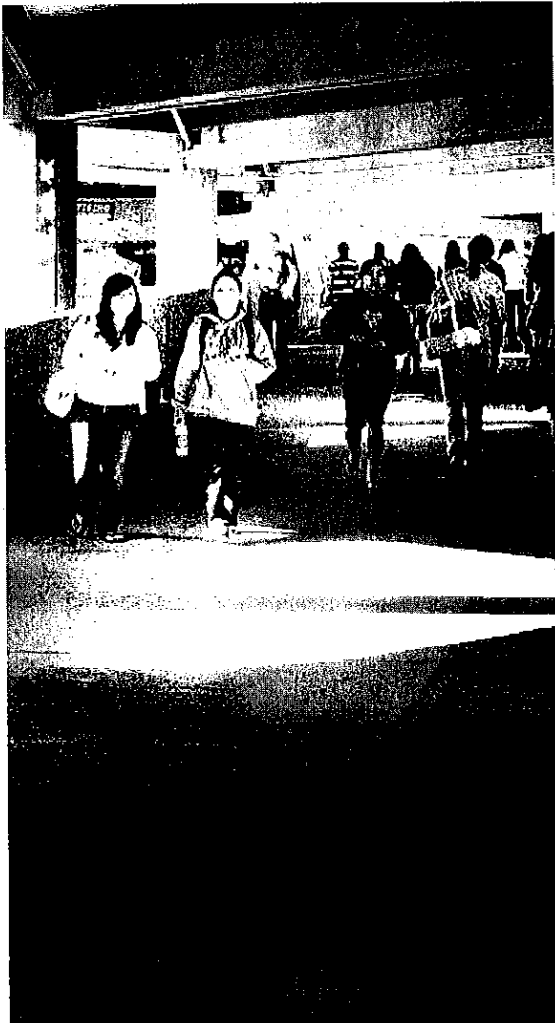


UHERO

THE ECONOMIC RESEARCH ORGANIZATION
AT THE UNIVERSITY OF HAWAII

INCLUSIONARY ZONING: IMPLICATIONS FOR OAHU'S HOUSING MARKET

FEBRUARY 12, 2010



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EXECUTIVE SUMMARY

This report describes Oahu's housing market and summarizes results from an analysis of the effect of inclusionary zoning ("IZ") on this market. Below we discuss our key findings.

Inclusionary Zoning policies have failed in other jurisdictions, and are failing on Oahu. IZ reduces the number of "affordable" housing units and raises prices and reduces the quantity of "market-priced" housing units.

Inclusionary zoning acts as a tax on developers that subsidizes housing for "gap" income households, earning between 80 and 140 percent of median income. Requiring developers to sell housing units at below-market rates reduces their revenues. Lowering the incentives for developers to produce housing will deter them from starting new projects, all else equal.

A comprehensive literature review of IZ policy studies from around the U.S. overwhelmingly indicates IZ policies have undesirable long-term effects. Approximately 90% of the policy studies found that IZ increases the market price of housing and decreases housing units available in the market. Specifically, 18 of the studies reviewed were able to assess the effect of an inclusionary zoning policy on housing market outcomes. Thirteen (13) of these studies found IZ policies both increased the market price of housing and decreased housing units available in the market, and three more studies found evidence of at least one of those effects. Of the 18 studies analyzing IZ effects, only two reported results that contradicted the theoretical prediction of increased price and/or decreased quantity of market priced homes.

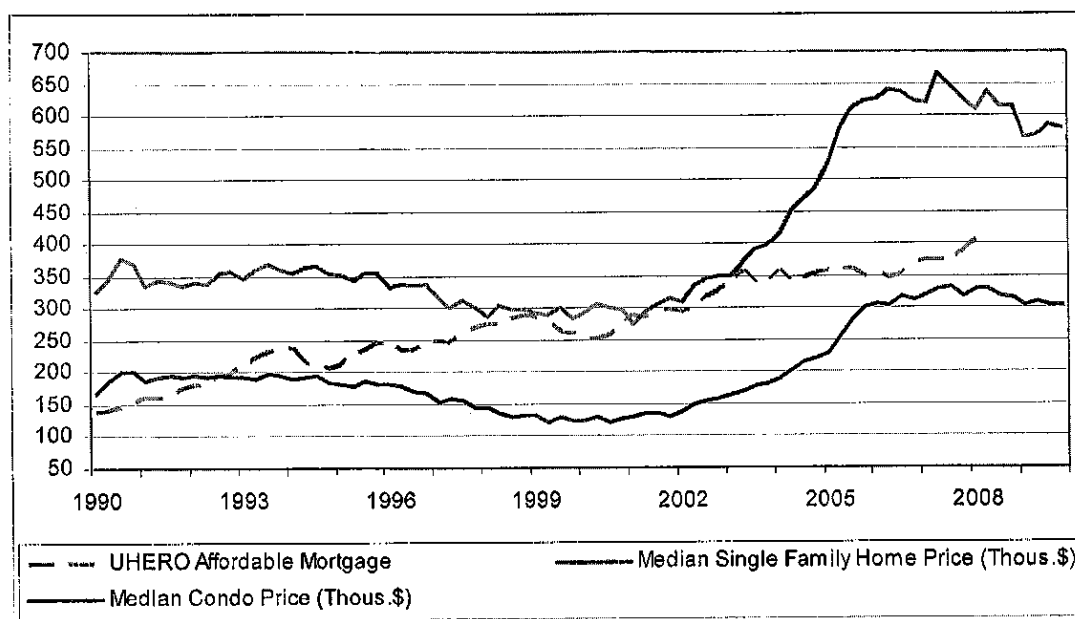
Inclusionary zoning policies on Oahu have been no more successful than those in the rest of the country.

A five year State program authorized by SLH 1988 Act 15 resulted in agreements to build 16,000 housing units, a percentage of which would be affordable. To date less than 600 total units of any kind have actually been built under those agreements.

Rules governing development in Kakaako dating from the 1980s were intended to increase affordable housing availability. More than 20 years later, only 1,451 affordable (predominantly rental) units have been built in Kakaako, most of which were provided by the public housing authority. The recent prohibition of most in-lieu fees further limits the options available to HCDA to work with developers to meet the affordable housing goal and will likely reduce production of units going forward.

Affordable units under an IZ policy begun by the City and County of Honolulu in 1994 were originally intended for "gap" income group buyers. Buyer restrictions on the affordable units kept participation in the program very low. To encourage participation, the City lifted buyer income and resale restrictions in 1999. According to a review by the City, from 2001 to 2005 more than 66% of the designated affordable homes were sold to buyers earning more than the gap income group range. Since the restrictions were put back in place in 2005, no new projects have been submitted for affordable housing review under the City and County.

It appears that neither the HCDA nor Honolulu inclusionary zoning policies have delivered substantial numbers of affordable housing units (by their own programmatic definitions) to households the programs were designed to help.

Figure 1A: Quarterly Housing Affordability, 1990-2009

There is no affordable housing crisis in the "gap" income groups earning between 80 and 140 percent of household median income.

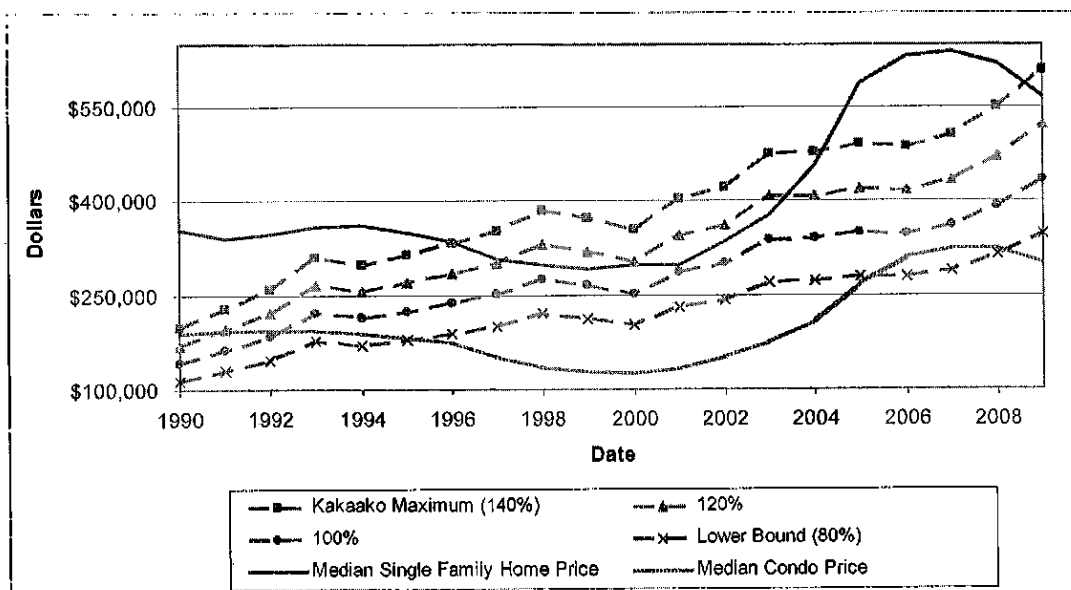
The UHERO affordable mortgage indicates that condominiums have been affordable for households with the nominal Honolulu median income since 1993. Figure 1A graphs the UHERO affordable mortgage against the median price of both single-family homes and condos. The affordable mortgage computed by UHERO is the maximum mortgage a household with the actual median Honolulu income could afford after a 20% down payment, assuming the household spends no more than 30% of its monthly income on the mortgage. While single-family homes have not been affordable since 2003, condominiums have been well within the means of the median Honolulu household since 1993, assuming the household has sufficient wealth for a down payment and is able to qualify for a mortgage.

The affordability problem in the state is cyclical. Figure

2A below shows maximum affordable mortgages for four Honolulu income groups from 1990 to 2008 and median prices of single-family homes and condominiums. From 1990 to 1995, at the end of the last Oahu housing cycle, single-family homes remained out of reach of households earning 140% of HUD income. Yet from 1996 to 2003, households in the 120-140% bracket could afford the median priced home, and all gap income households could afford a median priced condo from 1996 through 2005. From 1992 to 2008, all income groups except the 80% group could afford the median priced condo.

The recent peak in unaffordability occurred in 2007 at the height of the last housing cycle, but the declining price of Oahu homes has once again brought single-family homes within reach of the top gap housing group and condos within reach of all gap housing income levels.

In a move similar to what the City did in 1999, HHFDC removed restrictions in January 2010 on a project's 138 unsold units reserved for gap income buyers. "The HHFDC said that declines in property values have narrowed the gap

Figure 2A: Honolulu Maximum Affordable Mortgage by Income Group, 1990-2008

between market prices and Plantation Town unit prices to the point where the income limits and resale restrictions turned away buyers.” Qualifying gap income households will not be interested in reserved affordable housing units that come with major restrictions when market units with no restrictions are already affordable to them.

Kakaako IZ policies endanger project viability by squeezing profit margins, especially under proposed HB 2846 and HB 2849.

The economic implications of IZ policy can be illustrated using revenue and cost data from an actual condominium project in Kakaako that began construction in late 2006. The scenarios were computed using “best case” assumptions. This is, all units are sold at the listed price, the maximum allowable price is used for the reserved housing, and costs are assumed on the low side of what is typical in the industry.

The results of the exercise confirm our findings from

the literature and are in line with what housing markets in other jurisdictions have experienced under IZ policies. With no reserved housing, the 33.1% expected profit margin for a Honolulu developer in 2007 would have been very near the 35-40% rule of thumb level of profitability expected by financial backers of such developments. However, when the reserved housing requirement is added, one eighth of the pre-financing profit margin goes to cover the IZ tax. If we could estimate the costs associated with the risks such as the holding of an inventory of unsold units, buyer default, and price changes, the expected profit margin is likely much lower. Even with most cost and revenue factors deliberately chosen to maximize expected profitability at the height of the housing market boom in 2007, what appears to be a modest reserved housing requirement leaves the project teetering on the edge of viability.

To examine what happens outside of a booming economy, we repeat the exercise using 2009 prices and costs. Costs increased from 2007 to 2009, and the cooling of the housing market reduced revenue from market rate units. The combination of higher costs and lower revenues drops the profit-

ability of even a best-case scenario, with no reserved housing below 20%. When we add the existing affordable housing requirement, one eighth of the profit disappears again, driving the project further from viability. Again, these calculations are based on very optimistic assumptions, and do not take into account higher financing costs due to a tighter 2009-2010 credit market.

Finally, we repeat the exercise using the proposed rules in two pending pieces of legislation, HB 2846 and HB 2849. The first thing to note is that both bills would dramatically increase the number of reserved housing units required. Under both of the proposed bills, our best-case scenario profit margins fall below 15%. The increased affordable housing requirement, along with more realistic assumptions about inventory costs and pricing, might drive actual pre-financing profit margins below 10%. In short, a new condominium project similar to this would never be able to obtain financing and be built under either proposed bill.

Comparing the “best case” scenarios from 2007 and 2009 for Honolulu show the net effect of the IZ policy on the project depends on the overall state of the economy and housing cycle. Increasing IZ affordable housing requirements during poor economic times has the unfortunate cyclical effect of discouraging construction the most when the economy needs it the most. Provisions in IZ policies that restrict sales to only qualified buyers make it more difficult to find buyers for every unit. This is particularly true if the rules prevent selling to buyers with relatively higher incomes, place restrictions on down payments, or have requirements to sell reserved units only to first time homebuyers.

Eliminating inclusionary zoning and easing development regulations will result in more housing units and lower housing prices.

Reducing or eliminating overly burdensome regulation on development, including inclusionary zoning, will increase affordability of housing for two reasons. First, it will encourage building, increasing the overall stock of housing, which will help hold down the market price of housing. Second, removing IZ will allow for the natural “filtering” process to occur unheeded, with newer units going to higher income households and older units being increasingly occupied by lower income households as their values depreciate.

The effect of burdensome development regulation has been verified in Honolulu as well as cities across the country. For example, research by Stephen Malpezzi (1996) rated seven aspects of local government regulation, such as the change in approval time, for single-family projects between 1983 and 1988. Honolulu tied with San Francisco for the highest city-specific regulatory index value among 56 large metropolitan areas. Using this regulatory index, Malpezzi found that metro areas with the highest regulatory rankings have higher housing costs. After controlling for factors other than regulation, he found that increasing the regulatory burden from the lowest levels such as those of Dallas or Chicago to the highest rankings found in Honolulu would raise rents by 17 percent, reduce the number of housing units constructed by 42 percent, increase home prices by 51 percent, and reduce homeownership rates by about 10 percent.

Inclusionary zoning limits development, resulting in fewer market-rate units than otherwise. This is a particularly worrisome result because it prevents the natural “filtering” process, where the existing stock of housing depreciates and declines in quality relative to new amenity-rich units. For example, new housing often includes central air-conditioning and energy saving appliances, whereas twenty years ago few housing units would have such amenities. The construction of new housing units also increases the overall supply of housing, which increases the supply of lesser quality units to those with lower incomes.

It is important to note that other forms of regulation may hinder the filtering process. The number of new housing units developed in Hawai‘i dropped markedly in the mid 1970s after the Land Use Commission was created. Somerville and Mayer (2003) find that “restrictions on the supply

of new units lower the supply of affordable units.” As the demand for higher quality units increases in the face of building restrictions, rising prices increase the incentive for owners to maintain, repair and upgrade their existing housing units, resulting in less filtering.

In summary, inclusionary zoning has not worked in a number of jurisdictions around the U.S., and is not currently working on Oahu. Overall, inclusionary zoning policies reduce the number of “affordable” housing units, while raising prices and reducing the number of “market-priced” housing units. We found no evidence of an affordable housing problem for Oahu’s “gap” income group earning between 80 and 140 percent of household median income. Eliminating inclusionary zoning and easing development regulations will result in more housing units and lower housing prices.

1. INTRODUCTION

Placing median and gap-income families in housing they can afford is a challenge for municipalities across the United States. To address this challenge, cities and counties throughout the country have implemented a wide range of policies and programs including vouchers, rental assistance, inclusionary zoning, development impact fees, mortgage credit, and tax assistance. In Hawai'i, inclusionary zoning was introduced to assure that affordable homes are included in all new development plans. Inclusionary zoning is a policy that attempts to link construction of affordable housing to construction of market priced housing.

The purpose of this research is to evaluate the effectiveness of inclusionary zoning policy on Oahu. We proceed by first characterizing the affordable housing situation for the island of Oahu. We summarize the State's population, provide data on households, and examine trends in housing prices and housing stock. Using data on HUD median income, median single family home and condo prices, the UHERO affordable mortgage,¹ and housing stock, we evaluate the affordable housing situation for "gap" households earning 80% to 140% of HUD median household income. We then review current and proposed legislation relevant to Oahu, including City and County ordinances and rules pertaining to Kakaako and discuss these in light of Oahu's affordable housing needs.

Having described the state of gap housing and policy for Oahu, we turn to an evaluation of the effectiveness of IZ policy. Rather than focus only on the history of IZ in

Hawai'i, we review the academic literature which has evaluated the effects of inclusionary zoning policies nationwide. We highlight key results from the literature and summarize overall findings. We report on the repercussions of inclusionary zoning on housing prices, construction, and development for 29 case studies from across the U.S. Based on these case studies, we draw implications for Oahu's inclusionary zoning policies.

This report is organized as follows. We characterize the housing market on Oahu in Section 2, documenting the demand for housing services over the past decade and providing a comparison to the supply of housing over the same time period. We use this comparison to portray how well housing needs are being met on Oahu. We follow with a discussion of inclusionary zoning policy as a means of addressing Oahu's affordable housing needs in Section 3. We include a simple economic analysis of inclusionary zoning in Section 3 and summarize the literature on the effectiveness of IZ policies in Section 4. In Section 5 we focus on Oahu's inclusionary zoning policies with particular attention to the Kakaako Reserved Housing Requirement Rule. Using publically available data, we document the number of affordable housing units the rule has produced to date in Section 6. Alternatives to inclusionary zoning that have been successfully implemented in other parts of the country are reviewed in Section 7. We conclude with lessons from the literature and our prognosis for Oahu in Section 8.

2. THE HOUSING SITUATION ON OAHU

A. POPULATION TRENDS

The City and County of Honolulu is by far the most populated county in the State of Hawai'i, and has the greatest amount of resident movement among the four counties. As can be seen in Table 1, Honolulu has more than twice the combined resident population of the other three counties and makes up over 70 percent of the resident population statewide.²

73% of all movers in the state are on Oahu, 71% of immigrants from other parts of the United States move to Oahu, and 83% of all immigrants to Hawai'i from outside the country move to Oahu.

In addition to being the most developed county economically, Honolulu is home to most of the military population in Hawai'i, whose personnel and dependent families rotate in and out regularly with duty station assignments. According

to a 2005 U.S. Department of Housing and Urban Development report, "[t]he U.S. military is the single largest employer in the [Honolulu Metropolitan Area], accounting for 50,800 military and civilian jobs, with 12,300 at Schofield Barracks and 11,295 at Pearl Harbor." The study goes on to say that approximately 35% of these military households reside in private sector housing (U.S. HUD, 2005, p.5).⁵ This steady inflow of new residents and presence of movers suggests relatively strong demand side conditions for housing markets in Honolulu as many of these people must procure housing when they move to a new location on Oahu.

While the rate of population increase on Oahu has been and will continue to be somewhat lower than on the neighbor islands, the City and County of Honolulu is still projected by the Census Bureau to remain nearly twice as populous as the rest of the state combined through 2035.

Table 1: Resident Population and Migration Summary Data (1995-2000)

	State total	Honolulu County	Hawaii County	Kauai County	Maui County
Resident population:					
April 1, 2000 (Census estimate)	1,211,538	876,158	148,676	58,463	128,241
Percent of Statewide Resident Population		72.3%	12.3%	4.8%	10.6%
Total movers ³	490,545	358,022	59,139	20,420	52,964
Total domestic immigrants ⁴	149,176	105,760	18,610	6,788	18,018
Total international immigrants	46,751	38,619	3,510	1,028	3,594

SOURCE: 2008 STATE OF HAWAII DATA BOOK, TABLES 1.59 AND 1.63, [HTTP://HAWAII.GOV/DBEDT/INFO/ECONOMIC/DATABOOK/](http://hawaii.gov/dbedt/info/economic/databook/)

Table 2: Population Projections through 2035

	State total	City and County of Honolulu	Annual Growth Rate	All other counties
2005	1,264,468	899,673	0.531%	364,795
2010	1,299,567	911,833	0.269%	387,733
2015	1,367,795	941,824	0.649%	425,971
2020	1,432,538	969,462	0.580%	463,076
2025	1,492,253	994,610	0.514%	497,644
2030	1,547,460	1,017,565	0.457%	529,894
2035	1,598,675	1,038,316	0.405%	560,359

SOURCE: 2008 STATE OF HAWAII DATA BOOK, TABLE 1.28, [HTTP://HAWAII.GOV/DBEDT/INFO/ECONOMIC/DATABOOK/](http://hawaii.gov/dbedt/info/economic/databook/)

Yet the slowing of overall population growth on Oahu may not accurately characterize demand for housing. While the growth in counts of people is slowing, growth in number of households remains steady. This reflects, in part, the large expansion in the number of small households.

Despite the much faster increase in the number of households relative to the number of people in households, the average household size on Oahu has remained fairly constant at around 2.9 since 2000.⁶ Thus, it appears that as the number

of households expands, the mix of household types is changing as well. This is a change from two measures reported in the 2003 Hawai'i Housing Policy Study (HHPS): "crowding and doubling up had decreased" and "average household sizes were dropping throughout the [1990s]" (SMS, 2003, Honolulu p. Exec Summary-3). To maintain a relatively constant average household size with a dramatic increase in single person households, there must also be growth in the number of large households.

Table 3: Honolulu Household and Household Population Change, 1990 to 2008

	1990	2000	2008	Percent Increase		
				1990-2000	2000-2008	1990-2008
Household Population	802,338	845,211	877,361	5.3%	3.7%	9.4%
Total households	265,304	286,450	302,861	8.0%	5.6%	14.2%
Householder Living Alone	51,006	61,963	72,284	21.5%	15.8%	41.7%
Householder, Not Alone	214,298	224,487	230,577	4.8%	2.7%	7.6%

SOURCE: CENSUS 2000 SUMMARY FILE 1 (SF 1) 100-PERCENT DATA, QUICK TABLES QT-H3, CENSUS 1990 SUMMARY TAPE FILE 1 (STF 1) - 100-PERCENT DATA, DETAILED TABLES DP-1, 2008 AMERICAN COMMUNITY SURVEY 1-YEAR ESTIMATES DP-2

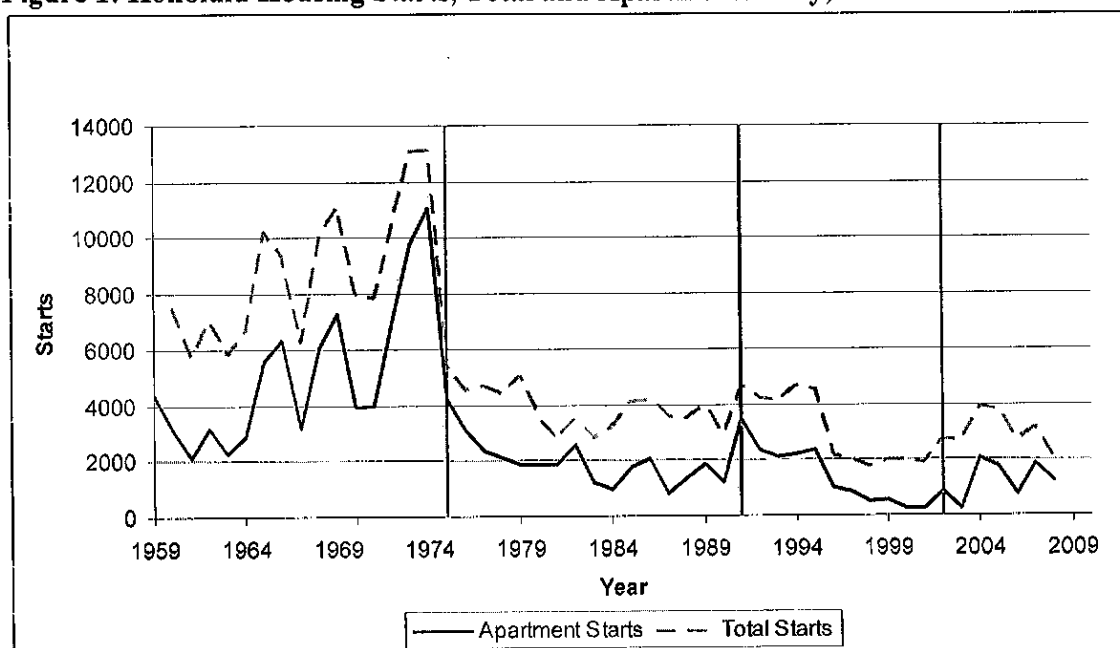
When we consider census data on crowding and average household size, we find that Hawai'i continues to rank very high. According to the Historical Census of Housing Tables, Hawai'i has led all 50 states in its percent of households considered "crowded" since the 1970 census.⁷ Crowding in Honolulu remains high at 7.79% in the 2008 American Community Survey, especially among renters where the rate is 11.48%.⁸ A special tabulation from Census 2000 showed Hawai'i had the highest incidence of multigenerational families (which include at least three generations of a family in a single household) of any state at 8.21%.⁹ The 2008 ACS reports the State of Hawai'i's multigenerational family incidence rate at 7.39%, which is still higher than any other state in Census 2000.¹⁰ These data are consistent with a shift to polarization of household sizes toward the high (crowded, multigenerational households) and low (single householder living alone) ends of the spectrum.

The City and County of Honolulu can be described as a dynamic, fluid market with many movers and people seeking housing services. Since 1990, the number of households has increased about one and a half times as fast as the overall population, suggesting that the demand for housing services will continue to be robust into the foreseeable future. The changing profile of households suggests the housing needs of families moving forward may be different from the needs of families for whom the prior housing stock was originally built.

B. HOUSING STOCK ON OAHU

We begin with a historical overview of housing stock since Statehood. Figure 1 shows the total number of single, duplex, and apartment (condo) unit starts on Oahu since 1959. Indicated on the figure are vertical lines at 1975, 1991, and 2002 denoting significant regulatory changes in Honolulu land policy. In 1975, the Land use Reform Act at the State level¹¹ implemented mandatory leasehold conversion for single-family homes but not condominiums. At the same time, major changes were made to the Land Use Law and the discretion of the Land Use Commission to approve redistricting was curtailed.¹² Following protests in 1974 and legislative changes in 1975, new housing starts on Oahu fell precipitously and have not recovered for more than 30 years.

The line drawn at 1991 indicates the passage of City Ordinance 91-95 by the City and County of Honolulu, which extended the applicability of leasehold conversion to condos. In 1998, the United States Supreme Court refused to hear a challenge to 91-95 because it was similar to the existing larger State law that was already in operation. By 2001, annual apartment construction (including condominiums) dwindled near zero. A ruling in 2002 by the Hawai'i State Supreme Court neutered the law, exempting nearly all units on Oahu from 91-95's scope.¹³ While much of the recovery in apartment starts after 2001 can be attributed to an upswing in the housing cycle, it is possible that regulatory easing may have helped.

Figure 1: Honolulu Housing Starts, Total and Apartments Only, 1965 to 2008

SOURCE: HAWAII DATA BOOK, 1967-2009, [HTTP://HAWAII.GOV/DBEDT/INFO/ECONOMIC/DATABOOK/](http://hawaii.gov/dbedt/info/economic/databook/) * NOTE: ONLY APARTMENT DATA AVAILABLE FOR 1959.

Table 4 displays the current number of total housing units on Oahu, which grew from 315,988 in 2000 to 337,177 in 2008, an annual average growth of 2,649 housing units. At first glance, this 6.71% growth over the last 8 years (0.815% annualized growth) implies that additions to the housing stock kept pace with and slightly exceeded the 5.6% growth rate in the number of households. A more detailed breakout of the total unit growth shows that most of the growth has

been in single family detached homes. More than three times as many owner-occupied single family detached homes as owner-occupied condominium units in large buildings (more than 50 units) have been built since 2000. Moreover, the entire increase has been in owner-occupied units. In fact, the number of total rental units of all types has actually declined over both 8- and 18-year periods.

Table 4: Total Housing Unit Stock, City and County of Honolulu

	Census		American Community Survey			Change in Units	
	1990	2000	2006	2007	2008	1990 to 2008	2000 to 2008
Total Housing Units	281,683	315,988	332,718	334,799	337,177	55,494	21,189
Total Occupied:	265,304	286,450	299,217	304,611	302,861	37,557	16,411
Owner occupied:	137,910	156,233	173,806	173,715	176,148	38,238	19,915
1, detached	93,833	105,797	117,591	116,966	117,392	23,559	11,595
50 or more	16,772	18,610	19,538	21,991	21,874	5,102	3,264
Renter occupied:	127,394	130,217	125,411	130,896	126,713	(681)	(3,504)
1, detached	29,007	30,388	29,220	31,914	29,722	715	(666)
50 or more	25,863	29,592	25,185	25,983	30,112	4,249	520
Total Vacant Units	16,379	29,538	33,501	30,188	34,316	17,937	4,778

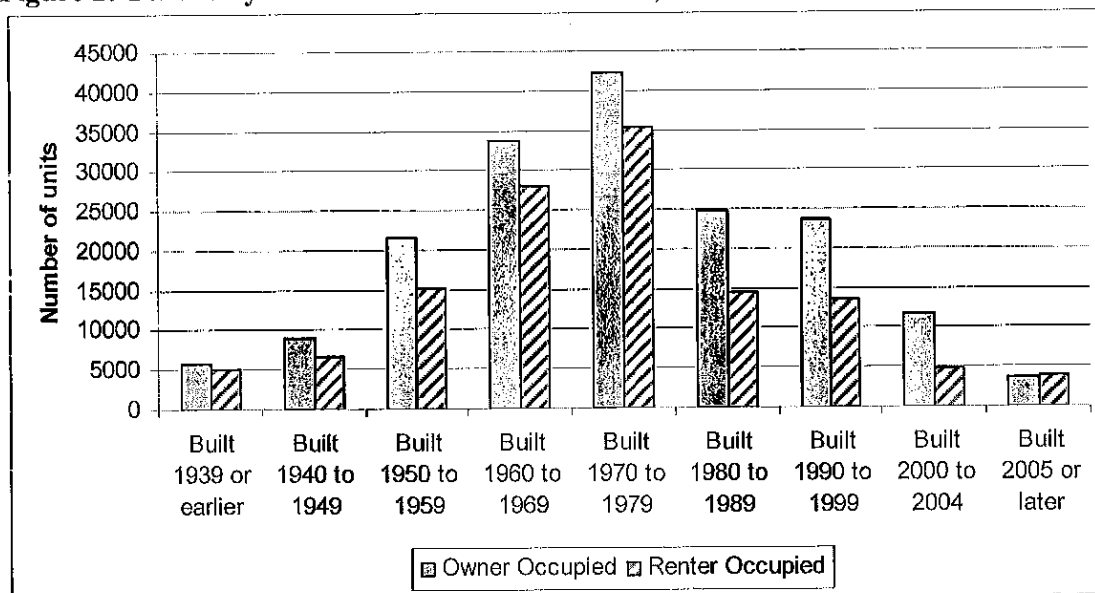
SOURCE: US CENSUS BUREAU, CENSUS 1990 AND 2000 TABLES QT-H1 AND ACS 2006, 2007, AND 2008 1-YEAR ESTIMATES TABLE DP-4

While there was an increase in total housing units, there was also a large increase in the number of vacant units that were not part of the active real estate market. A subset of the total number of vacant units, these are units that were neither for rent nor for sale for some reason. One example of units in this category is housing units used for seasonal or occasional use by non-residents, also sometimes referred to as "vacation homes."¹⁴ Removing these types of units from the housing inventory is appropriate when evaluating the available supply for those seeking housing services. "Where they are identified, vacation homes and unit (sic) otherwise not available to the local housing market have been eliminated from the inventory." (SMS, 2003, p. Section IIA-1)

Removing the 8,651 increase in units not for rent or sale¹⁵ from all housing stock estimates reduces the 8 year growth in the effective housing stock available to 4.14%, about one and a half percentage points below the growth in households during that period.¹⁶ Therefore, the increase in the effective housing stock on Oahu is not keeping pace with the increase in resident households.

The most recent data on the age of the housing stock in Honolulu shows that construction fell sharply after the 1970s and has remained low since then. Figure 2 shows the distribution of when housing units in 2008 were built by the decade of construction, broken out for owner-occupied and renter-occupied units.

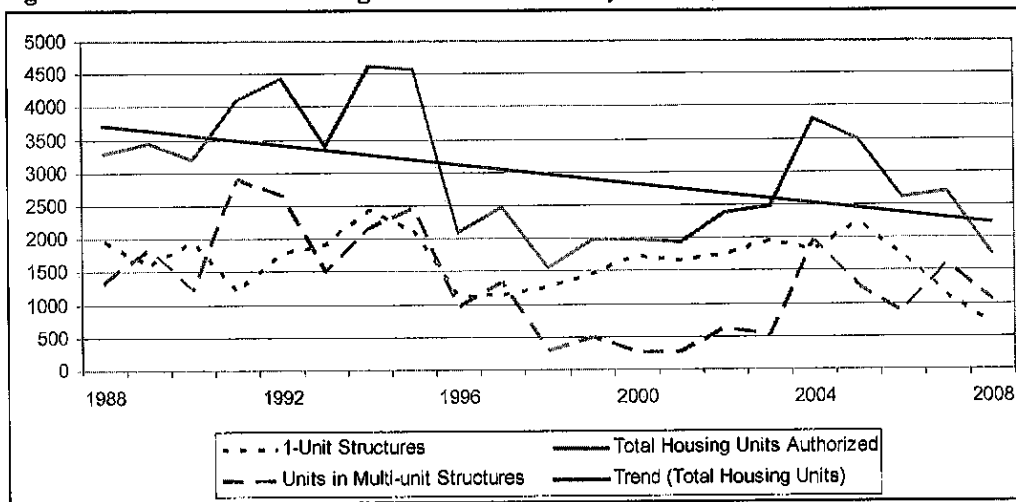
Figure 2: Tenure by Year Structure Built on Oahu, 2008



SOURCE: US CENSUS BUREAU, 2008 AMERICAN COMMUNITY SURVEY 1-YEAR ESTIMATES, TABLE B25036

Figure 3 shows the annual number of new housing units authorized by building permits for Honolulu from 1988 to 2008.

Figure 3: New Private Housing Units Authorized by Permit, Honolulu



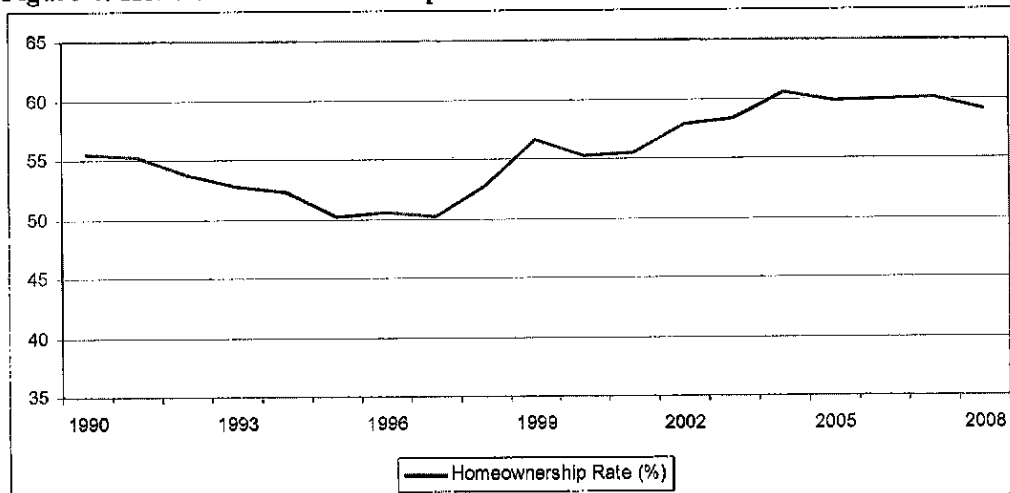
SOURCE: CENSUS BUREAU SERIES IDS HON0115BP1PRV AND HON0115BP1FH, AVAILABLE AT [HTTP://RESEARCH.STLOUISFED.ORG/FRED2/RELEASE?RID=148&OB=LU&OD=DESC&PAGEID=1](http://research.stlouisfed.org/fred2/release?rid=148&ob=LU&od=DESC&pageid=1)

In sum, the stock of housing on Oahu is growing slower than household counts. The bulk of the existing stock of housing, for both owner-occupied and renter-occupied housing, was built in the 1960s and 1970s. Even after accounting for the housing cycle, the number of permits authorized for new construction on Oahu has declined over the last 20 years. This suggests the older stock of housing from prior decades will continue to supply the majority of units in the active housing market.

C. HONOLULU'S HOUSING AFFORDABILITY

Homeownership rates in Honolulu have been relatively stable since 1990, fluctuating between roughly 50% and 60% for the entire period. At 60%, homeownership in Honolulu has been near record levels since 2004, though still below the national average which has hovered around 65% since the early 1980s.

Figure 4: Honolulu Homeownership Rate



SOURCE: CENSUS BUREAU, HOME OWNERSHIP RATE FOR HAWAII, SERIES HIHOWN AVAILABLE AT [HTTP://RESEARCH.STLOUISFED.ORG/FRED2/SERIES/HIHOWN?CID=27293](http://research.stlouisfed.org/fred2/series/hihown?cid=27293)

While the high price of housing in the Honolulu market would seem to create a significant barrier to ownership, the growth in homeownership, even since 2002, has been significant. Even with high prices, income growth and low borrowing costs allowed for a growing share of Oahu's population to purchase housing. Furthermore, for the median Honolulu household of about 3 people earning 100% of the household size-adjusted median HUD designated income, the median priced condo has been affordable every year for the last 15 years.

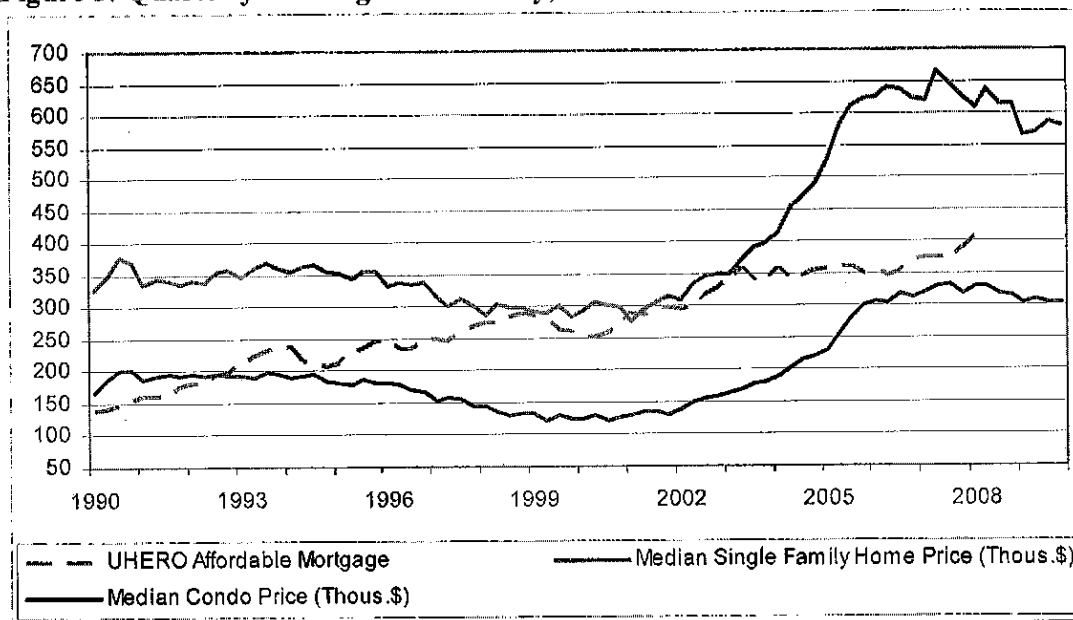
During this same time period, the UHERO affordable mortgage indicates that condominiums became affordable for households with the nominal Honolulu median income. Figure 5 below graphs the UHERO affordable mortgage against the median price of both single family homes and condos. The affordable mortgage computed by UHERO is the maximum mortgage a household with the actual median Honolulu income could afford after a 20% down payment, assuming the household spends no more than 30% of its monthly income on the mortgage. While standalone single-

family homes have not been affordable since 2003, condominiums have been well within the means of the median Honolulu household since 1993 assuming the household has sufficient wealth for a down payment and is able to qualify for a mortgage.

The increase in prices over the past decade has resulted in a rightward shift in the distribution of single-family home prices. This means there are relatively more high end units in the housing stock than there was in the past. While this may be partly due to the overall increase in housing prices during the recent housing cycle, it may also be due to the shift in the mix of types of housing units available on Oahu.

From Table 4 earlier, we know that the majority of new housing units built were of the standalone single-family unit type that has gone down in affordability. At the same time, less than 10% of the housing units built since 1990 were condominiums in large structures (with more than 50 units). Thus, the stock of housing is growing slower than household counts, and what units are being added are mostly in the least affordable category.

Figure 5: Quarterly Housing Affordability, 1990-2009



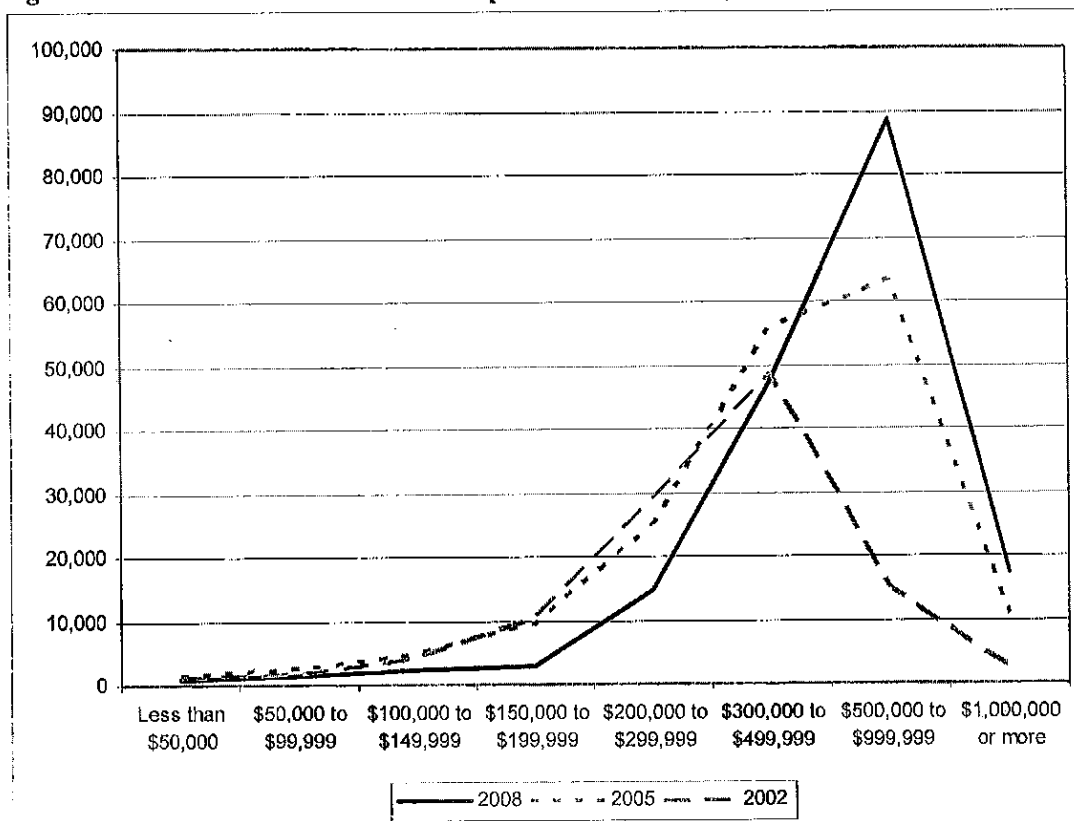
SOURCE: UHERO

As incomes have not kept pace with the increase in single-family home prices, this implies a lower number of affordable homes available in the market for Honolulu householders seeking to purchase and own the home they will live in. It is useful to keep in mind the peak of the UHERO affordable mortgage series was at \$407,053 to provide context

for the rightward shift in Figure 6 below.

In the next section we provide a brief overview of one popular policy solution to meeting the affordable housing challenge – inclusionary zoning rules.

Figure 6: Distribution of Owner Occupied Home Values, 2002-2008



SOURCE: CENSUS BUREAU, 2002, 2005, AND 2008 ACS 1-YEAR ESTIMATES, TABLE DP-4

3. INCLUSIONARY ZONING AS A SOLUTION TO THE AFFORDABLE HOUSING CHALLENGE

A. BRIEF INTRODUCTION TO INCLUSIONARY ZONING

Inclusionary zoning refers to a class of policy tools that attempt to link construction of affordable housing to construction of market priced housing. The “inclusionary” portion of the name stems from the fact that these policies require builders to include certain types of buildings (homes targeted to lower income households) in their developments. Exclusionary policies, on the other hand, prohibit or exclude certain types of construction from occurring in permitted development projects. Inclusionary zoning policies can be either mandatory or voluntary, and are generally incorporated as part of the permitting process; developers comply with the policy to receive approval to proceed with their projects (if it is mandatory) or receive incentives. Typical inclusionary zoning (IZ) policies offer incentives such as expedited permit processing, permit waivers, or density bonuses to compensate for the land use restrictions or increased costs imposed on developers.

The first IZ ordinance in the country was implemented in the 1960s in Newton, MA. The policy produced 225 units of affordable housing over 30 years (Engler 2002). Since then, IZ policies have grown in number and scope in jurisdictions across the country. Adoption of programs grew rapidly in the 1980s largely in response to double-digit increases in housing prices. In California the number of communities with IZ policies increased by almost 400% in the 1990s (Powell and Stringham 2004). As of 2004 there were an estimated 350 to 400 local jurisdictions with IZ policies, the vast majority being in California, Massachusetts, and New Jersey (Porter 2004).

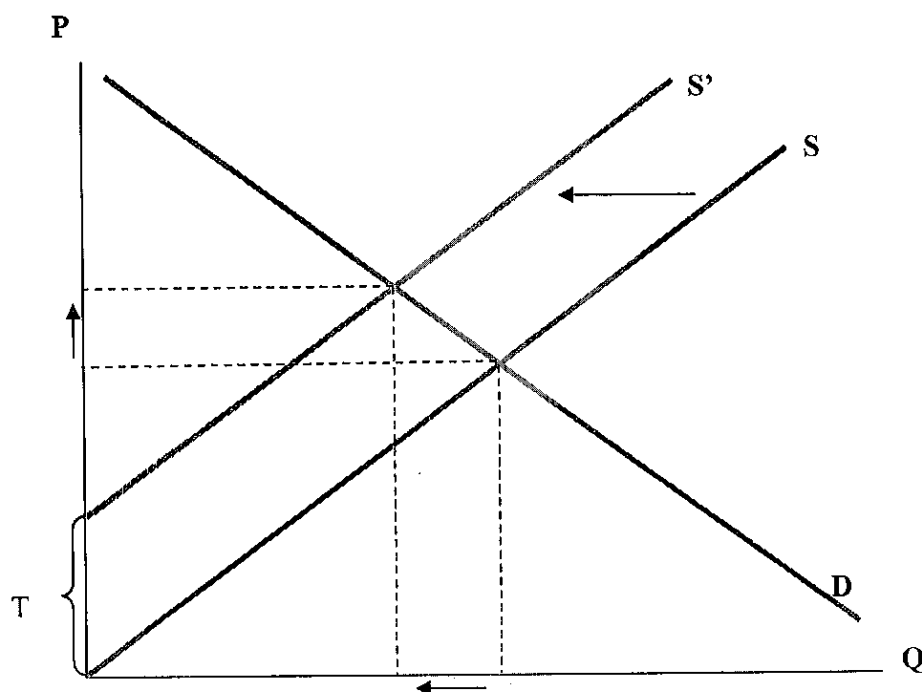
According to Schofield and Brown-Graham (2004), the pursuit of affordable housing provision through IZ policies

differs from other traditional affordable housing programs in three major ways. First, IZ involves construction of affordable housing using private rather than public funding. As opposed to direct public construction or public financial support of construction (such as the federal Low Income Housing Tax Credit), inclusionary zoning projects are funded by private developers. Second, inclusionary zoning programs usually require some degree of socioeconomic integration in the development by requiring designated affordable units to be dispersed throughout the project. This is designed to prevent segregation of affordable housing units to less desirable areas, separate from market rate housing.¹⁷ Lastly, Schofield and Brown-Graham (2004) point out that most traditional (non-inclusionary zoning) programs aim to serve the very-low end of the income range of households; inclusionary zoning produced housing “is largely for sale and targeted to low- and moderate-income families.”

B. ECONOMICS OF INCLUSIONARY ZONING

Inclusionary zoning acts as a tax on developers that funds additional housing for “gap” income households. Requiring developers to produce additional units of housing and sell them at below-market rates reduces their revenues. These lost revenues go toward subsidizing affordable housing services for low to moderate-income members of the community.

The magnitude of the tax that IZ imposes varies considerably program to program, depending on both the reserved housing requirement and the amount that affordable units are discounted. While it is difficult to calculate exactly how large of a burden IZ is for developers, it is at least as large a tax as an in-lieu fee if a substantial number of developers choose to pay the fee rather than build the additional units.

Figure 7: Housing Market Effects under Inclusionary Zoning

The effect of a tax on the production of any product, housing included, is relatively straightforward. The extra tax imposed by IZ increases the cost to developers and limits the supply of housing provided. Facing the additional cost, developers will build fewer housing units, all else equal. This phenomenon is illustrated in Figure 7.

The vertical axis is the price for housing units and the horizontal axis represents the quantity of housing units built. In the above figure, the line labeled D indicates the demand for housing units. As with most commodities, people are willing to buy more units the lower the price. This can occur from, for example, renters who would like to own a home becoming able to afford to buy as prices fall. The line labeled S represents the original supply for houses. The line labeled S' is the supply of houses after the implementation of the IZ

policy. The higher the price of housing units, the more developers are willing to build as it becomes easier to turn a profit.

The distance between the two supply lines, T, is equal to the profit developers forego per market rate unit under the reserve requirement. T increases with the reserve requirement and the price differential and decreases with land costs and quality differential. When an IZ policy is enacted, developers receive less revenue per project. While some projects may proceed as planned, some projects may be cancelled (or never started) because either they are no longer profitable, or because it is more profitable to build elsewhere. With fewer new units being built to meet market demand, developers are able to charge a higher price for their units, making market units more expensive for anyone who is unable to obtain the subsidized housing.

C. EXAMPLE DATA FOR A NEW CONDO IN KAKAAKO

An example using data from an actual condominium project in the Kakaako district of Honolulu subject to a 20% IZ requirement illustrates the economic effect of IZ policy. In late 2006, the 46 floor Moana Vista condominium began construction. Using actual sales and price data, reported square footage from government sources,¹⁸ and construction cost estimates from Rider Levett Bucknall,¹⁹ we are able to estimate the expected profit of the developer when all units were sold. The object of this analysis is to obtain estimates as close as possible to the projected revenues and costs at the time the developer was deciding whether to proceed or not.

Financial estimates for the project are presented in Table 5 for 2007 when Moana Vista began construction, for the fourth quarter of 2009, and for hypothetical scenarios under two proposed 2010 bills.²⁰ On the cost side, the table includes "hard" construction costs as well as non-construction costs using the actual land purchase price²¹ and conservative estimates on "soft costs." These soft costs include things like permitting, marketing, planning, and management costs outside of the construction site. Also included are the standard 3% development fee and a 6% contingency fee, both of which are set to conservatively low levels for a condominium project of this scale.

For the revenue side, market prices for residential units were obtained from the developer's original Moana Vista price list from 2007. Using a median price ratio reflecting current and previous market conditions, these prices were scaled to adjust for price swings in the housing cycle. All units, including those used to satisfy the reserved housing requirement,²² were treated as fee simple units using the rules for reserved housing units for sale and not rental. For simplicity, we capitalized rental revenue from commercial and industrial portions of the building with an 8% terminal capitalization

rate. Where we did not have an actual price quote for a particular unit (i.e. all units of a given type were already sold and had no posted prices), we estimated prices based on similar units on nearby floors.

D. EVEN AT "BEST CASE," LOW PROFIT MARGINS MAKE FINANCING DIFFICULT

All of the scenarios reported in Table 5 should be regarded as "best case" outcomes for each scenario. The costs do not include any financing costs and employ rates for each cost category on the low side of what is typical in the industry. On the revenue side, every scenario assumes all 492 units are immediately sold ("absorbed") upon completion of the project. In reality, it may take time to sell all of the units,²³ during which time the developer incurs additional inventory holding costs. This problem can be exacerbated by the risk of buyer default. Furthermore, the prices used for the reserved housing units were weighted to favor sales to the upper end of the eligible gap income distribution.²⁴ The prices used were the legal maximum allowed for the reserved housing, further increasing the revenue per unit.²⁵

Without any affordable housing, the 33.1% expected profit margin for a Honolulu developer in 2007 would have been very near the 35-40% rule of thumb level of profitability expected by financial backers of such projects.²⁶ Expected profitability levels are crucial to securing financing for these types of projects because of the high amounts of risks involved. Once a project of this nature is underway, there is no way to easily recover the resources committed if something goes wrong.²⁷ When the reserved housing requirement is added, one eighth of the pre-financing profit margin goes to cover the IZ tax. If we could estimate the costs associated with the risks mentioned earlier like inventory holding costs, profit margin is likely much lower. Even with most cost and revenue factors deliberately chosen to maximize expected profitability at the height of the housing market boom in

2007, what appears to be a modest reserved housing requirement leaves the project teetering on the edge of viability.

The second column shows that outside of a booming economy, the possibility that this project could obtain financing falls apart. While costs increased from 2007 to 2009, the cooling of the housing market also reduced revenue from market rate units. The combination of higher costs and lower revenues drops the profitability of even a best-case scenario, with no reserved housing, below 20%. When we add the existing affordable housing requirement, one eighth of the profit disappears again, driving the project further from viability. Again, these calculations are based on very optimistic assumptions, and do not take into account higher financing costs due to a tighter 2009-2010 credit market.

The columns on the right side of the table repeat the exercise using the proposed rules in two pending pieces of legislation, HB 2846 and HB 2849. The first thing to note is that both bills would dramatically increase the number of reserved housing units required. Under both of the proposed

bills, our best case scenario pre-financing profit margins fall below 15%. The increased affordable housing requirement, along with more realistic assumptions about inventory costs and pricing, might drive actual pre-financing profit margins below 10%. In short, a new condominium project similar to this would never be able to obtain financing and be built under either proposed bill.³⁰

Comparing the "best case" scenarios from 2007 and 2009 for Honolulu show the net effect of the IZ policy on the project depends on the overall state of the economy and housing cycle. This means increasing IZ affordable housing requirements during poor economic times has the unfortunate cyclical effect of discouraging construction the most when the economy needs it the most. Provisions in IZ policies that restrict sales to only qualified buyers make it more difficult to find buyers for every unit. This is particularly true if the rules prevent selling to buyers with relatively higher incomes, place restrictions on down payments, or have requirements to sell reserved units only to first time homebuyers.

Table 5: Pre-Financing Data for a Newly Built Moana Vista-like Structure under Existing Kakako Rules and Two Proposed Revisions

	Existing Rules		Proposed HB 2846		Proposed HB 2849	
	2007	2009	2007	2009	2007	2009
Residential	107,295,000	122,820,000				
Commercial	1,069,063	1,155,000				
Industrial	2,585,000	2,750,000				
Parking	19,164,844	22,378,250				
Construction Total ²⁸	130,113,908	149,101,250				
Inflation Adjusted Land Costs	15,000,000	15,538,822				
Soft Costs (33%)	42,937,589	49,203,413				
Contingency Fee (6%)	10,383,090	11,899,280				
Development Fee (3%)	6,137,152	6,984,735				
Total Costs Before Financing	204,571,737	232,824,499				
Estimated Required Reserved Housing Units ²⁹	124	124	193	193	175	175
Residential Revenue with no Reserved Housing	308,450,000	289,179,000				
Revenue, no RH, 3% Sales Com.	299,196,500	280,503,630				
Commercial Revenue	2,813,250	2,772,000				
Industrial Revenue	4,323,000	3,597,000				
Commercial and Industrial Commission	214,088	191,070				
Profit, no RH	101,546,925	53,857,061				
Profit Margin, no RH	33.1%	18.8%				
Residential Revenue with Reserved Housing	288,382,000	280,888,000	273,421,000	272,850,000	277,555,000	275,186,000
Revenue, with RH, 3% Sales Com.	279,730,540	272,461,360	265,218,370	264,664,500	269,228,350	268,930,420
Commercial Revenue	2,813,250	2,772,000	2,813,250	2,772,000	2,813,250	2,772,000
Industrial Revenue	4,323,000	3,597,000	4,323,000	3,597,000	4,323,000	3,597,000
Commercial and Industrial Commission	214,088	191,070	214,088	191,070	214,088	191,070
Profit, with RH	82,080,985	45,814,791	87,588,795	38,017,931	71,578,775	40,283,851
Profit Margin, with RH	28.8%	16.4%	24.8%	14.0%	25.9%	14.7%

SOURCES: HCDA MOANA VISTA PAGE, KC RAINBOW II PRICES, RLB QUARTERLY COST REPORTS, COLLIER'S MONROE FRIEDLANDER RETAIL MARKET AND INDUSTRIAL MARKET REPORTS

E. IMPACTS OF INCLUSIONARY ZONING ON HOUSING SUPPLY AND LONG-TERM PRICING

The analysis thus far has only looked at the supply of housing within a given year. As mentioned in Section 2, the undersupply of housing services relative to household formation is a chronic problem, and solutions should take a long range approach. IZ has the same effect as a tax. Therefore, it limits development, resulting in fewer market-rate units than otherwise. This is a particularly worrisome result because “[l]ow-cost housing is usually produced through a process called filtering where existing housing units drop in cost as their relative quality falls, rather than through construction of new, lower-cost units.” (Feldman, 2002 p. 9)

Over time, the existing stock of housing depreciates and declines in quality relative to new amenity-rich units. For example, new housing often includes central air-conditioning and energy-saving appliances, whereas twenty years ago few housing units would have such amenities. The construction of new housing units also increases the overall supply of housing, which increases the supply of lesser-quality units to those with lower incomes. (Feldman 2002, p. 10). Malpezzi and Green (1996, p. 1811) also found that “high-quality new construction is associated with growth in the low-quality stock as well”. Specifically, they found that the construction of new units in 1995 led to a 2.5% increase in the number of lesser-quality rental units available. “[T]o the extent that a city makes it easy for any type of housing to be built, it will also

enhance the available stock of low-cost housing.” (p. 1811)

It is important to note that other forms of regulation may hinder the filtering process. As shown in Figure 1 on page 14, the number of new housing units developed in Hawai‘i dropped markedly in the mid 1970s after the LUC was created. Somerville and Mayer (2003, p. 45) find that “restrictions on the supply of new units lower the supply of affordable units.” As the demand for higher-quality units increases in the face of building restrictions, rising prices increase the incentive for owners to maintain, repair and upgrade their existing housing units, resulting in less filtering.

Malpezzi (1996, p. 224) rated seven aspects of local government regulation, such as the change in approval time, for single-family projects between 1983 and 1988. Honolulu tied with San Francisco for the highest city-specific regulatory index value among 56 large metropolitan areas. Using this regulatory index, Malpezzi found that metro areas with the highest regulatory rankings have higher housing costs. After controlling for factors other than regulation, he found that increasing the regulatory burden from the lowest levels such as those of Dallas or Chicago to the highest rankings found in Honolulu would raise rents by 17 percent, reduce the number of housing units constructed by 42 percent, increase home prices by 51%, and reduce homeownership rates by about 10 percent. While these results may seem excessively large, keep in mind that the change in regulatory environment is very large as well.

4. LESSONS FROM THE NATIONAL AFFORDABLE HOUSING LITERATURE

The benefits of inclusionary zoning commonly touted in the literature include:

1. Strengthening communities
2. Stimulating economic development
3. Supporting "smart growth" principles
4. Enhancing economic and racial integration
5. Overcoming NIMBY-ism ("Not in My Backyard")
6. Offering a predictable and level playing field to developers

While these benefits are easy to articulate, they are difficult to test empirically. Most of the analyses on inclusionary zoning focus on the costs of these types of policies. The potential costs that are most frequently discussed are:

1. Reducing the total stock of available housing in a market
2. Increasing the median/average market price of housing

The effects of inclusionary zoning on the surrounding housing market have been widely discussed in the literature. Bento et al. (2009) examine California data from 1988-2005. The authors conducted a multivariate statistical analysis of housing starts, prices, and size, isolating the effects of inclusionary zoning programs by controlling for spatial and temporal conditions such as the neighborhood or school district and changing market conditions over time. The authors were able to show that the price of single-family houses increases and the size of single-family homes decreases under inclusionary zoning policies.

Schuetz et al. (2009) examine IZ policies in San Francisco, Boston and Washington, D.C., and find evidence that inclusionary zoning increased prices, lowered production in Boston and Washington, D.C., but find no effect on market outcomes in San Francisco. The authors suggest that San

Francisco's use of exemptions and density bonuses may have helped ease market distortions. The authors also find that for all jurisdictions, the number of years the IZ program had been in place was the biggest determinant of how many units were produced total, and that annual housing production is mostly determined by what is offered to developers (density bonuses and other incentives).

Mintz-Roth (2008) reviews affordable housing strategies for "hot markets," using New York City as a case study. This paper uses interviews with national policymakers and experienced affordable and mixed-income housing developers to assess the relative success of affordable housing initiatives. The author finds that neither relying on inclusionary zoning or extending existing NYC affordable housing programs should be considered a replacement for federal subsidies, which have historically provided the most affordable housing to jurisdictions.

Powell and Stringham (2004a) use data from Los Angeles and Orange County and argue that IZ makes market-priced homes more expensive, restricts the supply of new homes, and produces limited affordable units. They find that IZ increases the price of new homes in the median city by \$33,000 to \$66,000. In eight CA cities, 17,296 fewer homes were produced during the seven years after the adoption of inclusionary zoning (with 770 "affordable" units produced). The estimated present value losses in government tax revenue due to Los Angeles and Orange County inclusionary zoning ordinances is over \$750 million. An opposite conclusion was reached by Rosen (2002) for the Los Angeles area. Using a land residual approach which creates scenarios of development based on income potential and costs, Rosen was unable to find any effect of inclusionary zoning on housing starts.

Similar conclusions are drawn by Powell and Stringham (2004b) for 50 cities in the San Francisco Bay area. After passing an ordinance, the average city produces fewer than 15 affordable units per year. Median prices increase by \$22,000 to \$44,000 and new construction decreases by 31 percent the year following the adoption of IZ. Means et al. (2007) use panel data for cities in California and find that these policies drive housing prices up by 20% and decrease the stock of homes by 10%.

Table 7 summarizes the national studies reviewed, and any outcomes that were analyzed and reported in the studies. Heavy data requirements make empirical analysis of IZ difficult, limiting the number of pure empirical case studies of the effects of inclusionary zoning policies. We reviewed 18 studies that were able to assess the effect of an inclusionary zoning policy on housing market outcomes. Of these,

13 policy studies were found to increase the market price of housing and decrease housing units available in the market. In two studies the market price of houses increased, and one study provided evidence of a fall in the overall quantity of housing units.

Of the 18 studies reviewed, there were only two cases in which reported results contradicted the theoretical prediction of increased price and/or decreased quantity of market priced homes. A study of the policy in Fairfax County, VA, found evidence of lower market prices, and the analysis of the Loudoun County, VA, inclusionary zoning ordinance found evidence of increased overall housing units in the market as a result of the policy. There are 11 other policies we examined that were not able to assess market effects of inclusionary zoning. We summarize these 29 inclusionary zoning policies over the next two pages.

Table 6. Key to Table 7, National Affordable Housing Policies

Heading	Explanation
Setting	Place where the policy was implemented
Location	City or County and State
Policy	Characterization of the policy
Start date	Year policy began
% Median	Upper income limit qualifying for affordable housing
% Required	Affordable homes a developer must provide as a percentage of market priced homes
Duration (years)	Years affordable home must remain in the program
Mandatory	Policy was required of all new development
Rentals Allowed	Rental housing was included in the provision affordable homes
Incentives	Allowances were granted to developers to encourage construction of affordable homes
Density bonus	Developers were allowed to build in excess of density limits (units/ac)
Other	Other developer incentives
Exemptions	Conditions for which builders were not required to provide affordable homes
Size (units)	Development below which builders were not required to provide affordable homes
Additional	Other reasons builders were not required to provide affordable homes
Flexibilities	Alternatives to building affordable units on the development site
Cash buyout	Developers paid the housing authority in place of building affordable homes
Offsite	Developers were allowed to build affordable homes at another location
Market Outcomes	Policy impact on home prices and home construction
P↑Q↓	Home prices went up and homes built went down as result of the policy
P↓Q↑	Home prices went down and homes built went up as a result of the policy
Affordable (Units)	Total number of affordable homes built as a result of the policy at the time the study referenced was conducted

NOTES TO TABLE 7:

A. REPEALED IN 1996; B. EXPANDED IN 2000; C. BECAME ORDINANCE IN 1977; D. UPDATED IN 2007; E. LIFETIME DURATION FOR RENTAL UNITS; F. MANDATORY ONLY FOR SPECIAL REQUESTS; G. RENTAL UNITS ONLY; H. FLEXIBLE DESIGN STANDARDS; I. PRIORITY PROCESSING; J. SUBSIDIES; K. REZONING/MIXED USE ZONING; L. FEE DEFERRAL/WAIVER; M. LOWER QUALITY HOUSING; N. DESIGN MODIFICATIONS; O. TECHNICAL AND FINANCIAL ASSISTANCE; P. IF REQUIREMENT PREVENTS DEVELOPMENT FROM PROCEEDING; Q. SPECIAL DEVELOPMENT ZONES, REBUILDING AFTER A NATURAL DISASTER; R. 5 FOR RENTALS; S. OR 1 ACRE; T. 1200 UNITS FROM 1992 IZ PROGRAM, ADDITIONAL 1200 EXPECTED FROM AFFORDABLE HOUSING PROGRAM; U. INFORMATION ON THE MARKET EFFECTS OF THE POLICY WERE NOT FOUND; V. EXEMPTIONS WERE GRANTED TO LOW DENSITY DEVELOPMENTS, SINGLE FAMILY DEVELOPMENTS WITH MINIMUM LOT SIZE REQUIREMENTS, MULTI-FAMILY BUILDINGS, DEVELOPMENTS NOT SERVED BY MUNICIPAL WATER AND SEWAGE, AND WHERE IMPLEMENTATION OF THE POLICY WOULD CAUSE HOUSING PRODUCTION TO DECREASE OR HOUSING PRICES TO RISE; W. EXCLUDING MONTGOMERY CO. MD AND FAIRFAX CO VA.

Table 7. National Affordable Housing Policies

Setting		Policy				Incentives			Exemptions		Flexibility		Market Outcomes		
Location	Start date	% Median	% Required	Duration (years)	Mandatory	Rentals Allowed	Density bonus	Other	Size (units)	Other ^v	Cash buyout	Offsite	P↑Q↓	P↓Q↑	Affordable (Units)
Montgomery, MD	1974	65	12.5-15	10-20	•	•	•		50	•			•		10,781
SF Bay Area, CA	1979	19	10-25	30+	•	•	•		2	•	•	•	•		9,154
Washington DC	2007	45	5-15	10+	•	•	•		50	•	•	•	u		3,889 ^w
New York, NY	1987 ^b	80	20	Life		•	•			•			u		1,900
Prince George's, MD	1991 ^a	70	10	10	f	•	•		50	•			u		1,600
San Diego, CA	1992	80	20		•	•			10					Q↑	1,200 ^L
Sunnyvale, CA	1982	120	10	20	•	•	•	i,o	10				•		825
San Francisco, CA	1992 ^d	120	15	Life	•	•		h	5	•	•	•	•		724
Burlington, VT	1990	60-80	15-25	99	•	•	•	o	5			•	•		650
Fairfax County, VA	1990	70	6.25	15-20	f	•	•		50	•	•			P↓	582
Pleasanton, CA	1978	50	15	Life	•		•	i,l,n	15		•		u		508
Palo Alto, CA	1974	100	10	59	•	•			3 ^r		•		•		465
Novato, CA	1999	65-90	10-20	30-Life	•	•	•	m,k,l,i	0	q	•	•	u		442
Santa Cruz, CA	1978	80	15	Life	•	•	•	i,j	3	•	•	•	•		276
Newton, MA	1960 ^c	50	10	40	f	g			10	•	•	•	u		225
Loudoun County, VA	1993	70	6.25	15	f	•	•		50	•	•			Q↑	208

Setting		Policy				Incentives			Exemptions		Flexibility		Market Outcomes		
Location	Start date	% Median	% Required	Duration (years)	Mandatory	Rentals Allowed	Density bonus	Other	Size (units)	Other ^v	Cash buyout	Offsite	P↑Q↓	P↓Q↑	Affordable (Units)
San Mateo, CA	1992	120	10	30 ^e	•	•			10				u		158
Dublin, CA	1992	120	5	55	•			l,m	20		•		•		100
Livermore, CA	1983	80	10	55	•			m	10 ^s		•		•		96
Cambridge, MA	1998	65	15		•	•	•		10	•	•		•		89
Brookline, MA	2002	100-120	15		•	•			6		•	•	•		89
Boston, MA	2000	120	10	30	•	•			10	•	•	•	•		72
St. Cloud, MN	2002	80	20		•		•	o			•		Q↓		39
Monterey, CA	1980	100	15	30	•			v			•	•	P↑		<20
Mountain View, CA	1999	100	10	55	•	•		m	3 ^r		•		u		0
Denver, CO	2002	80-95	10		•		•	l,n	30		•	•	P↑		
Chicago, IL	2003	100	10-20	30	•	•	•	k	10		•		u		
Union City, CA	2002	120	15	Life	•	•		i,o	0	p	•		u		
Napa, CA	1999	120	10	30 ^e	•	•	•	l,m,n,o	1		•		u		

The review of literature above provides some clues regarding the relative achievements and shortcomings of various inclusionary zoning policies around the country. Inclusionary zoning has been implemented in a wide variety of housing market types, with rules that range from extremely flexible to highly restrictive. In the next section we provide an overview of the current inclusionary zoning policies on Oahu, and compare the characteristics of the Oahu housing market and the characteristics of the Kakaako Rule to those described in the literature. We use this comparison to draw implications about the likely success of the Kakaako Rule in the Oahu housing market.

5. OVERVIEW OF OAHU'S INCLUSIONARY ZONING POLICIES

The affordability of housing services in Hawai'i has long been recognized by the public and the state legislature as a persistent problem. For example, in 1989 the legislature wrote at the very beginning of a bill regarding housing in Hawai'i:

The legislature finds that there exists a critical shortage of safe, sanitary and affordable housing units in the State and that the legislature must quickly eliminate or reduce that critical shortage by using temporary, but courageous and novel legislation designed to rapidly increase the inventory of affordable housing units, and to do so in the most expeditious and economical way with a high degree of flexibility given to the developer in developing real property for affordable housing.³¹

With the intent of encouraging a "[rapid] increase [in] the inventory of affordable housing units, and to do so in the most expeditious and economical way," the legislature implemented in that bill (SLH 1988 Act 15) a statewide inclusionary zoning policy. The legislature, therefore, regarded IZ as a solution to the growing need for affordable housing with a degree of immediacy and low cost that other solutions did not offer. In this section, we discuss the structure of the Kakaako and Honolulu County policies to date.

A. THE KAKAAKO COMMUNITY DEVELOPMENT DISTRICT

Implementation of IZ policy occurs at multiple levels of government. Some policies, like the 5-year program allowing exception to zoning rules and ordinances in SLH 1988 Act 15, are enacted as State law. Others, like the City and County of Honolulu's rules regarding unilateral agreements, occur at the local government level. Still other instances of IZ policies

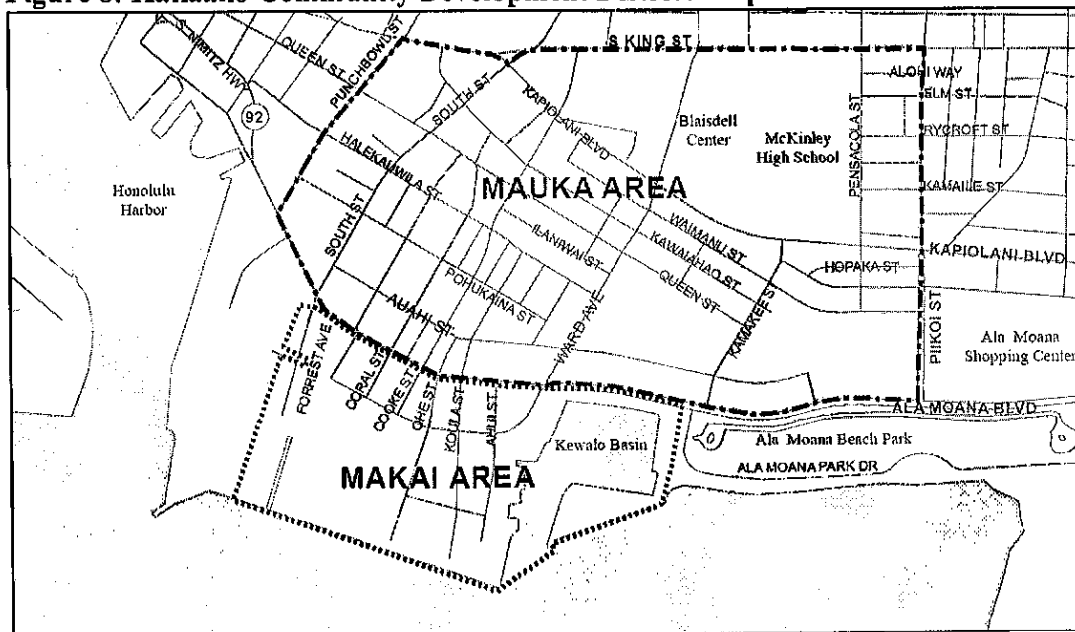
relating to land use on Oahu are not in statutes or ordinances at all, but instead reside in the administrative rules of an agency like the Land Use Commission. A prime example of this last class of IZ rules existing outside of statutes and ordinances are the Hawai'i Community Development Authority's Kakaako Mauka area rules, which also happen to be the oldest and first instance of IZ policy in Hawai'i.

In 1976, the Hawai'i State Legislature established the Hawai'i Community Development Authority (HCDA) with the passage of SLH 1976 Act 153. The law states that HCDA is intended to be "a public entity which shall determine community development programs and cooperate with private enterprise and the various components of federal, state, and county governments in bringing plans to fruition" (HRS 206E-1). Areas under the jurisdiction of HCDA are called community development districts, and must be specially designated by legislative action (HRS 206E-5).

The first community development district, established by the legislature in the same 1976 bill, was the Kakaako Community Development District (hereafter referred to as the "Kakaako district"). As part of the designation, the legislature noted the district's relatively low state of development and proximity to the urban core gave it "potential for increased growth and development that can alleviate community needs such as low-income housing, parks and open space, and commercial and industrial facilities" (HRS 206E-31).

The current boundaries of the Kakaako district detailed in HRS 206E-32 are shown in Figure 8.

HCDA began operations in 1977 and focused first on drafting a comprehensive development plan with significant community input. After 5 years, on February 16, 1982, the Kakaako Community Development District Plan was approved by the Governor pursuant to HRS 206E-5(e). The

Figure 8: Kakaako Community Development District Map

SOURCE: SUPPLEMENTAL EIS PREPARATION NOTICE, REVISIONS TO THE KAKAOKO COMMUNITY DEVELOPMENT DISTRICT MAUKA AREA PLAN AND RULES, HCDA, DECEMBER 2007, P.1-3 AVAILABLE AT [HTTP://OEQC.DOH.HAWAII.GOV/SHARED%20DOCUMENTS/EA_AND_EIS_ONLINE_LIBRARY/OAHU/2000S/2007-12-23-SEISPN-KAKAOKO-COMMUNITY-DEVELOPMENT-DISTRICT-MAUKA-AREA.PDF](http://oeqc.doh.hawaii.gov/shared%20documents/EA_AND_EIS_ONLINE_LIBRARY/OAHU/2000S/2007-12-23-SEISPN-KAKAOKO-COMMUNITY-DEVELOPMENT-DISTRICT-MAUKA-AREA.PDF)

plan included Hawai'i's first inclusionary zoning policy, which remains in force today.³²

B. KAKAOKO'S RESERVED HOUSING REQUIREMENT RULE

HRS 206E-4(18) implicitly empowered HCDA with the ability to impose affordable housing requirements on any proposed development project in any jurisdiction under its control. The "[r]equirement of providing reserved housing units" requires every development that includes multi-family dwelling units on a lot of at least 20,000 square feet to provide at least 20 percent of the units for sale or rental to qualified persons.³³ The requirement could be met by either building residential units for sale or rent at controlled prices as part of the project itself, by building controlled price units elsewhere in Kakaako, or by making cash payments to the Authority in lieu of providing the units.³⁴ In return for providing reserved housing units, the builder would be permitted to build high rise multi-family residential structures (i.e. condominiums)

that would otherwise be prohibited.

After July 1995, the "cash payments in lieu of providing such reserved housing units" were determined in the rules as a percentage of the expected gross revenues of the developer. The percentage was set using a sliding scale: the more reserved units in the project and the lower the expected average price of the non-reserved units in the project, the lower the percentage of gross revenues that had to be paid by the developer as cash payments in lieu. The formula used to determine the payment (A) is:

$$A = 4.0\% \times [1 - (B/D/20\%)] \times C$$

Where:

B = number of reserved housing units provided

D = total number of units

C = gross revenue

Note that the bracketed term drops to zero when B/D is 20% and it is equal to one when B is zero. This is why the cash

payment in lieu ranges from 0% to a maximum of 4% of expected gross revenues.³⁵

Gross revenues are defined in the rules to include any receipts from selling non-reserved units and parking plus the capitalized value of net operating rent for rental space in the proposed development. The expected values of these gross revenues are determined by HCDA using estimates at the time of permit approval. Payment is made prior to issuance of the permit, which may then be “adjusted based on the actual average price of the development” at a later date.³⁶ Cash fees collected in this way are placed in a revolving fund to be used by HCDA to contract to build or improve reserved housing in Kakaako.

The final component of the reserved housing policy is the definition of who the “qualified persons” eligible to purchase the reserved units are, and the price controls on the reserved units. The adjusted gross income (AGI) limits for qualifying households depends on whether the household is seeking to purchase (not to exceed 140% of median income) or rent (not to exceed 100% of median income).³⁷ Moreover, the purchasing or renting applicant household cannot have more than 125% of the relevant AGI limit in assets, including gifts to assist in down payments. Pricing of the reserved units to be sold, after a maximum 10% down payment, are capped in a way that ensures the total costs of homeownership³⁸ for the buyer does not exceed 33% of their gross monthly income. In a similar way, the total monthly rent plus expected water and electricity bills could not exceed 30% of a renter’s gross monthly income. These rent and qualification controls retain force from time of sale or rental for a minimum period of 15 years on any reserved unit.³⁹

While the 20% reserved housing requirement remains in the HCDA Kakaako plan, it is not always enforced in a consistent way. In April 1997, HCDA passed a temporary 12-month waiver of the affordable housing fees paid in lieu

of providing qualifying units.⁴⁰ This effectively suspended the IZ program to “facilitate redevelopment efforts by providing incentives that encourage timely new development activity.” To qualify for the waiver, projects had to submit permit applications within 12 months of the waiver’s enactment and meet certain project timeline benchmarks.⁴¹

The 1997 general waiver was not extended after it expired, but HCDA has given exemptions to specific projects since then. For example, 909 Kapiolani built by POSEC Hawai‘i was granted a full waiver from the reserved housing requirement.⁴² Since the reserved housing requirement administered by HCDA is part of the administrative rules passed by the authority and not encoded in any statute, its application is at the discretion of HCDA. This can be observed on Schedule A of the Mauka Area Rules, which states the amount of cash required as a cash payment in lieu of providing reserved housing units is a range from 0 to the maximum amount determined by the formula cited above. This implies that HCDA always reserves the right to reduce or eliminate the cash payment amount for any development project in its jurisdiction. While Schedule A is no longer applicable due to SLH 2009 Act 18’s prohibition of cash in lieu payments for HCDA’s reserved housing requirement, the variability remains: HCDA has the power to waive or reduce the number of units that must be provided on a project by project basis.

C. 2009 SENATE BILL 1350

During the 2009 session of the Hawai‘i Legislature, a bill was proposed and subsequently passed to raise the reserved housing requirement in the Kakaako district from 20% to 30%. The measure was vetoed by Governor Lingle because it would have extended the reserved housing requirement to commercial development projects and included questionable language. For example, the Governor notes that “the provisions of the bill appear to permit a development project to satisfy a reserve housing requirement outside of Kakaako,

but Section 3 of the bill eliminates the power of the Hawai'i Community Development Authority to allow these outside developments."¹³

SB1350 would have enlarged the types of projects required to provide reserved housing units because the current HCDA rules only require development projects that include multi-family dwelling units to provide reserved housing. Section 1 of the bill included the following table (Table 8) showing the revised requirements.

As noted by Governor Lingle's veto message, this would impose reserved housing requirements on purely commercial development projects that do not exist under the current HCDA rules.

The other notable effect of SB1350 would have been to encode the HCDA reserved housing requirement directly into the statutes that empower HCDA. Section 3 of the bill would have changed the language in HRS 206E-4 enumerating HCDA's powers to recognize legislative limits on what reserved housing requirements could be enforced. HRS 206E-4(18) would have been changed to read that HCDA could "[a]llow satisfaction of any affordable housing requirements imposed by law or the authority upon any proposed development project through the construction of reserved housing units."¹⁴ Previously, there were no statutory restrictions (i.e. "by law") on HCDA's powers regarding affordable housing requirements.

Furthermore, Section 6 would have encoded minimum requirements for who reserved housing units in the Kakaako district could be sold to. Previously, the enabling language put

the buyer qualifications at the discretion of HCDA: "Reserved housing' means housing designated for residents in the low or moderate income ranges who meet such eligibility requirements as the authority may adopt by rule" (HRS 206E-101). SB1350 would have inserted a standard that said eligible buyers must earn not more than 140% of the area median income in addition to any eligibility requirements established by the authority.

While these policies would have put a stable set of policy standards in place for the Kakaako district's reserved housing policy, it would have also taken away much of the flexibility of HCDA to respond to changing economic and market conditions. Moreover, as noted by the Governor, the bill would "place a de facto halt on the permitting of new projects in Kakaako until such time as the Hawai'i Community Development Authority completes rulemaking actions that would be required to implement the provisions of this bill."¹⁵

D. HONOLULU COUNTY: OCTOBER 1994 DHCD RULES

Relevant to the discussion of Kakaako district reserved housing requirements are the affordable housing policies of the City and County of Honolulu. The policy is relevant because the City and County's jurisdiction covers largely the same market and represents the next best alternative for both builders and buyers. While the Kakaako district is governed under the authority of HCDA and not the City and County of Honolulu (hereafter referred to as "the City"), the urban zoned land governed by the City is the closest substitute for developable land in Kakaako.

Table 8: SB1350 Reserved Housing Requirement for Kakaako mauka area

Land Area (square feet)	Residential Development (%)	Commercial Development (%)
0 - 19,999	0	0
20,000 - 79,999	20	10
80,000 or more	30	20

SOURCE: SB1350 SECTION 2, AVAILABLE AT [HTTP://WWW.CAPITOL.HAWAII.GOV/SESSION2009/BILLS/GM812_.PDF](http://WWW.CAPITOL.HAWAII.GOV/SESSION2009/BILLS/GM812_.PDF)

Prior to 1998, the administration of inclusionary zoning policy for the City was done by the Department of Housing and Community Development (DHCD). In October 1994, that agency adopted Rules for the Terms of Unilateral Agreements Requiring Affordable Housing which allowed developers to satisfy a 30% affordable housing condition for permit approval by providing affordable rental or sale units either on- or off-site, by conveying developable land to the City, or by paying an in-lieu fee to the City.⁴⁶ The policy required affordable units to be rented or sold to buyers earning no more than 120% of the HUD median income. One third of the affordable units (10% of the entire project) had to be rented or sold to those making no more than 80% of the HUD median income.⁴⁷ Affordable rental units that were rented to either category had to be rented for a minimum of 10 years at controlled prices.

According to the rules, the for-sale affordable sale units had to be priced in a way that the monthly total costs of ownership did not exceed 33% of the purchaser's gross monthly income. Affordable unit rental rates for those making less than 80% of the HUD median income could not exceed the Section 8 Fair Market Rents established by HUD. For those making above 80% of the HUD median income, the monthly rent could not exceed 30% of the renter's gross monthly income.⁴⁸

Purchasers of the for-sale affordable units were subject to a 2 to 8 year buyback provision,⁴⁹ under which the City reserved the right to buy the unit back if the purchaser wanted to sell it and move during that period; this restriction on transfer prevented the purchaser from reselling the unit on the open market for prevailing market prices. Similarly, affordable rental units could be sold 10 years after initial rental, but for an additional 10 years thereafter the City would have the right to buy the unit first. Thus, a rental unit could only be freely sold under the 1994 rules 20 years after the initial rental.⁵⁰ Bonus considerations left unspecified were available

to developers who maintained affordable rental units at affordable rents for more than 20 years.

In April 1998, DHCD was eliminated and the powers to negotiate unilateral agreements for developer permits moved to the Department of Planning and Permitting (DPP). "By 1999, this set of controls was clearly not working," (SMS, 2005, p. i) and the City passed a two year temporary suspension of buyer qualification requirements and buyback provision.⁵¹ City Ordinance 01-33 extended this moratorium to August 5, 2005, but a subsequent effort by developers to obtain another extension to June 30, 2006 failed.⁵² Note that the price controls for affordable housing were not suspended by the moratorium in either 99-51 or in the extension ordinance 01-33. Therefore, units could be priced in a way that met the requirements to satisfy the City's affordable housing rules and count as provision of an affordable unit, but could be sold to anyone (as long as they resided in the unit for at least one year). Since the expiration of 01-33, the original 1994 DHCD rules have been in place regarding applicant qualifications and transfer of affordable units.

E. DEFINING "SUCCESS" OF INCLUSIONARY ZONING

What does it mean for an IZ policy to be successful? If the policy is mandatory, any new development will result in additional affordable units in the market unless the development receives a waiver. The success of an IZ policy should be examined in light of its effects on the entire housing market in the jurisdiction of interest. For example, does imposition of the policy have any effect on the price and quantity of other (market-priced) housing units? As discussed in Section 3, if an IZ policy increases the number of affordable units at the expense of reduced development in the area and higher market prices, the policy may be unsustainable. This is because the long run market price of homes will depend on not only the restricted price of current "affordable units," but on the over-

all stock of housing units. Furthermore, the affordable units revert to market-priced units at some point. Based on Figure 7, if the supply of housing units is restricted, the market price of homes will increase, all else equal. A truly successful IZ policy is one that increases the number of “affordable homes” available to the target population without having negative effects on the larger housing market in the area. These negative effects include increases in the market prices of housing units and/or decreases in the number of housing units.

The literature has much to offer regarding characteristics of markets where IZ has worked reasonably well to produce affordable units without significantly distorting the surrounding housing market, and characteristics of IZ policies that tend to perform better than otherwise. From the studies we reviewed, it appears that mandatory IZ policies in general lead to construction of more units of affordable housing than voluntary policies (NHC 2002, Minnesota 2002). By imposing additional costs, however, mandatory IZ policies can discourage overall development by reducing construction of new homes, therefore leading to higher overall home prices. In some areas, cash buyouts or in-lieu fees have proven successful in generating revenues to support low-income housing programs.

In other areas, such as California, Massachusetts, and Colorado, allowing construction of affordable units at offsite locations has helped meet critical regional housing needs. Successful IZ policies have included inducements to builders such as density bonuses, expedited permitting, financial assistance, and technical assistance (Schuetz et al. 2007). Exemptions, while not directly contributing to new affordable units, can be part of a successful IZ program if the policy is

transparent and applied consistently. Finally, long duration requirements have helped successful programs maintain the stock of affordable homes by imposing restrictions on when homes can be resold (Brown 2001, Minnesota 2002).

Success of an IZ policy will also be determined in part by local housing conditions. Table 9 lists the policy, market, and land characteristics of past successful IZ programs in the U.S. and assesses these characteristics for Kakaako.

Previous successful IZ programs were in areas with high demand for affordable housing (Brunick 2003), located outside major cities (NHC 2002) where housing markets were “hot” i.e. prices were rising (Brown 2001, Brunick 2003), and in locations that were desirable for development (Brunick 2003).

Land availability has helped some IZ programs succeed. Rural land on the periphery of a growing metropolitan area or surplus land that becomes available enables more rapid development at lower overall cost. Rezoning of land from rural or agricultural to residential will also increase the value of that property, making it easier to provide affordable units than in a previously developed area where income is already being generated.

The Oahu housing market and the Kakaako IZ policy have some of the characteristics that the literature suggests are necessary to meet affordable housing needs through inclusionary zoning. We now turn to specific data regarding the provision of affordable housing units and report outcomes of the Kakaako and Honolulu inclusionary zoning policies to date.

Table 9. Policy, Market, and Land Characteristics of Successful IZ Programs

Select Characteristics of Successful IZ Programs in the U.S.		Kakaako Characteristics	
		Yes	No
Policy	Mandatory	✓	
	Cash buyout		✗
	Off-site construction	✓	
	Density bonus	✓	
	Preferential permitting		✗
	Cost offset		✗
	Exemptions	✓	
	Transparent consistent exemptions		✗
	Long duration requirement		✗
Market	High demand for affordable housing	✓	
	Outside a large city		✗
	Hot market		✗
	Desirable location	✓	
Land	Rural land		✗
	Surplus land		✗

6. THE EFFECTS OF OAHU IZ ON AFFORDABLE HOUSING

We can use the data above and lessons from the extensive literature on inclusionary zoning to anticipate effects of policies like HB 2846 and HB 2849. Evidence from various types of housing markets and various forms of IZ policy suggest what is in store for Oahu.

The state bill referenced at the start of section II, SLH 1988 Act 15, created a statewide program that allowed the state's Housing Finance and Development Corporation (HFDC) to enter into agreements with private developers "for the purpose of exempting the project from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to zoning and construction standards for subdivisions, development, and improvement of land, and the construction, improvement, and sale of homes thereon."⁵³ In short, essentially all governmental restrictions at all levels could be waived for one concession by the developer: "not

less than sixty per cent of the units shall be sold in price ranges established by [HFDC]."⁵⁴ Here, inclusionary zoning offered the lifting of bureaucratic red tape in return for provision of affordable units.

The program, which lasted for five years, resulted in agreements signed by HFDC with private builders for more than 16,000 units, at least 60% of which would have been affordable. Unfortunately, "the vast majority of these homes were not developed due to the sixty per cent affordable housing requirement that made many projects economically unfeasible." Furthermore, according to HFDC, "less than 600 were actually constructed."⁵⁵

A. KAKAAKO

As can be seen in Table 10, more than two-thirds of the reserved housing units provided in the Mauka Area of

Table 10: Reserved Housing Units in Kakaako, 2008

Project Name	Reserved Condominiums			Public Control
	Sale Units	Rental Units	Senior Rentals	
1133 Waimanu	264	18	0	None
1226 Waimanu*	64	0	0	None
Honuakaha	93	0	151	HCDA
Kamakee Vista	0	227	0	HCDCH
Kauhale Kakaako	0	268	0	HCDCH
Keola Lai	63	0	0	None
Moana Vista*	124	0	0	None
Na Lei Hulu Kupuna	0	0	76	HCDA
Pohulani	0	0	263	HCDCH
Royal Capitol Plaza	28	0	0	None
Total	636	513	490	
Total (Actually Built)	448	513	490	

*PROJECT CONSTRUCTION IS ON HOLD AND EXCLUDED FROM THE SUM TOTAL (ACTUALLY BUILT).
 SOURCES: HCDA AFFORDABLE HOUSING MAP, AVAILABLE AT
[HTTP://HCDWEB.ORG/KAKAAKO/PROJECTS/AFFORDABLE%20HOUSING%20MAP.PDF](http://hcdaweb.org/kakaako/projects/affordable%20housing%20map.pdf), AND HCDA 2008
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Kakaako are rental units rather than fee simple units for sale. Furthermore, Kamakee Vista, Pohulani, Na Lei Hulu Kupauna, Kauhale Kakaako, and Honuakaha were all developed at least in part by either HCDA or HCDCH; by public entities rather than private developers.

Many private sector projects do not appear on this list because they have no reserved housing units, although many of these projects did pay the in-lieu fee required at the time of development. Note that the 1133 Waimanu project in Table 10 “was developed by Waldron Ventures to satisfy the Hawai'i Community Development Authority's reserved housing requirement for the 404 Piikoi Street Project,” which has no reserved housing units. This is the Nauru Development entry in Table 11, which shows how many reserved units were actually included within the planned development condominiums by private developers. Only the two most recent

projects actually provided most or all of the units required; all other prior projects either paid the in-lieu cash fee to buy out the requirement, built the reserved units off site, or received a complete waiver from HCDA.

The historic data suggests that the overwhelming majority of reserved housing in Kakaako (74.3%) has so far been built in public development projects. So far, it appears that the experience of the HCDA and the Kakaako inclusionary zoning policy have resulted in very little private developer driven reserved housing. Instead, developers have chosen to pay cash in-lieu and leave it to the public housing agencies to build (mainly rental) affordable housing. With the recent prohibition of cash in-lieu in Kakaako by SLH 2009 Act 18 and expressed interest of the State in exiting oversight of public affordable housing, it is unclear what the future of affordable housing in Kakaako will be.

Table 11: Private Planned Development Projects Subject to Kakaako Rules

Permitted	Project Name	Condominiums		Reserved Units		Cash in-lieu
		Total Units	Market Units	20%	Provided	
1984	One Waterfront Tower	307	307	62	0	\$2,427,379
1984	Royal Capitol Plaza	297	269	59	28	\$399,310
1984	Nauru Development	1373	1091	275	0	1133 Waimanu
1989	Imperial Plaza	221	221	44	0	\$2,539,349
1995	One Archer Lane	331	331	66	0	\$1,183,778
2002	Hokua	248	248	50	0	Waiver
2003	Moana Pacific	706	706	141	0	Waiver
2005	909 Kapiolani	227	227	45	0	Waiver
2005	Keola Lai	352	289	70	63	\$1,194,560
2005	Moana Vista	520	396	104	124	\$ -
Total		4582		916	215	

SOURCE: WRITTEN TESTIMONY SUBMITTED BY ANTHONY CHING, EXECUTIVE DIRECTOR OF HCDA BEFORE THE HOUSE COMMITTEE ON WATER, LAND, OCEAN RESOURCES & HAWAIIAN AFFAIRS, MONDAY, MARCH 10, 2008, AVAILABLE AT [HTTP://WWW.CAPITOL.HAWAII.GOV/SESSION2008/TESTIMONY/SB2982_WLH_03-10-08_.PDF](http://www.capitol.hawaii.gov/session2008/testimony/SB2982_WLH_03-10-08_.PDF)

B. CITY AND COUNTY OF HONOLULU

The City's Department of Planning and Permitting (DPP) has issued two studies regarding the effectiveness of the City's inclusionary zoning policies in delivering affordable housing to targeted groups. The first study, issued in 2001, examined the effect of the buyer qualification and transfer/buyback rules moratorium implemented in Ordinance 99-51. The second study, transmitted to the City Council in 2005, reported on the effects of the extension of the moratorium from 2003 through August 2005.

We have been unable to determine the number of units sold under the DHCD 1994 rules from 1994 through 2001,⁵⁶ but information provided by DPP⁵⁷ make it possible to characterize the program's outcomes from 1999 to 2005. DPP concluded in the first study in 2001 that "most of the buyers (of affordable housing units) fit within the target groups for the City's Affordable Housing Program."⁵⁸ However, in the subsequent period from 2001 to 2005, DPP's analysis of transaction level sales data including buyer income and family size showed that less than one-third of the buyers in any of those years were actually in the targeted affordable housing groups that would have qualified in the absence of a moratorium. We return to this point in the conclusion.

DPP determined "that when the buyer qualification restrictions were suspended, sales of affordable units were made to families who would not have qualified with the restrictions in place." DPP further "recommended that the moratorium

be lifted and that buyer eligibility qualification provisions be reinstituted on affordable units."⁵⁹ According to the transaction level data, "Half of the households had incomes 20% higher than the maximum qualifying income for the unit they purchased, and one-fourth had incomes, almost 50% higher than the maximum." In some cases, buyers of affordable homes were making several times the HUD median income; there is even a case of an affordable home buyer who was earning in excess of \$500,000 in income.⁶⁰ In short, the homes were priced to be affordable to those who could not afford market priced homes, but instead were mostly sold to those who could have afforded market priced homes anyway. Under the 01-03 extension, affordable homes were not going to the families the program was intended to help.

Median home prices in the Honolulu housing market provide insight as to why this was the case. According to DPP, "under the unique housing market conditions in 1999, market unit prices had moved so close to affordable housing unit prices that the additional restrictions on the affordable units made them less attractive than the market units for many prospective 'qualified' buyers." This can be seen in Figure 5 presented earlier, which shows Honolulu median condo prices below the affordable mortgage since 1992. From the standpoint of a developer, selling a unit under the affordable home pricing and as market priced made little difference. But if any unit past the 30% minimum was designated as an affordable unit, it could be used as a credit to satisfy the affordable housing requirement for future projects.⁶¹

Table 12: Honolulu Affordable Housing

	2001	2002	2003	2004	Total
Total Affordable Units Provided	454	838	1,068	202	2,562
Number Affordable to 80% of Median Income	154	274	298	30	756
Number Affordable to 120% of Median Income	189	343	645	168	1,345
Share of Households With Qualifying Income	26.3%	29.0%	31.7%	32.4%	29.9%

SOURCE: DPP (2005), TABLES 2 AND 5

However, market prices rose after 2002, and “[e]ven moderate-income families [were] priced out of the housing market.”⁶² Both qualified buyers and higher income buyers who may not have met the original income requirements turned to affordable housing as an attractive option. Since the moratorium lifted all buyer income restrictions, it allowed developers to sell affordable units to buyers of any income level. It is likely that sellers viewed buyers with higher incomes as less risky and easier to secure home loans for, and as a consequence were incentivized to seek them out even for affordable units that had to be sold.

According to DPP, no new projects since the expiration of 01-33 in August 2005 have required certification for provision of affordable housing because every single development has drawn down on affordable housing credits earned during the moratorium when market prices and affordable housing prices were near each other. Builders have discussed new projects because they are running low on banked affordable housing credits, but to date (November 2009) no new projects have been submitted for affordable housing review.⁶³ Therefore, the City’s inclusionary zoning policy has provided no new affordable housing units since 2005, and delivered

less than one-third of the affordable units between 2001 and 2005 to targeted families in need of affordable housing.

C. AFFORDABILITY UNDER CURRENT KAKAAKO AND SB 1350 RULES

On the supply side, it appears that neither the HCDA nor Honolulu’s IZ policies have delivered substantial numbers of affordable housing units (by their own programmatic definitions). We now turn to the demand side and examine how many households exist on Oahu that could qualify for reserved housing as defined in the HCDA rules. Table 13 shows the HCDA inclusionary zoning policies for affordable unit pricing and buyer eligibility.

Using data for HUD median income, median home prices in Honolulu from the Honolulu Board of Realtors, and income distribution data for homeowners and renters from the US Census Bureau; we are able to provide approximate measures of the relevant demand and affordability for the units provided by these programs. We present results using the policy parameters from the HCDA rules for Kakaako’s Mauka area rules, which would have remained constant through the present even if SB 1350 had entered into law.

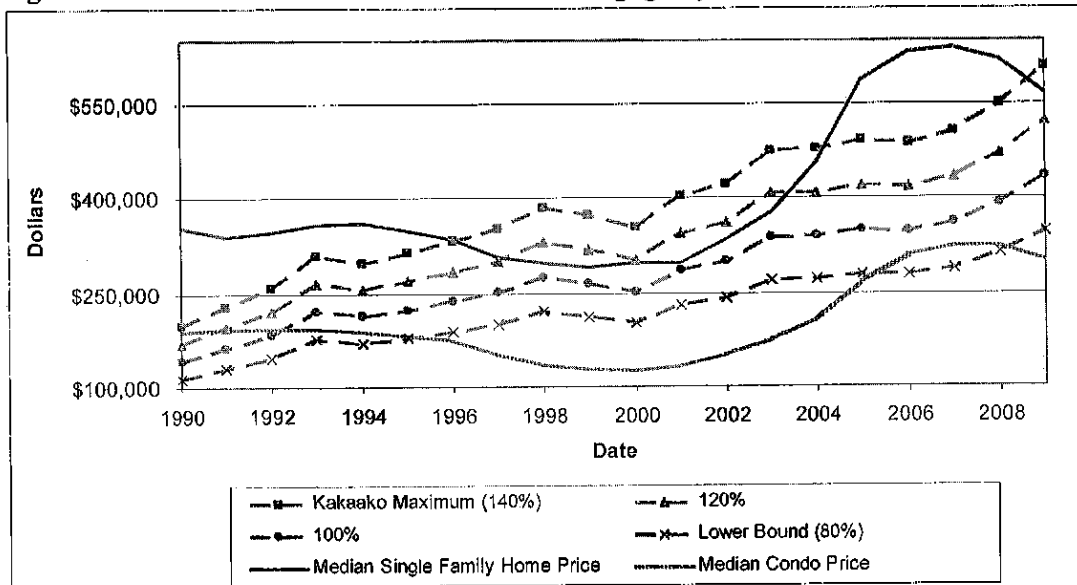
Table 13: Kakaako Affordable Unit Pricing and Buyer Eligibility Standards

		HCDA Mauka Rules	SB 1350
Max. Income	Buyer	140% of Median	140% of Median
	Renter	100% of Median	100% of Median
Max. Owner Monthly Costs	Buyer	33% of Gross Inc.	33% of Gross Inc.
	Renter	30% of Gross Inc.	30% of Gross Inc.
Min. Years of Affordability		15	15

Figure 9 shows maximum affordable mortgages for four Honolulu income groups from 1990 to 2009 and median prices of single-family homes and condominiums, revealing that the affordability problem in the state is cyclical. From 1990 to 1995, at the end of the last Oahu housing cycle, single-family homes remained out of reach of households earning 140% of HUD income. Yet from 1996 to 2003 households in the 120-140% bracket could afford the median

priced home, and all gap income households could afford a median priced condo from 1996 through 2005. From 1992 to 2008, all income groups except the 80% group could afford the median priced condo. Finally, the recent peak in unaffordability occurred in 2007, and the expected decline in Oahu home prices is expected to bring single-family homes within reach of the top gap housing group and condos within reach of all gap housing income levels.

Figure 9: Honolulu Maximum Affordable Mortgage by Income Group, 1990-2009



NOTE: 2009 DATA ARE UHERO FORECASTS.
SOURCE: UHERO

7. POLICY ALTERNATIVES TO INCLUSIONARY ZONING

Across the U.S., a variety of policies, programs, and initiatives have been implemented to augment affordable housing supplies and increase home ownership among low- and moderate-income households. Listed below are some of the policies that have the potential to increase housing affordability in the Honolulu market. We cannot say how these alternatives would work in Hawai'i because at the time this study was completed the demand for housing at various income levels was unknown; however, these alternatives have been used with success in other places. The alternative policies are grouped under the following objectives: A) maintain existing supplies, B) maintain existing home ownership, C) increase land availability, D) reduce conflicting policies and restrictions, and E) leverage resources and programs.

A. MAINTAIN SUPPLY OF EXISTING AFFORDABLE HOMES

Maintaining and restoring affordable rentals is a strategy that has been shown to work. In New York, NY, a group of 80 banks and insurance companies sponsor a nonprofit organization that administers low cost loans for construction and rehabilitation of multifamily homes. In 30 years, the organization has provided financing and technical assistance for more than 100,000 units (Lubell, 2006).

Providing increased flexibility by way of building, permitting, and restoration codes is another strategy to help maintain an existing supply of affordable homes. Building codes can be revised to facilitate private investment in restoration. The state of New Jersey revised requirements to allow older homes to be updated to meet codes at lower cost. In this way, many new rehabilitation projects were undertaken and millions of dollars were saved (Lubell, 2006).

Creative financing and tax incentive strategies have also been used to maintain the supply of existing affordable

homes. Jurisdictions can implement tax abatement financing to encourage owners to invest in restoration of existing rentals by reducing or freezing the assessed value on which the property is taxed. In Portland, Oregon, tax abatement financing can be applied to developments near public transportation, rehabilitation of homes for rent, rehabilitation of owner-occupied homes, and construction of affordable not-for-profit rental homes. And in Chicago, Illinois, older rental homes may qualify for reduced property taxes (Lubell, 2006).

B. MAINTAIN EXISTING OWNERSHIP OF AFFORDABLE HOMES

An important part of affordable housing initiatives is encouraging families to responsibly maintain budgets to stay in their homes after they purchase them, or discouraging them from purchases they cannot afford. Offering financial education and counseling, especially to first-time homebuyers, is an important component of a successful affordable housing solution. The state of Montana created a network that educated 10,000 families and 3,000 homebuyers in 200 communities in just 8 years. In Chicago, Illinois, counseling, telephone hotline, credit counseling services, a faith-based outreach, and workshops helped borrowers avoid foreclosure. In the first three years, 1,300 families who received assistance were able to avoid foreclosure. An estimated \$86 million has been saved in city services and fees and costs to financial institutions (Lubell, 2006).

C. INCREASE LAND AVAILABILITY FOR AFFORDABLE HOME CONSTRUCTION

Increasing land availability has the effect of lowering costs to builders, increasing potential profit margins and thus potentially driving down housing prices (all else equal). This strategy has been shown to work in many diverse jurisdictions. In Woodinville, Washington, land that had originally

been purchased for a solid waste transfer station had become surplus property. King County acquired the parcel and built 170 affordable houses and rentals for low- to middle-income families. In Camarillo, California, land that had been part of a state mental hospital was acquired and used to build affordable homes for university faculty and staff at Cal State Channel Islands. An old elementary school in Rossville, Georgia, was converted to affordable homes for seniors, and in Denver, Colorado, airport property was acquired for a mixed-use development with 10% set aside for affordable homes for working families (Lubell, 2006).

Modifications to zoning restrictions can also increase availability of sites on which to build affordable housing. In Fairfax County, VA, an area near the site of a planned mass transit stop was rezoned high density. Sixty-five homes and a five acre parking lot will be replaced by 2,000 condominium units and a half million square feet of office and retail space. The redevelopment will provide approximately 100 affordable homes. Vacant waterfront in Brooklyn was rezoned residential and will be the site of 10,000 new homes, open space, and public parks. The redevelopment will include approximately 3,500 affordable homes (Lubell, 2006).

Relaxing housing restrictions by allowing for different types of housing has also been shown to work. In Cambridge, Massachusetts, a Massachusetts Institute of Technology development included 137 mixed-income homes comprising flats, duplexes, and three bedroom homes. Oakland, California, is using manufactured housing⁶⁴ in an infill development to supply working families with affordable homes, and Santa Rosa, California, and Mercer Island, Washington, are using accessory dwelling units⁶⁵ to help meet affordable housing demands.

D. RECOGNIZE AND ELIMINATE CONFLICTING POLICIES AND PROGRAMS

Streamlining the review and permitting processes to expedite construction of affordable housing is a strategy that has worked elsewhere and has significant potential to help in Hawai'i. In Austin, Texas, expedited reviews and fee waivers were offered for projects meeting program standards for affordable homes. The State of Massachusetts also provided a streamlined approval process for developments that include affordable homes.

Re-examining fee structures such as impact fees can alleviate the burden on developers and increases their incentive to provide housing units. In Albuquerque, New Mexico, Lincoln, Nebraska, and Martin County, Florida, impact fees were waived for low- to moderate-income level housing, and in Phoenix, Arizona, impact fees were waived or reduced (Lubell, 2006).

It is plausible that reducing the regulatory burden on developers could reduce home prices on Oahu or at least slow their rate of growth. Malpezzi (1996) found that a large increase in the regulatory burden of a city acts to reduce housing construction by 42 percent, increases home prices by 51 percent, and reduces homeownership rates by about 10 percent. If policy makers were to reduce the regulatory burden on developers even modestly, then the supply of housing will respond more rapidly to increased demand and allow for a slowing of the appreciation of existing housing. Even a modest increase in the number of condos developed and a modest slowing of the growth of condo prices over the next decade would put them in reach of most gap-income households. If policy makers "are interested in reducing housing costs, they would do well to start with zoning reform. Building small numbers of subsidized housing units is likely to have a trivial impact on average housing prices (given any reasonable demand elasticity), even if well targeted towards deserving

poor households. However, reducing the implied zoning tax on new construction could well have a massive impact on housing prices.” (Glaeser and Gyourko, 2002 p. 21)

E. RECOGNIZE AND LEVERAGE INTEREST-COMPATIBLE POLICIES AND PROGRAMS

Working with, supporting, and providing resources for grass root organizations and non-profits such as Habitat for Humanity has worked to increase affordable housing around the country. This has the potential to work in Hawai‘i as well. The Honolulu Habitat for Humanity is a nonprofit affiliate of the Habitat for Humanity International (HFHI). Homes are built using volunteer labor and donated materials and sold to buyers for no profit with zero-interest 20-year mortgages. As a condition of the purchase, the homebuyer must help with construction of the home. Between 1988 and 2008, Honolulu Habitat for Humanity completed 63 homes with two additional planned in 2009 and at least four more scheduled for 2010 (Honolulu Habitat for Humanity, 2010).

Fostering relationships between the housing authority and local businesses has proven to be a win-win strategy in cities such as Rochester, Minnesota. Rising home prices prompted the Mayo Clinic to pledge \$7 million for affordable homes within the region. Funds were combined with contributions from other employers, donations from local foundations, and state housing monies and financing. The effort resulted in 800 new affordable homes. In the state of Illinois, employers are entitled to a 50% tax credit on investments in affordable housing for workers (Lubell, 2006).

Because high housing costs make it difficult for business to attract and retain workers, getting local businesses involved in the challenge to provide affordable housing is a key part of the solution. Examples of this are plentiful. In San Diego, California, the Chamber of Commerce formed a 34 member housing committee to report on key issues and develop a set of recommendations for presentation to the mayor, and in

Chapel Hill-Carrboro, North Carolina, the Chamber created a housing council composed of a broad spectrum of stakeholders. In addition to regular meetings, the council started a website to provide information on the local housing market. In San Francisco, California, the Chamber listed “workforce housing and land use” as a top priority, supported measures aimed at increasing affordable housing, conducted a survey of renters, and holds stakeholder meetings to garner information and feedback on policy proposals, and in Sarasota County, Florida, the Chamber initiated an advisory group to provide county commissioners with recommendations on ways to address affordable housing issues. In San Jose, California, the Silicon Valley Leadership Group formed a coalition group with outreach and education activities and organized a speaker’s bureau made up of prominent business leaders who are available to speak at community function about affordable housing issues. In the District of Columbia, the city invites input from housing groups and local businesses on projects targeted at neighborhood development and middle income housing, and in Omaha, Nebraska, housing groups and local businesses joined forces to support a development with open space, and light industry, and affordable housing (Joint Center for Housing Studies, 2004).

Creative financing schemes and use of taxes and subsidies has also increased affordable options in diverse jurisdictions. In Tucson, Arizona, borrowers can receive down payment assistance with silent second mortgages⁶⁶ at zero interest if the family lives in the home for 20 years and 2% interest if less than 20 years. Within 12 years, \$4 million in funds had been repaid and recycled to other homebuyers. In the state of Arizona, unclaimed property⁶⁷ revenues are being used to fund a housing trust which to date has yielded \$20 million per year for affordable housing including set asides for housing on rural and tribal lands. The state of Montana set aside funds totaling \$65 million for first and second mortgages and \$0.5 million in federal funds for down payment

assistance. In North Bethesda, Maryland, rents on affordable townhouses are subsidized by a combination of exactions on market priced homes, reduced land costs, tax-exempt financing, property tax exemptions, and an additional state contribution. In Milwaukee, Wisconsin, the 4% low-income housing tax credit was combined with historic tax credits, federal funds, and state financing to renovate a 100-year-old landmark building into affordable apartments (Lubell, 2006). The local government of Escondido, California acquired state financing in the form of low interest loans for the acquisition and rehabilitation of affordable rental apartments, and the state of California recently initiated a short-term loan program to help defray site acquisition and pre-development costs for new homes at infill⁶⁸ sites. In New York, land was acquired to preserve and build thousands of affordable homes using a combination of city funds, loan guarantees, and private financing. In Alachua County, Florida, funds were set aside in the form of forgivable second mortgages⁶⁹ to cover impact fees costs for below-median income households.

Housing bonds are another popular tool used to increase supply. In the state of California, voters passed \$4 billion in bonds for affordable housing programs and activities. Within the first few years, funds were used to preserve nearly 100,000 affordable homes, rentals, and shelters. In Phoenix, Arizona, voters passed \$30 million in bonds to develop affordable rental homes. In Miami-Dade County, Florida, voters passed a general obligation bond from which nearly \$200 million will be made available for affordable homes. And in New York, a reserve funding was directed toward preserving and developing 165,000 affordable homes (Lubell, 2006).

F. DEMAND-SIDE POLICIES

It is important to note that the majority of the policies described above are supply side policies, that is, they act to increase the supply of housing. Yet in a well-functioning housing market, it is unclear that supply is the problem. As discussed above, a reduction in the regulatory burden could put median priced condos well within reach of the gap-income group. But as is clear from the above analysis, the typical renter does not have sufficient income to qualify to purchase median priced condos with or without regulatory reform. While the purpose of this study was not to evaluate the affordability of rentals and the affordability problem facing the less than gap-income population, we believe that this is where the true affordability problem exists. Once we have adopted a more flexible regulatory environment that facilitates building housing, the problem of affordability is one of low income. Even eliminating all regulatory barriers would not end the affordability problem for low-income renters. Instead, Feldman (2002, p. 16) argues "policymakers should respond to the high housing cost-to-income ratios by facilitating the ability of low-income households to acquire non-housing necessities like food and medicine." The idea is that society cares about the high housing cost-to-income ratio primarily because it prevents low-income households from purchasing other necessities such as adequate food and clothing. And, providing cash or cash-like subsidies to help low-income households acquire basic necessities crowded out by high housing costs is the most cost-effective way of dealing with the affordability problem. "If policymakers provide subsidies that can be used only in the housing market, then they must address the fact that building new housing units appears to be a relatively expensive method of providing low-cost housing compared to the alternatives." (Feldman, 2002 p 16.)

8. CONCLUSION

To assist the gap income groups with housing and homeownership, inclusionary zoning was implemented on Oahu requiring new developments to provide below-market priced units. What have been the implications of Oahu's inclusionary zoning policies? Using the best available data on population, housing and income, and findings from several decades of inclusionary zoning across the U.S. we arrive at the following conclusions.

1. Inclusionary Zoning policies have failed in other jurisdictions, and are failing on Oahu. IZ reduces the number of "affordable" housing units and raises prices and reduces the quantity of "market-priced" housing units.
 - Requiring developers to sell housing units at below-market rates reduces their revenues. Lowering the incentives for developers to produce housing will deter them from starting new projects, all else equal.
 - A comprehensive literature review of IZ policy studies from around the U.S. overwhelmingly indicates IZ policies have undesirable long-term effects. Approximately 90% of the policy studies found that IZ increases the market price of housing and decreases housing units available in the market.
 - A five year State program authorized by SLH 1988 Act 15 resulted in agreements to build 16,000 housing units, a percentage of which would be affordable. To date less than 600 total units of any kind have actually been built under those agreements.
 - Rules governing development in Kakaako dating from the 1980s were intended to increase affordable housing availability. More than 20 years later, only 1,451 affordable (predominantly rental) units have been built in Kakaako.
2. There is no affordable housing crisis in the "gap" income groups earning between 80 and 140 percent of household median income.
 - Affordable units under an IZ policy begun by the City and County of Honolulu in 1994 were originally intended for "gap" income group buyers. To encourage participation, the City lifted buyer income and resale restrictions in 1999. According to a review by the City, from 2001 to 2005 more than 66% of the designated affordable homes were sold to buyers earning more than the gap income group range. Since the restrictions were put back in place in 2005, no new projects have been submitted for affordable housing review under the City and County.
 - The UHERO affordable mortgage indicates that condominiums have been affordable for households with the nominal Honolulu median income since 1993.
 - The affordability problem in the state is cyclical. From 1990 to 1995, at the end of the last Oahu housing cycle, single-family homes remained out of reach of households earning 140% of HUD income. Yet from 1996 to 2003, households in the 120-140% bracket could afford the median priced home, and all gap income households could afford a median priced condo from 1996 through 2005. From 1992 to 2008, all income groups except the 80% group could afford the median priced condo.
 - The recent peak in unaffordability occurred in 2007 at the height of the last housing cycle, but the declining price of Oahu homes has once again brought single-family homes within reach of the top gap

housing group and condos within reach of all gap housing income levels.

3. Kakaako IZ policies endanger project viability by squeezing profit margins, especially under proposed HB 2846 and HB 2849.

- The economic implications of IZ policy can be illustrated using revenue and cost data from an actual condominium project in Kakaako that began construction in late 2006. With no reserved housing, the 33.1% expected profit margin for a Honolulu developer in 2007 would have been very near the 35-40% rule of thumb level of profitability expected by financial backers of such developments.
- However, when the reserved housing requirement is added, one eighth of the pre-financing profit margin goes to cover the IZ tax.
- To examine what happens outside of a booming economy, we repeat the exercise using 2009 prices and costs. Costs increased from 2007 to 2009, and the cooling of the housing market reduced revenue from market rate units. The combination of higher costs and lower revenues drops the profitability of even a best-case scenario, with no reserved housing, below 20%. When we add the existing affordable housing requirement, one eighth of the profit disappears again, driving the project further from viability.
- Finally, we repeat the exercise using the proposed rules in two pending pieces of legislation, HB 2846

and HB 2849. Under both of the proposed bills, our best-case scenario profit margins fall below 15%.

In short, a new condominium project similar to this would never be able to obtain financing and be built under either proposed bill.

4. Eliminating inclusionary zoning and easing development regulations will result in more housing units and lower housing prices.

- Reducing or eliminating overly burdensome regulation on development, including inclusionary zoning, will increase affordability of housing for two reasons.
- First, it will encourage building, increasing the overall stock of housing, which will help hold down the market price of housing.
- Second, removing IZ will allow for the natural “filtering” process to occur unheeded, with newer units going to higher income households and older units being increasingly occupied by lower income households as their values depreciate.

In summary, inclusionary zoning has not worked in a number of jurisdictions around the U.S., and is not currently working on Oahu. Overall, inclusionary zoning policies reduce the number of “affordable” housing units, while raising prices and reducing the number of “market-priced” housing units. We found no evidence of an affordable housing problem for Oahu’s “gap” income group earning between 80 and 140 percent of household median income. Eliminating inclusionary zoning and easing development regulations will result in more housing units and lower housing prices.

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ENDNOTES

¹These metrics are available on our website at <http://uhero.prognoz.com/>

²The census estimates for July 1, 2008 show Honolulu at 70.3% of Statewide resident population.

³Includes movers within the same county, total immigrants, and movers from abroad.

⁴Includes movers from other counties in Hawai'i but excludes movers within the same county.

⁵However, the study notes that military households on Oahu in the private sector are "almost exclusively in the rental market."

⁶In the 2000 census, average Honolulu household size was 2.91. The four most recent years of the American Community Survey indicate average household sizes of 2.91, 2.93, 2.88, and 2.90. Variations in the ACS estimates are not statistically significant (e.g. 2008 margin of error was 0.03), suggesting no change over those four years.

⁷A "crowded" household is one where there is more than 1 person per room in the housing unit. This table is available at <http://www.census.gov/hhes/www/housing/census/historic/crowding.html>

⁸US Census Bureau, 2008 American Community Survey 1-Year Estimates, Table C25014

⁹See, for example, Vorsino (2005).

¹⁰US Census Bureau, 2008 American Community Survey 1-Year Estimates, Table B11017 – note that no county level version was available for Honolulu for this table.

¹¹The "Maryland law" was passed in 1967, but was not actually applied until 1975. See Cooper and Daws (1990), Chapter 13: The Maryland Law. In particular, p. 412: "The 1967 law came into effect without Burns' signature. And even then it was not implemented by Democratic state administrations until after several legislative acts in 1975."

¹²See, for example, Cooper and Daws (1990), Chapter 3: The Land Use Commission. "On balance, the LUC came off

looking like what it was: an enormously powerful government agency, though one whose discretionary leeway was trimmed somewhat by the 1975 amendments to the Land Use Law." (p. 123)

¹³See, for example, Pang (2002), "Lease-to-fee cases clouded," Honolulu Star-Bulletin, June 5, 2002, available at <http://archives.starbulletin.com/2002/06/05/news/story1.html>.

¹⁴See "Historical Census of Housing Tables – Vacation Homes," available at <http://www.census.gov/hhes/www/housing/census/historic/vacation.html>. It is possible for a housing unit to be for sale but vacant because it is not the owner's primary residence.

¹⁵In 2008, American Community Survey Table H5 Vacant housing units shows 34,416 total vacant units, but only 5,718 (For rent) + 3,799 (For sale only) + 3,075 (Rented, not occupied) = 12,592 in the active housing services market. That means $34,416 - 12,592 = 21,724$ units were not available to anyone seeking housing services in 2008. The same value in Census 2000 was $29,538 - 16,465 = 13,073$. Thus the growth in number of existing units not actually part of the housing market for some reason between 2000 and 2008 is $21,724 - 13,073 = 8,651$.

¹⁶Census 2000 Summary File 1 (SF 1) 100-Percent Data, Table H5 and US Census Bureau, 2008 American Community Survey 1-Year Estimates, Table B25004.

¹⁷Schofield and Brown-Graham (2004, p. 4) note that affordable housing provided by traditional programs usually produce housing units that are kept separate from market-rate housing developments. "Often [traditional programs' affordable] housing is located at the city center or along the urban fringe, where land is cheaper but far less accessible to community resources."

¹⁸HCD's Moana Vista page at <http://hcdweb.org/what-s-new/moana-pacific-under-construction> reported 552,000 square feet of multi-family residential, 5,500 square

feet of commercial, and 22,000 square feet of industrial space. No mention was made of parking availability; we assumed 1 stall per residential unit and 8 staff/guest stalls at 325 square feet per stall. Sources have reported that the developer was to provide between 100 and 200 parking stalls to accompany the affordable units, but no precise number was given. Since the project was never completed, an observable *ex post* number of parking stalls is unavailable.

¹⁹Quarterly Construction Cost Reports are available online from Rider Levett Bucknall at http://www.americas.rlb.com/cost-research_quarterly.html. For this analysis, we used the second quarter 2009 data for present value and an average of the four quarterly reports in 2007 to proxy for construction costs faced by the developer of Moana Vista. We assume raw construction costs constitute 60% of the overall project costs; the other 40% includes financing, marketing, planning, and design.

²⁰HB 2846 and HB 2849 would both place additional reserved housing requirements above and beyond what already exist in the HCDA rules. These bills introduce higher requirements that take the square footage of the project and require a percentage of that total be used for reserved housing. Our estimates under these two proposals are based on the floorplan data of the original Moana Vista project rather than the revised Pacifica project's floorplan data.

²¹Regular Document No. 2008-105520 at the State Bureau of Conveyances indicated that \$45,000 of conveyance tax was paid when title was conveyed from Evershine X to KC Rainbow II for the land at the Moana Vista site. Since the conveyance tax rate is 30 cents per \$100 of purchase price, the purchase price must have been \$15,000,000. The land value used in Table 5 for 2009 is inflation adjusted using the UHERO forecasted Honolulu CPI.

²²Reserved housing units were selected based on the prices used by the developer; the lowest priced units were selected first for use as reserved housing units subject to price controls. This assumption will maximize the possible revenue raised,

even if it is not necessarily what a developer would do (e.g. they may prefer to separate the affordable housing onto their own floors away from the market rate units).

²³In June 2009, more than two years after construction began and following major price decreases, almost one in every seven units in the actual Moana Vista condominium remained unsold. This is based on the developer's price list from June 21, 2009.

²⁴Reserved Housing was assumed to target the lowest income group (80% of HUD median income) with only 10% of the reserved units. 20% were assumed to target the highest group (140% of HUD median income).

²⁵The computed prices account for the homeowner property tax exemption and assume low monthly maintenance fees (\$500 in 2007, \$700 in 2009). These increase the amount of income available and therefore increase the maximum allowable condo prices.

²⁶According to Paul Fried, Principal of AFC Realty Capital, "[w]e also look for projected profit margins of at least 35 to 40%, before we begin analyzing the developer's projected construction costs." See "Experts discuss concerns in condo development finance," *Real Estate Weekly*, February 1, 2006 available at <http://www.thefreelibrary.com/Experts+discuss+c+concerns+in+condo+development+finance.-a0142207151>.

²⁷At the time of the foreclosure action against Moana Vista, the original developer had already lost \$65 million due to an inability to secure financing in the face of the recession. See, for example, Janis L. Magin, "Stalled Moana Vista faces legal challenges," *Pacific Business News*, May 8, 2009 available at <http://pacific.bizjournals.com/pacific/stories/2009/05/11/story4.html?q=moana%20vista%20foreclosure>, and Janis L. Magin, "San Diego group buys Moana Vista," *Pacific Business News*, October 21, 2009, available at <http://pacific.bizjournals.com/pacific/stories/2009/10/19/daily33.html>.

²⁸According to a letter from Hawaiian Dredging to KC Rainbow II dated November 2, 2007 entered into evidence for 1st Circuit Court case ICC09-1-000914, the contracted costs

of building the tower of Moana Vista from the ground floor to the 6th floor was "not to exceed \$11,877,929." Included in the document is a detailed line item cost estimation. Extrapolating the costs to all 46 floors imply the costs of the tower alone would have been around \$96 million, which is relatively close to our estimate using RLB cost data in 2007. A statement by Hawaiian Dredging published September 26, 2009 in the Honolulu Star-Bulletin (available online at http://www.star-bulletin.com/business/20090926_Private_sale_talks_delay_Moana_Vista_auction.html) said "it would take from \$126.5 million to \$131.5 million to complete Moana Vista if work were to begin in December." Again, their estimate of remaining work corresponds well with our 2009 estimated total costs (minus already completed work).

²⁹Conversion of Square Footage requirements in the legislative proposals are done using the original Moana Vista floor plans and indicate the minimum number of units to meet the requirement.

³⁰The Moana Vista project was sold to a San Diego-based developer to avoid foreclosure. The resulting decrease in the cost basis of the project (the original developer absorbed the losses) probably contributed to the new viability of the project. See, for example, Janis L. Magin, "Pacifica, formerly Moana Vista, set to restart sales," *Pacific Business News*, December 22, 2009 available at <http://pacific.bizjournals.com/pacific/stories/2009/12/21/daily15.html>.

³¹SLH 1988 Act 15, Section 1

³²The most current publicly accessible copy of this policy is an unofficial compilation from June 2005 posted by HCDA. HCDA (2005) is available at <http://hcdaweb.org/kakaako/plans-rules/>. The relevant sections are subchapters 4 (Planned Developments) and 7 (Sale and Rental of Reserved Housing Units).

³³See HCDA (2005), Chapter 22, Subchapter 4, Section 15-22-115(a).

³⁴See HCDA (2005), Chapter 22, Subchapter 4, Section 15-22-115(c). Note that SLH 2009 Act 18 modified the autho-

rization in HRS 206E-4 under which HCDA was allowed to impose inclusionary zoning; cash payment in lieu of providing reserved housing units is now largely prohibited by statute.

³⁵A detailed schedule of percentages is given in Schedule A of HCDA (2005). If 20% or more units were reserved, the schedule indicates "no cash is required." Interestingly, there is another equation provided for use when the average unit price in a proposed development is lower than 180% of median income. Since Honolulu median condominium prices are much higher than median income (currently more than 3.5 times as large), no projects make use of these lower price range equation.

³⁶See Tune (1999) for an example of this clause in action. HCDA refunded \$770,462 plus accrued interest to the developer of One Archer Lane after prices on units were lowered 10% the year before. "The refund covers only part of the fees paid. The authority retains \$1.36 million in affordable housing fees . . . The fee schedule was changed in 1995 to encourage development in the slow Hawai'i economy. Myers paid \$2.13 million based on original sales prices."

³⁷HCDA (2005), Chapter 22, Subchapter 7 Section 15-22-184(a)(1).

³⁸Includes principal and interest of mortgages, real property taxes, insurance, and condominium association fees.

³⁹HCDA (2005), Chapter 22, Subchapter 7 Sections 15-22-185.1(a)(2), 15-22-185.1(b), and 15-22-185.1(c).

⁴⁰See Honolulu Star-Bulletin Staff (1997).

⁴¹HCDA (1997), p. 5. Projects smaller than 200,000 square feet had to start construction no later than 18 months after approval; they also had to complete construction no later than 2 years from that start date. For projects larger than 200,000 square feet, the respective start and completion targets were 2 years after approval and 4 years after construction start date.

⁴²See the 909 Kapiolani project page on the HCDA site available at <http://hcdaweb.org/kakaako/projects/private-sector-projects/909-kapiolani/>; "On January 5, 2005, HCDA members approved revisions to POSEC Hawai'i's request

for modifications of the Rules relating to yard, view corridor, height, open space and loading. The Authority also approved the joint development of the Project site with the adjacent Musicians' Association building, as well as the waiver of the reserved housing cash-in-lieu fee."

⁴³Governor's Message No. 812, July 13, 2009 *available at* http://www.capitol.Hawaii.gov/session2009/bills/GM812_.PDF. Section 1 states that HCDA would be able to count fractions of eligible units constructed outside of the jurisdiction controlled by HCDA, but Section 3 removed language that had explicitly allowed this practice. It is unclear if the legislature believed such powers were already implied in the authorization to administer reserved housing requirements in the first place.

⁴⁴This is also where language that had previously enabled HCDA to give reserved housing credits for reserved housing developed outside HCDA's jurisdiction was stricken.

⁴⁵Governor's Message No. 812, July 13, 2009.

⁴⁶See City and County of Honolulu Resolution 03-265, *available at* <http://www.honolulu.gov/refs/bill/text/2003/r265.htm>

⁴⁷DHCD (1994), Chapter 2, Sections 2-4(a) and 2-7(b).

⁴⁸DHCD (1994), Chapter 2, Sections 2-11(a) and 2-11(d).

⁴⁹DHCD (1994), Chapter 5, Section 5-3. The restriction was 8 years for purchasers making 80% or less than HUD median income, 4 years for those making 81% to 120% of HUD median income, and 2 years for those making 120% or more of HUD median income. Oddly, nobody making above 120% would qualify to be a purchaser in the first place, so the last 2 year restriction seems to apply only to those making exactly 120% of the median HUD income.

⁵⁰DHCD (1994), Chapter 2, Sections 2-8(b) and 2-8(d).

⁵¹See 1999 Bill 49 *available at* <http://www.honolulu.gov/refs/bill/status/1999/B049.htm>. The city ordinance is Ordinance 99-51.

⁵²2005 Bill 46 *available at* http://www4.honolulu.gov/docushare/dsweb/Get/Document-35588/0m7_dl0r.pdf. To

our knowledge, this is the only available digital copy showing the actual text modifications of Ordinance 01-33 to Ordinance 99-51 available online.

⁵³SLH 1988 Act 15, Section 6(c).

⁵⁴SLH 1988 Act 15, Section 6(b)(1).

⁵⁵SLH 2005 Act 198, Section 1. We note that this is a statewide policy, and not limited to Honolulu.

⁵⁶We do not have a copy of the 2001 report, and DPP was unable to provide a copy of it. The report is City and County of Honolulu, Department of Planning and Permitting, "A Report on the Implementation of Ordinance 99-51," Honolulu, February 6, 2001.

⁵⁷We were able to obtain a copy of the 2005 report from the City Clerk's office (DPP, 2005). Additional information was provided via phone conversation with Eugene Takahashi at DPP on November 23, 2009.

⁵⁸DPP (2005), p. 3

⁵⁹See testimony submitted by Dean Uchida, Executive Director of the Land Use Research Foundation of Hawai'i for 2005 Bill 46 of the Honolulu City Council, *available at* <http://www4.honolulu.gov/docushare/dsweb/Get/Document-35833/0mtf-n3s.pdf>.

⁶⁰Per conversation with Eugene Takahashi at DPP, November 23, 2009.

⁶¹DHCD (1994) Chapter 2, Section 2-8(d) does not specify a time on when a unit built off-site to satisfy the requirement for a project has to be built. Section 2-4(d) only says that "[t]o the maximum extent possible, the affordable units shall be constructed and delivered simultaneously with the market units." In a sense, this "improves" on 2-4(d) by delivering the affordable units first.

⁶²SLH 2005 Act 196, Section 1

⁶³Per conversation with Eugene Takahashi at DPP, November 23, 2009. Also, builders may have a new avenue of obtaining credits to replenish their stores through purchase of Department of Hawaiian Home Lands (DHHL) credits authorized by SLH 2009 Act 141. To date, no builder has yet

attempted to claim the new DHHL credits to satisfy the Honolulu affordable housing requirement.

⁶⁴A new home constructed at a factory location and then reassembled on site.

⁶⁵Typically a small private unit inside or adjacent to a single family home.

⁶⁶A second loan used to supplement the primary mortgage that need not be repaid until the home is sold or refinanced.

⁶⁷Such as inactive bank accounts, bank deposits, lay-away fees, unclaimed refunds from lenders, insurance companies and commercial retail operations.

⁶⁸An empty lot or a space between buildings in a developed urban area.

⁶⁹A loan with no repayment obligation if program requirements are met.

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Journal HOME

An Analysis of Affordable/Work-Force Housing Initiatives and Their Legality in the State of Florida, Part I

by J. Michael Marshall and Mark A. Rothenberg

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Despite the nationwide slowdown in the housing market and the 2007 property tax package adopted by the Florida Legislature, many communities in Florida are still struggling to foster the development of affordable housing. In some areas, housing prices have become so high that many local governments have changed the vernacular from striving to provide "affordable housing" to providing "work-force housing."¹ The difference in terms reflects a change in priorities from assisting the poor to ensuring that low- to middle-income workers (e.g., police officers, teachers, paramedics) are able to live in the same communities that they serve.

There are a host of reasons that could be cited for the current disparity between average housing prices and average household incomes. Culprits for the so-called "affordability gap" include high land costs, exclusionary design and zoning regulations, high development and construction costs, lack of buildable land, tourism, and government impact fees. While a complete discussion of these factors and their effects on the housing market is beyond the scope of this article, the authors concede that a range of initiatives to encourage both affordable and workforce housing is necessary.

Nevertheless, despite the panoply of reasons for the affordable housing dilemma, many local governments have limited their responses to the imposition of mandatory affordable housing requirements as a condition of granting development approvals. Developers are often forced either to pay into an affordable housing fund or set aside a certain number of newly constructed dwelling units to be utilized as affordable housing. These mandatory measures — generally referred to as "inclusionary zoning" — have significant legal constraints not often considered at the time they are adopted. In this article, the authors will provide an analysis of the current state of Florida and federal law regarding impact fees and development exactions as they relate to mandatory inclusionary zoning initiatives.

Planning and Zoning as a Way to Encourage Affordable Housing

Government interest in affordable housing is not a new phenomenon. Beginning with the United States Housing Act of 1937 and continuing today with programs such as the Low-Income Housing Tax Credit, governments at all levels have sponsored a variety of programs designed to either increase the supply of affordable housing units or assist individuals in locating and meeting the demand of paying for suitable housing they could not otherwise afford. Over the same duration, however, local governments have established and enforced zoning policies and land use regulations to effectively prevent the construction of affordable housing. Referred to as "exclusionary zoning," these development regulations include mechanisms that often limit residential development to single-family homes at low overall residential densities with little to no opportunity for the development of a variety of housing types that are affordable to low- to middle-income residents. These local regulatory regimes have "work[ed]" indirectly by shaping local housing markets, encouraging or prohibiting the construction of certain types of housing, and thereby conditioning the tenure (rent versus own) and price of housing.²

In 1975, the New Jersey Supreme Court set out to reverse the exclusionary aspects of local land use controls by requiring local governments in that state to provide meaningful opportunities for affordable housing through their zoning regulations. In *Southern Burlington County NAACP v. Township of Mt. Laurel*, 338 A.2d 713 (N.J. 1975) (*Mt. Laurel I*), the New Jersey Supreme Court held that:

[T]he presumptive obligation arises for each municipality affirmatively to plan and provide, by its land use regulations, the reasonable opportunity for an appropriate variety and choice of housing, including, of course, low and moderate cost housing, to meet the needs, desires, and resources of all categories of people who may desire to live within its boundaries.³

In the wake of the *Mt. Laurel* decision, the New Jersey Legislature enacted the state's Fair Housing Act, which codified the requirement that affordable

housing must be considered and ensured in the context of local land development regulations.

By comparison, the Florida Legislature has enacted the Growth Management Act, which is codified in F.S. Ch. 163, Part II. The cornerstone of the Growth Management Act is the requirement that Florida counties and municipalities must adopt comprehensive plans that operate as a blueprint for future growth in the community. These comprehensive plans are required to take into account housing supply and affordability. Moreover, the Growth Management Act further requires that local government land development regulations must be consistent with and implement the adopted comprehensive plan.

Despite its laudable intentions, the authors submit that comprehensive planning has resulted in more aspirational goal-setting as opposed to realistic planning. Specifically, the goals, policies, and objectives of local plans have often gone unrealized or been less than fully implemented. The classic example of this paradigm is the community that expresses a desire for affordable housing; establishes maximum residential densities in the comprehensive plan consistent with achieving the goal; but then promulgates development regulations that cap permissible development at a density far less than the density envisioned by the comprehensive plan.

The authors also recognize that the restrictive nature of land development regulations is not the sole cause of the affordable housing crisis. Opponents to intensive residential development could make a persuasive argument that unbridled residential development could result in land speculation, over-inflated pricing, and give rise to a luxury housing market intended to capitalize on residents who live in Florida on a seasonal basis. There are simply no guarantees that merely opening the floodgates to more residential development would necessarily result in more affordable housing for the community. Look no further than Florida's current housing market as proof: a market with an overabundance of housing units, but one in which the affordability problem persists nonetheless.

• Heightened Sensitivity to the Regulation of Identity of Users Rather Than the Physical Attributes of the Development

The failure of effective land use planning has compelled some local governments to incorporate inclusionary zoning measures in their land development regulations.⁴ Other local governments have opted to wait for the dust to settle on at least one ongoing challenge against the City of Tallahassee's recently adopted inclusionary zoning ordinance. Whether a local government can require developers to build a certain number of units, or pay a fee for affordable housing through inclusionary zoning, depends on whether the state delegated such authority in an enabling act or in other legislative measures.

Historically, courts have examined whether local government authority to review development proposals is confined to a review of the geometric or physical elements of a development proposal (e.g., the type of land use, lot size, setbacks, building height, floor area ratio) and not the economic characteristics of the prospective owners or users of the development. For example, in *Fox v. The Town of Bay Harbor Islands*, 450 So. 2d 559 (Fla. 3d DCA 1984), the Third District Court of Appeal held that an ordinance requiring the bottom floor of an apartment building to be utilized solely by a building superintendent was arbitrary and invalid. Writing for the court, Judge Pierson explained the court's heightened sensitivity to land development regulations geared toward the identity of the user rather than the physical characteristics or actual use of the structure:

The generally accepted justifications for a reasonable setback requirement are that it secures adequate air and light, promotes safety from fire and other dangers, prevents overcrowding of land... and enhances aesthetic values.... Particularly pertinent here is the principle that zoning ordinances are much less suspect when they focus on the use than when they command inquiry into who are the users. Consistent with that principle, courts have struck down ordinances which limited the occupancy of a dwelling unit to a narrowly defined family on the ground, among others, that such ordinances have, at most, a tenuous relation to the city's legitimate goal of preventing overcrowding, defraying traffic problems, and avoiding an overload in the school system.... It is clear to us that in the ordinance under consideration the identity of the person who occupies the ground floor apartment has not the slightest bearing upon the health, safety, morals or welfare of the public at large....⁵

• State Policy on Authorization of Inclusionary Zoning

Legislative authorization for inclusionary zoning measures differs from state to state.⁶ In Florida, the state legislature has authorized cities and counties to adopt inclusionary zoning measures in their land development codes. In 2001, the Florida Legislature enacted legislation stating that municipalities and counties "may adopt and maintain in effect any law, ordinance, rule, or other measure that is adopted for the purpose of increasing the supply of affordable housing using land use mechanisms such as inclusionary housing ordinances."⁷

Under the foregoing legislative framework, local governments in Florida may examine a number of affordable housing strategies.⁸ As suggested by the legislature, a local government may attempt to establish an inclusionary zoning program. The local government must decide, however, whether the program should be made voluntary or mandatory.

Under a voluntary program, a local government would encourage affordable housing by offering various incentives to the developer in exchange for either providing affordable housing as part of the new development or paying a fee in lieu of providing any inclusionary units. Incentives could include any combination of density bonuses, impact fee waivers, expedited permitting, or more flexible development standards (e.g., less strenuous setback requirements).

Under a more aggressive mandatory program, local governments would require new development either to set aside a specified number of residential units to be sold as affordable housing units, or pay a fee in lieu of providing units. Mandatory programs sometimes provide a density bonus to the

developer, and, in some instances, the developer may be allowed to provide offsite inclusionary units. A local government could also decide simply to impose mandatory linkage fees on all new development instead of allowing the option to provide inclusionary units and then use the revenues raised to construct affordable units on its own. In any event, a mandatory program leaves the developer with no choice as to whether an affordable housing element will be part of the project.

The common theme with either strategy is that each one is designed to provide affordable housing with limited governmental resources, primarily because the cost burden is borne by the developer, and ultimately passed on to the buyers of the units sold at market rate.⁹ The task for the local government is to ensure that the chosen strategy is lawfully implemented. Therefore, local governments must understand the nature of that task in order to determine which strategy to pursue.

The Scope of Local Government Authority to Impose Mandatory Inclusionary Zoning Measures

No Florida court has squarely addressed the issue of how local governments can lawfully increase the supply of affordable units and bridge the "affordability gap" through land use controls. Florida courts have shown sensitivity, however, to developers when local governments have attempted to arbitrarily hoist the responsibility of providing affordable housing on individual developers. In the often-quoted case of *Debes v. City of Key West*, 690 So. 2d 700 (Fla. 3d DCA 1997), Judge Schwartz of the Third District Court of Appeal stated:

The claim that the city's action may be justified as promoting the creation of adequate housing is, if anything, even more obviously deficient. While this aim may represent a desirable public policy — which might support, for example, the condemnation of property for that use... it emphatically may not be promoted on the back of a private landowner by depriving him of the constitutionally protected use of his property.¹⁰

The authors note that *Debes* involved a challenge to the City of Key West's decision to deny an application to rezone a parcel of property from residential to commercial. The city, in pertinent part, attempted to justify its denial on the basis of preserving affordable housing in the city without providing any nexus between the denial and the need for affordable housing.¹¹ Further, *Debes* did not involve an inclusionary zoning ordinance. Nevertheless, the court's pronouncements in *Debes*, coupled with numerous Florida and federal cases pertaining to the law of exactions and impact fees, provide a compelling indication that inclusionary zoning ordinances requiring mandatory set-asides or fees in lieu thereof will be highly problematic and subject to considerable judicial scrutiny.

• Inclusionary Zoning Under a Taking Analysis

Since its landmark decision in *Village of Euclid v. Ambler Realty, Co.*, 272 U.S. 365 (1926), the U. S. Supreme Court has repeatedly held that state and local governments have the authority to adopt land use regulations pursuant to the police power. The U.S. Supreme Court has also indicated, however, that there are instances in which land use regulations may violate the Takings Clause of the Fifth Amendment of the U.S. Constitution.

The U.S. Supreme Court has identified five forms of governmental action that may be unconstitutional under the Takings Clause of the Fifth Amendment. These are 1) direct governmental seizures of private property; 2) permanent physical invasions of private property as described in *Loretto v. Teleprompter Manhattan CATV Corporation*, 458 U.S. 419 (1982); 3) regulations that completely deprive a private landowner of any economic value in property, like the regulation at issue in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992); 4) regulations that fail to satisfy the factors set forth in *Penn Central Transportation Company v. New York City*, 438 U.S. 104 (1978); and 5) takings that result from development exactions imposed on landowners as a condition of development approvals, such as those described in *Nollan v. California Coastal Commission*, 483 U.S. 825, 834 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994).¹² The first two categories are considered takings per se and require just compensation to the landowner "without regard to whether the action achieves an important public benefit or has only minimal economic impact on the owner."¹³ The third and fourth categories are generally referred to as "regulatory takings," and they occur when the government over-regulates or limits the use of private property while not physically intruding upon it.¹⁴ The fifth category is the most amorphous in that development exactions "share certain features of each form of taking [per se and regulatory], but like any offspring, struggle to fashion their own identity."¹⁵

Development exactions in the form of land dedications "resemble physical takings in the sense that they typically require the permanent surrender of private property for public use."¹⁶ On the other hand, mandatory fees in lieu of dedications, connections charges, and impact fees are more closely related to regulatory takings.¹⁷ Of course, virtually all inclusionary zoning ordinances incorporate both mandatory set-asides and fees-in-lieu thereof. Therefore, the authors submit that inclusionary zoning ordinances properly fall within the development exactions category and are subject to the *Nollan/Dolan* analysis.

• The Nollan/Dolan Analysis

In *Nollan*, the U.S. Supreme Court articulated a "means-ends" standard for reviewing land development exactions under the Takings Clause of the Fifth Amendment of the U. S. Constitution. The property owners in *Nollan* sought a permit to replace their small beachfront bungalow with a new, larger home.¹⁸ The California Coastal Commission agreed to grant the building permit, but only if the owners dedicated an easement on the beach that traversed their property. The easement would have been located between the high water line and a seawall that ran along the rear property line. The commission justified the exaction on the basis that the new home would block public view of the beach and further contribute to a "psychological barrier" to the public beach when placed next to other homes along the shore.¹⁹

The U.S. Supreme Court began its analysis by establishing that an unconstitutional taking of property would have occurred if the commission had just outright demanded an uncompensated easement along the beach. The issue, however, was whether the commission could constitutionally demand

that same uncompensated easement as a condition of approval for a development permit. In that regard, the Supreme Court reiterated the concept that "a land use regulation does not effect a taking if it substantially advances a legitimate state interest and does not deny an owner economically viable use of this land."²⁰

In other words, a land use restriction must, at the very least, substantially advance a legitimate state interest.²¹ Then, without deciding whether public views and minimizing psychological barriers to the beach were substantial governmental purposes, the U.S. Supreme Court found that the required easement did nothing to advance those objectives.²² By failing to advance a legitimate state interest, the uncompensated exaction was deemed unconstitutional.

The commission argued that the easement would have served the public interest because it was part of a "comprehensive program" to provide continuous public access along the beach. In response, the U.S. Supreme Court said it:

may well be right that [the comprehensive program] is a good idea, but that does not establish that the Nollans alone can be compelled to contribute to its realization. Rather, California is free to advance its "comprehensive program," if it wishes, by using its power of eminent domain for this "public purpose"; but if it wants an easement across the Nollans' property, it must pay for it.²³

Seven years later, the U.S. Supreme Court explained that the permit conditions in *Nollan* may have been valid if the commission had simply imposed limitations on building width or height, or required the provision of a "viewing spot" along the property perpendicular to the beach. The commission's regulatory authority was "set completely adrift from its constitutional moorings," because there was absolutely no connection, or "essential nexus," between the easement and visual access to the beach.²⁴ Because no nexus was found, the U.S. Supreme Court had no reason to decide the degree to which any such nexus should exist. That question was answered in *Dolan*.

In *Dolan*, a property owner applied for a permit to redevelop land on which her plumbing and electric supply store was located. The property owner wanted to construct a larger store and a paved parking lot. The city commission granted approval of the project, but imposed a condition that the owner had to dedicate a portion of her land that was within the 100-year floodplain to be used as an open greenway and another portion of her land for a public pedestrian/bicycle path.²⁵ The property owner argued that the conditions had no relation to her proposed redevelopment and, thus, constituted an unconstitutional taking of property.²⁶

The U.S. Supreme Court found an essential nexus between the exactions and the justifications advanced by the city in *Dolan*. More specifically, the city's interest in preventing flooding in the area of the proposed redevelopment was related to the need for an open greenway given that the redevelopment would contribute to increased stormwater runoff. Further, the proposed redevelopment featured a larger store than what previously existed onsite, which in turn, would result in 435 additional vehicle trips to the property. The city wanted to mitigate any congestion caused by higher traffic and the pedestrian/bicycle pathway was related to that objective because it facilitated alternative means of transportation.²⁷

The U.S. Supreme Court then addressed the issue of whether the nexus was "constitutionally sufficient to justify the conditions imposed by the city."²⁸ Citing the Wisconsin Supreme Court's decision in *Jordan v. Menomonee Falls*, 137 N.W.2d 442 (Wis. 1965), the U.S. Supreme Court ruled that "the dedication should have some reasonable relationship to the needs created by the [development]."²⁹ In doing so, the U.S. Supreme Court established an intermediate standard of review to be used in development exaction cases. To avoid confusing this standard with the more deferential rational basis test used in equal protection cases, the U.S. Supreme Court avoided the phrase "rational nexus," but clarified that:

the term "rough proportionality" best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the [city] must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.³⁰

The exactions in *Dolan* were unconstitutional because they were not "roughly proportionate" to the impacts created by the proposed redevelopment. The U.S. Supreme Court acknowledged that an open greenway would help alleviate flooding by keeping the floodplain open, but the exaction was not proportionate because the city did not simply require that the space be left open. The city demanded that the land be handed over as public space, although it never showed why a public greenway instead of a private greenway was required for flood control.³¹

The U.S. Supreme Court also accepted the city's argument that the proposed store would increase traffic in the area. However, the dedication of the pedestrian/bicycle pathway did not reasonably relate to that increase. The city merely stated that the pathway "could offset some of the traffic demand . . . [which] is a far cry from a finding that the bicycle pathway system will, or is likely to, offset some of the traffic demand."³²

In the final analysis, *Nollan* and *Dolan* require that a local government must do more than assert mere conclusory statements when imposing conditions upon new development. The local government must take affirmative steps to quantify its findings that justify the imposition of exactions, regardless of how commendable the government's motives may be. The U.S. Supreme Court concluded the *Dolan* decision by explaining that "[a] strong public desire to improve the public condition [will not] warrant achieving the desire by a shorter cut than the constitutional way of paying for the change."³³

Local governments should take heed of the analysis set forth in *Nollan* and *Dolan* and duly consider how or whether new development actually affects the supply of affordable housing. It is one thing to assert that new development gives rise to housing needs because it generates employment opportunities. It also may be easy to accept that these new jobs offer low to median wages. It is another thing altogether, however, to maintain that new development actually makes the housing needed by those employees to be prohibitively expensive. Thus, even if a local government performs the rigorous analysis of linking the construction of new residential, commercial, or industrial space to an increased demand for housing for low- to median-

wage workers, a mandatory program that does not justly compensate new development will likely fail to meet the threshold nexus requirement described by the U.S. Supreme Court in *Nollan* for one very important reason: it is virtually impossible to demonstrate that new residential or nonresidential development in and of itself causes housing to be unaffordable.

In *Nollan*, the U.S. Supreme Court assumed that the California Coastal Commission's reasons for requiring the easement at issue in that case (visual access and overcoming psychological barriers to the beach) were legitimate state interests; however, that fact did not dispose of the issue of whether the exaction was permissible.³⁴ Likewise, the fact that affordable housing is needed within the community because a median-income household cannot obtain an average-priced home cannot, on its own, be the foundation upon which mandatory exactions on new development are based.³⁵ In discussing the required nexus between development exactions and legitimate state interests, the U.S. Supreme Court revealed in *Nollan* that exactions must serve those interests in the same manner that a prohibition on new development would serve it.³⁶ The U.S. Supreme Court explained in *Nollan* that "the [c]ommission unquestionably would be able to deny the Nollans their permit outright if their new house . . . would substantially impede these [legitimate state] interests, unless the denial would interfere so drastically with the Nollans' use of their property as to constitute a taking."³⁷

The California Coastal Commission took this statement to mean that anything less than a prohibition (i.e., imposing a condition to a development permit) must also fail with its police power if the police power may be construed so broadly. The U.S. Supreme Court agreed, but only to the extent *the condition and the prohibition would accomplish the same legitimate purpose*. However, "[T]he evident constitutional propriety disappears . . . if the condition substituted for the prohibition utterly fails to further the end advanced as the justification for the prohibition."³⁸

The U.S. Supreme Court further explained that:

the lack of nexus between the condition and the original purpose of the building restriction converts that purpose to something other than what it was. . . . In short, unless the permit condition serves the same governmental purpose as the development ban, the building restriction is not a valid regulation of land use but "an out-and-out plan of extortion."³⁹

Thus, under *Nollan*, it must be shown that a development condition is an adequate substitution for a prohibition on development.

Based on *Nollan*, if the legitimate state interest behind mandatory affordable housing fees or exactions is the desire to increase the supply of affordable housing units, the underlying truth must be that a moratorium on new development would also achieve that purpose. Any local government measure that imposes affordable housing mandates will survive a challenge brought under *Nollan* only if the local government demonstrates that a moratorium would also serve the affordable housing shortage. The authors respectfully submit that a moratorium on new development will not necessarily serve the affordability crisis and it will be the local government's task to prove otherwise. Indeed, to the extent that the legitimate state interest is simply to increase the supply of affordable units, then a moratorium would certainly not advance that interest because no new units would be constructed in the community. As such, the housing crisis cannot be blamed on new development (because even in the absence of it, the affordability problems will likely persist, if not worsen), and as a matter of well-established law, new development cannot be burdened with a problem that is not of its creation. In sum, the local government has to make some kind of factual showing that new development is causing the inability for people to find housing that is affordable.⁴⁰

• The Level of Constitutional Scrutiny May Depend on the Manner by Which Inclusionary Zoning is Applied

As previously stated, the manner by which a mandatory inclusionary zoning ordinance is attacked may depend on how it is applied. Most local governments will likely defend an inclusionary zoning ordinance on the grounds that it is a legislative act and, therefore, entitled to greater judicial deference than adjudicatory decisions. Generally speaking, land use ordinances are considered constitutional unless they are "clearly arbitrary and unreasonable" and "bear no substantial relation to the public health, safety, morals, or general welfare."⁴¹ By focusing on the fact that inclusionary zoning ordinances are legislatively imposed, while development exactions are typically imposed as a condition of approval in an adjudicatory or quasi-adjudicatory proceeding, a local government may argue that the "rough proportionality" standard does not apply. Moreover, by characterizing an inclusionary zoning ordinance as a generally applicable zoning regulation, the landowner will shoulder the initial burden of proving that the ordinance is unconstitutional, whereas the government must make the threshold showing of rough proportionality under the *Nollan/Dolan* analysis. That is exactly what happened in the California case of *Home Builders Association of Northern California v. City of Napa*, 108 Cal. Rptr. 2d 60 (2001).

In *Napa*, the California Appellate Court upheld an inclusionary zoning ordinance that required, in pertinent part, that residential developers⁴² had to choose between 1) developing 10 percent of their units for affordable housing; 2) submitting an alternative equivalent proposal such as the dedication of land, or the construction of affordable housing units on the other site if the proposed alternative results in affordable housing opportunities equal to or greater than those created by the 10 percent requirement; 3) paying a fee into a housing trust fund; or 4) appealing for an adjustment or waiver of the requirement if the required dedication lacked a reasonable relationship or nexus between the impact of the development and the inclusionary requirement.⁴³ In exchange, the ordinance offered development incentives, loans, and expedited processing of development applications. A consortium of builders challenged the ordinance arguing, inter alia, that the ordinance constituted an unconstitutional taking on its face and violated the due process clause of the federal and state constitutions.⁴⁴

The California court upheld the ordinance against the facial challenge because it gave developers the right to request a waiver of the inclusionary requirements. In that regard, the court stated, "Since the [c]ity has the ability to waive the requirements imposed by the ordinance, the ordinance cannot and does not, on its face, result in a taking."⁴⁵

Napa rejected the developers' claim that the waiver provision improperly placed the burden upon them to show a waiver would be appropriate. Relying

on *Dolan*, *Napa* ruled that the party challenging a generally applicable zoning regulation has the burden of showing there could be no constitutional application.⁴⁶

Napa also ruled that the ordinance satisfied the takings analysis described in *Agins v. City of Tiburon*, 477 U.S. 255 (1980), because it did not fail to substantially advance the legitimate state interest of producing affordable housing units. On that point, the developers contended that the *Napa* ordinance should not be afforded the deference given to traditional zoning ordinances, but rather, scrutinized under the intermediate level of review established in *Nollan* and *Dolan* that applies to development exactions.⁴⁷ *Napa* disagreed, stating that the:

[I]ntermediate standard of judicial scrutiny formulated by the high court in *Nollan* and *Dolan* is intended to address . . . land use bargains between property owners and regulatory bodies. . . . But a different standard applies to development fees that are generally applicable through legislative action because the heightened risk of extortionate use of the police power to exact unconstitutional conditions is not present.⁴⁸

Finally, *Napa* concluded that the City of Napa could enforce the inclusionary zoning measures despite that its past zoning policies may have contributed to the housing shortage.⁴⁹

Whether *Napa* will influence Florida courts is an open question. The authors note, however, that *Napa* should not serve as a bell-weather for an ultimate constitutional determination regarding inclusionary zoning ordinances. First, *Napa* held that the ordinance could not be facially unconstitutional by virtue of the waiver provision. Specifically, the court could envision circumstances in which the city waived the requirement, thereby saving the ordinance from constitutional infirmity. By contrast, in the context of facial challenges to ordinances, Florida courts have permitted certain facial challenges to be heard without requiring the aggrieved party to first appear before an administrative body.⁵⁰

Depending on its text, a waiver provision itself may run afoul of Florida law prohibiting arbitrary decisionmaking and lack of meaningful standards. Put simply, in the context of quasi-judicial proceedings, Florida courts may reject a local government's ability to selectively waive a requirement in their code. As Judge Fletcher noted in his concurring opinion in *Miami-Dade County v. Brennan*, *Miami-Dade County v. Brennan*, 802 So. 2d 1153 (Fla. 3d DCA 2001), the failure to afford definitive standards:

places the quasi-judicial zoning boards in a position where they are able to amend the zoning regulations within the various categories...on specific application so as to create non-uniform requirements for properties within the same zoning category. Obviously amending the zoning regulations themselves is a legislative function which cannot be delegated to a quasi-judicial board....⁵¹

Moreover, *Napa* refused to review the ordinance under the *Nollan/Dolan* analysis given that the inclusionary zoning ordinance was of general applicability rather than a development exaction imposed as a condition of approval designed to offset the impacts caused by a specifically proposed plan of development. However, the "legislative/adjudicatory" dichotomy is not as clear cut as the California court suggests in *Napa*. The court essentially reasoned that the ordinance was a legislative function of the city and, therefore, subject to a lesser standard of review. However, the authors note that most land use decisions cannot be placed neatly in either the legislative or adjudicative camps, and "courts and scholars are unanimous in their assessment that the scope of the *Nollan/Dolan* analysis is unsettled."⁵²

In *B.A.M. Development v. Salt Lake County*, 128 P.3d 1161 (Utah 2006), the Utah Supreme Court was presented with the question of whether a county ordinance that required developers to dedicate land as a condition of subdivision approval should be reviewed under the *Nollan/Dolan* test. The government argued that rough proportionality did not apply given that the ordinance was one of general applicability. Ultimately, the Utah Supreme Court did not have to answer the question presented because it found that the Utah Legislature had codified the *Nollan/Dolan* analysis in a statute that set forth the basis for development exactions in that state.⁵³ Therefore, rough proportionality applied, not because the court resolved the legislative/adjudicatory debate, but because the legislature had already said so. As in Utah, the heightened level of scrutiny established in *Nollan* and *Dolan* is essentially the same level of scrutiny that Florida law demands of both impact fee ordinances passed legislatively and development exactions made in exchange for a specific development approval.

¹ For example, in Palm Beach County, the term "work-force housing" refers to housing that is affordable to households earning up to 120 percent of the median household income in a particular community. In Palm Beach County, a household must earn an annual salary of at least \$130,000 to qualify for a median-priced house, which currently sells for more than \$400,000. Linda Rawls, *Palm Beach County Home Sales Bust the Boom*, *Palm Beach Post*, July 26, 2006. The median household income in Palm Beach County is not \$130,000 or even \$100,000. Most households earn far less than that amount. In fact, 120 percent of the median household income in Palm Beach County is only about \$70,000. Hector Florin, *Survey: Affordable Housing Dwindles in Palm Beach County*, *Palm Beach Post*, July 6, 2006.

² Bruce Katz, Margery A. Turner, Karen D. Brown, Mary Cunningham, and Noah Sawyer, *Rethinking Local Affordable Housing Strategies: Lessons From 70 Years of Policy and Practice*, The Brookings Institution Center on Urban and Metropolitan Policy and The Urban Institute 68 (December 2003), available at www.brookings.edu/~media/Files/rc/reports/2003/12metropolitanpolicy_katz/housingreview.pdf.

³ *Southern Burlington County NAACP v. Township of Mt. Laurel*, 336 A.2d at 727-28. In its subsequent decision in *Southern Burlington County NAACP v. Township of Mt. Laurel*, 456 A.2d 390 (N.J. 1983) (*Mt. Laurel II*), the New Jersey Supreme Court elaborated on the municipalities' duty to provide realistic affordable housing opportunities. The *Mt. Laurel II* court explained that the municipality should offer incentives for the provision of affordable housing, but if incentives were not successful, then devices such as mandatory set-asides or affordable housing zoning districts would need

to be utilized. *Id.* at 446. Then, the New Jersey Supreme Court ruled in *Holmdel Builders Association v. Township of Holmdel, et al.*, 583 A.2d 277, 280 (N.J. 1990), that it was constitutionally sufficient for new development to pay affordable housing impact fees instead of actually constructing affordable housing units, reasoning that the two requirements were functionally equivalent. *Holmdel*, 583 A.2d at 288-91.

⁴ On November 20, 2007, the Second Circuit Court granted the City of Tallahassee's Motion for Summary Judgment — thus upholding the city's ordinance against a facial challenge. *Florida Home Builders Association, Inc. v. City of Tallahassee Builders Association, Inc.*, Case No. 37 2006 CA 000579 (November 20, 2007). In that case, a coalition of builders argued that the city's ordinance constituted a physical taking of property. The court in pertinent part ruled that the city's ordinance could not be categorized as a physical taking of property. *Id.* at 5. As in the *Napa* decision, the court further noted that there may be instances where the ordinance could be applied constitutionally (e.g., the added value of the property due to density bonuses may serve as compensation or the developer could request a waiver). *Id.* at 8. The court further found that because the ordinance is a regulation, it does not constitute an unlawful tax. *Id.* at 9. At the time of submittal for publication, the case had been appealed by both parties and is under review by the First District Court of Appeal.

⁵ *Fox*, 450 So. 2d 559 (emphasis added) (citations omitted).

⁶ For example, in California, the state legislature has granted broad land use planning authority to local governments and California courts have interpreted the state's enabling act and subsequent legislation as permitting inclusionary zoning measures §65913.9, California Government Code; *Home Builders Ass'n of Northern California v. City of Napa*, 90 Cal. App. 4th 188 (2001). In sharp contrast, an *en banc* opinion of the Virginia Supreme Court struck down an early inclusionary zoning program initiative that required developers to set aside a certain number of dwelling units for low-medium income residents. *Board of Supervisors of Fairfax County v. De Groff Enterprises, Inc.*, 214 Va. 235 (Va. 1973) (ruling that "[t]he amendment, in establishing maximum rental and sale prices for 15 percent of the units in the development, exceeds the authority granted by the enabling act to the local governing body because it is socio-economic zoning and attempts to control the compensation for the use of land and the improvements thereon").

⁷ Fla. Stat. §166.04151, (2005) (municipalities); Fla. Stat. §125.01055 (2005) (counties).

⁸ Similarly, the Growth Management Act provides that counties are "encourage[d] [to use] innovative land development regulations which include provisions such as transfer of development rights, incentive and inclusionary zoning, planned-unit development, impact fees, and performance zoning." Fla. Stat. §163.3202(2)(h)(3) (2005). Fla. Stat. §163.3177 of the Growth Management Act further states, in pertinent part, that local governments shall incorporate a housing element in their comprehensive plans to encourage, among other things, the "creation or preservation of affordable housing to minimize the need for additional local services and avoid the concentration of affordable housing units only in specific areas of the jurisdiction."

Other Florida Statutes with provisions that relate to local governments and affordable housing are:

- Fla. Stat. §§125.379 and 166.0451 direct counties and municipalities to draft an inventory list of all government-owned lands that are appropriate sites for affordable housing.
- The "Community Redevelopment Act of 1969" allows for the creation of community redevelopment agencies. Fla. Stat. §163.330, *et seq.* (2005).
- Fla. Stat. §§253.034 and 253.0341 allow local governments to request the surplus of the state-owned lands, and directs the State of Florida to surplus state-owned lands upon request for the purposes of providing or maintaining affordable housing:
- Fla. Stat. §1001.43 authorizes school districts to use portions of school sites to provide affordable housing for teachers and other school district personnel;
- Fla. Stat. §380.06 provides greater development of regional impact standards and substantial deviation thresholds for developments of regional impact when they provide a certain amount of affordable housing.

⁹ William M. Merrill & Robert K. Lincoln, *The Missing Link: Legal Issues and Implementation Strategies for Affordable Housing Linkage Fees and Fair Share Regulations*, 22 Stet. L. Rev. 469, 474 (1993).

¹⁰ *Debes*, 690 So. 2d at 702 (emphasis added).

¹¹ *Id.*

¹² *Lingle v. Chevron, Inc.*, 544 U.S. 528, 537-38 (2005).

¹³ *Loretto*, 458 U.S. at 434-35.

¹⁴ *Yee v. City of Escondido*, 503 U.S. 519, 532, 539 (1992).

¹⁵ *B.A.M. Development, L.L.C. v. Salt Lake County*, 128 P.3d 1161 (Utah 2006).

16 *Id.*

17 *Id.*

18 *Nollan*, 483 U.S. at 828.

19 *Id.*

20 *Id.* at 834 (citing *Agins v. Tiburon*, 444 U.S. 255 (1980)).

21 *Id.*

22 *Id.* at 838-39.

23 *Id.* at 841-42.

24 *Dolan*, 512 U.S. at 388.

25 *Id.* at 380.

26 *Id.* at 382.

27 *Id.* at 387-88.

28 *Id.* at 390.

29 *Id.* at 390-91 (citing *Jordan v. Menomonee Falls*, 137 N.W.2d 442 (Wis. 1965)).

30 *Id.* at 391.

31 *Id.* at 393-94.

32 *Id.* at 395 (emphasis in original) (citations omitted).

33 *Id.* at 396 (quoting *Penn. Coal*, 260 U.S. at 416).

34 *Nollan*, 483 U.S. at 835.

35 See also, *Volusia County*, 780 So. 2d at 135 (rejecting countywide need for improvements as basis for imposing impact fees on new development).

36 *Nollan*, 483 U.S. at 835-36.

37 *Id.*

38 *Id.* at 837 (emphasis added).

39 *Id.* (quoting *J.E.D. Assoc., Inc. v. Atkinson*, 432 A.2d 12, 14-15 (1981) (emphasis added)).

40 *Nollan*, 483 U.S. at 841.

41 *Village of Euclid v. Ambler Realty, Co.*, 272 U.S. 365, 395 (1926); *Agins v. City of Tiburon*, 477 U.S. 255, 260-63 (1980).

42 The City of Napa's inclusionary zoning ordinance applied to both nonresidential and residential development. Developers of nonresidential projects are required to pay a housing fee. The court's opinion primarily speaks to the requirements placed on residential developers. See City of Napa Code of Ordinances §15.94.040.

43 The nature of the development (e.g., multi-family vs. single family) dictated whether the options were available as of right or whether approval from the city council was required. For example, developers of single-family units could pay a fee into the affordable housing fund as of right whereas developers of multi-family units were required to obtain the consent of the city council before they could exercise the option to pay a fee in lieu of constructing units. *Id.* at 192.

44 *Napa*, 106 Cal. Rptr. 2d at 63.

45 *Id.* at 64.

46 *Id.*

47 *Id.* at 65.

48 *Id.*

49 *Id.* at 66.

50 *Samoff v. Florida Dept. of Hwy. Safety*, 825 So. 2d 351, 357 (Fla. 2002).

51 *Miami-Dade County v. Brennan*, 802 So. 2d 1153 (Fla. 3d D.C.A. 2001).

52 *B.A.M. Development v. Salt Lake County*, 2004 UT App. 34, 43 (Utah App. 2004).

53 *Id.* at 46.

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This column is submitted on behalf of the Real Property, Probate and Trust Law Section, Melissa Murphy, chair, and William P. Sklar and Richard R. Gans, editors.

Part two of this article:

An Analysis of Affordable/Work-Force Housing Initiatives and Their Legality in the State of Florida, Part II

Journal HOME

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An Analysis of Affordable/Work-force Housing Initiatives and Their Legality in the State of Florida, Part II

by J. Michael Marshall and Mark A. Rothenberg

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In Florida, "local governments have no... authority to tax, other than ad valorem taxes, except as provided by general law."¹ Up until the middle of the 20th century, local governments in Florida relied almost exclusively on public revenue sources, such as ad valorem taxes, to fund capital growth. However, over the past 40 years, local governments have increasingly turned to private revenue sources by imposing impact fees and exactions on new development. "The basic theory behind... impact fees [is] that users of capital facilities such as sewers or roads could fairly be charged the cost of providing the additional facilities required for their use."² This type of cost-shifting helps local governments finance necessary infrastructure improvements without dipping into the public coffers.³ Nevertheless, impact fees and development exactions must not violate the Florida Constitution, U.S. Constitution, or any federal legislation that binds the states.⁴ Many of the early attempts in Florida to impose impact fees were challenged on the basis that such fees constituted an illegal and unconstitutional tax.⁵ From those early cases evolved a test that local governments must satisfy to lawfully impose impact fees or development exactions.

The Impact Fee Rationale

The seminal case addressing the legal requirements attendant to the assessment of an impact fee is the Florida Supreme Court case of *Contractors and Builders Association of Pinellas County, et al. v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976). The *Dunedin* case involved a challenge to a City of Dunedin ordinance that required payment of a connection fee as a condition for receiving the city's water and sewer services. The city claimed that the ordinance simply raised revenue that was needed for expanding the water and sewer systems to accommodate the increased demand that each new connection would create. The plaintiff argued that the connection fees were not legitimate regulatory fees, but were taxes that the city could not lawfully impose.⁶

In *Dunedin*, the Florida Supreme Court accepted the concept that new development may be required to pay for its "fair share" of any additional regulatory costs that it creates, rejecting the claim that connection fees are unlawful taxes, per se. Reasoning against a windfall for existing property owners, the Florida Supreme Court cautioned, however, that the connection charges would be considered illegal taxes if they had "no relationship to and [were] greatly in excess of the costs of the regulation which [were] supposed to justify their collection." Thus, the *Dunedin* case teaches that local governments must operate within the following parameters when imposing a fee on new development:

- The money collected must be used to meet the costs of expanding the public facility.
- Only users who are benefited from the expansion should be responsible for the costs of expansion.
- To the extent fees are collected from new users, those users are not required to finance replacing public facilities, but only for the additional capacity their uses require.⁷

The *Dunedin* case involved the most common type of impact fee — those based on the amount of public infrastructure that the new development will consume. These so-called "consumption based fees" are calculated by determining the "value of the public infrastructure consumed per unit of land use."⁸ The other type of impact fee is known as an "improvement based" fee. Improvement based fees are usually based on a set of improvement projects that the local government has set forth in its long-range capital growth plans. New developments are charged their proportionate share of the costs of those projects.⁹ A third approach is to require a developer to actually construct the additional infrastructure required to serve the new development.

All of these approaches share some common characteristics. In particular, the local government must always establish a level of service standard for each facet of infrastructure that it finances with impact fees, such as police, fire, transportation, wastewater treatment services, etc. This required level of service is then applied to both new and existing development. If the level of service standard is lower than current service levels, then a deficiency exists in that service, and as ruled in *Dunedin*, new development cannot be charged fees to make up for existing deficiencies. Each new development can only be charged for accommodating level of service deficiencies that are the result of that particular development.¹⁰

The "Dual Rational Nexus" Test

Since *Dunedin*, a two-pronged test had developed under Florida law that all local governments must satisfy to lawfully impose an impact fee or development exaction. More specifically, local governments must demonstrate 1) a rational nexus between proposed development and the need for additional capital facilities for which the fee or exaction is imposed; and 2) a rational nexus between the improvement/expenditure of funds collected or exaction and the benefits accruing to the subject property.¹¹ This is known as the "dual rational nexus" test.¹²

While *Dunedin* marked the critical differences between impact fees and taxes, the foundation for the rational basis test was established that same year in *Wald Corporation v. Metropolitan Dade County*, 338 So. 2d 863 (Fla. 3d DCA 1976). In *Wald*, the plaintiff challenged a condition that required the dedication of a drainage canal and drainage easement for subdivision approval. The plaintiff claimed that the requirement violated the Florida Constitution and the Due Process and Equal Protection clauses of the U.S. Constitution.¹³ The Third District Court of Appeal upheld the condition upon determining that the condition was rationally related to the fact that the subject property required drainage and that adjacent properties would have been adversely impacted absent the drainage improvements.¹⁴

Like the U.S. Supreme Court eventually did in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), the Third District reached its decision by striking a balance between two divergent standards for reviewing land use exactions. The court refused to review the constitutionality of the exaction under a "merely reasonable" standard, a highly deferential standard that would have provided local governments with too much unfettered discretion. The court also refused to require the exaction to be "specifically and uniquely attributable" to the proposed development because the court believed that such scrutiny would prevent local governments from ever considering how a proposed subdivision plan affects surrounding residents.¹⁵ Instead, relying on the same Minnesota Supreme Court case that the U.S. Supreme Court would later cite in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), the Florida court adopted a compromised approach, the "rational nexus" test.¹⁶

Subsequently, in 1983, the Fourth District Court of Appeal rendered its decision in *Hollywood, Inc. v. Broward County*, 431 So. 2d 606 (Fla. 4th DCA 1983), and fully articulated the "dual rational nexus" test. The Fourth District stated:

...the local government must demonstrate a reasonable connection, or rational nexus, between the need for additional capital facilities and the growth in population generated by the subdivision (and) ... the government must show a reasonable connection, or rational nexus, between the expenditures of the funds collected and the benefits accruing to the subdivision.¹⁷

The Florida Supreme Court ultimately adopted the "dual rational nexus" test in the 1991 decision of *St. Johns County v. Northeast Florida Builders Association, Inc.*, 583 So. 2d 635, 638 (Fla. 1991).

Application of the Dual Rational Nexus Test

Similar to the "essential nexus" requirement under *Nollan/Dolan*, the first prong of the dual rational nexus test requires an assessment of the local government's "rational basis" to require the improvements. In that regard, the local government must be able to reasonably show that the new development will create more than a possible or incidental need for increased capacity of any public facilities that serve the new development. Further, like the rough proportionality requirement, a developer must only pay fees or dedicate property that represent its pro rata share of the burden imposed on public facilities by the new development. In *Hollywood, Inc.*, the county satisfied this "needs" requirement by presenting evidence that it had to acquire and develop additional land to maintain a previously adopted level of service for parks as new residents moved into new residential developments.¹⁸

In contrast, the Fifth District Court of Appeal applied the dual rational nexus test in case of *Hernando County v. Budget Inns of Florida, Inc.*, 555 So. 2d 1319 (Fla. 5th DCA 1990), to strike development exaction. The county imposed a condition of approval on a proposed hotel development that required the developer to design a frontage road servicing the hotel and then to construct the road at some time in the future when the county decided it was necessary. Notably, the county conceded to the fact that "no present need for the road exist[ed]." As a result, the court found that the condition failed to satisfy the dual rational nexus test because:

for the nexus test to apply, thus making a compulsory dedication constitutionally valid, the nexus must be rational. This means it must be substantial, demonstrably clear and present. It must definitely appear that the proposed action by the developer will either forthwith or in the demonstrably immediate future so burden the abutting road, through increased traffic or otherwise, as to require its accelerated improvement. Such dedication must be for specifically and contemplated immediate improvements — not for the purpose of "banking" the land for use in a projected but unscheduled possible future use ...¹⁹

The second prong of the dual rational nexus test demands an assessment of whether the new development will "benefit" from the local government's use of the collected fees. The local government must demonstrate that the new development will actually receive more than an incidental benefit from the expenditure of the impact fees or dedication of property.²⁰

In sum, cases such as *Hollywood, Inc.*, *St. Johns County*, and *Dunedin* illustrate the basic contours of the "dual rational nexus" test as follows:

- The local government must be able to justify the fees or exactions by showing that the new development will create more than a possible or incidental

need for increased capacity of any public facilities that serve the new development.

- The local government must demonstrate that the new development will actually receive more than an incidental benefit from the expenditure of the impact fees or dedication of property.
- The developer cannot be required to pay impact fees or dedicate property that exceed a pro rata share of the burden imposed on those public facilities.
- In the case of impact fees, the fees must be earmarked to fund expansion of capital facilities that serve the area in which the new development is located.
- The impact fees must be used to provide only the additional capacity required by the new development and not any existing deficiencies.
- The impact fees must not be used to benefit other residents by financing capital growth that is bound to occur with or without the proposed development.
- The impact fees must be spent within a defined, reasonably short amount of time or returned to the payer of the fee.
- The local government's showing of a rational nexus between the proposed development and the community's need for increased capacity of public services, or between the expenditure of the impact fees and the benefit accrued to the new development, may be refuted by the developer with additional evidence or an alternate study.²¹

An Affordable Housing Tax May be Unlawful

As noted by the Florida Supreme Court, satisfaction of the dual rational nexus requirements is important because of the relationship between taxes and fees.²² A local government that wishes to impose affordable housing fees or mandatory exactions on a new development without first establishing the dual nexus requirements must rely upon an explicit and unequivocal grant of such taxing authority from the legislature or Florida Constitution.²³ To that end, a local government will not be able to avail itself of F.S. §166.04151 or §125.01055 because those statutes merely state that local governments *may* enact inclusionary zoning ordinances, but they do not proscribe how those ordinances can operate, *i.e.*, whether they can be mandatory or voluntary. As such, the legislature has not removed all doubt as to whether local governments can impose an affordable housing tax on new development.²⁴ The most logical conclusion that can be drawn from F.S. §§166.04151 and 125.01055 is that while local governments have no authority to levy affordable housing taxes, they may adopt an affordable housing law, rule, ordinance, or other measure provided that any such measure satisfies the "dual rational nexus" test.

However, the authors submit that a mandatory affordable housing impact fee or exaction program would have a difficult time surviving the scrutiny employed by the "dual rational nexus" test. The imposition of such a program would necessarily raise several problematic questions. For instance, how could an affordable impact fee be tailored to benefit solely the developer or the new residents of the project? Moreover, given that the affordable housing problem already exists, is it legal (let alone equitable) to require the developer, and ultimately the prospective purchaser of other-market rate housing in the development to pay to address an existing problem? Pondering such questions only leads to other, perhaps more difficult questions. The task of adopting a level of service for affordable housing is not as easy as measuring the amount of potable water required to service new development. The capacity to provide traditional municipal services is almost always controllable by either the local government or a utility. By contrast, the availability of housing depends in large measure on individual property owners and the price they are willing to sell their properties, an item generally outside of direct government control. Therefore, how does a local government measure its need for affordable housing?

Significantly, the Florida Supreme Court has held that a countywide need for infrastructure improvements cannot serve as the basis for an impact fee or exaction. In *Volusia County*, the Florida Supreme Court explained that a countywide standard would amount to an unlawful tax because:

there is no requirement that taxes provide any specific benefit to the property; instead they may be levied throughout the particular taxing unit for the general benefit of residents and property. Fees, by contrast, must confer a special benefit on fee-payers in a manner not shared by those not paying the fee.²⁵

Thus, in *Volusia County*, the court held that an otherwise valid school impact fee could not be applied to dwelling units that were governed by a deed restriction that explicitly prohibited school age children from residing in them. It simply did not matter that the county needed new schools if the new development at issue was neither responsible for contributing to that need nor would not have benefited from the expenditure of funds to address that need.²⁶

Moreover, even if a local government is convinced that sound public policy calls for the implementation of an affordable housing impact fee, it may not sidestep the "dual rational nexus" requirements. In *Collier County v. State*, 733 So. 2d 1012 (Fla. 1999), Collier County had imposed an "interim governmental services fee" because it believed that the then-current ad valorem scheme unfairly created a windfall for property owners of recently improved property. According to the county, owners of improved property did not always pay their fair share of county services because of the lag time between the improvement and updated property appraisals.²⁷ The fee was meant to correct the inequities in the system, but the court determined it constituted a tax because it did not meet the dual nexus requirements.²⁸ The Florida Supreme Court instructed that "[i]f there is a windfall created by the current statutory scheme, . . . the [c]ounty's redress lies with the [l]egislature."²⁹

Conclusion

For the reasons set forth above, mandatory inclusionary zoning programs will face considerable judicial scrutiny and raise a panoply of questions that most local governments are not prepared to answer. The authors submit that mandatory programs have been proposed and in some instances adopted

because they are both politically expedient and provide an easy answer. The affordable housing crises didn't appear overnight, and will not be solved overnight. The authors submit that local governments should consider making such programs voluntary. To ensure voluntary programs achieve the same result as mandatory programs, local governments must strive to eliminate doubt as to the availability of their incentives through clearly drafted land development regulations duly adopted after consultation with the development community and the public. As one of the early fathers of land-use law, Richard Babcock, noted years ago, "[w]hat is required from all participants, laymen, planners, lawyers, and judges is an effort to turn zoning from the petty parochial device it now is to a viable tool of land-use policy." Through coordinated efforts, the authors submit that voluntary programs premised on respect between the public, development community, and local governments has the potential to yield far better results than legally questionable mandatory programs.

¹ *Collier Cty. v. State*, 733 So. 2d 1012, 1014 (Fla. 1999); *Broward County v. Janus Development Corporation, et al.*, 311 So. 2d 371 (Fla. 4th D.C.A. 1975).

² William M. Merrill & Robert K. Lincoln, *The Missing Link: Legal Issues and Implementation Strategies for Affordable Housing Linkage Fees and Fair Share Regulations*, 22 Stet. L. Rev. 469, 474 (1993).

³ Impact fees are simply a nontaxation source of revenue paid by those persons who are responsible for additional capital expenditures. James Nicolas, *et al.*, *Impact Fees in Florida: Their Evolution, Methodology, Current Issues and Comparisons with Other States* 2-4 (Sept. 2005) (unpublished manuscript on file with the Florida Impact Fee Review Task Force, Florida Committee on Intergovernmental Relations).

⁴ *Hollywood, Inc. v. Broward County*, 431 So. 2d 606, 609 (Fla. 4th D.C.A. 1983).

⁵ *Contractors and Builders Association of Pinellas County, et al. v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976).

⁶ *Id.* at 315-16.

⁷ *Id.* at 321-22. See also *Janus*, 311 So. 2d at 374-75 (ruling that an ordinance imposing an impact fee to be used for building roads, streets, highways, and bridges was "simply an exaction of money" when there are no provisions in the ordinance that specified where or when, if ever, the government would spend the money collected). In *Home Builders & Contractors Association of Palm Beach County v. Board of County Commissioners of Palm Beach County, et al.*, 446 So. 2d 140 (Fla. 4th D.C.A. 1984), the Fourth District Court of Appeal upheld a county ordinance that imposed an impact fee for new roads.

⁸ Nicolas, *Impact Fees in Florida: Their Evolution, Methodology, Current Issues and Comparisons with Other States* at 7 (Sept. 2005).

⁹ *Id.* at 8-9.

¹⁰ *Id.* at 10.

¹¹ *Hollywood, Inc. v. Broward County*, 431 So. 2d 606, 611 (Fla. 4th D.C.A. 1983).

¹² In addition to the dual rational nexus test, all locally adopted impact fee ordinances must comply with the requirements of the "Florida Impact Fee Act," which was created by the Florida Legislature during the 2006 session. The Florida Impact Fee Act is intended to ensure that local governments assume a certain level of accountability given the "growth of impact fee collections and local governments' reliance on impact fees." Fla. Stat. §163.31801(2) (2006). To that end, the Florida Impact Fee Act requires that impact fee ordinances must, at a minimum: "(a) Require that the calculation of the impact fee be based on the most recent and localized data. (b) Provide for an accounting and reporting of impact fee collections and expenditures . . . [and] account for the revenues and expenditures of such impact fee in a separate accounting fund. (c) Limit administrative charges for the collection of impact fees to actual costs. (d) Require that notice be provided no less than 90 days before the effective date of an ordinance or resolution imposing a new or amended impact fee." Fla. Stat. §163.31801(3)(a)-(d).

¹³ *Wald*, 338 So. 2d 863, 864 (Fla. 3d D.C.A. 1976).

¹⁴ *Id.* at 868.

¹⁵ *Id.* at 867.

¹⁶ *Id.* at 868 (citing *Jordan v. Village of Menomonee Falls*, 137 N.W.2d 442, 448 (1966)).

¹⁷ *Hollywood, Inc. v. Broward County*, 431 So. 2d 606 (Fla. 4th D.C.A. 1983).

¹⁸ *Id.*

¹⁹ *Hernando County v. Budget Inns of Florida, Inc.*, 555 So. 2d 1319 (Fla. 5th D.C.A. 1990). But see *St. Johns County*, 583 So. 2d at 638 (ruling that school impact fees would be valid even if the additional capacity in public schools may or may not be used in the immediate future because "[d]uring the

useful life of the dwelling unit, school-aged children may come and go.”).

²⁰ *Hollywood*, 431 So. 2d 606 (Fla. 4th D.C.A. 1983).

²¹ See Nicolas, *Impact Fees in Florida: Their Evolution, Methodology, Current Issues and Comparisons with Other States* at 15 (Sept. 2006).

²² *Volusia County v. Aberdeen et Ormand Beach, LP*, 760 So. 2d 126, 135 (Fla. 2000).

²³ For example, municipalities have been granted the statutory authority to levy public service taxes on “the purchase of electricity, metered natural gas, liquified petroleum gas . . . , manufactured gas . . . , and water service.” Fla. Stat. §166.231(1)(a) (2005). Certain counties have been granted the authority to levy tourist development taxes and convention development taxes. Fla. Stat. §§125.0104, 212.0305 (2005).

²⁴ See *State v. City of Port Orange*, 650 So. 2d 1, 3 (Fla. 1995).

²⁵ *Volusia County*, 760 So. 2d at 135 (internal citations and quotations omitted).

²⁶ *Id.*

²⁷ *Collier County*, 733 So. 2d 1012 (Fla. 1999).

²⁸ *Id.* at 1015-1018.

²⁹ *Id.* at 1019.

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AGENDA ITEM REPORT

August 8, 2016

ITEM NUMBER: 7.

ITEM: Approval of an ordinance on **second** reading amending section 23-12 entitled general provisions to modify sub-section 23-12(6)(a) related to the allowable height of docks. Enclosed is a staff report from Town Planner Michael Miller and a copy of the proposed ordinance.

DESCRIPTION:

At a recent Town Council meeting the issue of boat dock heights was discussed. The current Code provision limits a deck / dock crossing a seawall to no more than 12 inches (was only 1.5 inches before 2007). While some waterfront owners are replacing / renovating their seawalls to raise them, due to cost or practicality some are adding a retaining wall on top of the seawall or landward. Further, since the BFE are so high sloping down from a home / pool deck to the seawall / dock is creating steep slope issues for some. A Code amendment was requested to address this situation. We used Ron's sketch as a guideline. It seems to make more sense to limit the dock heights from MSL rather than from a seawall or retaining wall, as they can vary so much. We are suggesting 6.5 feet NGVD. Since a seawall cannot exceed 5.5 feet or 6.0 feet in more vulnerable areas (Biscayne Bay frontage) this would allow 6 inches above the highest seawall / retaining wall height (maybe higher – 7.0' or 7.50'?). MMPA was requested to research the matter and prepare a staff report / draft LDR revisions for consideration.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk
Ronald Wasson, Town Manager

ATTACHMENTS

1.	MMiller staff report	BHI TC Staff Report Dock Heights May 26 2016.pdf
2.	Dock Height Ordinance	Dock Height Draft Ord - May 25 2016.pdf

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

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

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

Date: May 25th, 2016

Subject: Town of Bay Harbor Islands
Proposed Land Development Code Amendment
Boat Docks / Seawalls
Modifications to Allowable Height
MMPA Acct. No. 01-0702-0800

ISSUE:

The Town has received a number of requests from property owners seeking to repair / replace boat docks and seawalls / retaining wall structures. The Town's Code has included zoning provisions for such structures governing the allowable location, size and extension into adjoining waterways for many years. In 2007 the Town studied and subsequently adopted Ordinance No. 830 on January 14th, 2008 that updated many of the Town's earlier Code provisions, including the allowable length of docks extending into waterways, limits on the extent that boats may extend into the Bay Harbor Waterway, and provisions related to flexible dock designs / extensions into waterways as may be required by Miami-Dade County DERM due to sea-grasses and the minimum depth of water necessary for mooring (4 feet). In 2010 the Town considered further amendments but the item was tabled. In 2013 the Town Council expressed an interest in moving forward with the previous 2010 amendments. On December 9th, 2013 the Town Council adopted Ordinance No. 958 which again modified several Code provisions, including establishing minimum heights for docks / regulations for seawall heights.

Most of the original seawalls in the Town were built at elevation between 3.5' – 4.5' MSL and had a uniform "T" appearance (vertical seawall with "T"-shaped seawall cap on top). Due to sea level rises this has proven to be insufficient, as water commonly overlaps the seawalls, especially along Biscayne Bay due to boat traffic and high tides. Many communities have adopted regulations requiring that new or repaired seawalls must be raised, as well as other flood proofing infrastructure. The Town Code now "encourages" seawalls to be 5.5-feet in elevation at most locations (6.0' recommended along Biscayne Bay). The walking surface of

docks are required to be a minimum of 5.0-feet in elevation above mean sea level (for sea plants / creatures) as per Miami-Dade / US Corp of Engineers requirements. Over the years FEMA has steadily increased the minimum Base Flood Elevation (BFE) for habitable structures. In earlier years the lowest habitable floor had to be at least 18 inches above the crown of the adjoining roadway. The roads within the Town are generally built between 4'-5' NGVD. Now geographically delineated areas have set minimum habitable floor elevations higher (8'-10' NGVD). As new buildings are being built, which must be at the BFE or above, the slope of the lot from the house / pool to adjoining property lines / seawalls has become steeper. The elevation of a pool deck / patio deck is generally 6-12 inches below the Finished Floor Elevation (FFE) or 7.00 MSL in the 8.00 MSL areas (single-family areas). On the East Island the BFE ranges from 8.00 MSL on the western side of the island to 10.00 MSL along the eastern edge of the island, which is 4'-5' above seawalls if they are rebuilt to the maximum height allowed or 5.5' to 6.5' above the original seawalls. The Town's new desired seawall cap heights of 5.5' or 6.0' MSL allows for a more gradual slope of the rear yard to the seawall cap. As stated some of the existing older seawalls are very low and cannot structurally support raising the seawall cap to the required height. The cost to build a new seawall and/or repair or raise a seawall cap can be significant. In lieu of building a new seawall or raising the seawall cap several of the recent dock / seawall designs include a retaining wall system on the lot adjoining the seawall or similar structures attached directly to the seawall cap to hold back the grade of the lot / keep water from spilling over into the lot. If a retaining wall system is used to get to the required seawall height, the dock may be required to be lower than the retaining wall system and in some cases, not permitted to be replaced. Docks are now permitted to be a maximum of 12 inches above the seawall cap (1.5 inches prior to 2013 amendment). For example, if the existing older seawall cap is 3.8' in elevation, the dock may be no more than 4.8' in elevation and is under the required minimum 5.0-foot elevation for docks and cannot be replaced.

This issue was discussed at the May 9th, 2016 Town Council meeting. MMPA was instructed to draft suggested Code language modifications to address this issue.

BACKGROUND / RESEARCH FINDINGS

MMPA previously verified with both the US Corp of Army Engineers and DERM that their agencies have no regulations on docks / seawalls unless they are constructed in public waters of the US / state. Seawalls are typically constructed on private property at / near the rear property line. Many communities share similar same design regulations, even though there may be differences in locations needs. The height of seawalls was established many years ago when flood protection was not as critical as today. When the Town was constructed in the late 1940s the land elevations were set at the requirements at that time, which were much lower than today's standards. The earlier rule of thumb was that the minimum habitable floor elevation was at least 18 inches above the crown of the abutting road. This would be about 5½ - 6 feet above mean sea level. There are many older structures in the Town with those floor elevations. FEMA now publishes Flood Insurance Rate Maps (FIRM) that specify higher minimum habitable floor elevations. For the West Island the minimum habitable floor elevation is now 8 feet NGVD. For the East Island the minimum habitable floor elevation ranges from 8 feet NGVD on most of the western areas to 9 feet for most of the eastern areas and 10 feet on portions of those lots fronting on the Indian Creek. The difference is because of expected tidal water storm surges and is based on computer modeling. During a severe tropical storm / hurricane event it could be expected that

Town of Bay Harbor Islands
Proposed Land Development Code Amendment
Boat Docks / Seawalls - Modifications to Allowable Height
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portions of the Town would be mostly under water from Biscayne Bay / Indian Creek / Atlantic Ocean. During high tides / storm events it has been observed sea water covering streets and overflowing storm drains. If the Town were being constructed today the land elevations / street elevations would be at least 2 feet higher than exist today. If global warming warnings continue and sea levels rise as predicted, there may come a time when the coastal areas of South Florida experience regular flooding and some structures become un-inhabitable (estimated sea level has risen about 9 inches in the last 80-100 years).

The US Corp of Army Engineers has published a document entitled "Dock Construction Guidelines in Florida or Other Minor Structures Constructed in or over Submerged Aquatic Vegetation (SAV)" which was published in August 2001. The Corp of Engineers uses these guidelines in the permitting process for docks in Biscayne Bay and adjoining / connected waterways. Miami-Dade County DERM also uses these guidelines and acts as the local permitting agent for the Corp. The guidelines are geared more toward protecting underwater sea grasses and include suggested limits on dock sizes and extensions into water bodies to permit sun light to get to the sea grasses. One of the US Corp of Army Engineer's guidelines is that the minimum height of the dock surface (top) should be at least 5 feet above the mean high water line.

In 2009 the Town's Building Department staff researched the estimated cost to repair seawalls as stated on a number of building permit applications. There were 17 permits issued during 2009 by the Town for seawall repairs; however, staff believes some of the costs may include some dock repairs as well. Out of the total number of permits issued (17), 10 of the permits listed repair costs less than \$2,000 (including both single-family / multi-family). One permit listed a cost of \$16,500 while a group of 4 permits ranged between \$20,920 and \$26,500. One permit listed a cost of \$36,335 and one permit listed a cost of \$100,000. Again the cost listed is believed to include dock repairs as well.

As it is costly to replace a seawall and raise the seawall cap to the required heights, several property owners have chosen to keep repairing the lower seawalls and in some cases install a retaining wall system on top of the seawall or landward. This is potentially an issue for the long term goal of a uniform seawall and seawall height appearance, rather than a haphazard appearance. There have also been many permits issued to raise the seawall cap up to the suggested height without the use of a retaining wall system.

After researching the issue and discussing this with Town staff (Town Manager / Bldg. Official / Town Engineer), MMPA feels that amending the Code to limit docks to no more than 6.5 feet above MSL rather than above the seawall cap would allow the types of retaining walls proposed, while still providing adequate access to the dock from the adjoining lot without the exorbitant expense of requiring the applicant to rebuild the entire seawall.

SUMMARY

The Town Manager / staff have received requests for boat docks to have a higher elevation than currently allowed (12 inches above a seawall) due to the higher FEMA minimum Base Flood Elevation (BFE) requirements and resulting steeper lot slopes. On May 9th, 2016 the Town Council discussed this issue and instructed staff to draft some suggested Code amendments. MMPA was instructed by Town staff to research this issue and draft Code language to address this issue.

After researching the issue, MMPA feels that amending the Code to limit docks to no more than 6.5 feet above MSL, rather than above the seawall cap as the Town regulations now specify, would allow property owners to construct the types of retaining walls proposed while still providing adequate (less steep) access to the boat dock from the adjoining lot without the exorbitant expense of requiring the applicant to rebuild the entire seawall. MMPA recommends the Town Council review and discuss the proposed Ordinance and, if found to be acceptable, move forward with the adoption of the Ordinance on first reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 23 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED ZONING AND PLANNING; AMENDING SECTION 23-12 ENTITLED GENERAL PROVISIONS TO MODIFY SUB-SECTION 23-12(6)(a) RELATED TO THE ALLOWABLE HEIGHT OF DOCKS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Bay Harbor Islands adopted the first Zoning and Planning Code for the community in June 1957; and

WHEREAS, the Town Council periodically studies various land development trends and issues and amends the Zoning and Planning Code accordingly; and

WHEREAS, much of the existing land development in the Town was constructed prior to the enactment of the Zoning and Planning Code, including the installation of seawalls in the late 1940's; and

WHEREAS, the Town has adopted standards for the construction of docks, mooring piles and seawalls in the waterways adjoining the east and west islands; and

WHEREAS, the original land elevations, portions of seawalls and public infrastructure and many habitable structures existing in the Town are lower than current agency standards, which causes occasional flooding problems; and

WHEREAS, over the years FEMA and/or other regulatory agencies increased the minimum elevation requirements for physical improvements, including ground floor elevations for structures, which frequently causes significant grade changes between a newer habitable structure and the older seawalls, docks, roadways and public infrastructure; and

WHEREAS, portions of the original seawalls and some boat docks, while meeting the engineering design criteria when built in the late 1940's, do not adequately protect

adjoining upland properties from the effects, singularly or in combination, of occasional high tides or wave action caused by storm winds or boats within Biscayne Bay or allow for safe or convenient access from boat docks to uplands; and

WHEREAS, the primary environmental permitting agencies - the US Corp of Army Engineers and the Miami-Dade County, regulate where and to what extent boat docks and mooring piles may be placed to minimize environmental damage; and

WHEREAS, the Town Council held duly advertised public meetings to consider the proposed modifications to the Town's Zoning and Planning Code.

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 Zoning and Planning Code is hereby amended to amend Section 23-12 entitled "General Provisions" to modify subsection 23-12(6)(a) related to the allowable design standards for boat docks, as more fully set forth in the attached Exhibit "A", and by reference are made a part hereof.

Section 2. That the Town of Bay Harbor Islands Zoning and Planning Code is hereby amended to amend 23-12 entitled "General Provisions" to modify subsection to amend subsection 23-12(10) to add additional Code provisions for seawalls as more fully set forth in the attached Exhibit "A", and by reference are made a part hereof.

Section 3: 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 4: 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 5: 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 6: That this Ordinance shall be in full force and take effect immediately upon its passage and adoption.

PASSED on First Reading this ____ day of _____, 2016.

PASSED AND ADOPTED on Second Reading this ____ day of _____, 2016.

JORDAN W. LEONARD
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. 23-12. General provisions.

- (6) (a) No boathouse or dock building shall be erected on or adjoining any of the lots in the town, but a dock extending such as distance from the line of the outside face of the seawall cap of the waterfront lots as may be approved by the town manager may be permitted, provided:
- (i) No deck of any dock shall be higher than the existing height of the seawall cap, or a retaining wall attached directly to the seawall cap, or a retaining wall abutting the seawall; provided, however, if a property has a deck and/or walkway in the adjacent yard and wishes to carry the same material across the seawall cap onto the dock so that there is an unbroken appearance between the deck and/or walkway and dock with respect to materials, the dock may be higher than the seawall cap, but not to exceed 12 inches 6.5 feet above Mean Sea Level (MSL), ~~subject to approval of the planning and zoning board~~;
 - (ii) No dock or deck constructed within the town shall bear any weight upon the seawall or seawall cap unless structural calculations (including vertical and lateral) are presented to the town by a licensed professional engineer. The engineer shall certify that the additional loading (including vertical and lateral) presented by the proposed dock is within the design loading calculations of the seawall;
 - (iii) No dock shall extend more than 25 feet beyond the outside face of the seawall cap, except as provided hereinafter;
 - (iv) As to those docks projecting into the Bay Harbor Waterway between the east island and the west island, none shall extend more than 15 feet beyond the outside face of the seawall cap. This restriction specifically applies to lots one through 12 in block two; lots one through 32 in block three; and lots one through 28 and lots 96 through 104 in block 23.
 - (v) No dock which extends more than eight feet beyond the outside face of the seawall cap shall have a width of more than four feet, and shall have no obstructions to such width such as storage bins, benches, etc.;
 - (vi) No cover shall be permitted to be erected in connection with any dock;
 - (vii) No part of any dock shall be placed nearer than ten feet to a line formed by the projection of the sidelines of the dock;

- (viii) No boat landing, dock or pier shall be constructed until the plans and specifications therefore shall have been approved in writing by the town manager, and
 - (ix) No portion of any vessel shall extend more than 30 feet beyond the outside face of the seawall cap in the Bay Harbor Waterway.
 - (x) Notwithstanding the above provisions as related to the allowable projection of docks from the outside face of a seawall, because of shifting underwater land elevations and/or environmental characteristics in Biscayne Bay and the Bay Harbor Waterway, the Miami-Dade Department of Environmental Resource Management (DERM) may require alterations to the above stated criteria. Any variation from the above criteria shall require an owner to request and receive a variance from the town council prior to any construction commencing on a dock structure. Such variances shall be on a case-by-case basis, the application shall be accompanied by an environmental assessment from DERM of the waterway adjacent to the subject property, and any town approval shall be limited to the minimal variation of the criteria necessary to meet the unique environmental characteristics of the site.
 - (xi) The minimum height of a dock surface (top) extending seaward of a seawall shall be at least 5 feet above Mean Sea Level (MSL), unless otherwise approved by the applicable regulatory agency (Miami-Dade DERM / US Corp of Army Engineers). ~~The highest dock surface shall not exceed 12 inches above the adjoining seawall cap, unless otherwise approved by the Town Council.~~
- (b) Boat lifts and/or davits shall be permitted to be constructed and/or installed on or upon adjoining waterfront properties, subject to the following provisions:
- (i) Boat lifts and/or davits: Any device used to raise and/or lower a boat, or other water vehicle to and/or from the surface of the water.
 - (ii) Boat lifts and/or davits shall not be constructed nor installed in such a manner which would allow any portion of the boat lift or davit or watercraft lifted or suspended from same to be any closer than ten feet to a line formed by the projection of the side property lines of the lot.
 - (iii) No portion of a boat lift or davit shall extend more than 25 feet beyond the outside face of the seawall cap.
 - (iv) No boat lift or davit shall be constructed or installed with any attachment or fastening to the seawall or seawall cap. Boat lifts and davits shall be structurally self-supporting and not dependent upon the seawall or seawall cap for structural integrity.

- (v) No cover or canopy shall be permitted to be erected in connection with any boat lift or davit.
 - (vi) No boat lift or davit shall be constructed or installed until the plans and specifications therefore shall have been approved in writing by the town manager.
- (7) No boat canal or other waterway shall be dug or excavated into any of the waterfront lots. No ramp for aircraft shall be built without the approval in writing of the town. The town shall have the right to regulate the size and types of boats, yachts, or vessels which may be moored to any dock or mooring along the waters adjacent to the town, regardless of the location.
- (8) No mooring piles shall be placed more than 40 feet beyond the outside face of the seawall cap of any lot, provided however, no mooring piles shall be placed more than 30 feet beyond the outside face of the seawall cap of any lot on the Bay Harbor Waterway between the east and west island, and no mooring pile shall be nearer than seven and one-half feet to a line formed by the projection of the side lot lines to the lot. Notwithstanding the above provisions, because of shifting underwater land elevations and/or environmental characteristics in Biscayne Bay and the Bay Harbor Waterway, the Miami-Dade Department of Environmental Resource Management (DERM) may require alterations to the above stated criteria. Any variation from the above criteria shall require an owner to request and receive a variance from the town council prior to any construction commencing on a dock structure. Such variances shall be on a case-by-case basis, the application shall be accompanied by an environmental assessment from DERM of the waterway adjacent to the subject property, and any town approval shall be limited to the minimal variation of the criteria necessary to meet the unique environmental characteristics of the site.
- (9) No lot or parcel shall be increased in size by filling in the waters on which it abuts.
- (10) No seawall shall be erected, constructed or repaired in the town or adjacent thereto unless and until its location, design, materials, structures, strength, etc. shall have been approved in writing by the town.
- (a) Seawall permit for use of municipal seawall. Any person needing to access a municipal seawall shall first obtain a permit and register with the town. In addition to a permit fee, the town might require the posting of a bond.
 - (b) Damaging municipal seawall. Any person injuring or damaging a municipal seawall shall be liable and shall immediately reimburse the town in an amount equal to the cost of repairing such damage or injury. The town shall have a specific lien on any vessel and its equipment that shall damage a municipal seawall due to the negligence in its operation or handling.

- (c) Height of seawalls. The elevation at the top of any seawall cap shall be 5.50 feet above Mean Sea Level (MSL). Notwithstanding the above, the following properties that experience more frequent and turbulent wave action from Biscayne Bay may elect to raise the top of a seawall cap to 6.0 feet above MSL: Lots 11 through 29 of Block 2; Lots 1 through 4 of Block 3; Lots 1 through 5 of Block 4; Lots 29 through 95 of Block 23; and Tracts C through F, as denoted on the plat of "Bay Harbor Island" according to the plat thereof, as recorded in Plat Book 46, at Page 5 of the public records of Miami-Dade County.
- (d) Design, construction of seawalls. All seawalls shall be designed and certified by a registered engineer and constructed by a licensed contractor.
- (e) Completion of construction, approval. Seawalls, when completed and backfilled to grade shall be plumb and the coping straight before its final acceptance and release of bond by the Town.
- (f) Extension of seawall into waterways. No part of any seawall, including slabs, may extend beyond any lot line into any waterway. Piles and the cap beam may encroach into the adjoining waterway, if approved by the Town and regulatory agency having jurisdiction.
- (g) Construction methods. Seawalls shall be constructed of reinforced concrete, with a cap beam and supported on concrete pilings driven to bedrock. Seawalls shall penetrate into the soil at least 2 feet. No rip-rap shall be permitted in place of a seawall; however, rip-rap may be installed adjoining a seawall if approved by the Town and regulatory agencies having jurisdiction. If a seawall is replaced all existing tie backs shall be removed. Property owners are encouraged to remove failed tie backs when possible due to frequent system failures and damage caused on upland lands.
- (h) Non-conforming Seawalls - Existing seawalls and construction methods other than specified herein shall be allowed to remain as non-conforming structures and may continue to be repaired. Property owners are strongly encouraged to reconstruct and/or raise older low elevation seawalls to the heights specified in subsection (c) above and remove failed tie back systems as opportunities occur to increase flood protection and safeguard properties.
- (11) It shall be unlawful and a public nuisance for any property owner in the town to permit, or fail to repair or reconstruct, any failed seawall upon his property. It is further declared unlawful and a public nuisance for any property owner to fail to remove from his property or an adjacent body of water the debris and rubble of any failed seawall.

AGENDA ITEM REPORT

August 8, 2016

ITEM NUMBER: 8.

ITEM: Approval of an ordinance on **second** reading amending Section 24-16 entitled minimum landscape standards, to modify the landscape requirements for compliance by nonconforming properties. Enclosed is a report from the Town Planner Michael Miller and a copy of the proposed ordinance.

DESCRIPTION:

At a recent Town Council meeting the issue of requiring older non-conforming sites to upgrade their landscaping as per Sec. 24-16(a) was discussed. It was expressed that for minor improvements the current requirement to upgrade a site fully with all of the minimum landscape requirements may be burdensome. MMPA was requested to research the matter and prepare a staff report / draft LDR revisions for consideration. We have provided several alternatives for the Town to consider.

When the ordinance was discussed at first reading, the Town Council gave staff direction and the ordinance was amended per the Council's recommendations.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk

ATTACHMENTS

1.	MMiller staff report	BHI TC Staff Report NonConforming LS Change May 26 2016.pdf
2.	Proposed Ordinance	Final Draft Ord - June 20 2016 - landscape ord.pdf

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

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

From: Michael J. Miller, AICP 
Consultant Town Planner

Date: May 25th, 2016

Subject: Town of Bay Harbor Islands
Proposed Property Maintenance Standards Code Amendment
Minimum Landscape Standards
Modifications to Requirements for Compliance for Nonconforming Property
MMPA Acct. No. 01-0702-0800

ISSUE

In 1994 Miami-Dade County adopted a minimum Landscape Code (Ch. 18A) that mandates certain landscaping requirements for all land uses in the county, both in the unincorporated areas of the county as well as all municipalities. Local governments may choose to adopt more stringent standards (more / larger / etc.) but the county-wide minimum standards must be met. In 2008 the Town choose to adopt Supplemental Landscape Code upgrades (Sec. 24-16). The Town Council, after receiving input from the Environmental Impact Committee and community residents, desired to include a requirement for older non-conforming properties to upgrade if a threshold was reached. The Town has a significant number of non-conforming properties (i.e. no or few shade trees) but progress has been made to improve sites as redevelopment occurs. Section 24-16(a) requires that all redevelopment of existing properties that add more than 100 sq. ft. of floor area to an existing structure, add more than 100 square feet of hardscape area to a site (walkways / decks / driveways), or cost in aggregate more than \$10,000.00 shall upgrade the landscaping on the property to meet current day standards.

The Town has received complaints from a few property owners seeking to replace / expand existing driveways and/or pool decks but do not want to comply with the landscaping upgrade requirements. Some of the sites did not meet the minimum landscape standards for shade trees, so staff insisted the sites be improved. The Town does not currently have a minimum "green" open space requirement for single-family homes – only multifamily sites. The PZ Board has occasionally expressed concern with the amount of impervious area on some single-family sites and has requested a study of this and possible Code amendments. Recently the Town

Town of Bay Harbor Islands
Proposed Property Maintenance Standards Code Amendment
Minimum Landscape Standards
Modifications to Requirements for Compliance for Nonconforming Property
May 25th, 2016
Page 2

adopted Code amendments related to single-family driveways / front yard parking court designs to ensure sufficient landscaped areas are provided along the Town's roadways. Some older multi-family or single-family sites have installed large amounts of hardscapes (driveways / walkways / decks / patios) covering a large percentage of the lots, which is unattractive and leads to drainage problems. Therefore, some of those older sites have limited but established landscaping and may not have ample room to place numerous new trees to meet the County / Town requirements of 5-6 trees per single family lot / 7 trees for one-lot multifamily developments / etc.). Additionally, it can be costly in some instances, to comply with the landscape requirements. But a goal of the Town has been to upgrade older sites as opportunities arise. Perhaps the existing thresholds can be adjusted so that minor exterior improvements do not trigger full compliance.

The Town Council recently discussed this issue, upon the request of the Town Manager, and expressed that this requirement should only be applied to new construction and properties that expand the existing structure more than 100 square feet, rather than replace / minimally expand a driveway or pool deck. MMPA was requested to draft Code language to address this issue.

RECOMENDATION

MMPA recommends the Town Council review and discuss the proposed ordinance and, if found to be acceptable, adopt the ordinance on first reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 23 OF THE TOWN'S CODE OF ORDINANCES ENTITLED PROPERTY MAINTENANCE STANDARDS; AMENDING SECTION 24-16 ENTITLED MINIMUM LANDSCAPE STANDARDS, TO MODIFY THE LANDSCAPE REQUIREMENTS FOR COMPLIANCE BY NONCONFORMING PROPERTIES; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Town of Bay Harbor Islands adopted Property Maintenance Standards Code for the community in September 1996; and

WHEREAS, the Town of Bay Harbor Islands has been required to enforce the Miami-Dade County Landscape Code (Chapter 18A) requirements since 1994; and

WHEREAS, the Town of Bay Harbor Islands adopted enhanced Supplemental Landscape Code provisions for the community in August 2008; and

WHEREAS, the Town Council periodically studies various land development issues and periodically amends the Code accordingly; and

WHEREAS, some of the existing land development in the Town was constructed prior to the enactment of the Miami-Dade County Landscape Code or Town Supplemental Landscape Code and does not comply with minimum criteria; and

WHEREAS, the Town Council desires that older nonconforming sites be upgraded when substantial improvements are made to properties and has established thresholds when nonconforming site upgrades are required; and

WHEREAS, the Town Council held duly advertised public meetings to consider the proposed modifications to the Town's Zoning and Planning Code.

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 Property Maintenance Standards Code is hereby amended to amend Section 24-16 entitled "Minimum Landscape Standards" to modify the requirement for compliance for nonconforming properties, 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 _____, 2016.

PASSED AND ADOPTED on Second Reading this ____ day of _____, 2016.

JORDAN W. LEONARD
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
Property Maintenance Standards Code – Chapter 24

Sec. 24-16. Minimum landscape standards.

Requirements for compliance for nonconforming properties. It is the express intent and desire of the town council that all sites comply with and meet the minimum requirements set forth in the Miami-Dade Countywide Landscape Code and town supplemental standards stated herein. The town recognizes that many of the properties in the town were constructed prior to the enactment of either the county or town supplemental code requirements. Property owners are encouraged to meet the most recent minimum standards, if possible. All new development must comply with the most stringent standards set forth in either code. All redevelopment of existing properties that add more than ~~100~~ 200 square feet of gross floor area to an existing structure, ~~add more than 100 square feet of pavement, decking, patios or other hardscape area to a site, or cost in aggregate more than \$10,000.00~~ shall upgrade the landscaping on the property to meet current day standards.

AGENDA ITEM REPORT

August 8, 2016

ITEM NUMBER: 9.

ITEM: Approval of an ordinance on **second** reading amending Chapter 16 of the Town Code, providing for a renewed eligibility window for the participation of the Town Manager to the Employees Retirement System. Enclosed find a copy of the proposed ordinance.

DESCRIPTION:

At the May 5th, Special Council Meeting, the Town Council discussed Town Manager Wasson performance evaluation. As a result, the Town Council approved changes the Town Manager contract and allowed for the Manager to join the Employees Retirement System. The proposed ordinance would open an eligibility window for the Town Manager to join the Retirement System within six (6) months.

The ordinance was approved on first reading at the June Council Meeting.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk
Ronald Wasson, Town Manager

ATTACHMENTS

1.	Proposed Ordinance	Town Manager Opt-In Ordinance Amendment (11May2016).pdf
2.	Acturials	TM Pension- actuarial.pdf

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 16, THE TOWN OF BAY HARBOR ISLANDS EMPLOYEES RETIREMENT SYSTEM, OF THE TOWN OF BAY HARBOR ISLANDS CODE OF ORDINANCES, PROVIDING FOR A RENEWED ELIGIBILITY WINDOW FOR THE PARTICIPATION OF THE TOWN MANAGER IN THE RETIREMENT SYSTEM; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The Town Council intends to provide a renewed six-month eligibility window within which the Town Manager may elect to participate in the Bay Harbor Islands Employees Retirement System at no cost to the Retirement System;

WHEREAS, the Town Council has received and reviewed an actuarial impact statement related to these changes,

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

Section 1. That Section 16-20, Persons eligible and persons ineligible, of Chapter 16, Town of Bay Harbor Islands Employees Retirement System, is hereby amended by adding the underlined language and deleting the ~~stricken through~~ language as follows:

Sec. 16-20. - Persons eligible and persons ineligible.

All full-time, salaried or hourly paid general employees and police officers initially employed on or after October 1, 1980, shall become members of the retirement system upon the completion of one year of continuous employment. All full-time, salaried or hourly paid general employees and police officers as of September 30, 1980, and who are not as of such date members in the retirement system shall be eligible for

membership at any time on or after the completion of one year of continuous employment, with membership service to include the one year period prior to commencement of member contributions. The town manager, ~~within the later of either, six calendar months after appointment to that position, or six calendar months after enactment of this ordinance,~~ may make a one-time irrevocable election to participate ("opt in") in the retirement system by delivering a written notice thereof, dated and signed as town manager, to the retirement system and town finance officer. The town manager's election to opt in shall be subject to approval by the town council. Should the town manager elect to opt in, and such election be approved by town council, the years or fractional parts of years accrued as town manager shall be added to the member's years of credited service under the following terms and conditions:

- (1) The member contributes to the retirement system the full actuarial cost of all service credits, including the first year of employment, purchased hereunder.
- (2) The purchase of credited service under this subsection by a member shall be paid in full no later than the December 31 prior to retirement in accordance with the terms, rules, procedures and regulations established by the board of trustees. If full payment is not made prior to the December 31 prior to retirement, then the member, upon retirement, shall not receive credited service for the actuarial equivalent of the balance owed.
- (3) Payment for the benefits provided in this section may be made in one or more of the following manners:
 - (a) Cash lump sum payment.
 - (b) Direct rollovers or member rollover contributions from other plans. The fund will accept either a direct rollover of an eligible rollover distribution or a member contribution of an eligible rollover distribution from a qualified plan described in section 403(a) of the Internal Revenue Code, from an annuity contract described in section 403(b) of the Internal Revenue Code, or from an eligible plan under section 457(b) of the Internal Revenue Code, which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state. The retirement system will also accept a member rollover contribution of the portion of a distribution from a qualified plan described in section 401(a) of the Internal Revenue Code, or from an individual

retirement account or annuity described in section 408(a) or 408(b) of the Internal Revenue Code, that is eligible to be rolled over and would otherwise be includible in the member's gross income.

Current members of the retirement system who are subsequently appointed to the position of town manager, within six calendar months of being appointed, shall have a one-time irrevocable election not to continue participating ("opt out") in the retirement system by delivering a written notice thereof, dated and signed as town manager, to the retirement system and town finance officer. Any such current member of the retirement system who is appointed town manager and elects not to opt out within the prescribed time shall continue to accrue credited service and participate in the retirement system in all respects.

- (4) The following shall not be eligible for participation in the retirement system:
- (a) Members of the town council;
 - (b) Elected officials;
 - (c) Independent contractors;
 - (d) All other persons not falling within the prescribed categories of persons eligible for membership.

Renewed Participation Window for Town Manager: Within six calendar months after enactment of this ordinance, the Town Manager may make a one-time irrevocable election to participate ("opt in") in the retirement system. Any such election shall be made in the manner set forth above, and shall be subject to all terms and conditions set forth in this section.

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 applications 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 this 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 renumbered or relettered 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 _____, 2016.

PASSED and ADOPTED on Second Reading on this _____ day of _____, 2016.

JORDAN W. LEONARD
MAYOR

ATTEST:

MARLENE M. SIEGEL
TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

CRAIG SHERMAN, ESQ.
TOWN ATTORNEY



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May 27, 2016

Mr. Alan K. Short
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

Re: Town of Bay Harbor Islands Employees Retirement System

Dear Alan:

In response to your request, we have enclosed an actuarial impact statement for the proposed ordinance that allows the Town Manager to opt into the pension plan within six months of enactment.

Please note that the actuarial impact was determined based on the October 1, 2015 actuarial valuation of the plan and is based on the assumption that the Town Manager begins participating in the plan as of August 17, 2016 and makes a one-time contribution equal to \$417,459 on that date to cover the cost of his past service liability. Therefore, the Town's required contribution is not impacted by the pension benefit attributable to the Town Manager's service earned through August 17, 2016 and is only impacted by the pension benefit that is expected to be earned by the Town Manager for his service under the plan after August 17, 2016.

If you have any questions, please do not hesitate to call me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles T. Carr".

Charles T. Carr
Consulting Actuary

Enclosure as stated

**TOWN OF BAY HARBOR ISLANDS
EMPLOYEES RETIREMENT SYSTEM**

IMPACT STATEMENT FOR ORDINANCE NO.

PART ONE: CERTIFICATION OF THE PLAN ADMINISTRATOR

I have enclosed a copy of Ordinance No. _____ of the Town of Bay Harbor Islands, which ordinance makes the following change to the Town of Bay Harbor Islands Employees Retirement System:

Allows the Town Manager to irrevocably opt into the pension plan within six calendar months after the later of the enactment of the ordinance or his appointment to that position by making a contribution to the plan equal to the actuarially equivalent value of any past service credit earned prior to his participation in the plan.

The plan's enrolled actuary, Charles T. Carr of Southern Actuarial Services Company, Inc., was provided with a copy of the proposed ordinance. In addition, the described plan change meets the requirements of Part VII, Chapter 112, Florida Statutes, and Section 14, Article X of the State Constitution.

Chairman, Board of Trustees

PART TWO: CERTIFICATION OF THE ENROLLED ACTUARY

Chapter 112 requires disclosure of the effect of changes in assumptions, methods, and plan provisions on certain liabilities. I have determined the impact of Ordinance No. _____ based on the results of the October 1, 2015 actuarial valuation. If the Town Manager elects to participate in the pension plan as of August 17, 2016, then the ordinance is expected to decrease the annual contribution required from the Town for the general employees' portion of the plan by **0.11%** of payroll, but to increase the annual cost. With respect to the 2016/17 plan year, the increase in annual cost is estimated to be \$20,959 for the general employees' portion.

The following tables set forth the required disclosures in connection with the plan change which has been described above:



General Employees' Portion Of the Plan	As of October 1, 2015 (Old Plan Provisions)	As of October 1, 2015 (New Plan Provisions)
Present value of future expected benefit payments:		
for active participants		
<i>retirement benefits</i>	\$ 5,982,969	\$ 6,420,240
<i>termination benefits</i>	760,691	764,457
<i>disability benefits</i>	27,390	28,630
<i>death benefits</i>	10,923	11,356
<i>return of contributions</i>	31,594	31,594
<i>sub-total</i>	\$ 6,813,567	\$ 7,256,277
for deferred vested participants	\$ 576,943	\$ 576,943
for retired participants and beneficiaries		
<i>retired (other than disab.) & benef.</i>	\$ 2,298,491	\$ 2,298,491
<i>disabled retirees</i>	43,281	43,281
<i>sub-total</i>	\$ 2,341,772	\$ 2,341,772
total	\$ 9,732,282	\$ 10,174,992
Entry age normal accrued liability:		
for active participants		
<i>retirement benefits</i>	\$ 4,573,887	\$ 4,938,301
<i>termination benefits</i>	518,873	522,290
<i>disability benefits</i>	16,741	17,866
<i>death benefits</i>	6,897	7,290
<i>return of contributions</i>	18,123	18,123
<i>sub-total</i>	\$ 5,134,521	\$ 5,503,870
for inactive participants	\$ 2,918,715	\$ 2,918,715
total	\$ 8,053,236	\$ 8,422,585
Actuarial value of assets	(7,246,525)	(7,643,194)
Unfunded accrued liability	\$ 806,711	\$ 779,391
Actuarial present value of accrued benefits	\$ 7,464,968	\$ 7,817,098
Present value of active participants':		
Future salaries	\$ 11,109,286	\$ 11,417,525
Future contributions	\$ 594,226	\$ 625,050
Present value of future contributions from the employer (including expense loading)	\$ 1,974,851	\$ 1,992,379
Total annual compensation (2016/17 FY)	\$ 2,385,505	\$ 2,544,667
Minimum required contribution (2016/17 FY):		
Annual normal cost (incl. expenses)	\$ 354,934	\$ 392,925
Amortization payment	103,403	99,901
Interest adjustment	18,079	19,853
Employee contribution	(122,691)	(137,995)
Total	\$ 353,725	\$ 374,684
(% of payroll)	14.83%	14.72%



This actuarial valuation and/or cost determination was prepared and completed by me or under my direct supervision and I acknowledge responsibility for the results. To the best of my knowledge, the results are complete and accurate and, in my opinion, the techniques and assumptions used are reasonable and meet the requirements and intent of Part VII, Chapter 112, Florida Statutes. There is no benefit or expense to be provided by the plan and/or paid from the plan's assets for which liabilities or current costs have not been established or otherwise taken into account in the valuation. All known events or trends which may require a material increase in plan costs or required contribution rates have been taken into account in the valuation.

Respectfully submitted,

Charles T. Carr

Charles T. Carr, A.S.A.
Consulting Actuary
Enrolled Actuary No. 14-04927

5/27/16

Date signed



AGENDA ITEM REPORT

August 8, 2016

ITEM NUMBER: 10.

ITEM: Approval of an ordinance on **second** reading amending Chapter 16, of the Town Code entitled Employees Retirement System providing for compliance requirements for prior military and police service. Enclosed find a copy of the proposed ordinance.

DESCRIPTION:

The proposed ordinance would update all of the recent amendments made to the Employees Retirement System for Police Officers only.

Among the changes is the clarification of the average of final compensation based on a 3 year average for police officers: the benefit formula multiplier was increased from 3.25% to 3.50% for service on and after October 1, 2014; the Monthly retirement subsidy was increased from \$350 to \$375 effective October 1, 2014; and several changes to the preserve compliance with the IRS.

Enclosed find a copy of the proposed ordinance and a detailed impact statement for the ordinance.

This ordinance was approved on first reading at the June Council meeting.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

The annual contribution required from the Town for the police officers portion for the 2016/2017 plan year is \$15,370.

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk

ATTACHMENTS

1.	Proposed Ordinance	IRS HEART Premium Tax Ordinance Amendment (04may2016).pdf
2.	Impact statement	ImpactStatement Ordinance No 3.pdf

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 16, THE TOWN OF BAY HARBOR ISLANDS EMPLOYEES RETIREMENT SYSTEM, OF THE TOWN OF BAY HARBOR ISLANDS CODE OF ORDINANCES, PROVIDING FOR THE USE OF PREMIUM TAX REVENUES PURSUANT TO CHAPTER 185, FLORIDA STATUTES; PROVIDING FOR CONTINUED COMPLIANCE WITH THE REQUIREMENTS FOR QUALIFIED PLANS UNDER SECTION 401(a) OF THE INTERNAL REVENUE CODE; PROVIDING FOR PURCHASE OF CREDITED SERVICE FOR PRIOR MILITARY AND POLICE SERVICE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, during the 2015 regular session of the State of Florida Legislature, Chapter 185, Florida Statutes was amended to provide for certain uses of state-provided premium tax revenues; and

WHEREAS, the Town of Bay Harbor Islands and the Dade County Police Benevolent Association have reached an agreement providing for the use of premium tax revenues in accordance with Section 185.35(1)(g), Florida Statutes, as amended; and

WHEREAS, the Town of Bay Harbor Islands and the Dade County Police Benevolent Association have also reached an agreement permitting police officer members of the retirement system to purchase up to four (4) years of credited service for prior military and/or police service; and

WHEREAS, recent changes to federal laws and regulations require various amendments to the retirement system in order to maintain its status as a qualified plan under Section 401(a) of the Internal Revenue Code; and

WHEREAS, the Town Council has received and reviewed an actuarial impact statement related to these changes,

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

Section 1. That subsections (f) and (i) of Section 16-1, Schedule, of Chapter 16, Town of Bay Harbor Islands Employees Retirement System, is hereby amended by adding the underlined language and deleting the ~~stricken through~~ language as follows:

Sec. 16-1. - Schedule.

...

(f) Credited service: Shall mean the total service, consisting of both prior service and membership service, during which a person serves or has served as a full-time employee of the town, and provided further:

- (1) Prior service shall consist of full-time employment prior to the effective date of the ordinance from which this chapter is derived.
- (2) Membership service shall consist of full-time employment subsequent to the effective date and during which a member contributes to the system as provided herein.
- (3) Credited service shall include a member's initial year of employment (eligibility period) although no member contributions are required for such year.
- (4) All other persons employed following the effective date and who become members shall be entitled to membership service only, including credit for the initial year of employment.
- (5) Any member granted a leave of absence may elect to leave his contributions in the fund pending his return as an employee and member and receive credit for the years for which contributions were made, plus prior service, if any, provided such member returns to employment and membership within two months following the end of his leave of absence.

(6) Credited Service shall also include any service credited pursuant to Section 16-24.1.

...

(i) *Average final compensation:* Shall mean the average of the highest annual pay received by a member during the highest five (three for police officer members) of the ten years of service immediately preceding retirement. Compensation for purposes herein shall include base compensation only and not overtime or other amounts not normally included in base pay. Base compensation shall include amounts paid by the Town of Bay Harbor Islands as deferred compensation for any member. ~~For the purpose of applying the limitations set forth in Sections 401(a)(17) and 415 of the Internal Revenue Code, compensation shall include any elective deferral (as defined in Code Section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the member and which is not includible in the gross income of the member by reason of Section 125 or 457 of the Internal Revenue Code. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in subsection (a) of section 16-51 hereof, compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the member by reason of Section 132(f)(4) of the Internal Revenue Code.~~

...

Section 2. That Section 16-24.1, Purchase of credits for military service, of the Town of Bay Harbor Islands Employees Retirement System, is hereby amended as follows:

Sec. 16-24.1. – ~~Purchase of credits for military service~~Credit for uniformed service, and for prior military and/or police service.

~~The years or fractional parts of years that a participant serves or has served full-time active duty in the military service of the Armed Forces of the United States, voluntarily or involuntarily, after a participant's first or initial employment with the town, shall be added to his years of credited service provided that:~~

- ~~(1) The participant did not receive a dishonorable discharge from the Armed Forces.~~
- ~~(2) The participant did not receive credited service for the time spent in the Armed Forces from any other private, governmental or military retirement or pension system.~~
- ~~(3) The participant contributes to the fund the full actuarial cost of all service credits purchased.~~
- ~~(4) The purchase of credited service under this section by a participant shall be paid in full prior to the participant's retirement date, and in accordance with all terms, rules, procedures or regulations established by the board of trustees.~~
- ~~(5) The maximum credit which may be purchased by a participant for any military service in the armed forces of the United States under this section shall be four years.~~
- ~~(6) All credited service purchased pursuant to this section shall count toward vesting.~~

(a) Credited service under Uniformed Services Employment and Reemployment Rights Act: Members shall receive credited service for Qualified Uniformed Service in accordance with the Uniformed Services Employment and Reemployment Rights Act.

(b) Purchase of prior military and/or police service: A police officer member may purchase credited service for military service occurring prior to the member's first or initial employment with the Town, as well as for service as a police officer for a different employer occurring prior to the member's first or initial employment with the Town, as long as the member is not entitled to receive a benefit for such other prior service as a police officer. The maximum number of years of credited service that may be purchased pursuant to this Subsection (b) for prior military and prior police service combined shall be four (4) years. The member shall pay the full actuarial cost of the service purchase as calculated by the Fund's actuary and based upon the member's salary at the time that the service credit is requested, plus any and all professional fees related to the purchase. Payment by the member of the required amount shall be made within six (6) months of the request for credit, but not later than the member's retirement date, upon receipt of which service credit shall be given. Multiple requests to purchase service pursuant to this sub-section may be made at any time prior to retirement.

Section 3. That subsection (a) of Section 16-40, Schedule, of the Town of Bay

Harbor Islands Employees Retirement System, is hereby amended as follows:

Sec. 16-40. - Schedule.

The retirement benefits for members shall be as follows:

- (a) *Normal retirement benefit:* The monthly normal retirement benefit for general employees shall be an amount equal to one-twelfth of one and one-quarter percent of average final compensation times all years of credited service; the monthly normal retirement benefit for police officers shall be an amount equal to one-twelfth of one and three-quarters percent of average final compensation times all years of credited service; provided, that effective October 1, 2005, said retirement benefit for police officers shall be increased to a total of three percent for years of credited service on or after October 1, 2005, and effective October 1, 2006, said retirement benefit for police officers shall be increased to a total of three and one-quarter percent (3.25%) for years of service on or after October 1, 2006, and effective October 1, 2014 said retirement benefit for police officers shall be increased to a total of three and one-half percent (3.50%) for years of service on or after October 1, 2014; however, as regards general employee members who make voluntary, additional contributions, the benefit percentage accrual rate shall be as shown in the following table, and as regards police officer employees who made voluntary, additional contributions with respect to credited service prior to October 1, 2005, the benefit percentage accrual rate shall be as shown in the following table for credited service prior to October 1, 2005:

...

Section 4. That subsection (d) of Section 16-40, Schedule, of the Town of Bay

Harbor Islands Employees Retirement System, is hereby amended as follows:

Sec. 16-40. - Schedule.

The retirement benefits for members shall be as follows:

...

- (d) *Retirement subsidy: Retirement subsidy:* Notwithstanding any other provision of this article, those police officers retiring after October 1, 2005 and general employees retiring after October 1, 2007, and having attained normal retirement age shall be entitled to a vested percentage, as set forth under normal retirement criteria, of a monthly retirement subsidy of \$350.00 until attaining the age of 65. This retirement subsidy is intended to be used by police officer and general employee retirees for payment of health insurance premiums but is not contingent upon such use. Members that terminate employment with the town and elect to withdraw their contributions shall not be entitled to receive such retirement subsidy. Effective October 1, 2014, the monthly retirement subsidy for police officer Members is increased to \$375.00.

Section 5. That subsection (h) of Section 16-40, Schedule, of the Town of Bay Harbor Islands Employees Retirement System, is hereby amended by adding a new subsection (6) as follows:

Sec. 16-40. - Schedule.

The retirement benefits for members shall be as follows:

...

- (h) Death and termination benefits:

...

- (6) *Death while performing USERRA - qualified active military service.* In the case of a Participant who dies on or after January 1, 2007 while performing "Qualified Military Service" under Title 38, United States Code, Chapter 43, Uniformed Services Employment and Reemployment Rights Act ("USERRA") within the meaning of Section 414(u) of the Internal Revenue Code, any "additional benefits" (as defined by Section 401(a)(37) of the Internal Revenue Code) provided under the Plan that are contingent upon a Participant's termination of employment due to death shall be determined as though the Participant had resumed employment immediately prior to his death. With respect to any such "additional benefits," for vesting purposes only, credit shall be given for the period of the Participant's absence from covered employment during "Qualified Military Service".

Section 6. That subsection (a) of Section 16-51, Internal Revenue Code Compliance, of the Town of Bay Harbor Islands Employees Retirement System, is hereby deleted in its entirety and replaced with the following language:

Sec. 16-51. – Internal Revenue Code Compliance.

(a) MAXIMUM AMOUNT OF RETIREMENT INCOME.

- (1) The limitations of this Subsection (a) shall apply in limitation years beginning on or after July 1, 2007, except as otherwise provided herein, and are intended to comply with the requirements of the Pension Protection Act of 2006 and shall be construed in accordance with said Act and guidance issued thereunder. The provisions of this Subsection (a) shall supersede any provision of the Plan to the extent such provision is inconsistent with this Subsection.

The Annual Pension as defined in Paragraph (2) below otherwise payable to a Member at any time shall not exceed the Dollar Limitation for the Member multiplied by a fraction whose value cannot exceed one, the numerator of which is the Member's number of years (or part thereof, but not less than one year) of service with the Town and the denominator of which is 10. For this purpose, no more than one year of service may be credited for any Plan Year. If the benefit the Member would otherwise accrue in a limitation year would produce an Annual Pension in excess of the Dollar Limitation, the benefit shall be limited (or the rate of accrual reduced) to a benefit that does not exceed the Dollar Limitation.

- (2) “Annual Pension” means the sum of all annual benefits, payable in the form of a straight life annuity. Benefits payable in any other form shall be adjusted to the larger of:

(A) For limitation years beginning on or after July 1, 2007

- (i) the straight life annuity (if any) payable to the Member under the Plan commencing at the same Annuity Starting Date as the Member's form of benefit, or

- (ii) the actuarially equivalent straight life annuity commencing at the same Annuity Starting Date, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).

(B) For limitation years beginning before July 1, 2007

- (i) the actuarially equivalent straight life annuity commencing at the same Annuity Starting Date, computed using the interest rate and mortality basis specified by the Board of Trustees for determining Actuarial Equivalence under the Plan for the particular form of payment, or
- (ii) the actuarially equivalent straight life annuity commencing at the same Annuity Starting Date, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).

No actuarial adjustment to the benefit shall be made for benefits that are not directly related to retirement benefits (such as a qualified disability benefit, preretirement incidental death benefits, and postretirement medical benefits); or the inclusion in the form of benefit of an automatic benefit increase feature, provided the form of benefit is not subject to §417(e)(3) of the Internal Revenue Code and would otherwise satisfy the limitations of this Subsection (a), and the amount payable under the form of benefit in any Limitation Year shall not exceed the limits of this Subsection (a) applicable at the annuity starting date, as increased in subsequent years pursuant to § 415(d) of the Code. For this purpose, an automatic benefit increase feature is included in a form of benefit if the form of benefit provides for automatic, periodic increases to the benefits paid in that form.

- (3) “Dollar Limitation” means, effective for the first limitation year beginning after January 1, 2001, \$160,000, automatically adjusted under Code Section 415(d), effective January 1 of each year, as published in the Internal Revenue Bulletin, and payable in the form of a straight life annuity. The new limitation shall apply to limitation years ending with or within

the calendar year of the date of the adjustment, but a Member's benefits shall not reflect the adjusted limit prior to January 1 of that calendar year. The Dollar Limitation shall be further adjusted based on the age of the Member when the benefit begins as follows:

(A) For Annuity Starting Dates in limitation years beginning on or after July 1, 2007

(i) If the Annuity Starting Date for the Member's benefit is after age 65

(I) If the Plan does not have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement

The Dollar Limitation at the Member's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's Annuity Starting Date that is the actuarial equivalent of the Dollar Limitation with actuarial equivalence computed using a 5.00% interest rate assumption and the mortality basis prescribed in Code Section 415(b)(2)(E)(v) for that Annuity Starting Date (and expressing the Member's age based on completed calendar months as of the Annuity Starting Date).

(II) If the Plan does have an immediately commencing straight life annuity payable at both age 65 and the age of benefit commencement

The Dollar Limitation at the Member's Annuity Starting Date is the lesser of (aa) the Dollar Limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Member's Annuity Starting Date to the annual amount of the adjusted

immediately commencing straight life annuity under the Plan at age 65, both determined without applying the limitations of this Subsection (a), and (bb) the limitation determined under Subparagraph (3)(A)(i)(I) of this Subsection(a). For this purpose, the adjusted immediately commencing straight life annuity under the Plan at the Member's Annuity Starting Date is the annual amount of such annuity payable to the Member, computed disregarding the Member's accruals after age 65 but including actuarial adjustments even if those actuarial adjustments are used to offset accruals; and the adjusted immediately commencing straight life annuity under the Plan at age 65 is the annual amount of such annuity that would be payable under the Plan to a hypothetical Member who is age 65 and has the same Accrued Benefit as the Member.

(ii) Except with respect to a Member who is a "Qualified Member" as defined in Section 415(b)(2)(H) of the Code, for benefits (except survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code), if the Annuity Starting Date for the Member's benefit is before age 62

(I) If the Plan does not have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement

The Dollar Limitation at the Member's Annuity Starting Date is the annual amount of a benefit payable in the form of a straight life annuity commencing at the Member's Annuity Starting Date that is the actuarial equivalent of the Dollar Limitation with actuarial equivalence computed using a 5.00% interest rate

assumption and the mortality basis prescribed in Code Section 415(b)(2)(E)(v) for that Annuity Starting Date (and expressing the Member's age based on completed calendar months as of the Annuity Starting Date).

- (II) If the Plan does have an immediately commencing straight life annuity payable at both age 62 and the age of benefit commencement

The Dollar Limitation at the Member's Annuity Starting Date is the lesser of (aa) the Dollar Limitation multiplied by the ratio of the annual amount of the adjusted immediately commencing straight life annuity under the Plan at the Member's Annuity Starting Date to the annual amount of the adjusted immediately commencing straight life annuity under the Plan at age 62, both determined without applying the limitations of this Subsection (a), and (bb) the limitation determined under Subparagraph (3)(A)(ii)(I) of this Subsection (a).

- (B) For Annuity Starting Dates in limitation years beginning before July 1, 2007

<u>Age as of Annuity Starting Date:</u>	<u>Adjustment of Dollar Limitation:</u>
<u>Over 65</u>	<u>The smaller of: (a) the actuarial equivalent of the limitation for age 65, computed using the interest rate and mortality basis specified by the Board of Trustees for determining actuarial equivalence under the Plan, or</u> <u>(b) the actuarial equivalent of the limitation for age 65, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).</u> <u>Any increase in the Dollar Limitation determined in accordance with this paragraph shall not reflect a</u>

	<u>mortality decrement between age 65 and the age at which benefits commence if benefits are not forfeited upon the death of the Member. If any benefits are forfeited upon death, the full mortality decrement is taken into account.</u>
<u>62 to 65</u>	<u>No adjustment.</u>
<u>Less than 62</u>	<u>The smaller of: (a) the actuarial equivalent of the limitation for age 62, computed using the interest rate and mortality basis specified by the Board of Trustees for determining actuarial equivalence under the Plan, or</u> <u>(b) the actuarial equivalent of the limitation for age 62, computed using a 5.00% interest rate and the mortality basis prescribed in Code Section 415(b)(2)(E)(v).</u> <u>This adjustment shall not apply to any "Qualified Member" as defined in Section 415(b)(2)(H), nor to survivor and disability benefits as defined in Section 415(b)(2)(I) of the Code.</u>

- (4) With respect to clause (3)(A)(i)(I), clause (3)(A)(ii)(I) and Paragraph (3)(B) above, no adjustment shall be made to the Dollar Limitation to reflect the probability of a Member's death between the Annuity Starting Date and age 62, or between age 65 and the Annuity Starting Date, as applicable, if benefits are not forfeited upon the death of the Member prior to the Annuity Starting Date. To the extent benefits are forfeited upon death before the Annuity Starting Date, such an adjustment shall be made. For this purpose, no forfeiture shall be treated as occurring upon the Member's death if the Plan does not charge Members for providing a qualified preretirement survivor annuity, as defined in Code Section 417(c), upon the Member's death.
- (5) The term "limitation year" is the 12 month period which is used for application of the limitations under Code Section 415 and shall be the calendar year.
- (6) The limitations set forth in this Subsection (a) shall not apply if the Annual Pension does not exceed \$10,000 provided the Member has never participated in a Defined Contribution Plan maintained by the Town.

- (7) Cost-of-living adjustments in the Dollar Limitation for benefits shall be limited to scheduled annual increases determined by the Secretary of the Treasury under Section Subsection 415(d) of the Code.
- (8) In the case of a Member who has fewer than 10 years of participation in the Plan, the Dollar Limitation set forth in Paragraph (3) of this Subsection (a) shall be multiplied by a fraction - (i) the numerator of which is the number of years (or part thereof) of participation in the Plan, and (ii) the denominator of which is 10.
- (9) Any portion of a Member's benefit that is attributable to mandatory Member contributions (unless picked-up by the Town) or rollover contributions, shall be taken into account in the manner prescribed in the regulations under Section 415 of the Code.
- (10) Should any Member participate in more than one defined benefit plan maintained by the Town, in any case in which the Member's benefits under all such defined benefit plans (determined as of the same age) would exceed the Dollar Limitation applicable at that age, the accrual of the Member's benefit under this Plan shall be reduced so that the Member's combined benefits will equal the Dollar Limitation.
- (11) For a Member who has or will have distributions commencing at more than one annuity starting date, the Annual Benefit shall be determined as of each such annuity starting date (and shall satisfy the limitations of this Section as of each such date), actuarially adjusting for past and future distributions of benefits commencing at the other annuity starting dates. For this purpose, the determination of whether a new starting date has occurred shall be made without regard to § 1.401(a)-20, Q&A 10(d), and with regard to §1.415(b)1(b)(1)(iii)(B) and (C) of the Income Tax Regulations.
- (12) The determination of the Annual Pension under Paragraph (A)(1) of this Subsection (a) shall take into account (in the manner prescribed by the regulations under Section 415 of the Code) social security supplements described in § 411(a)(9) of the Internal Revenue Code and benefits transferred from another defined benefit plan, other than

transfers of distributable benefits pursuant §1.411(d)-4, Q&A-3(c) of the Income Tax Regulations.

(13) The above limitations are intended to comply with the provisions of Section 415 of the Code, as amended, so that the maximum benefits provided by plans of the Town shall be exactly equal to the maximum amounts allowed under Section 415 of the Code and regulations thereunder. If there is any discrepancy between the provisions of this Subsection (a) and the provisions of Section 415 of the Code and regulations thereunder, such discrepancy shall be resolved in such a way as to give full effect to the provisions of Section 415 of the Code. The value of any benefits forfeited as a result of the application of this Subsection (a) shall be used to decrease future employer contributions.

(14) For the purpose of applying the limitations set forth in Sections 401(a)(17) and 415 of the Internal Revenue Code, Compensation shall include any elective deferral (as defined in Code Section 402(g)(3) of the Internal Revenue Code), and any amount which is contributed or deferred by the employer at the election of the Member and which is not includible in the gross income of the Member by reason of Section 125 or 457 of the Internal Revenue Code. For limitation years beginning on and after January 1, 2001, for the purposes of applying the limitations described in this Subsection (a), compensation paid or made available during such limitation years shall include elective amounts that are not includible in the gross income of the Member by reason of Section 132(f)(4) of the Internal Revenue Code. For limitation years on or after July 1, 2007, compensation shall include payments that otherwise qualify as compensation and that are made by the later of: (a) 2 and ½ (two and one-half) months after severance from employment with the employer, and (b) the end of the limitation year that includes the date of severance.

Section 7. That subparagraphs (3)(a) and (6)(a) of subsection (c) of Section 16-51, Internal Revenue Code Compliance, of the Town of Bay Harbor Islands Employees Retirement System, is hereby amended as follows:

Sec. 16-51. – Internal Revenue Code Compliance.

(c) Required Minimum Distributions.

...

(3) Requirements For Annuity Distributions That Commence During participant's Lifetime.

- (A) Joint Life Annuities Where the Beneficiary Is Not the participant's Spouse. If the participant's interest is being distributed in the form of a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary, annuity payments to be made on or after the participant's Required Beginning Date to the designated beneficiary after the participant's death must not at any time exceed the applicable percentage of the annuity payment for such period that would have been payable to the participant using the table set forth in Q&A-2 of ~~Section 1.401(a)(9)-6~~ Section 1.401(a)(9)-6 of the Treasury regulations. If the form of distribution combines a joint and survivor annuity for the joint lives of the participant and a nonspousal beneficiary and a period certain annuity, the requirement in the preceding sentence will apply to annuity payments to be made to the designated beneficiary after the expiration of the period certain.

(6) Definitions.

- (A) *Designated beneficiary.* The individual who is designated as the beneficiary under the Plan and is the designated beneficiary under Section 401(a)(9) of the Code and ~~section 1.401(a)(9)-1, Q&A-4~~ Section 1.401(a)(9)-4 of the Treasury regulations.

Section 8. That subsection (d) of Section 16-51, Internal Revenue Code Compliance, of the Town of Bay Harbor Islands Employees Retirement System, is hereby deleted in its entirety and replaced with the following language:

Sec. 16-51. – Internal Revenue Code Compliance.

...

(d) (1) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2) Definitions

The following definitions apply to this Section:

(A) *Eligible rollover distribution:* An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

(i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of 10 years or more;

(ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code;

(iii) the portion of any distribution which is made upon hardship of the member; and

(iv) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), provided that a portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax Employee contributions which are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code,

or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

(B) *Eligible retirement plan:* An eligible retirement plan is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, an annuity plan described in Section 403(a) of the Code, an annuity contract described in Section 403(b) of the Code, a qualified trust described in Section 401 (a) of the Code, an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, or, with respect to distributions on or after January 1, 2008, a Roth IRA (subject to the limitations of Code Section 408A(c)(3)) that accepts the distributee's eligible rollover distribution.

(C) *Distributee:* A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse. Furthermore, effective January 1, 2007, a surviving designated beneficiary as defined in Section 401(a)(9)(E) of the Code who is not the surviving spouse and who elects a direct rollover to an individual retirement account described in Section 408(a) of the Code or an individual retirement annuity described in Section 408(b) of the Code shall be considered a distributee.

(D) Direct rollover: A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

Section 9. That Section 16-51, Internal Revenue Code Compliance, of the Town of Bay Harbor Islands Employees Retirement System, is hereby amended by adding a new subsection (g) as follows:

Sec. 16-51. – Internal Revenue Code Compliance.

...

(g) Notwithstanding any other provision hereunder, a Member's accrued benefit under the Plan shall become non-forfeitable upon the attainment of the age and service requirements for Normal Retirement.

Section 10. That Section 16-80, Deposit, commingling and use of state funds, of the Town of Bay Harbor Islands Employees Retirement System, is hereby amended as follows:

Sec. 16-80. - Deposit, commingling and use of state funds.

All monies and funds payable or returnable by the state, pursuant to state laws, for the purpose of providing benefits to or for the exclusive use of policemen of the town may be deposited and commingled in the fund established herein, for investment purposes and the payment of additional benefits to policemen only.

Effective October 1, 2015, all insurance premium tax revenues received by the Town in accordance with Chapter 185, Florida Statutes, shall be utilized to reduce the Town's pension contribution. In addition, all accumulated insurance premium tax revenues as of October 1, 2015, which have not been utilized to fund benefits beyond minimum benefits as defined in Chapter 185, Florida Statutes, shall be utilized to fund the increase, enacted effective October 1, 2014, of the normal retirement multiplier for police officers to 3.5%, as provided in Section 16-40(a).

Section 11. That Section 16-82, Reserved, of the Town of Bay Harbor Islands Employees Retirement System, is hereby amended as follows:

Sec. 16-82. - ReservedSpecial Benefits.

Establishment of Defined Contribution Plan. Pursuant to Section 185.35, F.S., provision is hereby made for the establishment of a Defined Contribution component of the retirement system, which shall exist in conjunction with the defined benefit component, and which shall meet all applicable requirements of Section 185.35, F.S. and Section 401(a) of the Internal Revenue Code. Said component shall be limited to the contributions, if any, made into each member's account and the actual accumulated earnings, net of expenses, earned on the member's account.

Section 12. 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 applications of this Ordinance.

Section 13. 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 this 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 renumbered or relettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 14. 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 15. That this Ordinance shall be in full force and take effect immediately upon its passage and adoption.

PASSED on First Reading this _____ day of _____, 2016.

PASSED and ADOPTED on Second Reading on this _____ day of _____, 2016.

JORDAN W. LEONARD
MAYOR

ATTEST:

MARLENE M. SIEGEL
TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

CRAIG SHERMAN, ESQ.
TOWN ATTORNEY

TOWN OF BAY HARBOR ISLANDS EMPLOYEES RETIREMENT SYSTEM

IMPACT STATEMENT FOR ORDINANCE NO.

PART ONE: CERTIFICATION OF THE PLAN ADMINISTRATOR

I have enclosed a copy of Ordinance No. _____ of the Town of Bay Harbor Islands, which ordinance makes the following changes to the Town of Bay Harbor Islands Employees Retirement System:

- (1) Clarifies that average final compensation is based on a three-year average for police officers;*
- (2) Effective October 1, 2014, the benefit formula multiplier for police officers is increased from 3.25% to 3.50% for service earned on and after that date;*
- (3) Effective October 1, 2014, the monthly retirement subsidy for police officers is increased from \$350 to \$375;*
- (4) Effective October 1, 2015, allows the Town to apply all of the accumulated and ongoing Chapter 185 distributions as an offset to the Town's required contribution for police officers; and*
- (5) Makes several changes to preserve compliance with the Internal Revenue Code.*

The plan's enrolled actuary, Charles T. Carr of Southern Actuarial Services Company, Inc., was provided with a copy of the proposed ordinance. In addition, the described plan change meets the requirements of Part VII, Chapter 112, Florida Statutes, and Section 14, Article X of the State Constitution.

Chairman, Board of Trustees

PART TWO: CERTIFICATION OF THE ENROLLED ACTUARY

Chapter 112 requires disclosure of the effect of changes in assumptions, methods, and plan provisions on certain liabilities. I have determined the impact of Ordinance No. _____ based on the results of the October 1, 2015 actuarial valuation. The ordinance will increase the annual contribution required from the Town for the police officers' portion of the plan by **0.98%** of payroll. With respect to the 2016/17 plan year, the increase in annual cost is \$15,370 for the police officers' portion.

The following tables set forth the required disclosures in connection with the plan changes which have been described above:



**Police Officers' Portion
 Of the Plan**

	As of October 1, 2015 (Old Plan Provisions; Old Assumptions)	As of October 1, 2015 (New Plan Provisions; Old Assumptions)	As of October 1, 2015 (New Plan Provisions; New Assumptions)
Present value of future expected benefit payments:			
for active participants			
<i>retirement benefits</i>	\$ 8,307,271	\$ 8,523,736	\$ 9,161,152
<i>termination benefits</i>	271,208	281,082	308,672
<i>disability benefits</i>	67,712	71,141	89,809
<i>death benefits</i>	11,682	12,165	13,552
<i>return of contributions</i>	13,837	13,067	11,295
<i>sub-total</i>	<u>\$ 8,671,710</u>	<u>\$ 8,901,191</u>	<u>\$ 9,584,480</u>
for deferred vested participants	\$ 304,974	\$ 306,676	\$ 337,479
for retired participants and beneficiaries			
<i>retired (other than disab.) & benef.</i>	\$ 1,130,416	\$ 1,135,796	\$ 1,237,586
<i>disabled retirees</i>	0	0	0
<i>sub-total</i>	<u>\$ 1,130,416</u>	<u>\$ 1,135,796</u>	<u>\$ 1,237,586</u>
total	<u>\$ 10,107,100</u>	<u>\$ 10,343,663</u>	<u>\$ 11,159,545</u>
Entry age normal accrued liability:			
for active participants			
<i>retirement benefits</i>	\$ 6,284,886	\$ 6,399,981	\$ 6,876,338
<i>termination benefits</i>	181,178	185,966	202,202
<i>disability benefits</i>	35,771	37,086	45,037
<i>death benefits</i>	6,996	7,163	7,745
<i>return of contributions</i>	4,107	3,837	3,510
<i>sub-total</i>	<u>\$ 6,512,938</u>	<u>\$ 6,634,033</u>	<u>\$ 7,134,832</u>
for inactive participants	<u>\$ 1,435,390</u>	<u>\$ 1,442,472</u>	<u>\$ 1,575,065</u>
total	<u>\$ 7,948,328</u>	<u>\$ 8,076,505</u>	<u>\$ 8,709,897</u>
Actuarial value of assets	(8,190,585)	(8,190,585)	(8,190,585)
Unfunded accrued liability	<u>\$ 0</u>	<u>\$ 0</u>	<u>\$ 519,312</u>
Actuarial present value of accrued benefits	\$ 7,282,033	\$ 7,344,620	\$ 7,924,822
Present value of active participants':			
Future salaries	\$ 6,719,903	\$ 6,719,903	\$ 6,717,540
Future contributions	\$ 537,590	\$ 537,590	\$ 537,402
Present value of future contributions from the employer (including expense loading)	\$ 1,446,124	\$ 1,682,687	\$ 2,498,733
Total annual compensation (2016/17 FY)	\$ 1,575,965	\$ 1,575,965	\$ 1,575,965
Minimum required contribution (2016/17 FY):			
Annual normal cost (incl. expenses)	\$ 446,003	\$ 460,071	\$ 496,231
Amortization payment	0	0	66,564
Interest adjustment	10,319	11,621	21,123
Employee contribution	(121,228)	(121,228)	(121,228)
Total	<u>\$ 335,094</u>	<u>\$ 350,464</u>	<u>\$ 462,690</u>
(% of payroll)	21.26%	22.24%	29.36%



This actuarial valuation and/or cost determination was prepared and completed by me or under my direct supervision and I acknowledge responsibility for the results. To the best of my knowledge, the results are complete and accurate and, in my opinion, the techniques and assumptions used are reasonable and meet the requirements and intent of Part VII, Chapter 112, Florida Statutes. There is no benefit or expense to be provided by the plan and/or paid from the plan's assets for which liabilities or current costs have not been established or otherwise taken into account in the valuation. All known events or trends which may require a material increase in plan costs or required contribution rates have been taken into account in the valuation.

Respectfully submitted,

Charles T. Carr

Charles T. Carr, A.S.A.
Consulting Actuary
Enrolled Actuary No. 14-04927

5-11-16

Date signed



AGENDA ITEM REPORT

August 8, 2016

ITEM NUMBER: 11.

ITEM: Approval of an **ordinance on first reading** amending Chapter 16, the Employees Retirement System to implement the recommendations of the Board of Trustees (Retirement Board) regarding enhancements to the General Employees benefits under the retirement plan. Enclosed is a copy of the proposed ordinance and actuarial impact statement.

DESCRIPTION:

At the Retirement Board meeting held in May, the board recommended improvements to the General Employees retirement benefits as follows:

- Increase the benefit formula multiplier for service earned after September 30th, 2010 thru September 30th, 2016 by 0.25%.
- Increase the benefit formula multiplier for services earned after September 30, 2016 by 0.25%.
- Increase the retirement subsidy by \$25 per month from \$350 to \$375. Allow general employees to choose a partial lump sum option with the remainder of the accrued benefits payable in one of the annuity forms of payments.

At the June meeting the Town Council discussed the recommendations and requested that an ordinance be drafted to amend Chapter 16, Retirement System, to incorporate the changes. And also along with the ordinance a full actuarial study has been provided.

It should be noted that the Town's General Employees have not received significant enhancements to the retirement plan, specifically the multiplier, since Ordinance No. 446 was adopted December 8th, 1986. (see attached)

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

The fiscal impact would take effect in the 2017-2018 Budget and the amount of the Town's contribution would be \$104,045.

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk

Marlene Siegel, Town Clerk

ATTACHMENTS

1.	Proposed Ordinance	GERS Increased Benefit Multiplier Retirement Subsidy and Partial lump sum payment option Ordinance.pdf
2.	Actuarial Impact	actuarial study.pdf
3.	Ord No. 446 - 1986	1986 - 446.pdf

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 16, THE TOWN OF BAY HARBOR ISLANDS EMPLOYEES RETIREMENT SYSTEM, OF THE TOWN OF BAY HARBOR ISLANDS CODE OF ORDINANCES, PROVIDING FOR AN INCREASED BENEFIT MULTIPLIER FOR GENERAL EMPLOYEES; PROVIDING FOR AN INCREASE IN THE RETIREMENT SUBSIDY FOR GENERAL EMPLOYEES; PROVIDING FOR A PARTIAL LUMP SUM PAYMENT OPTION FOR GENERAL EMPLOYEES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, The Town Council of Bay Harbor Islands desires to amend the Town of Bay Harbor Islands Employees Retirement System to provide for certain benefit increases and improvements for general employees of the Town;

WHEREAS, the Town Council has received and reviewed an actuarial impact statement related to these changes,

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

Section 1. That Subsection 16-40(a), Normal Retirement Benefit, of Chapter 16, Town of Bay Harbor Islands Employees Retirement System, is hereby amended by adding the underlined language and deleting the ~~stricken through~~ language as follows:

Sec. 16-40. - Schedule.

The retirement benefits for members shall be as follows:

- (a) *Normal retirement benefit:* The monthly normal retirement benefit for general employees shall be an amount equal to one-twelfth of one and one-quarter percent of average final compensation times all years of credited service; provided, that with regard to general employees who were employed and accruing credited service on October 1, 2015, the benefit rate shall be increased as follows: to

one and one-half percent (1.50%) for all credited service earned from October 1, 2010 to September 30, 2016, and to one and three-quarters percent (1.75%) for all credited service earned on or after October 1, 2016. The monthly normal retirement benefit for police officers shall be an amount equal to one-twelfth of one and three-quarters percent of average final compensation times all years of credited service; provided, that effective October 1, 2005, said retirement benefit for police officers shall be increased to a total of three percent for years of credited service on or after October 1, 2005, and effective October 1, 2006, said retirement benefit for police officers shall be increased to a total of three and one-quarter percent (3.25%) for years of service on or after October 1, 2006, and effective October 1, 2014 said retirement benefit for police officers shall be increased to a total of three and one-half percent (3.50%) for years of service on or after October 1, 2014; however, as regards general employee members who make voluntary, additional contributions, the benefit percentage accrual rate shall be as shown in the following table, and as regards police officer employees who made voluntary, additional contributions with respect to credited service prior to October 1, 2005, the benefit percentage accrual rate shall be as shown in the following table for credited service prior to October 1, 2005:

Total Contribution Rate Including Voluntary Contributions ¹	Benefit Accrual Rate					
	Prior Service		Membership Service ²			
	General (percent)	Police (percent)	General (percent)			Police (percent)
			Service Prior to 10/1/10	Service from 10/1/10 to 09/30/2016	Service on or after 10/1/16	
2%			1 1/4 1.250%	1.500%	1.750%	1 3/4 1.750%
3			1 3/8 1.375%	1.625%	1.875%	1 7/8 1.875%
4			1 1/2 1.500%	1.750%	2.000%	2 2.000%
5			1 5/8 1.625%	1.875%	2.125%	2 1/8 2.125%
6	1 1/4 1.250%	1 3/4 1.750%	1 3/4 1.750%	2.000%	2.250%	2 1/4 2.250%
7			1 7/8 1.875%	2.125%	2.375%	2 3/8 2.375%

8			2 2.000%	<u>2.250%</u>	<u>2.500%</u>	2 1/2 2.500%
9			2 1/8 2.125%	<u>2.375%</u>	<u>2.625%</u>	25/8 2.625%
10			2 1/4 2.250%	<u>2.500%</u>	<u>2.750</u>	2 3/4 2.750%

¹The added, voluntary rates produce an increase in the benefit accrual rate as respects membership service only and only during such period as the particular contribution rate is in effect.

²Prior Service: Credited service prior to effective date (10/1/69). Membership Service: Credited service subsequent to effective date (10/1/69).

Notwithstanding paragraph (a) above, in accordance with subsection 16-21(a) herein, in the event that a police officer member elects to contribute eight percent of the police officer member's compensation retroactively to October 1, 2002, and has fully paid such amount by or before October 1, 2013, said police officer member's retirement benefit multiplier shall be increased to three and one-quarter percent and applied for pension purposes retroactively to all accrued credited service beginning as of October 1, 2002.

Section 2. That Subsection 16-40(d), Retirement Subsidy, of Chapter 16, Town of Bay Harbor Islands Employees Retirement System, is hereby amended by adding the underlined language and deleting the ~~stricken through~~ language as follows:

Sec. 16-40. - Schedule.

The retirement benefits for members shall be as follows:

(d) *Retirement subsidy:* Notwithstanding any other provision of this article, those police officers retiring after October 1, 2005 and general employees retiring after October 1, 2007, and having attained normal retirement age shall be entitled to a vested percentage, as set forth under normal retirement criteria, of a monthly retirement subsidy of \$350.00 until attaining the age of 65. This retirement subsidy is intended to be used by

police officer and general employee retirees for payment of health insurance premiums but is not contingent upon such use. Members that terminate employment with the town and elect to withdraw their contributions shall not be entitled to receive such retirement subsidy. Effective October 1, 2014, the monthly retirement subsidy for police officers and October 1, 2015 for General employees, Members the monthly retirement subsidy shall be increased to \$375.00.

Section 3. That Subsection 16-50, Schedule, of Chapter 16, Town of Bay Harbor Islands Employees Retirement System, is hereby amended by adding a new subsection (f), Partial Lump Sum Option, as follows:

Sec. 16-50. - Schedule.

Each member shall have the right at any time up to his actual retirement date to elect to have his retirement benefit payable under any of the options hereinafter set forth in lieu of the benefits otherwise provided, and to revoke any such elections and make a new election at any time prior to said actual retirement date. The value of optional retirement benefits shall be actuarially equivalent to the value of benefits otherwise payable. The member shall make such an election by written request to the board, and such an election shall be subject to the approval of the board.

(f) *Partial Lump Sum Option:* Effective October 1, 2015, General employees may elect a partial lump sum equal to any portion of the actuarial equivalent lump sum value of the employee's accrued benefit, with the remaining value, if any, to be paid in the form of a straight life annuity as provided in Section 16-40(b) or in any of the other optional retirement benefit annuity forms provided in this Section.

Section 4. 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 applications of this Ordinance.

Section 5. 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 this 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 renumbered or relettered to accomplish such intentions, and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. 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 7. That this Ordinance shall be in full force and take effect immediately applying retroactively upon its passage and adoption.

PASSED on First Reading this _____ day of _____, 2016.

PASSED and ADOPTED on Second Reading on this _____ day of _____, 2016.

JORDAN W. LEONARD
MAYOR

ATTEST:

MARLENE M. SIEGEL
TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

CRAIG SHERMAN, ESQ.
TOWN ATTORNEY

TOWN OF BAY HARBOR ISLANDS EMPLOYEES RETIREMENT SYSTEM

IMPACT STATEMENT FOR ORDINANCE NO.

PART ONE: CERTIFICATION OF THE PLAN ADMINISTRATOR

I have enclosed a copy of Ordinance No. _____ of the Town of Bay Harbor Islands, which ordinance makes the following changes to the Town of Bay Harbor Islands Employees Retirement System effective October 1, 2015:

- (1) Provides for a 0.25% increase in the benefit formula multiplier for general employees for service earned after September 30, 2010;*
- (2) Provides for an additional 0.25% increase in the benefit formula multiplier for general employees for service earned after September 30, 2016;*
- (3) Provides for a \$25.00 increase in the early retirement subsidy for general employees, which increases from \$350.00 per month to \$375.00 per month; and*
- (4) Allows general employees to choose an actuarially equivalent partial lump sum option with the remainder of the accrued benefit payable in one of the annuity forms of payment.*

The plan's enrolled actuary, Charles T. Carr of Southern Actuarial Services Company, Inc., was provided with a copy of the proposed ordinance. In addition, the described plan change meets the requirements of Part VII, Chapter 112, Florida Statutes, and Section 14, Article X of the State Constitution.



Chairman, Board of Trustees

PART TWO: CERTIFICATION OF THE ENROLLED ACTUARY

Chapter 112 requires disclosure of the effect of changes in assumptions, methods, and plan provisions on certain liabilities. I have determined the impact of Ordinance No. _____ based on the results of the October 1, 2015 actuarial valuation. The ordinance is estimated to increase the annual contribution required from the Town for the general employees' portion of the plan by **4.36%** of payroll. With respect to the 2016/17 plan year, the increase in annual cost is \$104,045 for the general employees' portion.

The following tables set forth the required disclosures in connection with the plan changes which have been described above:



General Employees' Portion Of the Plan	As of October 1, 2015 (Old Plan Provisions; Old Assumptions)	As of October 1, 2015 (New Plan Provisions; Old Assumptions)	As of October 1, 2015 (New Plan Provisions; New Assumptions)
Present value of future expected benefit payments:			
for active participants			
<i>retirement benefits</i>	\$ 5,547,675	\$ 5,982,969	\$ 6,650,153
<i>termination benefits</i>	685,998	760,691	896,627
<i>disability benefits</i>	22,225	27,390	36,070
<i>death benefits</i>	9,641	10,923	15,682
<i>return of contributions</i>	35,765	31,594	23,820
<i>sub-total</i>	<u>\$ 6,301,304</u>	<u>\$ 6,813,567</u>	<u>\$ 7,622,352</u>
for deferred vested participants	\$ 535,203	\$ 576,943	\$ 576,943
for retired participants and beneficiaries			
<i>retired (other than disab.) & benef.</i>	\$ 2,131,197	\$ 2,298,491	\$ 2,298,491
<i>disabled retirees</i>	39,096	43,281	43,281
<i>sub-total</i>	<u>\$ 2,170,293</u>	<u>\$ 2,341,772</u>	<u>\$ 2,341,772</u>
total	<u>\$ 9,006,800</u>	<u>\$ 9,732,282</u>	<u>\$ 10,541,067</u>
Entry age normal accrued liability:			
for active participants			
<i>retirement benefits</i>	\$ 4,241,313	\$ 4,573,887	\$ 4,926,061
<i>termination benefits</i>	468,070	518,873	596,236
<i>disability benefits</i>	13,769	16,741	18,465
<i>death benefits</i>	6,249	6,897	8,029
<i>return of contributions</i>	21,318	18,123	12,021
<i>sub-total</i>	<u>\$ 4,750,719</u>	<u>\$ 5,134,521</u>	<u>\$ 5,560,812</u>
for inactive participants	\$ 2,705,496	\$ 2,918,715	\$ 2,918,715
total	<u>\$ 7,456,215</u>	<u>\$ 8,053,236</u>	<u>\$ 8,479,527</u>
Actuarial value of assets	<u>(7,246,525)</u>	<u>(7,246,525)</u>	<u>(7,246,525)</u>
Unfunded accrued liability	<u>\$ 209,690</u>	<u>\$ 806,711</u>	<u>\$ 1,233,002</u>
Actuarial present value of accrued benefits	\$ 6,924,697	\$ 7,464,968	\$ 7,662,256
Present value of active participants':			
Future salaries	\$ 11,112,952	\$ 11,109,286	\$ 11,109,286
Future contributions	\$ 594,485	\$ 594,226	\$ 594,226
Present value of future contributions from the employer (including expense loading)	\$ 1,249,137	\$ 1,974,851	\$ 2,783,636
Total annual compensation (2016/17 FY)	\$ 2,385,505	\$ 2,385,505	\$ 2,385,505
Minimum required contribution (2016/17 FY):			
Annual normal cost (incl. expenses)	\$ 329,512	\$ 354,934	\$ 395,528
Amortization payment	26,878	103,403	158,044
Interest adjustment	8,647	18,079	26,889
Employee contribution	(122,691)	(122,691)	(122,691)
Total	<u>\$ 242,346</u>	<u>\$ 353,725</u>	<u>\$ 457,770</u>
(% of payroll)	10.16%	14.83%	19.19%



This actuarial valuation and/or cost determination was prepared and completed by me or under my direct supervision and I acknowledge responsibility for the results. To the best of my knowledge, the results are complete and accurate and, in my opinion, the techniques and assumptions used are reasonable and meet the requirements and intent of Part VII, Chapter 112, Florida Statutes. There is no benefit or expense to be provided by the plan and/or paid from the plan's assets for which liabilities or current costs have not been established or otherwise taken into account in the valuation. All known events or trends which may require a material increase in plan costs or required contribution rates have been taken into account in the valuation.

Respectfully submitted,

Charles T. Carr

Charles T. Carr, A.S.A.
Consulting Actuary
Enrolled Actuary No. 14-04927

7/25/16

Date signed



ORDINANCE NO. 446

AN ORDINANCE AMENDING SECTION 16-30(a)(1), SECTION 16-40(a), SECTION 16-60(c), AND SECTION 16-65 OF THE CODE OF THE TOWN OF BAY HARBOR ISLANDS RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM IN ORDER TO CHANGE THE NORMAL RETIREMENT DATE, BENEFIT ACCRUAL RATES, AND THE FISCAL YEAR, AND TO BRING ELECTION OF MEMBERS OF THE BOARD OF TRUSTEES INTO COMPLIANCE WITH CHAPTER 185, FLORIDA STATUTES

WHEREAS, the Town Council of the Town of Bay Harbor Islands is desirous of improving the present Employees' Retirement System; and

WHEREAS, recent amendments to Chapter 185, Florida Statutes, necessitate changes in said Employee's Retirement System.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS HEREBY ORDAINS:

Section 1. That Section 16-30(a)(1) is hereby amended by substituting the word "sixtieth" (60th) for the words "sixty-second" (62nd).

Section 2. That Section 16-40(a) is hereby amended to read as follows:

(a) Normal retirement benefit: The monthly normal retirement benefit for general employees shall be an amount equal to one and one-quarter percent (1 1/4%) of average final compensation times all years of credited service; the monthly normal retirement benefit for police officers shall be an amount equal to one and three-quarters percent (1 3/4%) of average final compensation times all years of credited service; provided, however, as regards members who make voluntary, additional contributions, the benefit percentage accrual rate shall be as shown in the following table:

Total Contribution Rate Including Voluntary Contributions	Benefit Accrual Rate			
	<u>Prior Service</u> General	<u>Police</u>	<u>Membership Service</u> General	<u>Police</u>
2%			1 1/4%	1 3/4%
3			1 3/8	1 7/8
4			1 1/2	2
5			1 5/8	2 1/8
6	1 1/4%	1 3/4%	1 3/4	2 1/4
7			1 7/8	2 3/8
8			2	2 1/2
9			2 1/8	2 5/8
10			2 1/4	2 3/4

The added, voluntary rates produce an increase in the benefit accrual rate as respects membership service only and only during such period as the particular contribution rate is in effect.

Prior Service: Credited service prior to effective date (10/1/69).
Membership Service: Credited service subsequent to effective date (10/1/69).

Section 3. That Section 16-60(c) is hereby amended to read as follows:

(c) One police officer and one general employee shall serve as members of the Board. Each police officer and general employee shall serve three-year terms and shall be elected by a majority of the members of the System within his or her same respective classification. Prior to January 1, 1987, an election shall be held to elect a police officer whose three-year term shall commence as of such date. The general employee currently serving as a member of the Board shall complete the three-year term currently in effect. Thereafter, elections shall be held prior to the expiration of each term. Members may be successively re-elected, provided that at all times any such Board member is an employee of the Town and a member of the System.

Section 4. That Section 16-65 is hereby amended to read as follows:

Effective October 1, 1986, the fiscal year of the System shall commence on October first of each year and terminate on the September thirtieth next ensuing. The period from January 1, 1986, to September 30, 1986, shall constitute a short fiscal year of the System.

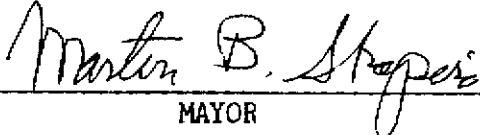
Section 5. This ordinance shall be made a part of the Code of Bay Harbor Islands, and the sections may be renumbered or relettered and the word "ordinance" may be changed to "section", "article", or other appropriate word.

Section 6. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Section 7. If any section, sub-section, sentence, clause or provision of this ordinance is held invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected by such invalidity.

Section 8. This ordinance shall take effect immediately upon passage.

PASSED AND ADOPTED this 8th day of December, 1986.


MAYOR

ATTEST:


TOWN CLERK

AGENDA ITEM REPORT

August 8, 2016

ITEM NUMBER: 12.

ITEM: Approval of an ordinance on **first** reading authorizing the Town's participation in a Florida Municipal Loan Council (Florida League of Cities) Bond Issue to refund the remaining bonds from the 2003 Community Enhancements bonds issue. Enclosed find a copy of the proposed ordinance and supporting documents.

DESCRIPTION:

In 2003, the Town participated in an FMLC Bond Issue in order to fund the Community Enhancements Project. A portion of the 2003 Bonds were refinanced via the 2012 SunTrust Equipment Finance and Leasing Promissory Refunding Note. It was not advantageous to refinance the later maturities at that time. Conditions now allow an advantageous refinancing of the remaining 2003 bonds. As were the original 2003 bonds, the new bonds will be issued by the Florida Municipal Loan Council (Florida League of Cities).

A special Council Meeting to consider the ordinance on second reading has been scheduled for 7:00 PM, Wednesday August 24th.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

Anticipated present value of savings over the life of the bonds is approximately \$570,000.

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk

ATTACHMENTS

1.	Proposed Ordinance	Ord - bonds agreement.pdf
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ORDINANCE NO. ____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AUTHORIZING THE NEGOTIATION OF A LOAN IN AN AGGREGATE AMOUNT NOT TO EXCEED \$3,250,000 FROM THE FLORIDA MUNICIPAL LOAN COUNCIL TO REFUND A PRIOR LOAN, AS DESCRIBED HEREIN; APPROVING THE FORM OF AND THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT WITH THE FLORIDA MUNICIPAL LOAN COUNCIL; APPROVING THE FORM OF AND THE EXECUTION AND DELIVERY OF A BOND PURCHASE CONTRACT; APPROVING THE FORM OF AND THE EXECUTION AND DELIVERY OF A CONTINUING DISCLOSURE AGREEMENT; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION WITH THE MAKING OF SUCH LOAN; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, participating governmental units (the "Members") have created the Florida Municipal Loan Council (the "Council") pursuant to a certain Interlocal Agreement and pursuant to Chapter 163, Part I, Florida Statutes, for the purpose of issuing its bonds to make loans to participating governmental units for qualified projects; and

WHEREAS, the Town of Bay Harbor Islands, Florida (the "Borrower"), a municipal corporation, is duly created and existing pursuant to the Constitution and laws of the State of Florida (the "State"); and

WHEREAS, the Borrower finds and declares that there is a substantial need for the refinancing of all or a portion of a loan previously undertaken from the Council by the Borrower, dated as of December 17, 2003 (the "Refunded Loan"), and secured by that certain Loan Agreement, by and between the Borrower and the Council, dated as of December 1, 2003 (the "Refunded Loan Agreement"), in order to take advantage of lower interest rates and realize debt service savings; and

WHEREAS, the Borrower has determined that refinancing the Refunded Loan through a pooled financing program involving a limited number of local governmental units through the Council, which regularly undertake projects requiring significant debt financing within the State, would provide for low cost refinancing of such Refunded Loan through economies of scale, administrative support, and access to experience and knowledge in accessing the capital markets; and

WHEREAS, it is anticipated that the benefits of a pooled financing by the Borrower and a limited number of governmental units through the Council may be obtained through a promise to repay loans under the program and supported by (1) a general covenant to budget

and appropriate legally available non-ad valorem revenues, or (2) a specific revenue pledge of certain taxes or revenues; and

WHEREAS, by pooling the respective financial needs of these certain various local governmental units, the Borrower will be able to access additional markets and expects to receive the benefits of lower interest rates on more favorable terms associated with such a large scale financing with such benefits being obtained for and inuring to the Borrower; and

WHEREAS, the Council is in the process of issuing its Florida Municipal Loan Council Refunding and Improvement Revenue Bonds, Series 2016, or such other designation as may be determined by the Council (the "Bonds"), and is seeking to make loans to governmental units in order to finance or refinance qualified projects; and

WHEREAS, the Borrower hereby determines that a need exists to borrow funds to finance the cost of refinancing the Refunded Loan; and

WHEREAS, the Borrower hereby determines that it would be economically beneficial and in the best interest of the Borrower and the citizens thereof to participate in the Council's financing with other local governmental units and to borrow funds from the Council from the proceeds of the Bonds to refinance the Refunded Loan (the "Loan").

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

SECTION 1. AUTHORITY. This Ordinance is enacted pursuant to Chapter 166, Florida Statutes, the Charter of the Borrower, and other applicable provisions of law.

SECTION 2. AUTHORIZATION OF THE REFINANCING. The refinancing of the Refunded Loan is hereby authorized.

SECTION 3. NEGOTIATED LOAN. Due to the complicated nature of the financings, the ability of the Council to access additional markets, and for the Borrower to receive the benefits of lower interest rates and issuance costs, it is hereby determined that it is in the best interest of the Borrower that the Loan to the Borrower be made from the proceeds of the Bonds, as opposed to the Borrower borrowing funds pursuant to a public sale in order to accomplish the refinancing of the Refunded Loan.

SECTION 4. LOAN AMOUNT. The amount of the Loan to the Borrower evidenced by a Loan Agreement secured by a covenant to budget and appropriate legally available non-ad valorem revenues shall not exceed \$3,250,000. The Loan shall be made as a tax-exempt borrowing, which shall include, but is not limited to, a pro-rata portion of costs of issuance incurred by the Borrower, the Council, the Florida League of Cities, Inc., administrative fees, and other ongoing costs, and shall bear interest and shall be repayable according to the terms

and conditions set forth in the Loan Agreement authorized pursuant to Section 5 hereof with such changes, insertions and omissions as may be approved by the Mayor. The redemption provisions, if any, relating to such Loan shall be as provided in the Loan Agreement.

SECTION 5. APPROVAL AND DELIVERY OF LOAN AGREEMENT. The Mayor, as attested by the Town Clerk, and approved as to form and correctness by the Town Attorney, or in each case their duly authorized designee, are hereby authorized and directed to execute and deliver a Loan Agreement to evidence the Loan (the "Loan Agreement") and to undertake all actions in respect to the Loan Agreement, which is in substantially the form attached hereto as Exhibit A with such changes, amendments, modifications, deletions, and additions as may be approved by the Mayor or his/her duly authorized designee, the execution thereof being conclusive evidence of such approval.

SECTION 6. APPROVAL AND DELIVERY OF CONTINUING DISCLOSURE AGREEMENT. The Mayor, Town Manager, or any other appropriate officers of the Borrower are authorized and directed to execute and deliver a Continuing Disclosure Agreement concerning compliance with the rules of the Securities and Exchange Commission concerning continuing disclosure by the Borrower, to be entered into by and between the Borrower and the Florida League of Cities, Inc., in substantially the form attached as Exhibit B with such changes, amendments, modifications, deletions, and additions as may be approved by the Mayor, Town Manager, or any other appropriate officer executing such agreement, the execution thereof being conclusive evidence of such approval.

SECTION 7. RATES AND BOND PURCHASE CONTRACT.

(A) The Mayor or his/her duly authorized designee, is authorized to approve the final rates of interest on the Bonds, the redemption provisions thereof, if any, and any other terms of the Bonds on behalf of the Borrower.

(B) The form of the Bond Purchase Contract, to be entered into by and between the Wells Fargo Bank, National Association (the "Underwriter"), the Borrower, the other local governmental units participating in the financing, and the Council in substantially the form attached hereto as Exhibit C with such changes, amendments, modifications, deletions, and additions as may be approved by the Mayor, or his/her duly authorized designee, the execution thereof being conclusive evidence of such approval is hereby approved.

SECTION 8. INDENTURE. The Borrower hereby acknowledges and consents to the Bonds being issued by the Council pursuant to a Trust Indenture, and any supplemental indentures thereto (the "Indenture"), to be executed by the Council and the Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee").

SECTION 9. PRELIMINARY AND FINAL OFFICIAL STATEMENT. The preparation and distribution of a preliminary and final official statement (collectively, the

"Official Statement") in connection with the offering and sale of the Bonds is hereby authorized. The sections of the Official Statement relating to the Borrower shall be approved by the Mayor or his/her duly authorized designee.

SECTION 10. OTHER INSTRUMENTS. The Mayor, the Town Attorney, the Town Clerk, the Town Manager, the Town Finance Director, or any other appropriate officers, attorneys, and other agents or employees of the Borrower are authorized and directed to perform all acts and things required by this Ordinance, the Loan Agreement, the Continuing Disclosure Agreement, the Bond Purchase Contract, the Indenture, or the Official Statement, or otherwise desirable or consistent with the requirements thereof and hereof, for the full, punctual, and complete performance of all the terms, covenants, and agreements contained in this Ordinance, the Loan Agreement, the Continuing Disclosure Agreement, the Bond Purchase Contract, the Indenture, or the Official Statement (including but not limited to, the execution of all tax documents relating to the tax exempt status of the Loan), and they are hereby authorized to execute and deliver all documents that shall be required by bond counsel, disclosure counsel, the Council, the Underwriter, or the Trustee. All actions taken to date by the officers of the Borrower in furtherance of the issuance of the Bonds and the making of the Loan are hereby approved, confirmed, and ratified.

SECTION 11. ADDITIONAL INFORMATION. The Loan Agreement shall not be executed and delivered unless and until the Borrower has received all information required by Section 218.385, Florida Statutes.

SECTION 12. REPEAL OF ORDINANCES IN CONFLICT. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 13. SEVERABILITY CLAUSE. If any phrase, clause, sentence, paragraph, or section of this Ordinance is for any reason held invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity of the remaining phrases, clauses, sentences, paragraphs, or sections of this Ordinance.

SECTION 14. EFFECTIVE DATE. This Ordinance shall take effect immediately upon its enactment.

[Remainder of page intentionally left blank]

PASSED on First Reading this ____ day of _____, 2016.

PASSED AND ENACTED on Second Reading this ____ day of _____, 2016.

(SEAL)

JORDAN W. LEONARD
Mayor

ATTEST:

MARLENE SIEGEL
Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

CRAIG SHERMAN, ESQ.
Town Attorney

EXHIBIT A

FORM OF LOAN AGREEMENT

LOAN AGREEMENT

By and Between

FLORIDA MUNICIPAL LOAN COUNCIL

and

TOWN OF BAY HARBOR ISLANDS, FLORIDA

Dated as of _____ 1, 2016

FLORIDA MUNICIPAL LOAN COUNCIL
REFUNDING AND IMPROVEMENT REVENUE BONDS, SERIES 2016

This Instrument Prepared By:

JoLinda Herring, Esquire
Bryant Miller Olive P.A.
SunTrust International Center
1 SE 3rd Avenue, Suite 2200
Miami, Florida 33131

and

Jason M. Breth, Esquire
Bryant Miller Olive P.A.
101 North Monroe Street, Suite 900
Tallahassee, Florida 32301

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LOAN AGREEMENT

This Loan Agreement (the "Loan Agreement"), is dated as of _____ 1, 2016, and entered into by and between the FLORIDA MUNICIPAL LOAN COUNCIL (the "Council"), a separate legal entity and public body corporate and politic duly created and existing under the Constitution and laws of the State of Florida (the "State"), and the TOWN OF BAY HARBOR ISLANDS, FLORIDA (the "Borrower"), a duly constituted municipality under the laws of the State.

WITNESSETH:

WHEREAS, pursuant to the authority of the Act (as hereinafter defined), the Council desires to loan to the Borrower the amount necessary to enable the Borrower to finance, refinance, or reimburse the cost of the Projects, as hereinafter defined, and the Borrower desires to borrow such amount from the Council subject to the terms and conditions of and for the purposes set forth in this Loan Agreement; and

WHEREAS, the Council is a separate legal entity and public body corporate and politic duly created and existing under the laws of the State organized and existing under and by virtue of that certain Interlocal Agreement by and among, initially, the City of DeLand, Florida, the City of Rockledge, Florida, and the City of Stuart, Florida, as amended and supplemented, together with the additional governmental entities who become members of the Council, in accordance with Chapter 163, Part I, Florida Statutes, as amended (the "Interlocal Act"); and

WHEREAS, the Council has determined that there is substantial need within the State for a financing program (the "Program") which will provide funds for qualifying projects (the "Projects") for the participating Borrowers; and

WHEREAS, the Council is authorized under the Interlocal Act to issue its revenue bonds to provide funds for such purposes; and

WHEREAS, the Council has determined that the public interest will best be served and that the purposes of the Interlocal Act can be more advantageously obtained by the Council's issuance of revenue bonds in order to loan funds to the Borrowers to finance or refinance Projects; and

WHEREAS, the Borrower is authorized under and pursuant to the Act to enter into this Loan Agreement for the purposes set forth herein; and

WHEREAS, the Borrower has determined that a covenant to budget and appropriate non-ad valorem revenues, as described herein, shall be pledged to secure this Loan Agreement; and

WHEREAS, the Borrower has determined that there is a substantial need for the refinancing of all or a portion of the Refunded Loan (as hereinafter defined) in order to take advantage of lower interest rates and realize debt service savings; and

WHEREAS, the Council and the Borrower have determined that the lending of funds by the Council to the Borrower pursuant to the terms of this Loan Agreement and that certain Trust Indenture, dated as of _____ 1, 2016, by and between the Council and the Trustee (as hereinafter defined), including any amendments and supplements thereto (the "Indenture"), relating to the issuance of the Bonds (as hereinafter defined), will assist in the development and maintenance of the public welfare of the residents of the State and the areas served by the Borrower, and shall serve a public purpose by improving the health and living conditions, and providing adequate governmental services, facilities, and programs and will promote the most efficient and economical development of such services, facilities, and programs in the State; and

WHEREAS, neither the Council, the Borrower, the State, nor any political subdivision thereof (other than each Borrower to the extent of their obligations under their respective Loan Agreements only), shall in any way be obligated to pay the principal of, premium, if any, or interest on those certain revenue bonds of the Council designated the "Florida Municipal Loan Council Refunding and Improvement Revenue Bonds, Series 2016" (the "Bonds") as the same shall become due, and the issuance of the Bonds shall not directly, indirectly, or contingently obligate the Council, the Borrower, the State, or any political subdivision or municipal corporation thereof to levy or pledge any form of ad valorem taxation for their payment but shall be payable solely from the funds and revenues pledged under and pursuant to this Loan Agreement and the Indenture.

NOW, THEREFORE, for and in consideration of the premises hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Definitions. Unless the context or use indicates another meaning or intent, the following words and terms as used in this Loan Agreement shall have the following meanings, and any other hereinafter defined words and terms, shall have the meanings as therein defined.

"Accountant" or "Accountants" means an independent certified public accountant or a firm of independent certified public accountants.

"Accounts" means the accounts created pursuant to Section 4.02 of the Indenture.

"Act" means, collectively, to the extent applicable to the Borrower, Chapter 163, Part I, Florida Statutes, Chapter 166, Part II, Florida Statutes, and Chapter 125, Part I, as amended, and all other applicable provisions of law.

"Additional Payments" means payments required by Section 5.03 hereof.

"Alternate Surety Bond" means any letter of credit or surety bond obtained to replace the Surety Bond then in effect pursuant to the Indenture.

"Alternate Surety Bond Provider" means any provider of an Alternate Surety Bond.

"Arbitrage Regulations" means the income tax regulations promulgated, proposed or applicable pursuant to Section 148 of the Code as the same may be amended or supplemented or proposed to be amended or supplemented from time to time.

"Authorized Representative" means, when used pertaining to the Council, the Chairman of the Council and such other designated members, agents or representatives as may hereafter be selected by Council resolution; and, when used with reference to a Borrower which is a municipality, means the person performing the functions of the Mayor or Deputy, Acting or Vice Mayor of such Borrower thereof or other officer authorized to exercise the powers and performs the duties of the Mayor; and, when used with reference to a Borrower which is a County means the person performing the function of the Chairman or Vice Chairman of the Board of County Commissioners of such Borrower; and, when used with reference to an act or document, also means any other person authorized by resolution to perform such act or sign such document.

"Basic Payments" means the payments denominated as such in Section 5.01 hereof.

"Board" means the governing body of the Borrower.

"Bond Counsel" means Bryant Miller Olive P.A., Miami, Florida, or any other nationally recognized bond counsel, selected by the Council.

"Bondholder" or "Holder," "holder of Bonds," "Owner," or "owner of Bonds," whenever used herein with respect to a Bond, means the Person in whose name such Bond is registered.

"Bond Insurance Policy" means the municipal bond insurance policy of the Bond Insurer guaranteeing the scheduled payment when due of the principal of and interest on the Bonds as provided therein.

"Bond Insurance Premium" means the premium payable to the Bond Insurer for the Bond Insurance Policy.

"Bond Insurer" means National Public Finance Guarantee Corporation and any successors thereto.

"Bonds" means the \$_____ Florida Municipal Loan Council Refunding and Improvement Revenue Bonds, Series 2016, issued pursuant to Article II of the Indenture.

"Bond Year" means a 12-month period beginning on [October] 2 and ending on and including the following [October] 1, except for the first period which begins on [September] __, 2016.

"Borrower" means the governmental unit which is described in the first paragraph and on the cover page of this Loan Agreement and which is borrowing and using the Loan proceeds to finance, refinance, and/or be reimbursed for, all or a portion of the costs of one or more Projects.

"Borrowers" mean, collectively, the Borrower and the other local governmental units receiving loans from the Council made from proceeds of the Bonds.

"Business Day" means any day of the year which is not a Saturday or Sunday or a day on which banking institutions located in New York City or the State are required or authorized to remain closed or on which the New York Stock Exchange is closed.

"Certificate," "Statement," "Request," "Requisition," or "Order" of the Council mean, respectively, a written certificate, statement, request, requisition, or order signed in the name of the Council by its Chairman, Program Administrator, or such other person as may be designated and authorized to sign for the Council; or of the Borrower mean, respectively, a written certificate, statement, request, requisition, or order signed in the name of the Borrower by its Mayor or Deputy, Acting, or Vice Mayor, or such other person as may be designated and authorized to sign for the Borrower. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion, or representation, and the two or more so combined shall be read and construed as a single instrument.

"Closing" means the closing of a Loan pursuant to the Indenture and this Loan Agreement.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, including, when appropriate, the statutory predecessor thereof, or any applicable corresponding provisions of any future laws of the United States of America relating to federal income taxation, and except as otherwise provided herein or required by the context hereof, includes interpretations thereof contained or set forth in the applicable regulations of the Department of the Treasury (including applicable final or temporary regulations and also including regulations issued pursuant to the statutory predecessor of the Code, the applicable

rulings of the Internal Revenue Service (including published Revenue Rulings and private letter rulings), and applicable court decisions)..

"Commencement Date" means the date when the term of this Loan Agreement begins and the obligation of the Borrower to make Loan Repayments accrues.

"Cost" means the purchase price of any project acquired; the cost of improvements; the cost of construction, extension or enlargement; the cost of all lands, properties, rights, easements and franchises acquired; the cost of all machinery and equipment, financing charges, interest during construction; and, if deemed advisable, for one year after completion of construction, cost of investigations, audits, and engineering and legal services; and all other expenses necessary or incident to determining the feasibility or practicability of such acquisition or construction, administrative expense and such other expenses as may be necessary or incident to the financing herein authorized and to the acquisition or construction of a project and the placing of the same in operation. Any obligation or expense incurred by the Borrower prior to the issuance of bonds for engineering studies and for estimates of cost and of revenues, and for other technical, financial, or legal services in connection with the acquisition or construction of any project, may be regarded as a part of the cost of such project..

"Cost of Issuance Fund" means the fund by that name established pursuant to Section 4.02 of the Indenture.

"Council" means the Florida Municipal Loan Council.

"Counsel" means an attorney duly admitted to practice law before the highest court of the State and, without limitation, may include legal counsel for either the Council, a Borrower, or the Trustee.

"Default" means an event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

"Escrow Account" means the Escrow Account held for the benefit of the holders of the Refunded Bonds by the Escrow Agent under the Escrow Deposit Agreement.

"Escrow Agent" means the current trustee for the Refunded Bonds, which is a qualifying bank or trust company, and which shall execute the Escrow Deposit Agreement with the Council and the Borrower prior to the issuance of the Bonds.

"Escrow Deposit Agreement" means the Escrow Deposit Agreement, which shall be executed and delivered by and among the Council, the Borrower, and the Escrow Agent, which agreement shall be in substantially the form approved by the parties thereto.

"Escrow Requirement" shall have the meaning assigned to such term in the Escrow Deposit Agreement.

"Event of Default" shall have the meaning ascribed to such term in Section 8.01 of this Loan Agreement.

"Financial Newspaper" or "Journal" means The Wall Street Journal or The Bond Buyer or any other newspaper or journal containing financial news, printed in the English language, customarily published on each Business Day and circulated in New York, New York, and selected by the Trustee, whose decision shall be final and conclusive.

"Fiscal Year" means the fiscal year of the Borrower.

"Fitch" means Fitch Ratings, a corporation organized and existing under the laws of the State of Delaware, its successors and assigns and if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Fitch" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Council, with approval of the Bond Insurer, by notice to the Trustee.

"Funds" means the funds created pursuant to Section 4.02 of the Indenture.

"Governmental Obligations" means (a) non-callable direct obligations of the United States of America ("Treasuries"), (b) evidences of ownership of proportionate interests in future interest and principal payments on Treasuries held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying Treasuries are not available to any person claiming through the custodian or to whom the custodian may be obligated, (c) subject to the prior written consent of the Bond Insurer, pre-refunded municipal obligations rated "AAA" and "Aaa" by S&P and Moody's, respectively, (d) subject to the prior written consent of the Bond Insurer, securities eligible for "AAA" defeasance under then existing criteria of S&P, or (e) any combination of the foregoing, unless the Bond Insurer otherwise approves.

"Indenture" means the Trust Indenture dated as of _____ 1, 2016, between the Council and the Trustee, including any indentures amendatory or supplemental thereto, pursuant to which (a) the Bonds are authorized to be issued, and (b) the Council's interest in the Trust Estate is pledged as security for the payment of the principal of, premium, if any, and interest on the Bonds.

"Interest Payment Date" means [October] 1 and [April] 1 of each year, commencing [April] 1, 2017.

"Interest Period" means the semi-annual period between Interest Payment Dates.

"Interlocal Act" means Chapter 163, Part I, Florida Statutes.

"Interlocal Agreement" means that certain Interlocal Agreement originally dated as of December 1, 1998, initially among the City of Stuart, Florida, the City of Rockledge, Florida, and the City of DeLand, Florida, together with the additional governmental entities who become members of the Council, all as amended and supplemented from time to time.

"Liquidation Proceeds" means amounts received by the Trustee or the Council in connection with the enforcement of any of the remedies under this Loan Agreement after the occurrence of an "Event of Default" under this Loan Agreement which has not been waived or cured.

"Loan" means the Loan made to the Borrower from proceeds of the Bonds in order to refund the Refunded Bonds attributable to the Refunded Loan and thereby refinance the Costs Projects in the amount specified in Section 3.01 herein.

"Loans" mean all loans made by the Council under the Indenture to the Borrowers.

"Loan Agreement" or "Loan Agreements" means this Loan Agreement and any amendments and supplements hereto.

"Loan Repayment Date" means [March] 20, 2017, and thereafter each [March] 20th and [September] 20th, or if such day is not a Business Day, the next preceding Business Day.

"Loan Repayments" means the payments of principal and interest and other payments payable by the Borrower pursuant to the provisions of this Loan Agreement, including, without limitation, Additional Payments.

"Loan Term" means the term provided for in Article IV of this Loan Agreement.

"Moody's" means Moody's Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Council, with the approval of the Bond Insurer, by notice to the Trustee.

"Non-Ad Valorem Revenues" means all revenues and taxes of the Borrower derived from any source whatsoever other than ad valorem taxation on real and personal property, which are legally available for Loan Repayments.

"Outstanding Bonds" or "Bonds Outstanding" means all Bonds which have been authenticated and delivered by the Trustee under the Indenture, except:

(a) Bonds canceled after purchase in the open market or because of payment at or redemption prior to maturity;

(b) Bonds deemed paid under Article VIII of the Indenture; and

(c) Bonds in lieu of which other Bonds have been authenticated under Section 2.06, 2.07, or 2.09 of the Indenture.

"Person" means an individual, a corporation, a partnership, an association, a trust, or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"Principal Fund" means the Series 2016 Principal Fund created by Section 4.02 of the Indenture.

"Principal Payment Date" means the maturity date or mandatory redemption date of any Bond.

"Program" means the Council's program of making Loans under the Act and pursuant to the Indenture.

"Program Administrator" means the Florida League of Cities, Inc., a non-profit Florida corporation.

"Project" or "Projects" means a governmental undertaking approved by the governing body of a Borrower for a public purpose, including the refinancing of any indebtedness, which shall include the Borrower's Project detailed on Exhibit A hereof.

"Project Loan Fund" means the Series 2016 Project Loan Fund established pursuant to Section 4.02 of the Indenture.

"Proportionate Share" means, with respect to the Borrower, a fraction the numerator of which is the outstanding principal amount of the Loan of the Borrower made from proceeds of the Bonds and the denominator of which is the outstanding principal amount of all Loans made from proceeds of the Bonds and then outstanding.

"Purchase Price" means the purchase price of one or more items of a Project payable by a Borrower to the seller of such items.

"Redemption Price" means, with respect to any Bond (or portion thereof), the principal amount of such Bond (or portion) plus the applicable premium, if any, payable upon redemption pursuant to the provisions of such Bond and the Indenture.

"Refunded Bonds" means the Borrower's portion of the Florida Municipal Loan Council Revenue Bonds, Series 2003B, maturing on and after December 1, 2028, and attributable to the principal loan payments as set forth in the Refunded Loan Agreement.

"Refunded Loan" means the loan from the Council to the Borrower funded from the proceeds of the Refunded Bonds and secured by the Refunded Loan Agreement.

"Refunded Loan Agreement" means the Loan Agreement dated as of December 1, 2003, by and between the Borrower and the Council.

"Reserve Fund" means the Series 2016 Reserve Fund created by Section 4.02 of the Indenture.

"Revenue Fund" means the Series 2016 Revenue Fund created by Section 4.02 of the Indenture.

"Revenues" means all Loan Repayments paid to the Trustee for the respective accounts of the Borrowers for deposit in the Principal Fund and Revenue Fund to pay principal of, premium, if any, and interest on the Bonds upon redemption [or acceleration of maturity] or at maturity, or to pay interest on the Bonds when due, and all receipts of the Trustee credited to the Borrower under the provisions of this Loan Agreement.

"S&P" means Standard & Poor's Rating Services, a business of Standard & Poor's Financial Services LLC, a corporation organized and existing under the laws of the State of New York, its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized securities rating agency designated by the Council, with the approval of the Bond Insurer, by notice to the Trustee.

"Special Record Date" means the date established pursuant to Section 9.05 of the Indenture as a record date for the payment of defaulted interest, if any, on the Bonds.

"State" means the State of Florida.

"Supplemental Indenture" means any indenture hereafter duly authorized and entered into between the Council and the Trustee, supplementing, modifying, or amending the Indenture, but only if and to the extent that such Supplemental Indenture is specifically authorized in the Indenture.

"Surety Bond" means the surety bond issued by the Surety Bond Provider guaranteeing certain payments into the Reserve Fund with respect to the Bonds and any other series of the Council's bonds or any Alternate Surety Bond.

"Surety Bond Provider" means National Public Finance Guarantee Corporation and any successors thereto or any Alternate Surety Bond Provider.

"Trust Estate" means the property, rights, Revenues, and other assets pledged and assigned to the Trustee pursuant to the Granting Clauses of the Indenture.

"Trustee" means The Bank of New York Mellon Trust Company, N.A., as trustee, or any successor thereto under the Indenture.

SECTION 1.02. Uses of Phrases. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context shall otherwise indicate, the words "Bond," "Bondholder," "Owner," and "person" shall include the plural as well as the singular number, and the word "person" shall include corporations and associations, including public bodies, as well as persons. All references herein to specific Sections of the Code refer to such Sections of the Code and all successor or replacement provisions thereto.

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ARTICLE II

REPRESENTATIONS, WARRANTIES, AND COVENANTS OF BORROWER AND COUNCIL

SECTION 2.01. Representations, Warranties, and Covenants. The Borrower represents, warrants, and covenants on the date hereof for the benefit of the Council, the Trustee, the Borrower, the Bond Insurer, and Bondholders, as applicable, as follows:

(a) Organization and Authority. The Borrower:

(1) is a duly organized and validly existing municipality of the State and is a duly organized and validly existing Borrower; and

(2) has all requisite power and authority to own and operate its properties, to refinance the Refunded Loan, to covenant to budget and appropriate the Non-Ad Valorem Revenues and to carry on its activities as now conducted and as presently proposed to be conducted.

(b) Full Disclosure. There is no fact that the Borrower knows of which has not been specifically disclosed in writing to the Council and the Bond Insurer that materially and adversely affects or, except for pending or proposed legislation or regulations that are a matter of general public information affecting the State municipalities generally, that will materially affect adversely the properties, activities, prospects, or condition (financial or otherwise) of the Borrower or the ability of the Borrower to perform its obligations under this Loan Agreement.

The financial statements, including, but not limited to the financial statements for the Borrower's Fiscal Year ended September 30, 2015, balance sheets, and any other written statement furnished by the Borrower to the Council, Wells Fargo Bank, National Association, as underwriter of the Bonds (the "Underwriter"), and the Bond Insurer were prepared in accordance with Generally Accepted Accounting Principles ("GAAP") and do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein or herein not misleading. There is no fact known to the Borrower which the Borrower has not disclosed to the Council, the Underwriter, and the Bond Insurer in writing which materially affects adversely or is likely to materially affect adversely the financial condition of the Borrower, or its ability to make the payments under this Loan Agreement when and as the same become due and payable.

(c) Pending Litigation. There are no proceedings pending, or to the knowledge of the Borrower threatened, against or affecting the Borrower, except as specifically described in writing to the Council, the Underwriter, and the Bond Insurer, in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would materially and adversely affect the properties, prospects, or condition (financial or otherwise) of

the Borrower, or the existence or powers or ability of the Borrower to enter into and perform its obligations under this Loan Agreement.

(d) Borrowing Legal and Authorized. The execution and delivery of this Loan Agreement and the consummation of the transactions provided for in this Loan Agreement and compliance by the Borrower with the provisions of this Loan Agreement:

(1) are within the powers of the Borrower and have been duly and effectively authorized by all necessary action on the part of the Borrower; and

(2) do not and will not (i) conflict with or result in any material breach of any of the terms, conditions, or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon any property or assets of the Borrower pursuant to any indenture, loan agreement, or other agreement or instrument (other than this Loan Agreement) or restriction to which the Borrower is a party or by which the Borrower, its properties, or operations are bound as of the date of this Loan Agreement, or (ii) with the giving of notice or the passage of time or both, constitute a breach or default or so result in the creation or imposition of any lien, charge, or encumbrance, which breach, default, lien, charge, or encumbrance (described in (i) or (ii)) could materially and adversely affect the validity or the enforceability of this Loan Agreement or the Borrower's ability to perform fully its obligations under this Loan Agreement; nor does such action result in any violation of the provisions of the Act, or any laws, ordinances, governmental rules or regulations, or court orders to which the Borrower, its properties, or operations may be bound.

(e) No Defaults. No event has occurred and no condition exists that constitutes an Event of Default, or which, upon the execution and delivery of this Loan Agreement and/or the passage of time or giving of notice or both, would constitute an Event of Default. The Borrower is not in violation in any material respect, and has not received notice of any claimed violation (except such violations as (i) heretofore have been specifically disclosed in writing to, and have been in writing specifically consented to by the Council and the Bond Insurer, and (ii) do not, and shall not, have any material adverse effect on the transactions herein contemplated and the compliance by the Borrower with the terms hereof), of any terms of any agreement or other instrument to which it is a party or by which it, its properties, or operations may be bound, which may materially adversely affect the ability of the Borrower to perform hereunder.

(f) [Reserved].

(g) Compliance with Law. The Borrower is in compliance with all laws, ordinances, and governmental rules and regulations to which it is subject, and which are material to its properties, operations, finances, or status as a municipal corporation.

(h) Use of Proceeds.

(1) The Borrower has heretofore issued and has presently outstanding and unpaid the Refunded Loan. The Borrower deems it necessary, desirable, and in the best financial interest of the Borrower that the Refunded Loan be refunded in order to effectuate interest cost savings and a reduction in the debt service applicable to bonded indebtedness. The refunding of the Refunded Loan in the manner herein provided is hereby authorized.

(2) The Borrower will apply the proceeds of the Loan from the Council, together with other legally available revenues of the Borrower, for the refinancing of the Refunded Loan and thereby the refinancing of the Projects as set forth in Exhibit A hereto. Simultaneously with the closing of the Loan, a sufficient portion of the proceeds of the Loan will, at the Borrower's request and instruction as provided in Section 3.03 hereof, be transferred by the Underwriter directly to the Escrow Agent for deposit by the Escrow Agent into the Escrow Account established pursuant to the Escrow Deposit Agreement, to effectuate the refunding of the Refunded Loan by providing for the payment of the principal of, premium, if any, and interest on the Refunded Loan as provided in the Escrow Deposit Agreement. If any component of the Refunded Loan to be refunded is not paid for out of the proceeds of the Loan at the Closing of the Loan, the Borrower shall on or before _____, 2016, pay the remaining cost of the Refunded Loan to be refunded directly to the Escrow Agent for deposit by the Escrow Agent into the Escrow Account.

(3) The Borrower understands that the actual Loan proceeds received by it are less than the sum of the face amount of the Loan Agreement plus the reoffering premium in an amount equal to a discount as described in Section 3.01 hereof. Borrower will accordingly be responsible for repaying, through the Basic Payments portion of its Loan Repayments, the portion of the Bonds issued to fund only its Loan including the portion issued to fund the underwriting discount, net original issue premium, and other fees and costs of issuing the Bonds.

(4) The Borrower covenants that it will make no use of the proceeds of the Bonds which are in its control at any time during the term of the Bonds which would cause such Bonds to be "Arbitrage Bonds" within the meaning of Section 148 of the Code.

(5) The Borrower, by the Trustee's acceptance of the Indenture, covenants that the Borrower shall neither take any action nor fail to take any action or to the extent that it may do so, permit any other party to take any action which, if either taken or not taken, would adversely affect the exclusion from gross income for Federal income tax purposes of interest on the Bonds.

(i) Project. All items constituting the Project are permitted to be refinanced with the proceeds of the Bonds and the Loan pursuant to the Act.

(j) Compliance with Interlocal Act and Interlocal Agreement. All agreements and transactions provided for herein or contemplated hereby are in full compliance with the terms of the Interlocal Agreement and the Interlocal Act.

(k) [Reserved.]

SECTION 2.02. Covenants of Borrower. The Borrower makes the following covenants and representations as of the date first above written and such covenants shall continue in full force and effect during the Loan Term:

(a) Security for the Loan and Loan Repayment. Subject to the provisions of Section 2.02(k) hereof, the Borrower covenants and agrees to appropriate in its annual budget, by amendment, if required, and to pay when due under this Loan Agreement as promptly as money becomes available directly to the Trustee for deposit directly into the appropriate Fund or Account created in the Indenture, amounts of Non-Ad Valorem Revenues of the Borrower sufficient to satisfy the Loan Repayment as required under this Loan Agreement. Such covenant is subject in all respects to the payment of obligations secured by a pledge of such Non-Ad Valorem Revenues heretofore or hereafter entered into. Such covenant and agreement on the part of the Borrower to budget and appropriate such amounts of Non-Ad Valorem Revenues shall be cumulative, and shall continue until such Non-Ad Valorem Revenues or other legally available funds in amounts sufficient to make all required Loan Repayments, including delinquent Loan Repayments, shall have been budgeted, appropriated, and actually paid to the Trustee for deposit into the appropriate Fund or Account. The Borrower further acknowledges and agrees that the Indenture shall be deemed to be entered into for the benefit of the Holders of any of the Bonds and that the obligations of the Borrower to include the amount of any deficiency in Loan Repayments in each of its annual budgets and to pay such deficiencies from Non-Ad Valorem Revenues may be enforced in a court of competent jurisdiction in accordance with the remedies set forth herein and in the Indenture. Notwithstanding the foregoing or any provision of this Loan Agreement to the contrary, the Borrower does not covenant to maintain any services or programs now maintained by the Borrower which generate Non-Ad Valorem Revenues or to maintain the charges it presently collects for any such services or programs.

(b) Delivery of Information to the Council and the Bond Insurer. Borrower shall deliver to the Bond Insurer and the Council as soon as available and in any event within 270 days after the end of each Fiscal Year an audited statement of its financial position as of the end of such Fiscal Year and the related statements of revenues and expenses, fund balances, and changes in fund balances for such Fiscal Year, all reported by an independent certified public accountant, whose report shall state that such financial statements present fairly Borrower's financial position as of the end of such Fiscal Year and the results of operations and changes in financial position for such Fiscal Year.

(c) Information. Borrower's chief financial officer shall, at the reasonable request of the Bond Insurer, discuss Borrower's financial matters with the Bond Insurer or their designee and provide the Bond Insurer with copies of any documents reasonably requested by the Bond Insurer or its designee unless such documents or material are protected or privileged from disclosure under applicable Florida law.

(d) Anti-Dilution Test.

(1) The Borrower may incur additional debt secured by all or a portion of the Non-Ad Valorem Revenues only if: (i) the prior two year average of Net Non-Ad Valorem Revenues Available For Debt Service were at least 2.0 times the prior two year average of the Proforma Maximum Annual Non-Ad Valorem Debt Service; and (ii) the prior two year average of the Proforma Maximum Annual Debt Service does not exceed 20% of the prior two year average of Net Total Governmental Fund Revenues. Prior to the issuance of any additional debt of the Borrower secured by all or a portion of the Non-Ad Valorem Revenues, the Borrower shall provide an anti-dilution certificate demonstrating compliance to the Council and the Bond Insurer.

(2) For purposes of calculating the Proforma Maximum Annual Debt Service and the Proforma Maximum Annual Non-Ad Valorem Debt Service, if the terms of the any debt are such that interest thereon for any future period of time is to be calculated at a rate which is not then susceptible of precise determination ("Variable Rate Indebtedness"), interest on such Variable Rate Indebtedness shall be computed based on the average annual interest rate paid over the last three years plus 150 basis points.

(3) For purposes of calculating the Proforma Maximum Annual Debt Service and the Proforma Maximum Annual Non-Ad Valorem Debt Service, if 25% or more of the principal amount of any debt comes due in any one year ("Balloon Indebtedness"), it shall be assumed the Balloon Indebtedness amortizes in up to twenty (20) years on a level debt service basis.

(4) The following words and terms as used in this Section 2.02(d) shall have the following meanings:

(i) "Adjusted Essential Expenditures To Non-Ad Valorem Revenues" means essential expenditures for general government and public safety as shown in the Borrower's audit less any revenues derived from ad valorem taxation on real and personal property that are legally available to pay for such expenditures.

(ii) "Adjusted Non-Ad Valorem Revenues" means the Net Total Governmental Fund Revenues not derived from ad valorem taxation on real and

personal property, which are legally available to pay debt service on any debt of the Borrower secured by or payable from all or a portion of the Non-Ad Valorem Revenues.

(iii) "Net Non-Ad Valorem Revenues Available For Debt Service" means the Adjusted Non-Ad Valorem Revenues minus Adjusted Essential Expenditures To Non-Ad Valorem Revenues.

(iv) "Net Total Governmental Fund Revenues" means Total Governmental Fund Revenues less the proceeds of any debt of the Borrower.

(v) "Proforma Maximum Annual Debt Service" means the maximum annual debt service on all existing debt and additional debt of the Borrower secured by or payable from the Total Governmental Fund Revenues.

(vi) "Proforma Maximum Annual Non-Ad Valorem Debt Service" means the maximum annual debt service on all existing debt and additional debt secured by or payable from all or a portion of the Adjusted Non-Ad Valorem Revenues.

(vii) "Total Governmental Fund Revenues" means any revenues derived from any source whatsoever of the Borrower deposited and held in the various funds and accounts of the borrower; provided, however, grants and other one-time items, including, but not limited to, insurance proceeds, do not constitute Total Governmental Fund Revenues.

(e) Further Assurance. The Borrower shall execute and deliver to the Trustee all such documents and instruments and do all such other acts and things as may be reasonably necessary to enable the Trustee to exercise and enforce its rights under this Loan Agreement and to realize thereon, and record and file and re-record and re-file all such documents and instruments, at such time or times, in such manner and at such place or places, all as may be reasonably necessary or required by the Trustee to validate, preserve, and protect the position of the Trustee under this Loan Agreement.

(f) Keeping of Records and Books of Account. The Borrower shall keep or cause to be kept proper records and books of account, in which correct and complete entries will be made in accordance with generally accepted accounting principles, consistently applied (except for changes concurred in by the Borrower's independent auditors) reflecting all of its financial transactions.

(g) Payment of Taxes, Etc. The Borrower shall pay all legally contracted obligations when due and shall pay all taxes, assessments, and governmental charges or levies imposed upon it or upon its income or profits, or upon any properties belonging to it, prior to the date on

which penalties attach thereto, and all lawful claims, which, if unpaid, might become a lien or charge upon any of its properties, provided that it shall not be required to pay any such tax, assessment, charge, levy, or claim which is being contested in good faith and by appropriate proceedings, which shall operate to stay the enforcement thereof.

(h) Compliance with Laws, Etc. The Borrower shall comply with the requirements of all applicable laws, the terms of all grants, rules, regulations, and lawful orders of any governmental authority, non-compliance with which would, singularly or in the aggregate, materially adversely affect its business, properties, earnings, prospects, or credit, unless the same shall be contested by it in good faith and by appropriate proceedings which shall operate to stay the enforcement thereof.

(i) Tax-exempt Status of Bonds. The Council and the Borrower understand that it is the intention hereof that the interest on the Bonds be excludable from the gross income of the Holders thereof for federal income tax purposes. In furtherance thereof, the Borrower and the Council each agree that they will take all action within their control which is necessary in order for the interest on the Bonds or this Loan to remain excludable from gross income for federal income taxation purposes and shall refrain from taking any action which results in such interest becoming included in gross income.

The Borrower and the Council further covenant that, to the extent they have control over the proceeds of the Bonds, they will not take any action or fail to take any action with respect to the investment of the proceeds of any Bonds, with respect to the payments derived from the Bonds or hereunder or with respect to the issuance of other Council obligations, which action or failure to act may cause the Bonds to be "arbitrage bonds" within the meaning of such term as used in Section 148 of the Code and the regulations promulgated thereunder. In furtherance of the covenant contained in the preceding sentence, the Borrower and the Council agree to comply with the Tax Certificate as to Arbitrage and the provisions of Section 141 through 150 of the Internal Revenue Code of 1986, as amended, including the letter of instruction attached as an Exhibit to the Tax Certificate, delivered by Bond Counsel to the Borrower and the Council simultaneously with the issuance of the Bonds, as such letter may be amended from time to time, as a source of guidelines for achieving compliance with the Code.

The covenants of the Council and the Borrower contained in this subsection shall survive the termination of this Loan Agreement.

(j) Information Reports. The Borrower covenants to provide the Council with all materials and information it possesses or has the ability to possess, which is necessary to enable the Council to file all reports required under Section 149(e) of the Code to assure that interest paid by the Council on the Bonds shall, for purposes of the federal income tax, be excluded from gross income.

(k) Limited Obligations.

(1) Anything in this Loan Agreement to the contrary notwithstanding, it is understood and agreed that all obligations of the Borrower hereunder shall be payable only from Non-Ad Valorem Revenues budgeted and appropriated as provided for hereunder and nothing herein shall be deemed to pledge ad valorem taxation revenues or to permit or constitute a mortgage or lien upon any assets or property owned by the Borrower and no Bondholder or any other person, including the Council, the Bond Insurer, or the Trustee, may compel the levy of ad valorem taxes on real or personal property within the boundaries of the Borrower. The obligations hereunder do not constitute an indebtedness of the Borrower within the meaning of any constitutional, statutory, or charter provision or limitation, and neither the Trustee, the Council, the Bond Insurer, nor the Bondholders nor any other person shall have the right to compel the exercise of the ad valorem taxing power of the Borrower or taxation of any real or personal property therein for the payment by the Borrower of its obligations hereunder. Except to the extent expressly set forth in this Loan Agreement, this Loan Agreement and the obligations of the Borrower hereunder shall not be construed as a limitation on the ability of the Borrower to pledge or covenant to pledge the Non-Ad Valorem Revenues or any revenues or taxes of the Borrower for other legally permissible purposes. Notwithstanding any provisions of this Loan Agreement, the Indenture or the Bonds to the contrary, the Borrower shall never be obligated to maintain or continue any of the activities of the Borrower which generate user service charges, regulatory fees, or any Non-Ad Valorem Revenues or the rates for such services or regulatory fees. Neither this Loan Agreement nor the obligations of the Borrower hereunder shall be construed as a pledge of or a lien on all or any legally available Non-Ad Valorem Revenues of the Borrower, but shall be payable solely as provided in Section 2.02(a) hereof and is subject in all respects to the provisions of Section 166.241, Florida Statutes, and is subject, further, to the payment of services and programs which are for essential public purposes affecting the health, welfare, and safety of the inhabitants of the Borrower. The Council, the Borrower, and the Bond Insurer mutually agree and understand that the amounts available to be budgeted and appropriated to make Loan Payments hereunder is subject to the obligation of the Borrower to provide essential services; however, such obligation is cumulative and would carry over from Fiscal Year to Fiscal Year.

(2) It is the intent of the parties hereto and they do hereby covenant and agree, that the liability of the Borrower hereunder is a several liability of the Borrower expressly limited to the Loan Repayments, and the Borrower shall have no joint liability with the other Borrowers or the Council for any of their respective liabilities, except to the extent expressly provided herein.

(l) Reporting Requirements.

(1) The Borrower will file or cause to be filed with the Bond Insurer and with the Council any official statement issued by, or on behalf of, the Borrower in connection with the incurrence of any additional indebtedness by the Borrower secured by Non-Ad Valorem Revenues. Such official statements shall be filed within sixty (60) days after the publication thereof.

(2) The Borrower agrees to provide to the Council and the Bond Insurer, not later than December 31st of each year, a certificate of its Chief Financial Officer stating that to the best of its knowledge the Borrower is in compliance with the terms and conditions of this Loan Agreement, or, specifying the nature of any noncompliance and the remedial action taken or proposed to be taken to cure such noncompliance.

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ARTICLE III

THE LOAN

SECTION 3.01. The Loan. The Council hereby agrees to loan to the Borrower and the Borrower hereby agrees to borrow from the Council the sum of \$_____, which after adding the net bond premium of \$_____ results in \$_____ in loan proceeds. This amount includes an amount equal to \$_____, which reflects the Borrower's share of the costs of issuance, the Bond Insurance Premium, and the Underwriter's discount. The amounts advanced to the Borrower net of the costs of the initial issuance are to be used by the Borrower for the purpose of refunding the Refunded Bonds attributable to the Refunded Loan and thereby refinancing the Costs Projects, in accordance with the provisions of this Loan Agreement and the Escrow Deposit Agreement.

SECTION 3.02. Evidence of Loan. The Borrower's obligation hereunder to repay amounts advanced pursuant to Section 3.01, together with interest thereon, and other payments required under this Loan Agreement, shall be evidenced by this Loan Agreement.

SECTION 3.03. Loan for Purpose of Refunding. The Borrower acknowledges that the Council, pursuant to the Borrower's request and instruction, is depositing a portion of the proceeds of the Loan in the amount of \$_____, together with \$_____ of other legally available funds of the Borrower, each as set forth and as directed by the terms of the Escrow Deposit Agreement, in order to refund the Refunded Bonds. The Borrower covenants that it will direct no other use of such portion of the Loan proceeds, agrees to the disbursement of the Loan proceeds in such manner, and further acknowledges that such Loan proceeds are to be held irrevocably by the Escrow Agent for such purpose.

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ARTICLE IV

LOAN TERM AND LOAN CLOSING REQUIREMENTS

SECTION 4.01. Commencement of Loan Term. The Borrower's obligations under this Loan Agreement shall commence on the date hereof unless otherwise provided in this Loan Agreement.

SECTION 4.02. Termination of Loan Term. The Borrower's obligations under this Loan Agreement shall terminate after payment in full of all amounts due under this Loan Agreement and all amounts not theretofore paid shall be due and payable at the times and in the amounts set forth in Exhibit D attached hereto; provided, however, that all covenants and all obligations provided hereunder specified to so survive (including the obligation of the Borrower to pay its share of the rebate obligations of the Council owed on the Bonds and agreed to by the Borrower pursuant to Section 5.03(b)(7) hereof and any amounts owed to the Bond Insurer) shall survive the termination of this Loan Agreement and the payment in full of principal and interest hereunder. Upon termination of the Loan Term as provided above, the Council and the Trustee shall deliver, or cause to be delivered, to the Borrower an acknowledgment thereof.

SECTION 4.03. Loan Closing Submissions. Concurrently with the execution and delivery of this Loan Agreement, the Issuer or the Borrower are providing to the Trustee the following documents each dated the date of such execution and delivery, except all opinions and certificates shall be dated the date of Closing:

- (a) A certified copy of the ordinance of the Borrower substantially in the form of Exhibit B attached hereto authorizing the Loan and this Loan Agreement;
- (b) An opinion of the Borrower's Counsel substantially in the form of Exhibit C attached hereto to the effect that the Loan Agreement is a valid and binding obligation of the Borrower and opining to such other matters as may be reasonably required by Bond Counsel, underwriter's counsel, and the Bond Insurer, and acceptable to Borrower's Counsel;
- (c) A certificate of the officials of the Borrower to the effect that the representations and warranties of the Borrower are true and correct;
- (d) [Reserved].
- (e) This executed Loan Agreement;
- (f) An executed Escrow Deposit Agreement;

(g) An standard opinion of Bond Counsel (addressed to the Council, the Trustee, the Bond Insurer, the Underwriter, and the Borrower) to the effect that (i) the resolution of the Council constitutes a valid and binding obligation of the Council enforceable against the Council in accordance with its terms; (ii) the Indenture has been duly executed by the Council and, assuming due authorization, execution and delivery by the Trustee, constitutes a valid and binding obligation of the Council enforceable upon the Council in accordance with its terms; (iii) the Bonds have been duly authorized, executed, and delivered by the Council and are valid and special obligations of the Council enforceable in accordance with their terms, payable solely from the sources provided therefor in the Indenture; and (iv) the interest on the Bonds is excludable from gross income for federal income tax purposes;

(h) An opinion of Bond Counsel (addressed to the Council, the Trustee, the Bond Insurer, the Underwriter, and the Borrower) to the effect that the refinancing from the proceeds of the Loan pursuant to this Loan Agreement is permitted under the Act, the Indenture and the Ordinance, and will not, in and of itself, cause the interest on the Bonds to be included in gross income for federal income tax purposes, or adversely affect the validity, due authorization for, or legality of the Bonds;

(i) An opinion of Issuer's Counsel (addressed to the Council, the Trustee, the Bond Insurer, and the Underwriter) to the effect that the Loan Agreement and Indenture are valid and binding obligations of the Issuer and opining to such other matters as may be reasonably required by Bond Counsel, underwriter's counsel, and the Bond Insurer, and acceptable to Issuer's Counsel;

(j) An opinion of Disclosure Counsel (addressed to the Issuer and the Underwriter) to the effect that based upon their participation in the preparation of the official statement, but without having undertaken to determine independently the accuracy, completeness, or fairness of the statements contained therein, they have no reason to believe that the official statement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; and

(k) Such other certificates, documents, opinions, and information as the Council, the Bond Insurer, the Trustee, or Bond Counsel may require, such requirement to be evidenced (in the case of parties other than the Trustee) by written notice of such party to the Trustee of such requirement.

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ARTICLE V

LOAN REPAYMENTS

SECTION 5.01. Payment of Basic Payments. The Borrower shall pay to the order of the Council all Loan Repayments in lawful money of the United States of America to the Trustee. No such Loan Repayment shall be in an amount such that interest on the Loan is in excess of the maximum rate allowed by the laws of the State of Florida or of the United States of America. The Loan shall be repaid in Basic Payments, consisting of:

- (a) principal in the amounts and on the dates set forth in Exhibit D; plus
- (b) interest calculated at the rates, in the amounts and on the dates set forth in Exhibit D.

On or before the fifteenth (15th) day of the month immediately preceding each Interest Payment Date, the Trustee shall give Borrower notice in writing of the total amount of the next Basic Payment due. The Basic Payments shall be due on each [March] 20th and [September] 20th, or if such day is not a Business Day, the next preceding Business Day (a "Loan Repayment Date"), commencing [March] 20, 2017, and extending through [September] 20, 20__, unless the Loan is prepaid pursuant to terms of Section 5.07 hereof [or accelerated pursuant to the terms of Section 8.03 hereof].

SECTION 5.02. Payment of Surety Bond Costs; Funding of Reserve Fund. The Borrower recognizes that the Surety Bond Provider has provided to the Council the Surety Bond for deposit to the Reserve Fund in lieu of a cash payment or deposit by the Borrower. The Surety Bond shall secure and satisfy the Reserve Requirement (as defined in the Indenture) and any other reserve requirement of bonds as listed on Annex A to the Surety Bond. The Trustee, on behalf of the Borrower, or any other Borrowers whose loans were funded with proceeds of a bond issue listed on Annex A to the Surety Bond, may draw on the Surety Bond in an amount equal to or less than the limit of the Surety Bond, all in accordance with Section 4.08 of the Indenture. The Borrower hereby agrees to pay to the Trustee an amount equal to the amount drawn by the Trustee, on behalf of the Borrower, on the Surety Bond as set forth in subsection (c) of Section 5.03 hereof. Such Surety Bond may be replaced by an Alternate Surety Bond issued with respect to funding the reserve fund of subsequent bonds issued by the Council whose reserve fund shall be on a parity with the Bonds, all in accordance with Section 4.08 of the Indenture.

SECTION 5.03. Payment of Additional Payments. In addition to Basic Payments, the Borrower agrees to pay on demand of the Council or the Trustee, the following Additional Payments:

(a) (i) the Borrower's Proportionate Share of: the annual fees or expenses of the Council, if any, including the fees of any provider of arbitrage rebate calculations, the Bond Insurance Premium of the Bond Insurer (to the extent not previously paid from the Cost of Issuance Fund), the fees of the Program Administrator and the fees of the rating agencies (to the extent not previously paid from the Cost of Issuance Fund); and (ii) the Borrower's equal share of the annual fees of the Trustee; annual fees of the Registrar and Paying Agent; [and the Surety Bond premium of the Surety Bond Provider and any related fees in connection with the Surety Bond (to the extent not previously paid from the Cost of Issuance Fund)].

(b) All reasonable fees and expenses of the Council or Trustee relating to this Loan Agreement, including, but not limited to:

(1) the cost of reproducing this Loan Agreement;

(2) the reasonable fees and disbursements of Counsel utilized by the Council, the Trustee, and the Bond Insurer in connection with the Loan, this Loan Agreement and the enforcement thereof;

(3) reasonable extraordinary fees of the Trustee and the Council following an Event of Default hereunder;

(4) all other reasonable out-of-pocket expenses of the Trustee, the Bond Insurer, and the Council in connection with the Loan, this Loan Agreement and the enforcement thereof, including, but not limited to, all fees and expenses related to the prepayment and defeasance of the Loan and the Bonds;

(5) all taxes (including any recording, documentary stamp taxes, intangible taxes, and filing fees) in connection with the execution and delivery of this Loan Agreement and the pledge and assignment of the Council's right, title, and interest in and to the Loan and the Loan Agreement, pursuant to the Indenture (and with the exceptions noted therein), and all expenses, including reasonable attorneys' fees, relating to any amendments, waivers, consents, or collection or enforcement proceedings pursuant to the provisions hereof;

(6) all reasonable fees and expenses of the Bond Insurer relating directly to the Loan;

(7) the Borrower's share of any amounts owed to the United States of America as rebate obligations on the Bonds related to the Borrower's Loan, which obligation shall survive the termination of this Loan Agreement;

(8) fees and costs of maintaining a rating on the Loan; and

(9) (i) any and all losses, damages, expenses (including reasonable legal and other fees and expenses), liabilities, or claims (or actions in respect thereof), to which the Council may become subject under any federal or state securities laws, federal or state tax laws, or other statutory law or at common law or otherwise, and (ii) any and all fees and expenses of any inquiries or audits by any regulatory agencies, all as caused by or arising out of or based upon this Loan Agreement, the Loan, the Bonds, the issuance of the Bonds or the use of Bond proceeds.

(c) For repayment of the Surety Bond held by the Trustee an amount equal to any amount drawn by the Trustee, on behalf of the Borrower, from the Surety Bond due to the Borrower's failure to pay its Basic Payments in accordance with Section 5.01 hereof, at the times and in the manner and together with interest and expense due thereon all as provided in Section 4.08(a) of the Indenture undertaken in order to reinstate the Surety Bond. The Borrower shall repay such amount drawn on the Surety Bond due to the Borrower's failure to pay its Basic Payments with the first available funds after payment of the current Loan Repayment. The Borrower shall repay only the amount drawn due to its failure to pay its Basic Payment.

SECTION 5.04. Interest Earnings or Investment Losses and Excess Payments.

(a) On each Interest Payment Date the Trustee shall credit against Borrower's obligation to pay its Loan Repayments, Borrower's share of any interest earnings which were received during the prior Interest Period by the Trustee on the Funds and Accounts (except the Project Loan Fund) held under the Indenture, or shall increase the Borrower's obligation to pay its Loan Repayment, by Borrower's share of any investment losses which were incurred during the prior Interest Period on the Funds and Accounts (except the Project Loan Fund) held under the Indenture.

(b) The credits provided for in (a) shall not be given to the extent the Borrower is in Default in payment of its Loan Repayments. If past-due Loan Repayments are later collected from the Borrower, the amount of the missed credit shall, to the extent of the amount collected, be credited in proportion to the amount of credit missed, to the Borrower from the past-due Loan Repayments.

(c) The credits may be accumulated. If the credit allowable for an Interest Period is more than required on the next ensuing Interest Payment Date to satisfy the current Loan Repayment, it may be used on the following Interest Payment Date.

SECTION 5.05. Obligations of Borrower Unconditional. Subject in all respects to the provisions of this Loan Agreement, including but not limited to Section 2.02(a) hereof, the obligations of the Borrower to make the Loan Repayments required hereunder and to perform and observe the other agreements on its part contained herein, shall be absolute and unconditional, and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed, or otherwise modified in any manner or to any extent whatsoever,

while any Bonds remain outstanding or any Loan Repayments remain unpaid, regardless of any contingency, act of God, event, or cause whatsoever. This Loan Agreement shall be deemed and construed to be a "net contract," and the Borrower shall pay the Loan Repayments and all other payments required hereunder, regardless of any rights of set-off, recoupment, abatement, or counterclaim that the Borrower might otherwise have against the Council, the Trustee, the Bond Insurer, or any other party or parties.

SECTION 5.06. Refunding Bonds. In the event the Bonds are refunded, all references in this Loan Agreement to Bonds shall be deemed to refer to the refunding bonds or, in the case of a crossover refunding, to the Bonds and the refunding bonds (but the Borrower shall never be responsible for any debt service on or fees relating to crossover refunding bonds which are covered by earnings on the escrow fund established from the proceeds of such bonds). The Council agrees not to issue bonds or other debt obligations to refund the portion of the Bonds allocable to this Loan Agreement without the prior written consent of the Authorized Representative of the Borrower.

SECTION 5.07. Prepayment. The Loan may be prepaid in whole or in part by the Borrower on the dates and in the amounts on which the Bonds are subject to optional redemption and notice provisions pursuant to Section 3.01 of the Indenture. The Borrower shall provide the Council sixty (60) days' notice of any prepayment of its Loan.

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ARTICLE VI

DEFEASANCE

This Loan Agreement shall continue to be obligatory and binding upon the Borrower in the performance of the obligations imposed by this Loan Agreement and the repayment of all sums due by the Borrower under this Loan Agreement shall continue to be secured by this Loan Agreement as provided herein until all of the indebtedness and all of the payments required to be made by the Borrower shall be fully paid to the Council, the Trustee, or the Bond Insurer, as provided herein, including any fees and expenses in connection with such repayment, if any. If, at any time, the Borrower shall have paid, or shall have made provision for payment of, prepayment premium, if any, and interest on the Loan, with respect to the Bonds, and shall have paid all other amounts due under this Loan Agreement, then, and in that event, the covenant regarding the pledge of and the lien on the revenues pledged, if any, to the Council for the benefit of the Holders of the Bonds shall be no longer in effect and all future obligations of the Borrower under this Loan Agreement shall cease; provided, however, that all covenants and all obligations provided hereunder specified to so survive (including the obligation of the Borrower to pay its share of the rebate obligations owed on the Bonds) shall survive the termination of this Loan Agreement and the payment in full of principal, premium, if any, and interest hereunder. For purposes of the preceding sentence, in order for the Borrower to have made "provision for payment," the Borrower shall have deposited sufficient cash and/or Governmental Obligations in irrevocable trust with a banking institution or trust company, for the sole benefit of the Council, in respect to which such cash and/or Governmental Obligations, the principal and interest on which, will be sufficient (as reflected in an accountant's verification report provided to the Trustee by the Borrower) to make timely payment of the principal of, prepayment premium, if any, and interest on the Loan. The prepayment premium, if any, shall be calculated based on the prepayment date selected by the Borrower in accordance with Section 5.07 hereof.

If the Borrower determines to prepay all or a portion of the Loan pursuant to Section 5.07 hereof, upon the required timely notice by the Borrower, the Council shall redeem a like amount of Bonds which corresponds in terms of amount and scheduled maturity date to such Loan prepayment pursuant to Section 3.01 of the Indenture.

If the Borrower shall make advance payments to the Council in an amount sufficient to retire the Loan of the Borrower, including redemption premium and accrued interest to the next succeeding redemption date of the Bonds, as provided herein, all future obligations of the Borrower under this Loan Agreement shall cease, including the obligations under Section 5.03 hereof, except as provided in Section 4.02 hereof. However, prior to making such payments, the Borrower shall give at least sixty (60) days' notice by mail, with receipt confirmed, to the Council.

ARTICLE VII

ASSIGNMENT AND PAYMENT BY THIRD PARTIES

SECTION 7.01. Assignment by Council. The Borrower expressly acknowledges that this Loan Agreement and the obligations of the Borrower to make payments hereunder (with the exception of certain of the Council rights to indemnification, fees, notices, and expenses), have been pledged and assigned to the Trustee as security for the Bonds under the Indenture, and that the Trustee shall be entitled to act hereunder and thereunder in the place and stead of the Council whether or not the Bonds are in default.

SECTION 7.02. Assignment by Borrower. This Loan Agreement may not be assigned by the Borrower for any reason without the express prior written consent of the Council, the Bond Insurer, and the Trustee.

SECTION 7.03. Payments by the Bond Insurer. The Borrower acknowledges that payment under this Loan Agreement from funds received by the Trustee or Bondholders from the Bond Insurer do not constitute payment under this Loan Agreement for the purposes hereof or fulfillment of its obligations hereunder.

SECTION 7.04. Payments by the Surety Bond Provider. The Borrower acknowledges that payment under this Loan Agreement from funds received by the Trustee or Bondholders from the Surety Bond Provider do not constitute payment under this Loan Agreement for the purposes hereof or fulfillment of its obligations hereunder.

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ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

SECTION 8.01. Events of Default Defined. The following shall be "Events of Default" under this Loan Agreement and the terms "Event of Default" and "Default" shall mean (except where the context clearly indicates otherwise), whenever they are used in this Loan Agreement, any one or more of the following events:

(a) Failure by the Borrower to timely pay any Loan Repayment, when due, so long as the Bonds are outstanding;

(b) Failure by the Borrower to timely pay any other payment required to be paid hereunder on the date on which it is due and payable, provided the Borrower has prior written notice of any such payments being due;

(c) Failure by the Borrower to observe and perform any covenant, condition, or agreement other than a failure under (a), on its part to be observed or performed under this Loan Agreement, for a period of thirty (30) days after notice of the failure, unless the Council, the Bond Insurer, and the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the Council, the Bond Insurer, or the Trustee, but cannot be cured within the applicable 30-day period, the Council, the Bond Insurer, and the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the failure is corrected;

(d) Any warranty, representation, or other statement by the Borrower or by an officer or agent of the Borrower contained in this Loan Agreement or in any instrument furnished in compliance with or in reference to this Loan Agreement, is false or misleading in any material respect when made;

(e) A petition is filed against the Borrower under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within sixty (60) days of such filing;

(f) The Borrower files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under such law;

(g) The Borrower admits insolvency or bankruptcy or its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including without limitation a receiver, liquidator, or trustee) of the Borrower or any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than sixty (60) days;

(h) Default under any agreement to which the Borrower is a party evidencing, securing, or otherwise respecting any indebtedness of the Borrower outstanding in the principal amount of \$100,000 or more if, as a result thereof, such indebtedness may be declared immediately due and payable or other remedies may be exercised with respect thereto;

(i) Any material provision of this Loan Agreement shall at any time for any reason cease to be valid and binding on the Borrower, or shall be declared to be null and void, or the validity or enforceability of this Loan Agreement shall be contested by the Borrower or any governmental agency or authority, or if the Borrower shall deny any further liability or obligation under this Loan Agreement;

(j) Final judgment for the payment of money in the amount of \$250,000 or more is rendered against the Borrower, the payment of which would materially adversely affect the Borrower's ability to meet its obligations hereunder (it being agreed that, if insurance or adequate reserves are available to make such payment, such judgment would not materially affect the Borrower's ability to meet its obligations hereunder) and at any time after ninety (90) days from the entry thereof, unless otherwise provided in the final judgment, (i) such judgment shall not have been discharged, or (ii) the Borrower shall not have taken and be diligently prosecuting an appeal therefrom or from the order, decree, or process upon which or pursuant to which such judgment shall have been granted or entered, and have caused the execution of or levy under such judgment, order, decree, or process of the enforcement thereof to have been stayed pending determination of such appeal, provided that such execution and levy would materially adversely affect the Borrower's ability to meet its obligations hereunder; or (iii) it has not been determined by a court of competent jurisdiction from which appeal may not be taken or from which appeal has been taken but has been finally denied that the Borrower is not obligated with respect to such judgment pursuant to the provisions of Chapter 768, Florida Statutes or other applicable law.

SECTION 8.02. Notice of Default. The Borrower agrees to give the Trustee, the Bond Insurer, and the Council prompt written notice if any petition, assignment, appointment, or possession referred to in Section 8.01(e), 8.01(f), and 8.01(g) is filed by or against the Borrower or of the occurrence of any other event or condition which constitutes a Default or an Event of Default, or with the passage of time or the giving of notice would constitute an Event of Default, immediately upon becoming aware of the existence thereof.

SECTION 8.03. Remedies on Default. Whenever any Event of Default referred to in Section 8.01 hereof shall have happened and be continuing, the Council or the Trustee shall, with the written consent of the Bond Insurer or upon the direction of the Bond Insurer, in addition to any other remedies herein or by law provided, have the right, at its or their option without any further demand or notice, to take such steps and exercise such remedies as provided in Section 9.02 of the Indenture, and, without limitation, one or more of the following:

(a) Declare all Loan Repayments, in an amount equal to 100% of the principal amount thereof plus all accrued interest thereon to the date on which such Loan Repayments shall be used to redeem the Bonds pursuant to Section 3.02 of the Indenture and all other amounts due hereunder, to be due and payable within 180 days, and upon notice to the Borrower the same shall become immediately due and payable by the Borrower within 180 days without further notice or demand.

(b) To take whatever other action at law or in equity which may appear necessary or desirable to collect amounts then due and thereafter to become due hereunder or to enforce any other of its or their rights hereunder.

SECTION 8.04. [Reserved].

SECTION 8.05. No Remedy Exclusive; Waiver, Notice. No remedy herein conferred upon or reserved to the Council or the Trustee is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right, remedy, or power shall be construed to be a waiver thereof, but any such right, remedy, or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Council or the Trustee to exercise any remedy reserved to it in this Article VIII, it shall not be necessary to give any notice other than such notice as may be required in this Article VIII.

SECTION 8.06. Application of Moneys. Any moneys collected by the Council or the Trustee pursuant to Section 8.03 hereof shall be applied (a) first, to pay any attorney's fees or other expenses owed by the Borrower pursuant to Section 5.03(b)(3) and (4) hereof; (b) second, to pay interest due on the Loan; (c) third, to pay principal due on the Loan; (d) fourth, to pay any other amounts due hereunder; and (e) fifth, to pay interest and principal on the Loan and other amounts payable hereunder but which are not due, as they become due (in the same order, as to amounts which come due simultaneously, as in (a) through (d) in this Section 8.06).

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ARTICLE IX

MISCELLANEOUS

SECTION 9.01. Notices. All notices, certificates, or other communication hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the parties at the following addresses:

Council:	Florida Municipal Loan Council c/o Florida League of Cities 301 South Bronough Street, Suite 300 Tallahassee, Florida 32301
Bond Insurer:	National Public Finance Guarantee Corporation 1 Manhattanville Road, Suite 301 Purchase, New York 10577
Trustee:	The Bank of New York Mellon Trust Company, N.A. 10161 Centurion Parkway Jacksonville, Florida 32256
Borrower:	Town of Bay Harbor Islands, Florida 9665 Bay Harbor Terrace Bay Harbor Islands, Florida 33154 Attention: Finance Director

Any of the above parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

SECTION 9.02. Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Council and the Borrower and their respective successors and assigns.

SECTION 9.03. Severability. In the event any provision of the Loan Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

SECTION 9.04. Amendments, Changes and Modifications. This Loan Agreement may be amended by the Council and the Borrower as provided in the Indenture; provided, however, that no such amendment shall be effective unless it shall have been consented to in writing by the Bond Insurer.

SECTION 9.05. Execution in Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which, when so executed and delivered, shall be an original and all of which shall constitute but one and the same instrument.

SECTION 9.06. Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State.

SECTION 9.07. Benefit of Bondholders; Compliance with Indenture. This Loan Agreement is executed in part to induce the purchase by others of the Bonds. Accordingly, all covenants, agreements, and representations on the part of the Borrower and the Council, as set forth in this Loan Agreement, are hereby declared to be for the benefit of the holders from time to time of the Bonds and the Bond Insurer. The Borrower covenants and agrees to do all things within its power in order to comply with and to enable the Council to comply with all requirements and to fulfill and to enable the Council to fulfill all covenants of the Indenture. The Borrower also acknowledges that the Council has delegated certain of its duties under the Indenture to its Program Administrator, including the direction to make investments in accordance with Article VII thereof.

The rights granted to the Bond Insurer under the Indenture or any Bond document to request, consent, to or direct any action are rights granted to the Bond Insurer in consideration of its issuance of the Bond Insurance Policy. Any exercise by the Bond Insurer of such rights is merely an exercise of the Bond Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit, or on behalf, of the Bondholders and such action does not evidence any position of the Bond Insurer, affirmative or negative, as to whether the consent of the Bondholders or any other person is required in addition to the consent of the Bond Insurer. The Bond Insurer is recognized as a third-party beneficiary hereunder and may enforce any such right, remedy or claim conferred, given or granted hereunder.

SECTION 9.08. Consents and Approvals. Whenever the written consent or approval of the Council shall be required under the provisions of this Loan Agreement, such consent or approval may be given by an Authorized Representative of the Council or such other additional persons provided by law or by rules, regulations or resolutions of the Council.

SECTION 9.09. Immunity of Officers, Employees, and Members of Council and Borrower. No recourse shall be had for the payment of the principal of, premium, if any, or interest hereunder or for any claim based thereon or upon any representation, obligation, covenant, or agreement in this Loan Agreement against any past, present, or future official officer, member, counsel, employee, director, or agent, as such, of the Council or the Borrower, either directly or through the Council or the Borrower, or respectively, any successor public or private corporation thereto under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, counsels, employees, directors, or agents as such is hereby expressly waived and released as a condition of and consideration for the execution of this Loan Agreement.

SECTION 9.10. Captions. The captions or headings in this Loan Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of sections of this Loan Agreement.

SECTION 9.11. No Pecuniary Liability of Council. No provision, covenant, or agreement contained in this Loan Agreement, or any obligation herein imposed upon the Council, or the breach thereof, shall constitute an indebtedness or liability of the State or any political subdivision or municipal corporation of the State or any public corporation or governmental agency existing under the laws thereof other than the Council. In making the agreements, provisions, and covenants set forth in this Loan Agreement, the Council has not obligated itself except with respect to the application of the revenues, income, and all other property as derived herefrom, as hereinabove provided.

SECTION 9.12. Payments Due on Holidays. With the exception of Basic Payments, if the date for making any payment or the last date for performance of any act or the exercise of any right, as provided in this Loan Agreement, shall be other than on a Business Day, such payments may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if done on the nominal date provided in this Loan Agreement.

SECTION 9.13. Calculations. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

SECTION 9.14. Time of Payment. Any Loan Repayment or other payment hereunder which is received by the Trustee or Council after 2:00 p.m. (New York time) on any day shall be deemed received on the following Business Day.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Florida Municipal Loan Council has caused this Loan Agreement to be executed in its corporate name with its corporate seal hereunto affixed and attested by its duly authorized officers and the Town of Bay Harbor Islands, Florida, has caused this Loan Agreement to be executed in its corporate name with its corporate seal hereunto affixed and attached by its duly authorized officers. All of the above occurred as of the date first above written.

FLORIDA MUNICIPAL LOAN COUNCIL

(SEAL)

By: _____
Name: Isaac Salver
Title: Chairman

ATTEST:

By: _____
Name: Michael Sittig
Title: Executive Director

LOAN AGREEMENT

TOWN OF BAY HARBOR ISLANDS,
FLORIDA

(SEAL)

By: _____
Name:
Title:

ATTESTED BY:

By: _____
Name:
Title: Town Clerk

Approved as to form and correctness
this ____ day of _____, 2016.

By: _____
Name:
Title:

EXHIBIT A

TOWN OF BAY HARBOR ISLANDS, FLORIDA
USE OF LOAN PROCEEDS

DESCRIPTION OF PROJECTS TO BE REFINANCED

<u>PROJECT</u>	<u>TOTAL AMOUNT TO BE REFINANCED</u>
Refund the Refunded Bonds attributable to the Refunded Loan and thereby refinance the Costs of the capital improvements consisting of drainage improvements, streets, lighting, landscaping and improvements within the business district of the Borrower	\$_____

EXHIBIT B

CERTIFIED ORDINANCE OF THE BORROWER

See Document No. _____

EXHIBIT C

OPINION OF BORROWER'S COUNSEL

[Letterhead of Counsel to Borrower]

_____, 2016

Florida Municipal Loan Council
c/o Florida League of Cities, Inc.
301 Bronough Street, Suite 300
Tallahassee, Florida 32301

The Bank of New York Mellon Trust
Company, N.A.
10161 Centurion Parkway
Jacksonville, Florida 32256

Bryant Miller Olive P.A.
SunTrust International Center
1 SE 3rd Avenue, Suite 2200
Miami, Florida 33131

Wells Fargo Bank, National Association
2363 Gulf-to-Bay Boulevard
Mail Code: WS7517
Clearwater, Florida 33765

National Public Finance Guarantee Corporation
1 Manhattanville Road, Suite 301
Purchase, New York 10577

Ladies and Gentlemen:

We are counsel to the Town of Bay Harbor Islands, Florida (the "Borrower"), and have been requested by the Borrower to give this opinion in connection with the loan by the Florida Municipal Loan Council (the "Council") to the Borrower of funds to refinance all or a portion of the Costs of the Project, as described in Exhibit A of the Loan Agreement, dated as of _____ 1, 2016, by and between the Council and the Borrower (the "Loan Agreement").

In this connection, we have reviewed such records, certificates, and other documents as we have considered necessary or appropriate for the purposes of this opinion, including applicable laws, the Charter of the Borrower, the Loan Agreement, the Trust Indenture dated as of _____ 1, 2016 (the "Indenture"), by and between the Council and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), Ordinance No. _____ enacted by the Borrower on _____, 2016 (the "Ordinance"), the Continuing Disclosure Agreement, dated as of _____, 2016 (the "Continuing Disclosure Agreement"), by and among the Borrower and the Florida League of Cities, Inc., the final Official Statement with respect to the Bonds dated _____, 2016 (the "Official Statement"), and the Bond Purchase Contract dated _____, 2016, between the Council, Wells Fargo Bank, National Association (the "Underwriter"), and the Borrowers (the "Bond Purchase Contract"). Based on such review, and

such other considerations of law and fact as we believe to be relevant, we are of the opinion that:

(a) The Borrower is a municipality duly organized and validly existing under the Constitution and laws of the State of Florida. The Borrower has the legal right and all requisite power and authority to enter into the Loan Agreement, to covenant to budget and appropriate Non-Ad Valorem Revenues to the payment of the Loan, to enact the Ordinance, consummate the transactions contemplated in the Loan Agreement and the Ordinance, and otherwise to carry on its activities and own its property.

(b) The Borrower has duly enacted the Ordinance, and authorized, executed, and delivered the Loan Agreement, the Bond Purchase Contract, and the Continuing Disclosure Agreement, and such instruments are legal and binding obligations of the Borrower enforceable against the Borrower in accordance with its terms, except to the extent that the enforceability hereof may be subject to bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditors' rights heretofore or hereafter enacted and that their enforcement may be subject to the exercise of judicial discretion in accordance with general principles of equity and to the sovereign police powers of the State of Florida and the constitutional powers of the United States of America.

(c) The execution and delivery of the Ordinance, the Continuing Disclosure Agreement, the Bond Purchase Contract, and the Loan Agreement; the consummation of the transactions contemplated thereby; the refinancing of the Refunded Loan; and the fulfillment of or compliance with the terms and conditions of the Ordinance, the Loan Agreement, the Bond Purchase Contract, and the Continuing Disclosure Agreement does not and will not conflict with or result in a material breach of or default under any of the terms, conditions, or provisions of any agreement, contract or other instrument, or law, ordinance, regulation, or judicial or other governmental order, to which the Borrower is now a party or it or its properties is otherwise subject or bound, and the Borrower is not otherwise in violation of any of the foregoing in a manner material to the transactions contemplated by the Loan Agreement.

(d) There is no litigation or legal or governmental action, proceeding, inquiry, or investigation pending or, to the best of our knowledge, threatened by governmental authorities or to which the Borrower is a party or of which any property of the Borrower is subject, which has not been described in the Official Statement or otherwise disclosed in writing to the Council and the Bond Insurer and which, if determined adversely to the Borrower, would individually or in the aggregate materially and adversely affect the validity or the enforceability of the Ordinance, the Loan Agreement, the Bond Purchase Contract, or the Continuing Disclosure Agreement.

(e) The indebtedness being refinanced, directly or indirectly, with the proceeds of the Loan was initially incurred by the Borrower, and the proceeds of such indebtedness have been fully expended, to finance the cost of the Project.

(f) Based upon my review of the Official Statement and without having undertaken to determine independently the accuracy or completeness of the contents of the Official Statement, the statements and information with respect to matters of law relating to the Borrower in the Official Statement under the captions "PURPOSE OF THE BONDS - General", "SECURITY AND SOURCES OF PAYMENT – Limited Obligations; Trust Estate"; "—Security of the Loan Agreement," and "LITIGATION" (in each case only with respect to those matters specific to the Borrower), and "CONTINUING DISCLOSURE" are true and correct in all material respects, and do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading, either as of its date or the date hereof. No opinion is expressed herein with respect to (i) actions or obligations of the Council or any other party other than the Borrower, (ii) documents to which the Borrower is not a party, and (iii) financial, statistical, or tax matters or projections.

We are attorneys admitted to practice law only in the State of Florida and express no opinion as to the laws of any other state and further express no opinion as to (i) the status of interest on the Bonds under either Federal laws or the laws of the State of Florida, or (ii) economic or financial matters described in the Official Statement relating to the Borrower.

Very truly yours,

EXHIBIT D

DEBT SERVICE SCHEDULE

<u>Date</u>	<u>Principal Amounts</u>	<u>Interest Rate</u>	<u>Interest Amounts</u>	<u>Total Amounts</u>
-------------	--------------------------	----------------------	-------------------------	----------------------

[TO COME]

* Loan repayments are due [March] 20th and [April] 20th of each year.

EXHIBIT B

FORM OF CONTINUING DISCLOSURE AGREEMENT

CONTINUING DISCLOSURE AGREEMENT FOR BORROWERS

This **CONTINUING DISCLOSURE AGREEMENT** dated as of September 1, 2016 (the "Continuing Disclosure Agreement") is executed and delivered by _____, a Florida municipal corporation ("Borrower"), and by Florida League of Cities, Inc., a Florida corporation not-for-profit, as Dissemination Agent (the "Dissemination Agent") hereunder. Additional capitalized terms used herein shall have the meanings ascribed thereto in Section 2 hereof.

SECTION 1. Nature of Undertaking. This Continuing Disclosure Agreement constitutes an undertaking by the Borrower under paragraph (b)(5) of the Rule to provide Financial Information and notice of the occurrence of certain events with respect to the Bonds, as provided in paragraph (b)(5)(i)(C) of the Rule, and otherwise to assist the Participating Underwriter in complying with paragraph (b)(5) of the Rule with respect to the Offering of the Bonds. Among other things, the Borrower is hereby undertaking (i) to disseminate an Annual Report not later than 270 days after the end of each Fiscal Year of the Borrower in accordance with Section 4 hereof, which contains Financial Information with respect to the Borrower, (ii) if an Annual Report does not contain the Audited Financial Statements, to disseminate the Audited Financial Statements in accordance with Section 4 hereof as soon as practicable after they shall have been approved by the Governing Body, (iii) to provide notice in a timely manner, in accordance with Section 6 hereof, of the occurrence of any of the Listed Events related to the Borrower and (iv) to provide notice in a timely manner, in accordance with Section 4(e) hereof, of any failure to disseminate an Annual Report in accordance with the preceding clause (i) of this sentence.

SECTION 2. Definitions. In addition to the definitions set forth above and in the herein-defined Indenture, which shall apply to any capitalized terms used herein, the following capitalized terms shall have the following meanings, unless otherwise defined therein:

"Annual Report" means a document or set of documents which (a) identifies the Borrower; (b) contains (or includes by reference to documents which were filed with the SEC or EMMA prior to the date that the Annual Report containing such reference is provided to the Dissemination Agent in accordance with Section 4 hereof): (i) Financial Information and Operating Data for the Borrower; (ii) Audited Financial Statements if such Audited Financial Statements shall have been approved by the Governing Body at the time the Annual Report is required to be provided to the Dissemination Agent in accordance with Section 4 hereof; and (iii) Unaudited Financial Statements if the Audited Financial Statements shall not have been approved by the Governing Body at the time the Annual Report is required to be provided to the Dissemination Agent in accordance with Section 4 hereof; (c) in the event that the Borrower delivers a Continuing Disclosure Certificate to the Dissemination Agent pursuant to Section 5(b) hereof, contains (in the case of the Annual Report disseminated on or immediately after the date

such Continuing Disclosure Certificate is so delivered) a narrative explanation of the reasons for the changes in Financial Information and/or Operating Data set forth in such Continuing Disclosure Certificate and the effect of the changes on the types of Financial Information and/or Operating Data being provided in such Annual Report; and (d) in the event that the Borrower authorizes a change in the accounting principles by which its Audited Financial Statements are prepared, contains (in the case of the Annual Report disseminated on or immediately after the date of such change) (1) a comparison between the Financial Information prepared on the basis of the new accounting principles which is contained in such Annual Report and the Financial Information prepared on the basis of the former accounting principles which was contained in the previous Annual Report disseminated immediately prior to such Annual Report and (2) a discussion of the differences between such accounting principles and the effect of such change on the presentation of the Financial Information being provided in such Annual Report.

"Annual Report Certificate" means an Annual Report Certificate in the form attached hereto as Exhibit A.

"Annual Report Date" means the date which is 270 days after the end of a Fiscal Year.

"Audited Financial Statements" means the financial statements of the Borrower which have been examined by independent certified public accountants in accordance with generally accepted auditing standards.

"Bondholder" means (i) the registered owner of a Bond and (ii) the beneficial owner of a Bond, as the term "beneficial owner" is used in any agreement with a securities depository for the Bonds and as the term may be modified by an interpretation by the SEC of paragraph (b)(5) of the Rule.

"Bonds" means the \$_____ Florida Municipal Loan Council Revenue Refunding and Improvement Revenue Bonds, Series 2016.

"Continuing Disclosure Agreement" means this Continuing Disclosure Agreement, as the same may be supplemented and amended pursuant to Section 8 hereof.

"Continuing Disclosure Certificate" means a Continuing Disclosure Certificate in the form attached hereto as Exhibit B delivered by the Borrower to the Dissemination Agent pursuant to Section 5 hereof.

"Dissemination Agent" means Florida League of Cities, Inc., acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent which is appointed pursuant to Section 3 hereof or to which the responsibilities of Dissemination Agent under this Continuing Disclosure Agreement shall have been assigned in accordance with Section 9 hereof.

"EMMA" means the Electronic Municipal Market Access System as described in Securities and Exchange Commission Release No. 34-59062 and maintained by the Municipal Securities Rulemaking Board for purposes of the Rule as further described in Sections 4 and 6 hereof.

"Event Notice" means notice of the occurrence of a Listed Event.

"Final Official Statement" means the Final Official Statement prepared in connection with the Offering of the Bonds.

"Financial Information" means financial information related to the Borrower of the types identified in the Continuing Disclosure Certificate most recently delivered by the Borrower to the Dissemination Agent in accordance with Section 5 hereof. The Financial Information (i) shall be prepared for the Fiscal Year immediately preceding the date of the Annual Report containing such Financial Information, and (ii) shall be prepared on the basis of the Audited Financial Statements to be provided to the Dissemination Agent concurrently with the Annual Report, provided that, if the Audited Financial Statements are to be provided to the Dissemination Agent subsequent to the date that the Annual Report is provided to the Dissemination Agent, such Financial Information may be prepared on the basis of the Unaudited Financial Statements.

"Governing Body" shall mean the governing body of the Borrower which shall approve the Audited Financial Statements.

"Indenture" means the Trust Indenture dated of even date herewith by and between Florida Municipal Loan Council, as Issuer, and The Bank of New York Mellon Trust Company, N.A., as Trustee.

"Insurer" means National Public Finance Guaranty Corporation, its successors and assigns.

"Loan Agreement" means the Loan Agreement dated of even date herewith, between the Issuer and the Borrower.

"Listed Events" means any of the events which are set forth in Section 6 hereof.

"MSRB" means the Municipal Securities Rulemaking Board.

"Offering" means the primary offering of the Bonds for sale by the Participating Underwriter.

"Operating Data" means operating data of the types identified in the Continuing Disclosure Certificate most recently delivered by the Borrower to the Dissemination Agent in accordance with Section 5 hereof. The Operating Data shall be prepared for the Fiscal Year immediately preceding the date of the Annual Report containing such Operating Data.

"Participating Underwriter" means Wells Fargo Bank, National Association.

"Rating Agencies" means _____ and Standard & Poor's Ratings Services.

"**Rule**" means Rule 15c2-12 adopted by the SEC under the Securities Exchange Act of 1934, as amended, as the Rule may be amended from time to time, or any successor provision thereto.

"**SEC**" means the Securities and Exchange Commission.

"**Trustee**" means The Bank of New York Mellon Trust Company, N.A., as trustee under the Indenture.

"**Unaudited Financial Statements**" means unaudited financial statements of the Borrower for any Fiscal Year which have been prepared on a basis substantially consistent with the Audited Financial Statements to be subsequently prepared for such Fiscal Year.

SECTION 3. Appointment of Dissemination Agent: Obligations of Borrower Respecting Undertaking. (a) The Borrower hereby appoints Florida League of Cities, Inc. to act as the initial Dissemination Agent hereunder. Florida League of Cities, Inc. hereby accepts such appointment. The Borrower may, from time to time, appoint a successor Dissemination Agent or discharge any then acting Dissemination Agent, with or without cause. If at any time there shall be no Dissemination Agent appointed and acting hereunder or the then appointed and acting Dissemination Agent shall fail to perform its obligations hereunder, the Borrower shall discharge such obligations until such time as the Borrower shall appoint a successor Dissemination Agent or the then appointed and acting Dissemination Agent shall resume the performance of such obligations.

(b) The Borrower hereby acknowledges that the Borrower is obligated to comply with this Continuing Disclosure Agreement and that the appointment of the Dissemination Agent as agent of the Borrower for the purposes herein provided does not relieve the Borrower of its obligations with respect to this Continuing Disclosure Agreement.

SECTION 4. Annual Financial Information. (a) The Financial Information shall be contained in the Annual Reports and, if provided separately in accordance with Section 5(b) hereof, the Audited Financial Statements which the Borrower is required to deliver to the Dissemination Agent for dissemination in accordance with this Section 4.

(b) The Dissemination Agent shall notify the Borrower of each Annual Report Date and of the Borrower's obligation hereunder not more than 60 and not less than 30 days prior to each Annual Report Date. The Borrower shall provide an Annual Report to the Dissemination Agent, together with an Annual Report Certificate, not later than each Annual Report Date, provided that, if the Annual Report does not include the Audited Financial Statements, the Borrower shall provide the Audited Financial Statements to the Dissemination Agent as soon as practicable after they shall have been approved by the Governing Body.

(c) The Dissemination Agent shall provide the Annual Report and, if received separately in accordance with Section 4(b) hereof, the Annual Financial Statements, to EMMA, the Trustee, the Issuer, the Rating Agencies and the Insurer within five (5) Business Days after receipt thereof from the Borrower.

(d) The Dissemination Agent shall provide the Issuer, the Borrower and the Trustee written confirmation that the Annual Report and, if received separately in accordance with Section 4(b) hereof, the Annual Financial Statements, were provided to EMMA in accordance with Section 4(c) hereof.

(e) If the Dissemination Agent shall not have filed the Annual Report by the Annual Report Date, the Dissemination Agent shall so notify the Borrower, EMMA, the Trustee and the Insurer within five (5) Business Days of the Annual Report Date.

SECTION 5. Continuing Disclosure Certificates. (a) The Borrower shall prepare a Continuing Disclosure Certificate in the form attached hereto as Exhibit B in connection with the Offering of the Bonds and shall deliver the same to the Dissemination Agent for dissemination to the Participating Underwriter, Issuer and Trustee.

(b) Prior to the deletion or substitution of any Financial Information and Operating Data in the Continuing Disclosure Certificate from the information listed in Exhibit B hereto, the Borrower will obtain an opinion of nationally recognized disclosure counsel (which may also act as outside counsel to the Borrower) addressed to the Issuer, the Participating Underwriter, the Trustee and the Dissemination Agent, to the effect that said deletion or substitution is permitted by the Rule and the Financial and Operating Data to be provided will comply with the Rule, as in effect on the date of the Offering of the Bonds and taking into account any amendment or interpretation of the Rule by the SEC or any adjudication of the Rule by a final decision of a court of competent jurisdiction which may have occurred subsequent to the execution and delivery of this Continuing Disclosure Agreement. The Dissemination Agent is entitled to rely on such opinion without further investigation.

(c) Notwithstanding Section 5(b) hereof, the Borrower shall not be required to comply with Section 5(b) hereof if such Section shall no longer be deemed to be required in order for this Continuing Disclosure Agreement to comply with the Rule as a result of the adoption, rendering or delivery of (i) an amendment or interpretation of the Rule by the SEC, (ii) an adjudication of the Rule by a final decision of a court of competent jurisdiction or (iii) an opinion of nationally recognized disclosure counsel (which may also act as outside counsel to the Borrower), in each case, to that effect.

(d) Any delivery of a Continuing Disclosure Certificate pursuant to Section 5(a) hereof shall not be deemed to be an amendment to this Continuing Disclosure Agreement and shall not be subject to the provisions of Section 8 hereof.

SECTION 6. Reporting of Listed Events. (a) Pursuant to the provisions of this Section 6, the Borrower shall direct the Dissemination Agent to provide, in the appropriate format required by law or applicable regulation, in a timely manner such that notice to EMMA can be provided not in excess of ten business days after the occurrence of the event, notice of the occurrence of any of the following events, with respect to the Loan and the Bonds:

- (i) principal and interest payment delinquencies;

- (ii) non-payment related defaults, if material;
- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) substitution of credit facility providers, or their failure to perform;
- (vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS form 5701-TEB) or other material notices or determinations with respect to the tax status of the Loan or Bonds, or other material events affecting the tax status of the Loan or Bonds;
- (vii) modifications to rights of holders of the Bonds, if material;
- (viii) Bond calls, if material, and tender offers;
- (ix) defeasances;
- (x) release, substitution, or sale of any property securing repayment of the Loan or Bonds, if material;
- (xi) rating changes;
- (xii) bankruptcy, insolvency, receivership or similar events of the Borrower (which is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Borrower in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Borrower, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Borrower).
- (xiii) the consummation of a merger, consolidation, or acquisition involving the Borrower or the sale of all or substantially all of the assets of the Borrower, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

- (xiv) the appointment of a successor or additional trustee or the change of name of the trustee, if material; and
- (xv) in a timely manner, notice of failure to provide annual Financial Information before the date(s) specified in Section 4 hereof.

(b) If the Borrower instructs the Dissemination Agent to provide an Event Notice pursuant to Section 6(a) hereof, the Dissemination Agent shall, within three (3) Business Days thereafter, file an Event of Notice with EMMA, the Trustee, the Rating Agencies, the Issuer and the Insurer. The Dissemination Agent shall provide the Borrower, the Issuer and the Trustee written confirmation that such Event Notice was provided to EMMA in accordance with this Section 6(b).

(c) Notwithstanding the foregoing, whenever the Borrower authorizes a change in either its Fiscal Year or the accounting principles by which its Audited Financial Statements are prepared, the Borrower shall provide the Dissemination Agent with written notice of such change and instruct the Dissemination Agent to file a copy of such notice with EMMA, the Issuer, the Insurer, the Rating Agencies and the Trustee, and the Dissemination Agent shall, within three (3) Business Days thereafter, file a copy of such notice with EMMA, the Issuer, the Insurer, the Rating Agencies and the Trustee. The Dissemination Agent shall provide the Borrower written confirmation that such notice was provided to EMMA in accordance with this Section 6(c).

SECTION 7. Additional Information. Nothing in this Continuing Disclosure Agreement shall be deemed to prevent (i) the Borrower from disseminating any information or notice of the occurrence of any event using the means of dissemination specified in this Continuing Disclosure Agreement or other means or (ii) the Borrower from including in an Annual Report any information which shall be in addition to the Financial Information, Operating Data and Audited or Unaudited Financial Statements required by Section 4 hereof to be included in such Annual Report, provided that this Continuing Disclosure Agreement shall not be deemed to require the Borrower to include or update any such additional information in any subsequently prepared Annual Report.

SECTION 8. Amendments: Waivers. This Continuing Disclosure Agreement may be amended, and any provision hereof may be waived, by the parties hereto if prior to the effective date of any such amendment or waiver, the Borrower delivers to the Dissemination Agent, the Issuer and the Trustee an opinion of nationally recognized disclosure counsel (which may also act as outside counsel to the Borrower), to the effect that the amendment is permitted under the Rule and that this Continuing Disclosure Agreement (taking into account such amendment or waiver) complies with the Rule, as in effect on the date of the Offering of Bonds or after the execution and delivery of this Continuing Disclosure Agreement, taking into account any amendment or interpretation of the Rule by the SEC or any adjudication of the Rule by a final decision of a court of competent jurisdiction which may have occurred subsequent to the execution and delivery of this Continuing Disclosure Agreement. The Dissemination Agent shall notify EMMA of any such amendment and shall provide EMMA with a copy of any such amendment.

SECTION 9. Assignment. The Borrower may not assign its obligations under this Continuing Disclosure Agreement. The Dissemination Agent may assign its rights and responsibilities hereunder to a third party with the consent of the Borrower, which shall not be unreasonably withheld.

SECTION 10. Compensation of the Dissemination Agent. As compensation to the Dissemination Agent for its services pursuant to this Continuing Disclosure Agreement, the Borrower agrees to pay all fees and all expenses of the Dissemination Agent including, without limitation, all reasonable expenses, charges, costs and other disbursements in the administration and performance of its duties hereunder, and shall to the extent permitted by law indemnify and save the Dissemination Agent and its officers, directors, attorneys, agents and employees harmless from and against any costs, expenses, damages or other liabilities (including attorneys fees) which it (or they) may incur in the exercise of its (or their) powers and duties hereunder, except with respect to its (or their) willful misconduct or gross negligence. Nothing contained herein is intended to be nor shall it be construed as a waiver of any immunity from or limitation of liability that the Borrower may be entitled to pursuant to the Doctrine of Sovereign Immunity or Section 768.28, Florida Statutes. Notwithstanding anything to the contrary contained herein, the obligations of the Borrower hereunder shall be limited obligations payable solely from the sources provided under Section 2.02(a) of the Loan Agreement.

SECTION 11. Concerning the Dissemination Agent and the Borrower. (a) The Dissemination Agent is not answerable for the exercise of any discretion or power under this Continuing Disclosure Agreement or for anything whatever in connection herewith, except only its own willful misconduct or gross negligence. The Dissemination Agent shall have no liability to the Bondholders or any other person with respect to the undertakings described in Section 1 hereof except as expressly set forth in this Continuing Disclosure Agreement regarding its own willful misconduct or gross negligence.

(b) The Dissemination Agent has no responsibility or liability hereunder for determining compliance for any information submitted hereunder with any law, rule or regulation or the terms of this agreement. The Dissemination Agent shall have no responsibility for disseminating information not delivered to it or giving notice of non-delivery except as specifically required hereunder.

(c) The parties to this Continuing Disclosure Agreement acknowledge and agree that the Borrower assumes no obligations hereunder other than those specifically assumed by the Borrower herein.

SECTION 12. Termination of this Continuing Disclosure Agreement. This Continuing Disclosure Agreement shall terminate at such time as the Loan Agreement terminates.

SECTION 13. Beneficiaries. This Continuing Disclosure Agreement shall inure solely to the benefit of the Borrower, the Dissemination Agent, the Trustee, the Issuer, [the Insurer,] the Participating Underwriter and the Bondholders. This Continuing Disclosure Agreement shall not be deemed to inure to the benefit of or grant any rights to any party other than the parties specified in the preceding sentence.

SECTION 14. Counterparts. This Continuing Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

SECTION 15. Governing Law. This Continuing Disclosure Agreement shall be governed by the laws of the State of Florida.

IN WITNESS WHEREOF, the Borrower and the Dissemination Agent have caused this Continuing Disclosure Agreement to be executed and delivered as of the date first written above.

_____, as Borrower

By: _____

Its: _____

FLORIDA LEAGUE OF CITIES, INC.,
as Dissemination Agent

By: _____

Its: _____

EXHIBIT A

Form of Annual Report Certificate

The undersigned duly appointed and acting _____ of _____ a Florida municipal corporation, as Borrower under the Continuing Disclosure Agreement (hereinafter described) (the "Borrower"), hereby certifies on behalf of the Borrower pursuant to the Continuing Disclosure Agreement dated as of September 1, 2016 (the "Continuing Disclosure Agreement") executed and delivered by the Borrower and accepted by Florida League of Cities, Inc., as Dissemination Agent (the "Dissemination Agent"), as follows:

1. Definitions. Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Continuing Disclosure Agreement.

2. Annual Report. Accompanying this Annual Report Certificate is the Annual Report for the Fiscal Year ended _____.

3. Compliance with Continuing Disclosure Agreement. The Annual Report is being delivered to the Dissemination Agent herewith not later than 270 days after the end of the Fiscal Year to which the Annual Report relates. The Annual Report contains, or includes by reference, Financial Information and Operating Data of the types identified in the Continuing Disclosure Certificate most recently delivered to the Dissemination Agent pursuant to Section 5 of the Continuing Disclosure Agreement. To the extent any such Financial Information or Operating Data is included in the Annual Report by reference, any document so referred to has been previously provided to EMMA or filed with the SEC.

Such Financial Information and Operating Data have been prepared on the basis of the [Audited/Unaudited] Financial Statements. [Such Audited Financial Statements are included as part of the Annual Report.] [Because the Audited Financial Statements have not been approved by the Governing Body as of the date hereof, the Unaudited Financial Statements have been included as part of the Annual Report. The Unaudited Financial Statements have been prepared on a basis substantially consistent with such Audited Financial Statements. The Borrower shall deliver such Audited Financial Statements to the Dissemination Agent as soon as practicable after they have been approved by the Governing Body.]

IN WITNESS WHEREOF, the undersigned has executed and delivered this Annual Report Certificate to the Dissemination Agent, which has received such certificate and the Annual Report, all as of the day of the ____ day of _____, ____.

_____, as Borrower

By: _____

Its: _____

Acknowledgment of Receipt:

Florida League of Cities, Inc.
as Dissemination Agent

By: _____

Its: _____

EXHIBIT B

Form of Section 5(a) Continuing Disclosure Certificate

Florida League of Cities, Inc.
301 Bronough Street
Tallahassee, Florida 33401

The undersigned duly authorized signatory of _____ (the "Borrower") hereby certifies on behalf of the Borrower pursuant to the Continuing Disclosure Agreement dated as of September 1, 2016 (the "Continuing Disclosure Agreement") executed and delivered by the Borrower and accepted by Florida League of Cities, Inc., as Dissemination Agent (the "Dissemination Agent"), as follows:

1. Definitions. Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Continuing Disclosure Agreement.

2. Purpose. The Borrower is delivering this Continuing Disclosure Certificate to the Dissemination Agent pursuant to Section 5(a) of the Continuing Disclosure Agreement.

3. Financial, Information and Operating Data Included in Final Official Statement. The following types of Financial Information and Operating Data were included in the Final Official Statement for the Bonds and are to be included in the Annual Report:

(a) Financial Information _____

(b) Operating Data _____

4. Annual Report. Until such time as the Borrower delivers a revised Continuing Disclosure Certificate and an opinion of disclosure counsel to the Dissemination Agent pursuant to Section 5 of the Continuing Disclosure Agreement, the Financial Information and Operating Data of the types identified in paragraph 3 of this certificate shall be included in the Annual Reports delivered by the Dissemination Agent pursuant to Section 4 of the Continuing Disclosure Agreement.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Continuing Disclosure Certificate to the Dissemination Agent, which has received the same, all as of the 1st day of _____, ____.

_____, as Borrower

By: _____

Its: _____

Acknowledgment of Receipt:

Florida League of Cities, Inc., as
Dissemination Agent

By: _____

Its: _____

EXHIBIT C

FORM OF BOND PURCHASE CONTRACT

BOND PURCHASE CONTRACT

_____, 2016

RE: \$_____ Florida Municipal Loan Council Refunding and Improvement
Revenue Bonds, Series 2016

Florida Municipal Loan Council
c/o Florida League of Cities, Inc.
Tallahassee, Florida

The Herein Defined Borrowers

Ladies and Gentlemen:

The undersigned, Wells Fargo Bank, National Association (the "Underwriter") hereby offers to purchase all of the Bonds (as hereinafter defined) from the Florida Municipal Loan Council, a separate legal entity of the State of Florida (the "Issuer"), subject to the acceptance of this offer by the Issuer, the **[City of Belle Isle, City of North Miami, City of Parkland, City of Port Richey, City of St. Augustine Beach, City of Valparaiso, Town of Bay Harbor Islands, Town of Eatonville, Town of Lake Park and the Town of Oakland]** (collectively, the "Borrowers") on or before 5:00 P.M. (Tallahassee, Florida time), on the date hereof, which offer, upon mutual acceptance by the Issuer and the Borrowers, will be binding upon all the parties hereto.

SECTION 1. Definitions: The following terms shall have the following meanings in this Purchase Contract unless another meaning is plainly intended, and capitalized terms not otherwise defined herein have the meanings ascribed to them in the Bond Indenture or the Loan Agreements, as may be applicable:

"Bond Counsel" means Bryant Miller Olive P.A., Miami, Florida.

"Bond Indenture" means the Trust Indenture dated as of _____ 1, 2016, between the Issuer and the Bond Trustee.

"Bond Insurer" means National Public Finance Guarantee Corporation.

"Bond Insurance Policy" means the municipal bond insurance policy issued by the Bond Insurer with respect to the Bonds.

"Bond Trustee" means The Bank of New York Mellon Trust Company, N.A.

"Bonds" means the \$_____ Florida Municipal Loan Council Refunding and Improvement Revenue Bonds, Series 2016.

"Borrowers" means collectively the [City of Belle Isle, City of North Miami, City of Parkland, City of Port Richey, City of St. Augustine Beach, City of Valparaiso, Town of Bay Harbor Islands, Town of Eatonville, Town of Lake Park and the Town of Oakland].

"Closing" refers to the transaction at which the Bonds are delivered by the Issuer to the Underwriter and paid for by the Underwriter pursuant to this Purchase Contract, as further described in Section 5 hereof.

"Closing Documents" means the documents described in Section 6 hereof, which are required to be delivered to the Underwriter at the Closing.

"Code" means the Internal Revenue Code of 1986, as amended, together with the regulations thereunder.

"Continuing Disclosure Agreement" means, as to the Issuer and each respective Borrower, the respective Continuing Disclosure Agreement, dated as of _____ 1, 2016, made by the Issuer and each Borrower, respectively, and the Bond Trustee.

"Disclosure Counsel" means Nabors, Giblin & Nickerson, P.A.

"Issuer" means the Florida Municipal Loan Council.

"Issuer's Counsel" means Kraig A. Conn, Esq.

"Letter" means the Blanket Letter of Representations between the Issuer and The Depository Trust Company, relating to the global book-entry system for ownership of beneficial interests in the Bonds.

"Loan Agreement" means, as to a Borrower, the Loan Agreement, dated as of _____ 1, 2016, between the Issuer and such Borrower.

"Loan Agreements" means the collective Loan Agreements, each dated as of _____ 1, 2016, between the Issuer and the Borrowers.

"Official Statement" means the Official Statement of the Issuer and the Borrowers with respect to the Bonds, substantially in the form of the Preliminary Official Statement, including the cover page, inside cover page and all appendices, exhibits and statements included therein or attached thereto, and all supplements thereto, with such changes as shall be necessary to conform to the terms of this Purchase Contract and shall be approved by the Underwriter, the Borrowers and the Issuer.

"Preliminary Official Statement" means the Preliminary Official Statement dated _____, 2016 of the Issuer with respect to the Bonds, including the cover page, inside cover page and all appendices, exhibits and statements included therein or attached thereto.

"Purchase Contract" means this Bond Purchase Contract among the Underwriter, the Issuer and the Borrowers.

"Reserve Fund Instrument" means the Debt Service Reserve Fund Surety Bond issued by National Public Finance Guarantee Corporation.

"State" means the State of Florida.

"Underwriter" means Wells Fargo Bank, National Association.

"Underwriter's Counsel" means Holland & Knight LLP.

SECTION 2. Purchase and Sale of the Bonds. Upon the terms and conditions contained herein and upon the basis of the representations herein set forth, the Underwriter will purchase and the Issuer will sell, all, but not less than all, of the Bonds at an aggregate purchase price of \$_____. The foregoing purchase price reflects \$_____ of net original issue premium/discount and \$_____ of underwriting discount with respect to the Bonds.

The Bonds will have such terms and conditions as described in the Preliminary Official Statement and in Schedule A hereto, and will be issued pursuant to the Bond Indenture. The Issuer will lend the proceeds of the Bonds to the Borrowers pursuant to the Loan Agreements. Pursuant to the Loan Agreements, the Borrowers will make payments in the amounts and at the times corresponding to the principal and interest payments required on the Bonds relating to that Borrower, and in the aggregate will make payments in the amounts and at the times corresponding to the principal and interest payments required on the Bonds.

The Underwriter agrees to make an initial bona fide public offering of the Bonds at the offering prices or yields set forth in Schedule A; provided, however, that the Underwriter reserves the right to: (i) offer and sell the Bonds to certain dealers and others at prices lower than such offering prices; and (ii) change such offering prices after the initial offering to such extent as the Underwriter shall deem necessary in connection with the marketing of the Bonds.

The primary role of the Underwriter, as underwriter, is to purchase the Bonds for resale to investors, in an arm's length commercial transaction between the Issuer and the Underwriter. The Underwriter, as underwriter, has financial and other interests that differ from those of the Issuer.

The Issuer and the Borrowers (i) ratify and approve the use by the Underwriter prior to the date hereof of the Preliminary Official Statement in connection with the offering of the Bonds, (ii) agree that the Official Statement and copies of the Loan Agreements and the Bond Indenture may be used by the Underwriter in the offering of the Bonds and (iii) agree that they will cooperate reasonably with the Underwriter if the Underwriter decides to qualify the Bonds under the securities act of any state except as limited by Sections 3(j) and 4(1) hereof. The Issuer and the Borrowers acknowledge that they have received a copy of the Preliminary Official Statement and have reviewed the same to their satisfaction, including the information therein under the section "Underwriting."

Delivered to the Issuer herewith by the Underwriter and attached hereto as Exhibit A is a disclosure statement of the Underwriter's pursuant to Section 218.385, Florida Statutes.

SECTION 3. Representations, Warranties and Covenants of the Issuer. The Issuer represents and warrants to and covenants with the Underwriter and the Borrowers that:

(a) The Issuer is a separate legal entity duly created and validly existing under Section 163.01, Florida Statutes.

(b) The Issuer is authorized under the laws of the State to: (i) issue the Bonds for the purposes for which they are to be issued as set forth in the Preliminary Official Statement; (ii) loan the proceeds of the Bonds to the Borrowers for the purposes set forth in the Preliminary Official Statement; (iii) enter into this Agreement, the Bond Indenture, the Continuing Disclosure Agreement and the Loan Agreements; (iv) pledge and assign to the Bond Trustee the payments to be made by the Borrowers pursuant to, and the Issuer's rights under, the Loan Agreements (other than as provided in the Bond Indenture) as security for the payment of the principal of, premium, if any, and interest on the Bonds; and (v) otherwise consummate the transactions contemplated by this Purchase Contract, the Bonds, the Bond Indenture, the Loan Agreements and the Preliminary Official Statement.

(c) The Resolutions of the Issuer adopted on _____ approving and authorizing the adoption, execution and delivery of this Purchase Contract, the Bond Indenture, the Loan Agreements, the Continuing Disclosure Agreement, the Letter, the Bonds and the Official Statement, were duly adopted at meetings of the Board of Directors of the Issuer which were duly called and held pursuant to law and at which quorums were present and acting throughout, and are in full force and effect.

(d) The Issuer has duly authorized (i) the execution and delivery of this Purchase Contract; (ii) the issuance and sale of the Bonds and the loan of the proceeds of the Bonds to the Borrowers upon the terms and for the purposes set forth herein; (iii) the approval, execution, delivery and/or receipt by the Issuer of the Bond Indenture, the Loan Agreements, the Bonds, the Continuing Disclosure Agreement, the Letter and this Purchase Contract and any and all such other agreements and documents which may be required to be approved, executed, delivered and/or received by the Issuer in order to carry out, give effect to, and consummate the transactions contemplated herein and therein.

(e) The Issuer will on or before the Closing execute and deliver the Bond Indenture, the Loan Agreements, the Letter, the Continuing Disclosure Agreement, the Official Statement, the Bonds, and any and all such other agreements and documents which may be required to be executed by the Issuer in order to carry out, give effect to, and consummate the transactions contemplated herein and therein.

(f) The Bonds, when issued, delivered and paid for as provided herein and in the Bond Indenture, will constitute valid and binding limited obligations of the Issuer enforceable in accordance with their terms and entitled to the benefits and security of the Bond Indenture (subject to any applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights generally and further subject to the availability of equitable remedies).

(g) Except as may be set forth in the Preliminary Official Statement, there is no action, suit, referendum, proceeding, inquiry or investigation at law or in equity or before or by any court, governmental agency, arbitrator, authority, public board or body pending or, to the knowledge of the Issuer, threatened against or affecting the Issuer wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated herein or in the Preliminary Official Statement, (ii) the issuance or sale of the Bonds, (iii) the validity or enforceability of the Bonds, the Bond Indenture, the Loan Agreements, the Continuing Disclosure Agreement, the Letter, this Purchase Contract or any agreement or instrument to which the Issuer is a party and which is used or contemplated for use in the consummation of the transactions contemplated herein or in the Preliminary Official Statement, or (iv) the exclusion from gross income for federal income tax purposes of the interest on the Bonds or the amounts to be received by the Issuer pursuant to the Loan Agreements.

(h) Neither the corporate existence, authority or powers of the Issuer nor the title of the officers of the Issuer to their respective offices are being contested or questioned by any proceeding or in any manner, and no authority or proceeding for the issuance of the Bonds granted or taken by the Issuer has been repealed, revoked or rescinded.

(i) The execution and delivery by the Issuer of the Official Statement, this Purchase Contract, the Bonds, the Bond Indenture, the Loan Agreements, the Continuing Disclosure Agreement, the Letter and the other documents contemplated herein or in the Preliminary Official Statement, and the compliance by the Issuer with their provisions do not and will not conflict with or constitute on the part of the Issuer a breach of or a default under any existing law, court or administrative regulation, decree, order, or to the knowledge of the Issuer, agreement, indenture, mortgage or lease by which the Issuer is or may be bound.

(j) The Issuer agrees to cooperate reasonably with the Underwriter and Underwriter's Counsel in any endeavor to qualify the Bonds for offering and sale under the securities or "blue sky" laws of such jurisdictions of the United States as the Underwriter may request; provided, however, that the Issuer shall not be required to qualify to transact business or file written consent to suit or to file written consent to service of process in any jurisdiction in connection with any such endeavor. The Issuer consents to the use by the Underwriter of the Preliminary Official Statement and the final Official Statement in obtaining such qualification. The Issuer shall not be obligated to pay any expenses or costs (including legal fees) incurred in connection with such qualification.

(k) The Issuer will take no action between the date hereof and the date of initial issuance of the Bonds which will cause any of the representations or warranties made in this Section 3 to be untrue as of the initial issuance of the Bonds.

(l) The Issuer will not take any action or, to the extent the Issuer has control over such action, permit any action to be taken, which might result in the loss of the exclusion from gross income for federal income tax purposes of interest on the Bonds.

(m) Except as may be described in the Preliminary Official Statement, the Issuer is not and has not since December 31, 1975 been in default in the payment of the principal of or interest on any obligation issued or guaranteed by it and the Issuer has no knowledge that any

event has occurred or is continuing that, with the lapse of time or the giving of notice or both, would constitute an event of default under any such obligation.

(n) Neither the Issuer nor anyone acting on its behalf has, directly or indirectly, offered the Bonds for sale to, or solicited any offer to buy the same from, anyone other than the Underwriter.

(o) The information contained in the Preliminary Official Statement (other than the information in the sections captioned, "The Borrowers," "Other Financial Information," and in Appendices **[F, G, H, I and _____]** and information related to DTC and its system of book-entry registration related to DTC and its system of book-entry registration and the Bond Insurer and its Bond Insurance Policy and Reserve Fund Instrument, as to which no representation is made) is true and correct in all material respects, does not contain any untrue statement of a material fact, and does not omit to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(p) The Issuer has previously delivered to the Underwriter for review copies of the Preliminary Official Statement. As of its date, the Preliminary Official Statement was deemed final by the Issuer except for the omission of such information permitted to be excluded by Section (b)(1) of Rule 15c2-12 under the Securities Exchange Act of 1934 ("Rule 15c2-12"). The Official Statement shall be provided for distribution, at the expense of the Issuer, in such quantity as may be requested by the Underwriter no later than the earlier of (i) seven (7) business days after the date of this Purchase Contract or (ii) one (1) business day prior to the date of the Closing, in order to permit the Underwriter to comply with Rule 15c2-12 of the Securities and Exchange Commission ("SEC"), and the applicable rules of the Municipal Securities Rulemaking Board (the "MSRB"), with respect to distribution of the Official Statement. The Issuer shall prepare the Official Statement, including any amendments thereto, in word-searchable PDF format as described in the MSRB's Rule G-32 and shall provide the electronic copy of the word-searchable PDF format of the Official Statement to the Underwriter no later than one (1) business day prior to the date of the Closing to enable the Underwriter(s) to comply with MSRB Rule G-32.

(q) If between the date of this Purchase Contract and the earlier of (i) ninety (90) days from the end of the "Underwriting Period" as defined in Rule 15c2-12 or (ii) the time when the Official Statement is available to any person from a nationally recognized municipal securities information repository (but in no event less than twenty-five (25) days following the end of the Underwriting Period), any event shall occur, of which the Issuer has actual knowledge, which might or would cause the Official Statement, as then supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Issuer shall notify the Underwriter thereof, and, if in the opinion of the Underwriter or the Issuer such event requires the preparation and publication of a supplement or amendment to the Official Statement, the Issuer will at the expense of the Borrowers supplement or amend the Official Statement.

(r) Except as otherwise set forth in the Preliminary Official Statement, the Issuer has in the past five years complied in all material respects with all prior continuing disclosure undertakings made by it pursuant to Rule 15c2-12.

SECTION 4. Representations, Warranties and Covenants of the Borrowers. Each Borrower severally and not jointly represents and warrants to and covenants with the Underwriter and the Issuer that:

(a) Such Borrower is duly organized and existing as a municipality under the laws of the State.

(b) Such Borrower has full right, power and authority to enter into and execute this Purchase Contract, the Loan Agreement and the Continuing Disclosure Agreement, to acknowledge, consent and approve to the issuance of the Bonds pursuant to the Bond Indenture and those portions of the Official Statement applicable to such Borrower and the Bonds, and to perform any acts required to be performed by it by such documents,

(c) Such Borrower has duly authorized all necessary action to be taken by it for: (i) the issuance and sale of the Bonds by the Issuer upon the terms and conditions set forth herein, in the Preliminary Official Statement and Official Statement and in the Bond Indenture; (ii) the approval of those portions of the Preliminary Official Statement applicable to such Borrower, the Bonds and the Bond Indenture; (iii) the execution and delivery of this Purchase Contract, the Continuing Disclosure Agreement and the Loan Agreement; and (iv) any and all such other agreements and documents as may be required to be executed, delivered or received by such Borrower in order to carry out, effectuate and consummate the transactions contemplated herein and therein.

(d) Such Borrower will at or before the Closing execute the Loan Agreement.

(e) The information with respect to such Borrower contained in the Preliminary Official Statement under the caption "The Borrowers" and in Appendices **[F, G, H, I and ____]** as applicable (the "Borrower Information"), is true and correct in all material respects, does not contain any untrue statement of a material fact, and does not omit to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

(f) The audited financial statements of such Borrower contained in the Preliminary Official Statement and to be contained in the final Official Statement, present fairly the financial position of such Borrower as of the dates indicated and the results of its operations for the periods specified; such financial reports and statements have been prepared in conformity with generally accepted accounting principles consistently applied in all material respects to the periods involved, except as may otherwise be stated in the notes thereto; and there has been no material adverse change in the condition, financial or otherwise, of such Borrower from that set forth in the audited financial statements, and such Borrower has not incurred any material liabilities since the date of such financial statements.

(g) The proceeds of the Bonds will not be used by such Borrower in any way that would adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

(h) The execution and delivery by such Borrower of this Purchase Contract, the Continuing Disclosure Agreement and the Loan Agreement and the other documents contemplated herein and in the Official Statement, the approval by such Borrower of the Bonds, those portions of the Official Statement applicable to such Borrower and acknowledgement and consent to the issuance of the Bonds pursuant to the Bond Indenture, the application by such Borrower of the proceeds from the sale of the Bonds, together with certain other moneys and securities, for the purposes set forth in the Official Statement, and the compliance by such Borrower with the provisions hereof and thereof, under the circumstances contemplated herein and therein, to the best knowledge of such Borrower, will not in any material respect conflict with or constitute on the part of such Borrower a breach of or default under either such Borrower's charter or under any ordinance, resolution, indenture, mortgage, deed of trust, loan agreement, contract or any agreement or other instrument of such Borrower to which such Borrower is a party, or of any existing law, administrative regulation, court order or consent decree to which such Borrower or such Borrower's property is subject.

(i) Except as may be described in the Preliminary Official Statement, to the best knowledge of such Borrower, there is no action, suit, referendum, proceeding, inquiry or investigation at law or in equity or before or by any court, governmental agency, arbitrator, authority, public board or body pending or threatened against or affecting such Borrower wherein an unfavorable decision, ruling or finding would materially and adversely affect (i) the transactions contemplated herein or in the Preliminary Official Statement, (ii) the issuance or sale of the Bonds, (iii) the existence of such Borrower or the entitlement of its respective officers to their respective offices, (iv) the collection of revenues by such Borrower from which such Borrower is obligated to make payments under the Loan Agreement, (v) the financial condition of such Borrower, (vi) the federal tax-exempt status of the interest on the Bonds, (vii) the validity or enforceability of the Loan Agreement, the Continuing Disclosure Agreement, the Bond Indenture, the Bonds, or this Purchase Contract, (viii) the power of such Borrower to execute, deliver or approve such documents, (ix) the business, properties, assets or financial condition of such Borrower or (x) the ability of such Borrower to comply with its obligations under the Loan Agreement, the Continuing Disclosure Agreement, this Purchase Contract or the transactions contemplated by the Official Statement.

(j) To the best knowledge of such Borrower, it is not now in default or with the giving of notice or passage of time would constitute a default, and as of the date of Closing will not be, in default with respect to any agreement to which such Borrower is a party and which could have a material financial impact on such Borrower or which could materially and adversely affect the ability of such Borrower to consummate the transactions contemplated by the Preliminary Official Statement.

(k) All the property financed or refinanced, whether directly or indirectly, by such Borrower with the proceeds of the Bonds is and will be owned by such Borrower.

(l) Such Borrower agrees to cooperate reasonably with the Underwriter and its counsel in any endeavor to qualify the Bonds for offering and sale under the securities or "blue sky" laws of such jurisdictions of the United States as the Underwriter may request, provided that such Borrower shall not be required to qualify to do business in any jurisdiction where it is not now so qualified, or to take any action which would subject it to general service of process in any jurisdiction where it is not now so subject. Such Borrower ratifies and consents to the use of the Preliminary Official Statement, the Official Statement and drafts thereof prior to the availability of the Official Statement by the Underwriter in obtaining such qualification.

(m) No default, event of default or event which, with the giving of notice or the passage of time, or both, would constitute a default or an event of default under the Bond Indenture, the Loan Agreement or under any document executed by such Borrower relating to the Bonds, has occurred and is continuing.

(n) Such Borrower has not taken or omitted to take any action, and knows of no action that any other person has taken or omitted to take, which would cause the interest on the Bonds to be includible in the gross income of the recipients thereof for federal income tax purposes, and covenants that it will not take any action or omit to take any action which could have such result.

(o) Such Borrower has not since December 31, 1975, been in default as to the payment of principal or interest on any obligation issued or guaranteed by it or on its behalf.

(p) Except as otherwise set forth in the Preliminary Official Statement, such Borrower has in the past five years complied in all material respects with all prior undertakings made by it pursuant to Rule 15c2-12.

SECTION 5. Closing, Delivery and Payment. The Closing shall be held on _____, 2016 at the offices of Bryant Miller Olive P.A. in Tallahassee, Florida or at such other time and other place as is agreed upon by the Underwriter and the Issuer. The Bonds will be closed pursuant to The Depository Trust Company's "FAST" system and shall be delivered to the Closing in New York, New York designated by the Underwriter, in typewritten fully registered form, bearing CUSIP numbers and with one certificate for each maturity of the Bonds in the entire principal amount of such maturity registered in the name of Cede & Co.

Subject to the terms and conditions hereof, the Underwriter will on the Closing date accept the delivery of the Bonds and pay the purchase price thereof in immediately available funds to the order of the Issuer. The Underwriter has entered into this Purchase Contract in reliance upon the representations and warranties of the Issuer and the Borrowers contained herein, and in reliance upon the representations and warranties to be contained in the Closing Documents, and upon the performance by the Issuer and the Borrowers of their respective obligations hereunder, both as of the date hereof and as of the date of the Closing. Accordingly, the Underwriter's obligation under this Purchase Contract to purchase, to accept delivery of and to pay for the Bonds is conditioned upon the performance by the Issuer and the Borrowers of their respective obligations to be performed hereunder and under such documents and instruments at or prior to the date of the Closing, and is also subject to the following additional conditions: (a) all representations of the Issuer and the Borrowers contained herein shall be true,

complete and correct on the date hereof and on and as of the date of the Closing; and (b) at or prior to the Closing, the Underwriter shall have received all of the Closing Documents.

If the Issuer or the Borrowers shall be unable to satisfy the conditions to the obligation of the Underwriter to purchase, to accept delivery of and to pay for the Bonds contained in this Purchase Contract, or if the obligation of the Underwriter to purchase, to accept delivery of and to pay for the Bonds shall be terminated for any reason permitted by this Purchase Contract, this Purchase Contract shall terminate and none of the Underwriter, the Issuer or the Borrowers shall be under any further obligation hereunder except that the respective obligations of the parties set forth in Section 10 hereof shall continue in full force and effect.

SECTION 6. Closing Documents. The Closing Documents shall consist of the following documents, each properly executed, certified or otherwise verified, dated, and in such form as shall be satisfactory to Bond Counsel, the Borrowers, the Issuer, the Issuer's Counsel, Disclosure Counsel, the Underwriter and Underwriter's Counsel:

- (a) the Bond Indenture;
- (b) the Loan Agreements;
- (c) the Preliminary Official Statement;
- (d) the Official Statement;
- (e) the Letter;
- (f) the Continuing Disclosure Agreements;
- (g) the Resolutions of the Issuer referred to in Section 3(c) hereof;
- (h) the Issuer's closing certificate confirming the accuracy as of the Closing of the representations made by the Issuer herein, and certifying that the information contained in the Official Statement (other than the information in the sections captioned "The Borrowers" and "Other Financial Information" and in Appendices **[F, G, H, I and ____]** and information related to DTC and its system of book-entry registration related to DTC and its system of book-entry registration and the Bond Insurer and its Bond Insurance Policy and Reserve Fund Instrument as to which no representation is made) as of its date and as of the date of the Closing was and is true and correct in all material respects, and did not as of the date of the Official Statement contain and does not as of the date of the Closing contain any untrue statement of a material fact and did not as of the date of the Official Statement and does not as of the date of Closing omit to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading;
- (i) the closing certificate of each Borrower confirming the accuracy as of the Closing of the representations made by it herein (except references to the Preliminary Official Statement shall be to the final Official Statement, and certifying that the Borrower Information contained in the Official Statement as of its date and as of the date of the Closing was and is true and correct in all material respects, and did not as of its date contain and does not as of the date of the

Closing contain any untrue statement of a material fact and did not as of its date and does not as of the date of Closing omit to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(j) the approving opinion of Bond Counsel substantially in the form included as **[Appendix ___]** to the Preliminary Official Statement for the Bonds;

(k) a supplemental opinion of Bond Counsel; addressed to the Issuer and the Underwriter, substantially to the effect that:

(i) The statements contained in the Official Statement under the headings **["DESCRIPTION OF THE SERIES 2016 BONDS" (except for the information regarding the DTC and information contained under the heading "Book-Entry Only System" therein), and "SECURITY FOR THE BONDS"]** insofar as such statements purport to summarize certain provisions of the Resolution and the Bonds are accurate summaries of the provisions purported to be summarized therein and the information contained in the Official Statement under the heading "TAX MATTERS" is accurate; and

(ii) The Bonds are exempt from registration under the Securities Act of 1933, as amended (the "1933 Act"), and the Bond Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act");

(l) **[A defeasance opinion of Bond Counsel related to the defeasance of the [Refunded Bonds (as defined in the Official Statement)], dated the date of the Closing and in a form acceptable to the Underwriter;]**

(m) an opinion of legal counsel for each Borrower in substantially the form attached as Exhibit C to the Loan Agreements;

(n) an opinion of counsel to the Bond Trustee;

(o) an opinion of the Issuer's Counsel in substantially the form attached hereto as Exhibit B;

(p) An opinion of Disclosure Counsel, dated the date of the Closing and addressed to the Issuer and the Underwriter, to the effect that based upon their participation in the preparation of the Official Statement as Disclosure Counsel and their participation at conferences at which the Official Statement was discussed, but without having undertaken to determine independently the accuracy, completeness or fairness of the statements contained in the Official Statement, such counsel has no reason to believe that the Official Statement contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading (except for any financial, forecast, technical and statistical statements and data included in the Official Statement and the information regarding DTC and its book-entry system, the Bond Insurer or the Bond Insurance Policy or Reserve Fund Instrument, in each case as to which no view need be expressed);

(q) evidence satisfactory to Bond Counsel and Underwriter's counsel that each Borrower is a Florida municipality;

(r) appropriate certifications by the Issuer and each Borrower in form and substance satisfactory to Bond Counsel, to enable it to opine that the interest on the Bonds is excluded from gross income for federal income tax purposes;

(s) copies of any and all documents required by the provisions of the Loan Agreements and the Bond Indenture to be obtained or furnished by the Borrower and/or the Issuer at or prior to the Closing including, but not limited to, the certificates, written statements, certified resolutions, executed documents, opinions, requests and authorizations described in the Bond Indenture;

(t) the Bond Insurance Policy;

(u) the Reserve Fund Instrument;

(v) the Bond Trustee's closing certificate, including certificate of fiduciary powers and good standing and certified resolution with respect to authority to authenticate the Bonds and serve as trustee under the Bond Indenture, together with an appropriate certificate of incumbency;

(w) IRS Form 8038G with respect to the Bonds executed by the Issuer;

(x) evidence that the Bonds have been rated not lower than the ratings set forth in Schedule A hereto and that such ratings are in effect at the date of Closing and are not then being reviewed;

(y) specimen Bonds;

(z) evidence as may be required by Bond Counsel or Underwriter's Counsel as to the compliance with the conditions of the Bond Indenture and Loan Agreements for the issuance of the Bonds thereunder;

(aa) An opinion of general counsel to the Bond Insurer and a certificate of an officer of the Bond Insurer dated the date of Closing, and addressed to the Underwriter and the Issuer, concerning the Bond Insurer, the Reserve Fund Instrument and the Bond Insurance Policy and the information relating to the Bond Insurer and the Bond Insurance Policy contained the Official Statement, in form and substance satisfactory to the Issuer and the Underwriter; and

(bb) such additional legal opinions, certificates, instruments and other documents as the Underwriter, the Borrowers, the Issuer, Underwriter's Counsel, Issuer's Counsel or Bond Counsel may reasonably request to evidence compliance by the Issuer and the Borrowers with legal requirements; the truth and accuracy in all material respects, as of the date of Closing, of the respective representations, warranties and covenants contained herein and in the Official Statement; and the due performance or satisfaction by them of all material agreements to be performed by them and all material conditions to be satisfied by them at or prior to the Closing.

SECTION 7. Termination by the Underwriter. This Purchase Contract may be terminated in writing by the Underwriter if any of the following shall occur: (i) this Purchase Contract shall not have been accepted by the Issuer or shall not have been approved by the Borrowers within the time herein provided; (ii) the signed Official Statement shall not have been provided within the time required by this Purchase Contract; (iii) the Bonds and all of the Closing Documents shall not have been delivered to the Underwriter in a timely manner on the date of Closing; (iv) legislation shall be enacted, or actively considered for enactment, or a court decision announced, or a ruling, regulation or decision by or on behalf of a governmental agency having jurisdiction of the subject matter shall be made, to the effect that indebtedness of the Issuer or similar indebtedness of any similar body, or interest on obligations of the general character of the Bonds, shall not be excludable from gross income for federal income taxes purposes, or that securities of the general character of the Bonds shall not be exempt from registration under the Securities Act of 1933, as amended, or that the Bond Indenture shall not be exempt from qualification under the Trust Indenture Act of 1939, as amended; (v) there shall exist any event or circumstance which, in the reasonable opinion of the Underwriter, either makes untrue or incorrect in a material respect any statement or information contained in the Official Statement, or is not reflected in the Official Statement but should be reflected therein in order to make the statements and information contained therein not misleading in a material adverse respect; (vi) there shall have occurred any outbreak or escalation of hostilities or other national or international calamity or crisis, the effect of such outbreak, escalation, calamity or crisis on the financial markets of the United States of America being such as, in the reasonable opinion of the Underwriter, would make it impracticable for the Underwriter to sell the Bonds; (vii) there shall be in force a general suspension of trading on the New York Stock Exchange, or minimum or maximum prices for trading shall have been fixed and be in force, or a stop order ruling or regulation by the Securities and Exchange Commission shall be issued or made, the effect of which would be that the issuance, offering or sale of the Bonds would be in violation of any provision of the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the Trust Indenture Act of 1939, as amended, or the Investment Company Act of 1940, as amended; (viii) in the reasonable judgment of the Underwriter the market price of the Bonds, or the market price generally of obligations of the general character of the Bonds, might be materially and adversely affected because: (a) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities generally by any governmental authority or by any national securities exchange, or (b) the New York Stock Exchange or other national securities exchange, or any governmental authority shall have imposed, as to the Bonds or similar obligations, any material restrictions not now in force, or increased materially those now in force, with respect to the extension of credit by, or the charge to the net capital requirements of, the Underwriter; (ix) a general banking moratorium shall have been declared by either federal, New York or Florida authorities; (x) a war involving the United States of America shall have been declared, or any conflict involving the armed forces of any country shall have escalated, or any other national emergency relating to the effective operation of government or the financial community shall have occurred, which, in the reasonable opinion of the Underwriter, materially adversely affects the market price of the Bonds; (xi) any litigation shall be instituted, pending or threatened to restrain or enjoin the issuance or sale of the Bonds or in any way protesting or affecting any authority for or the validity of the Bonds, the Bond Indenture or the Loan Agreements or the existence or powers of the Issuer or the Borrowers; or (xii) there is a withdrawal or downgrading of any investment rating on the Bonds.

SECTION 8. Termination by the Issuer. This Purchase Contract may be terminated in writing by the Issuer in the event that the Underwriter shall fail to accept delivery of the Bonds on the Closing date upon tender thereof to the Underwriter by the Issuer and delivery to the Underwriter of all of the Closing Documents.

SECTION 9. Changes Affecting the Official Statement after the Closing. If any event relating to or affecting the Issuer or the Borrowers shall occur, the result of which would make it necessary, in the opinion of the Issuer, or the Underwriter or Underwriter's Counsel, to amend or supplement the Official Statement in order to make it not misleading in the light of the circumstances existing at that time, Issuer shall forthwith prepare and furnish to the Underwriter at the Issuer's expense, a reasonable number of copies of an amendment of or supplement to the Official Statement in form and substance satisfactory to the Issuer, so that the Official Statement then will not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances existing at that time, not misleading.

SECTION 10. Expenses. (a) The Underwriter shall be under no obligation to pay, and the Issuer shall pay any expenses incident to the performance of the Issuer's obligations hereunder, including, but not limited to (i) the cost of preparation and printing of the Bonds, (ii) the fees and disbursements of Bond Counsel, Disclosure Counsel, and counsel to the Issuer, if any; (iii) the fees and disbursements of the financial advisor to the Issuer; (iv) the fees and disbursements of any other engineers, accountants, and other experts, consultants or advisers retained by the Issuer; (v) the fees for bond ratings and the premiums charged by the provider of the Bond Insurance Policy and the Reserve Fund Instrument; and (vi) the costs of preparing, printing and delivering the Preliminary Official Statement, the Official Statement and any supplements or amendments to either of them. The Issuer shall pay for any expenses (included in the expense component of the Underwriter's discount) incurred by the Underwriter on behalf of the Issuer in connection with the marketing, issuance and delivery of the Bonds including, but not limited to, meals, transportation, lodging, and entertainment of the Issuer's employees and representatives.

(b) The Underwriter shall pay (i) the cost of preparation and printing of this Purchase Contract and the Blue Sky Memorandum; (ii) all advertising expenses in connection with the public offering of the Bonds; and (iii) all other expenses incurred by them in connection with the public offering of the Bonds, including the fees and disbursements of counsel retained by the Underwriter.

SECTION 11. No Advisory or Fiduciary Role. The Issuer acknowledges and agrees that: (i) the transactions contemplated by this Purchase Contract are arm's length, commercial transactions between the Issuer and the Underwriter in which the Underwriter is acting solely as a principal and is not acting as a municipal advisor, financial advisor or fiduciary to the Issuer; (ii) the Underwriter has not assumed any advisory or fiduciary responsibility to the Issuer with respect to the transactions contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter or its affiliates have provided other services or is currently providing other services to the Issuer on other matters); (iii) the only obligations the Underwriter has to the Issuer with respect to the transaction contemplated hereby expressly are set forth in this Purchase Contract; and (iv) the Issuer has consulted its own

financial and/or municipal, legal, accounting, tax, and other advisors, as applicable, to the extent it deems appropriate. If the Issuer would like a municipal advisor in this transaction that has legal fiduciary duties to the Issuer, then the Issuer is free to engage a municipal advisor to serve in that capacity. The Issuer has engaged Public Resources Advisory Group as financial advisor to the Issuer in connection with the issuance of the Bonds.

SECTION 12. Waiver. Notwithstanding any provision herein to the contrary, the performance of any and all obligations of the Underwriter hereunder and the performance of any and all conditions contained herein for the benefit of the Underwriter may be waived by the Underwriter, in their sole discretion, and the approval of the Underwriter when required hereunder or the determination of their satisfaction as to any document referred to herein shall be in writing, signed by an authorized signatory of the Underwriter.

SECTION 13. Notices. Any notice or other communication to be given to the Issuer or the Borrowers under this Purchase Contract may be given by delivering the same in writing to their respective addresses set forth above or on the applicable signature page, as the case may be; and any such notice or other communication to be given to the Underwriter may be given by delivering the same in writing to the Underwriter at Wells Fargo Securities, 2363 Gulf-to-Bay Boulevard, Suite 200, Clearwater, Florida 33765.

SECTION 14. Parties in Interest; Borrowers's Undertakings; Survival of Representations. This Purchase Contract is made solely for the benefit of the Issuer, the Borrowers and the Underwriter, including the successors and assigns of the Underwriter and no other person, partnership, association or corporation shall acquire or have any rights hereunder or by virtue hereof. All representations and agreements by the Issuer, the Underwriter and the Borrowers contained in this Purchase Contract shall remain in full force and effect regardless of any investigation made by or on behalf of the Underwriter and shall survive the delivery of and payment for the Bonds.

SECTION 15. Severability. If any provision of this Purchase Contract shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any constitution, statute, rule of public policy, or any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Purchase Contract invalid, inoperative or unenforceable to any extent whatever.

SECTION 16. Business Day. For purposes of this Purchase Contract, "business day" means any day on which the New York Stock Exchange is open for trading.

SECTION 17. Section Headings. Section headings have been inserted in this Purchase Contract as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Purchase Contract and will not be used in the interpretation of any provisions of this Purchase Contract.

SECTION 18. Counterparts. This Purchase Contract may be executed in several counterparts each of which shall be regarded as an original (with the same effect as if the signatures thereto and hereto were upon the same document) and all of which shall constitute one and the same document.

SECTION 19. Governing Law. This Purchase Contract is to be governed by and construed according to the laws of the State of Florida.

SECTION 20. Entire Agreement; Miscellaneous. This Purchase Contract constitutes the entire agreement between the parties hereto with respect to the matters covered hereby, and supersedes all prior agreements and understandings between the parties. This Purchase Contract may not be amended, supplemented or modified without the written consent of the Issuer and the Underwriter.

If you agree with the foregoing, please sign the enclosed counterparts of this Purchase Contract and return it to the Underwriter. This Purchase Contract shall become a binding agreement between you and the Underwriter when all counterparts of this letter shall have been signed by or on behalf of each of the parties hereto.

[The signatures to this document are contained on pages S-1 through **[S-12]**, attached]

Signature Page to Bond Purchase Contract dated _____, 2016

Re: Florida Municipal Loan Council Refunding and Improvement Revenue Bonds,
Series 2016

**WELLS FARGO BANK, NATIONAL
ASSOCIATION**

By: _____

Its: Managing Director

Signature Page to Bond Purchase Contract dated _____, 2016

Re: Florida Municipal Loan Council Refunding and Improvement Revenue Bonds,
Series 2016

FLORIDA MUNICIPAL LOAN COUNCIL

By: _____
Its: Chairman

Signature Page to Bond Purchase Contract dated _____, 2016

Re: Florida Municipal Loan Council Refunding and Improvement Revenue Bonds,
Series 2016

CITY OF BELLE ISLE, FLORIDA

By: _____
Its: Mayor

By: _____
Its: _____

Address: _____

Signature Page to Bond Purchase Contract dated _____, 2016

Re: Florida Municipal Loan Council Refunding and Improvement Revenue Bonds,
Series 2016

CITY OF NORTH MIAMI, FLORIDA

By: _____
Its: Mayor

By: _____
Its: _____

Address: _____

Signature Page to Bond Purchase Contract dated _____, 2016

Re: Florida Municipal Loan Council Refunding and Improvement Revenue Bonds,
Series 2016

CITY OF PARKLAND, FLORIDA

By: _____
Its: Mayor

By: _____
Its: _____

Address: _____

Signature Page to Bond Purchase Contract dated _____, 2016

Re: Florida Municipal Loan Council Refunding and Improvement Revenue Bonds,
Series 2016

CITY OF PORT RICHEY, FLORIDA

By: _____
Its: Mayor

By: _____
Its: _____

Address: _____

Signature Page to Bond Purchase Contract dated _____, 2016

Re: Florida Municipal Loan Council Refunding and Improvement Revenue Bonds,
Series 2016

CITY OF ST. AUGUSTINE BEACH, FLORIDA

By: _____
Its: Mayor

By: _____
Its: _____

Address: _____

Signature Page to Bond Purchase Contract dated _____, 2016

Re: Florida Municipal Loan Council Refunding and Improvement Revenue Bonds,
Series 2016

CITY OF VALPARAISO, FLORIDA

By: _____
Its: Mayor

By: _____
Its: _____

Address: _____

Signature Page to Bond Purchase Contract dated _____, 2016

Re: Florida Municipal Loan Council Refunding and Improvement Revenue Bonds,
Series 2016

**TOWN OF BAY HARBOR ISLANDS,
FLORIDA**

By: _____

Its: Mayor

By: _____

Its: _____

Address: _____

Signature Page to Bond Purchase Contract dated _____, 2016

Re: Florida Municipal Loan Council Refunding and Improvement Revenue Bonds,
Series 2016

TOWN OF EATONVILLE, FLORIDA

By: _____
Its: Mayor

By: _____
Its: _____

Address: _____

Signature Page to Bond Purchase Contract dated _____, 2016

Re: Florida Municipal Loan Council Refunding and Improvement Revenue Bonds,
Series 2016

TOWN OF LAKE PARK, FLORIDA

By: _____

Its: Mayor

By: _____

Its: _____

Address: _____

Signature Page to Bond Purchase Contract dated _____, 2016

Re: Florida Municipal Loan Council Refunding and Improvement Revenue Bonds,
Series 2016

TOWN OF OAKLAND, FLORIDA

By: _____
Its: Mayor

By: _____
Its: _____

Address: _____

SCHEDULE A

Terms of the Bonds

Dated: _____, 2016

Interest Payment Dates: April 1 and October 1, commencing _____, 2016

Series 2016 Bonds

Maturity Date
(October 1)

Amount

Interest Rate

Optional Redemption. [TO COME]

Scheduled Mandatory Redemption. [TO COME]

Extraordinary Mandatory Redemption. [TO COME]

Ratings.

Standard and Poor's Ratings Services, a division of The McGraw-Hill Companies and Fitch, Inc. have assigned ratings to the Bonds as follows:

S&P

Fitch

EXHIBIT A

DISCLOSURE STATEMENT

_____, 2016

Florida Municipal Loan Council
c/o Florida League of Cities, Inc.
Tallahassee, Florida

Re: \$_____ Florida Municipal Loan Council Refunding and Improvement
Revenue Bonds, Series 2016 (the "Series 2016 Bonds")

Ladies and Gentlemen:

In connection with the issuance by the Florida Municipal Loan Council, a separate legal entity of the State of Florida (the "Issuer"), of \$_____ original aggregate principal amount of Series 2016 Bonds, Wells Fargo Bank, National Association (the "Underwriter") is underwriting a public offering of the Series 2016 Bonds. Arrangements for underwriting the Series 2016 Bonds will include a Bond Purchase Contract (the "Purchase Contract") between the Issuer and the Underwriter, which will embody the negotiations in respect thereof.

The purpose of this letter is to furnish, pursuant to the provisions of Section 218.385(6), Florida Statutes, certain information with respect to the arrangements contemplated for the underwriting of the Series 2016 Bonds, as follows:

The nature and estimated amounts of expenses to be incurred by the Underwriter in connection with the purchase and offering of the Series 2016 Bonds, are set forth in Schedule 1 attached hereto.

That no person has entered into an understanding with the Underwriter, or to the knowledge of the Underwriter, with the Issuer for any paid or promised compensation or valuable consideration, directly or indirectly, expressly or implied, to act solely as an intermediary between the Issuer and the Underwriter or to exercise or attempt to exercise any influence to effect any transaction in the purchase of the Series 2016 Bonds.

The underwriting spread, the difference between the price at which the Series 2016 Bonds will be initially offered to the public by the Underwriter and the price to be paid to the Issuer for each of the Series 2016 Bonds, will be:

	\$1,000	Amount
Average Takedown	_____	_____
Expenses	_____	_____
Total Discount	_____	_____

No other fee, bonus or other compensation is estimated to be paid by the Underwriter in connection with the issuance of the Series 2016 Bonds to any person not regularly employed or retained by the Underwriter (including any "finder" as defined in Section 218.386(1)(a), Florida

Statutes), except as specifically enumerated as expenses to be incurred by the Underwriter, as set forth in Schedule I attached hereto.

Truth-In-Bonding Statement – The Issuer is proposing to issue the Series 2016 Bonds for the purposes of (a) loaning the proceeds to certain borrowers participating in the pooled loan program, and (b) pay costs of issuance related to the Series 2016 Bonds including a municipal bond insurance premium and debt service reserve fund surety premium.

The Series 2016 Bonds are expected to be repaid over a period of ____ years, at a true interest cost of ____%, the total interest paid over the life of the Series 2016 Bonds will be \$_____.

The source of repayment of security for the Series 2016 Bonds are loan payments made by the borrowers under the pooled loan program. Authorizing this debt or obligation will result in an allocable portion of each borrower in a maximum of approximately \$_____, of certain legally available revenues of each borrower not being available to finance other services of each such borrower each year for ____ years.

The name and address of the Underwriter is listed below:

Wells Fargo Bank, National Association
2363 Gulf-to-Bay Boulevard, Suite 200
Clearwater, Florida 33765

We understand that you do not require any further disclosure from the Underwriter, pursuant to Section 218.385(6), Florida Statutes.

Very truly yours,

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Underwriter

By: _____
Name: _____
Title: _____

SCHEDULE I TO EXHIBIT A

Underwriter Expenses	\$/1000	Amount
Underwriter's Counsel		
i-Deal Bookrunning		
i-Deal Wire Charges		
i-Deal Electronic Order Entries		
CUSIP Charge and Disclosure Fee		
DTC Service Fees		
Out of Pocket Expenses		
TOTAL		

Note: Totals may not add due to rounding.

EXHIBIT B

FORM OF OPINION OF ISSUER'S COUNSEL

#47285581_v4

AGENDA ITEM REPORT

August 8, 2016

ITEM NUMBER: 13.

ITEM: Approval of an ordinance on **first** reading requested by Council Member Reid amending Section 23 of the Town Code entitled zoning and planning to regulate vacation rentals on the East Island. Enclosed find a copy of the proposed ordinance and supporting documents.

DESCRIPTION:

After several meetings and discussions the Town Council has asked staff for more research on the possibility to regulate vacation rentals on the East Island. After extensive research of several South Florida communities that have adopted regulations governing the vacation rentals, staff seeks guidance on the proposed criteria that would regulate and imposed eligibility requirements on the subject.

Staff requests additional guidance in some areas (noted in yellow) of the proposed ordinance. The registration and annual fees would be done by Resolution.

RECOMMENDED ACTION:

Council Discretion.

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk
Kelly Reid, Council Member

ATTACHMENTS

1.	Proposed Ordinance	VR-Draft Ord Aug 2 2016.pdf
2.	Exhibit A	VR Draft Revised Exhibit A Text Aug 2 2016.pdf
3.	Staff Report - MM	VR BHI Final TC Staff Report Vacation Rentals July 25 2016.pdf
4.	MD Code	BHI Vacation Rental Regs MD Code Excerpts.pdf

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA; AMENDING THE TOWN'S CODE OF ORDINANCES; AMENDING CHAPTER 23 ENTITLED ZONING AND PLANNING TO CREATE ARTICLE VI TO BE ENTITLED VACATION RENTALS; PROVIDING FOR THE REGULATION OF VACATION RENTALS ON THE EAST ISLAND IN THE MULTI-FAMILY RESIDENTIAL DISTRICTS; PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS AND STANDARDS FOR SAFETY AND OPERATION OF VACATION RENTALS; PROVIDING A PROCESS FOR ISSUANCE OF CERTIFICATES OF COMPLIANCE, ADMINISTRATION, PENALTIES, ENFORCEMENT, AND VESTING; UPDATING THE LIST OF PERMITTED USES IN THE RM-1, RM-2, AND RM-3 ZONING DISTRICTS; 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, Chapter 509, *Florida Statutes*, entitled, "Lodging and Food Service Establishments; Membership Campgrounds," regulates public lodging establishments, and the term "Public Lodging Establishments", is divided into the two subcategories: transient public lodging establishment and non-transient public lodging establishment; and

WHEREAS, Subsection 509.013(4)(a)1., *Florida Statutes* (2015), defines transient public lodging establishment as "any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or on calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.", and

WHEREAS, land uses that are transient public lodging establishments, as defined in Section 509.013, *Florida Statutes* (2015), are non-residential uses not permitted within

the Town's multi-family residential zoning districts and are inconsistent with the Town of Bay Harbor Island Comprehensive Plan Future Land Use Map, and

WHEREAS, the Town already has adopted regulations for transient rental uses (tenancies less than 6 consecutive months in any 12 months) in Section 23-3(a)(1) of the RD- Single-Family zoning district on the West Island which were adopted by the Town Council in July 2004; and

WHEREAS, Chapter 2011-119, Laws of Florida, created a new classification of public lodging establishment known as vacation rentals that is defined in Section 509.242(c), Florida Statutes (2015), as "any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project."; and

WHEREAS, Subsection 509.032(7), Florida Statutes (2015), provides that "a local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals", except that local regulations adopted on or prior to June 1st, 2011 are grandfathered; and

WHEREAS, the Florida Attorney General opined in Advisory Opinion AGO 2014-09, that "[t]o the extent a zoning ordinance addresses vacation rentals in an attempt to prohibit them in a particular area where residences are otherwise allowed, it would appear that a local government would have exceeded the regulatory authority granted in Section 509.032(7)(b), Florida Statutes."; and

WHEREAS, unregulated vacation rentals can create disproportionate impacts related to their size, excessive occupancy, and lack of proper facilities; and

WHEREAS, the presence of vacation rentals within existing residential buildings in established residential neighborhoods can create negative compatibility impacts, among

which include, but are not limited to, excessive noise, on-street parking and off-street parking demands, accumulation of trash, and diminished public safety; and

WHEREAS, transient public lodging establishments that are not vacation rentals are subject to stricter development standards, undergo annual inspections, and have more stringent operational and business requirements; and

WHEREAS, the Town Council has studied the current Zoning and Planning Code provisions of the Town and finds a substantial interest in furthering the public health, safety and welfare by controlling density and protecting the residential character of areas designated for residential use that certain modifications are necessary and desirable to address the concerns of Town residents and, by providing definitions and regulations for vacation rentals in the RM-1, RM-2, and RM-3 Multiple Family Residential zoning districts; and

WHEREAS, a public meeting was held before the Local Planning Agency (LPA) of the Town to review the proposed modifications to the Town's Land Development Regulations; 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 add Article VI – Vacation Rentals to Chapter 23, provide definitions and regulations for vacation rentals within the RM-1, RM-2, and RM-3 zoning districts, 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 _____, 2016.

PASSED on Second Reading this ____ day of _____, 2016.

JORDAN W. LEONARD
Mayor

ATTEST:

MARLENE SIEGEL
Town Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

CRAIG SHERMAN, ESQ.
Town Attorney

EXHIBIT "A"

**The Town of Bay Harbor Islands, Florida Code of Ordinances
is hereby amended as follows:**

CHAPTER 23

ZONING AND PLANNING

ARTICLE I. – Zoning Regulations

Sec. 23.4. – Use regulations, RM-1 and RM-2 Multiple Family district

In the RM-1 and RM-2 Multiple Family districts, no building or land shall be used and no building shall hereafter be erected, constructed, reconstructed or structurally altered which is designed, arranged or intended to be used or occupied for any purpose, excepting for one or more of the following uses:

- (1) Two-family dwellings.
- (2) Multiple-family dwellings or apartments, including townhouses, and accessory buildings including duly licensed home occupation.
- (3) Accessory uses and site improvements, including outdoor recreational game court facilities, subject to the provisions specified in section 23-12.
- (4) Reserved.
- (5) Public schools, but only upon specific approval and permit of the town council.
- (6) Single-story drive-in bank tellers' structures and parking facilities for a national or state bank situated in an adjacent block of the national or state bank which block is zoned B-1, but only upon the specific approval and permit by the town council as to the precise location and type and kind of improvements as well as landscaping requirements.
- (7) Temporary sales and business offices, construction trailers, and model dwelling units, but only in connection with the construction of dwelling units, and upon specific approval and permit of the town council, including but not limited to such time limits and other any other conditions as may be imposed by the town council at its discretion.
- (8) Parks, recreation and open space as either a primary use or accessory use.
- (9) Public or private off-street parking facilities as either a primary use or accessory use. Commercially owned and/or operated parking facilities are not permitted without the prior approval of the town council.
- (10) Vacation Rentals subject to the provisions in Chapter 23, Article VI of the Code of Ordinances of the Town of Bay Harbor Islands.

ARTICLE VI. - VACATION RENTALS

Sec. 23-70. – Purpose.

The Town Council finds that certain transitory uses of residential property tend to affect the residential character of the community and are injurious to the community. Therefore, it is necessary and in the interest of the public health, safety, and welfare to monitor and provide reasonable means for citizens of the Town of Bay Harbor Islands to mitigate impacts created by such transitory uses of residential property within the Town of Bay Harbor Islands. It is unlawful for any owner of any property within the geographic bounds of the Town of Bay Harbor Islands, Florida, to rent or operate a vacation rental of residential property contrary to the procedures and regulations established in this Article or applicable state statute.

Sec. 23-71. – Definitions.

For the purpose of this Article, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory. Words not defined shall be given their meaning as provided in Section 23-1. Definitions, of the Code of Ordinances of the Town of Bay Harbor Islands, Florida.

Bedroom or sleeping room shall mean a private room planned and intended for sleeping, separated from other rooms by a door, and accessible to a bathroom without crossing another bedroom or interior room.

Certificate of Compliance shall mean a document issued by the Town finding the building, land use or site complies with the applicable Code regulations and procedures.

Garbage shall be interpreted as defined in Section 9-21 of the Code of Ordinances.

Owner shall mean an individual, firm, association, syndicate, partnership, or corporation owning or having a proprietary interest in a parcel of land.

Person shall mean a corporation, company, association, society, firm, partnership, or joint stock company, as well as an individual, a state, and all political subdivisions of a state or any agency or instrumentality thereof.

Residential property refers to the specific multi-family residential zoning districts in Sec. 23.4 and 23.6.

Responsible party shall mean the owner or the person designated by the owner of the property to be called upon to answer for the maintenance of vacation rental property and for the conduct and acts of occupants of the vacation rental property.

Transient occupants (Occupants) shall mean any person, or guest or invitee of such person, who occupies or is in actual or apparent control or procession of residential property registered or used as a Vacation Rental. It shall be a rebuttable presumption that any person who holds themselves out as being an occupant or guest of an Occupant of the Vacation Rental is a Transient Occupant.

Vacation rental shall mean any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is rented to guests more than three (3) times in a calendar year for periods of less than thirty (30) days or one (1) calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests, but that is not a timeshare project.

Sec. 23-72. – Registration Required and Application.

(A) Registration Required. It is unlawful for any person to allow another person to occupy any Residential Property as a Vacation Rental within the Town of Bay Harbor Islands, or offer such rental services within the Town of Bay Harbor Islands, unless the person has registered the Vacation Rental property with the Town of Bay Harbor Islands and the Vacation Rental property has been issued a Certificate of Compliance in accordance with the provisions of this Article.

Application for registration. Applications for registration shall set forth at a minimum:

1. The legal description of the property offered for rental (i.e., address, lot, block and subdivision name);
2. Name, address, and phone number of owner of said property;
3. Name, address, and emergency contact phone number of the Responsible party for said property, which shall be twenty-four (24) hour, seven (7) days a week contact number;
4. Agreement by the Responsible party that the phone number for the Responsible party will be answered twenty-four (24) hours a day, seven (7) days a week by the Responsible party;
5. Agreement by the owner and Responsible party to all of the following:
 - a. That all vehicles associated with the Vacation Rental must be parked in compliance with the Code of Ordinances of the Town of Bay Harbor Islands;
 - b. That it shall be unlawful to allow or make any noise or sound that exceeds the limits set forth in Chapter 12, Article II, Noise anywhere in the Town;
 - c. That the owner, Responsible party and property shall comply with all applicable city, county, state and federal laws, rules, regulations, ordinances and statutes;

- d. That no solid waste container shall be located at the curb for pickup before 6:00 p.m. of the day prior to pick up, and the solid waste container shall be removed before midnight of the day of pickup;
- e. That whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance of a property, or, having been authorized, licensed, or invited, is warned by the owner or lessee, to depart the property and refuses to do so, commits the offense of trespass in a structure or conveyance; and
- f. That the application and any related approvals are specific to the property identified in the application and approval; other properties are not jointly shared commodities and should not be considered available for use by transient occupants of the property which is the subject of the application.

6. Proof of owner's current ownership of the property;

7. Proof of registration with, or exemption from, the Florida Department of Revenue for sales tax collection and Miami-Dade County for Tourist and Convention Development Taxes, where applicable;

8. Proof of licensure with, or exemption from, the Florida Department of Business and Professional Regulation for a transient public lodging establishment, where applicable; and

9. Proof of compliance with Subsection 23-74.

Submission of an incomplete registration application form shall result in rejection of the application.

(B) False information. It shall be unlawful for any person to give any false or misleading information in connection with the application for registration required by this Article.

Sec. 23-73. – Fees for Business Tax Receipt.

The Town may charge reasonable fees to compensate for administrative expenses in the review, inspection and issuance of a Vacation Rental Business Tax Receipt (BTR), and for enforcement of these Code provisions. The fees for a Vacation Rental BTR shall be provided for by resolution adopted by the Town Council of the Town of Bay Harbor Islands.

Sec. 23-74. – Responsible party required.

(A) Whenever any property is required to be registered under this Article, the owner shall appoint a natural person who resides within thirty (30) miles to serve as the Responsible party for service of notices as are specified herein, and notices given to the Responsible party shall be sufficient to satisfy any requirement for notice to the owner. An initial Responsible party shall be designated and name submitted with the application for registration, and the Town Manager or his designee shall thereafter be notified of any change of Responsible party within fifteen (15) days of such change. Further, it is the affirmative duty of the Responsible party to:

1. Inform all Occupants, in writing, prior to occupancy of the property of applicable Town of Bay Harbor Islands ordinances concerning noise, vehicle parking, garbage, and common area usage with a copy of the applicable Town of Bay Harbor Islands ordinances printed in the English language and posted prominently near the main entrance of the establishment;

2. Maintain all properties under their control in compliance with the occupancy limits, as specified in this Article, the Florida Building Code and the Code of Ordinances of the Town of Bay Harbor Islands, Florida, as determined by the building official or his designee;

3. See that the provisions of this Article are complied with and promptly address any violations of this Article or any violations of law which may come to the attention of the Responsible party;

4. Be available with authority to address and coordinate solutions to problems with the rental of the property twenty-four (24) hours a day, seven (7) days a week;

5. Be situated close enough to the property as to be able to, and shall, respond to emergency calls within two (2) hours of notification;

6. Keep available a register of all Occupants, which shall be open to inspection by authorized personnel of the Town of Bay Harbor Islands at all times; and

7. Maintain the entire property free of garbage and litter that is not stored in authorized receptacles for collection in compliance with the applicable Code provisions.

Failure of the Owner to report a change of the Responsible party, or failure of the owner or Responsible party to perform the tasks listed herein may result in those penalties listed in Section 23-76.

Sec. 23-75. – Standards and requirements for vacation rentals.

(A) Minimum Requirements for Issuance of a Certificate of Compliance.

The Town Manager or his designee may issue a Certificate of Compliance to the applicant upon proof that the following has occurred:

1. The owner and Responsible party completes the Town of Bay Harbor Islands application form;

2. A Business Tax Receipt (BTR) from the Town of Bay Harbor Islands pursuant to Chapter 13 of the Code or Ordinances;

3. A BTR from Miami-Dade County;

4. A Florida Department of Revenue certificate of registration for purposes of collecting and remitting tourist development taxes, sales surtaxes and transient rental taxes, where applicable;

5. A Florida Department of Business and Professional Regulations license as a transient public lodging establishment, where applicable;

6. An affidavit, demonstrating initial and on-going compliance with Vacation Rental Standards contained herein, plus any other applicable local, state and federal laws, regulations and standards to include, but not be limited to Chapter 509, Florida Statutes, and Rules, Chapter 61C and 69A, Florida Administrative Code; and

7. A copy of the vacation rental/lease agreement form to be used when contracting with Transient Occupants.

(B) Vacation Rental Standards.

The following standards shall govern the use of any vacation rental as a permitted use:

1. Minimum life/safety requirements:

a. Swimming pool, spa and hot tub safety. A swimming pool, spa or hot tub shall comply with the current standards of Residential Swimming Pool Safety Act, Chapter 515, Florida Statutes.

b. Bedroom or sleeping rooms. All bedrooms or sleeping rooms shall meet the minimum requirements of the Florida Building Code.

***Note: The Florida Building Code does not define “Bedroom”, only “Sleeping Unit” as follows: “A room or space in which people sleep, which can also include permanent provisions for living, eating, and either sanitation or kitchen facilities but not both. Such rooms or spaces that are also part of a dwelling unit are not sleeping units”. New definitions were added in subsection 23-71 to use the terms interchangeably. This note will be removed for adoption.**

c. Smoke and carbon monoxide (CO) detection and notification system. If an interconnected and hard-wired smoke and carbon monoxide (CO) detection and notification system is not in place within the vacation rental unit, then an interconnected, hard-wired smoke alarm and carbon monoxide (CO) alarm system shall be required to be installed and maintained on a continuing basis consistent with the requirements of Section R314, Smoke Alarms, and Section R315, Carbon Monoxide Alarms, of the Florida Building Code – Residential.

d. Fire extinguisher. A portable, multi-purpose dry chemical 2A:10B:C fire extinguisher shall be installed, inspected and maintained in accordance with NFPA 10 on each floor/level of the unit. The extinguisher(s) shall be installed on the wall in an open common area or in an enclosed space with appropriate markings visibly showing the locations.

- e. There shall be posted, next to the interior door of each bedroom or sleeping room a legible copy of the building evacuation map – Minimum 8' - ½" by 11".

2. Maximum occupancy. The maximum vacation rental occupancy shall not exceed the smallest occupancy calculated pursuant to each of the following standards:

- a. One (1) person per one hundred fifty (150) gross square feet of permitted, air-conditioned living space; and
- b. Two (2) persons per bedroom or sleeping room, meeting the requirements for a bedroom or sleeping room in the Florida Building Code, plus two (2) additional persons that may sleep in one common area; and
- c. The maximum occupancy shall be limited to XX (XX) transient occupants per vacation rental unit.

***Needs to be discussed further with Town – Most other cities have included maximum occupancy limits – Ft. Lauderdale = 10 persons per unit / Hollywood = 4 persons per sleeping room / Lighthouse Point = 2 persons per bedroom // 8 persons per DU in SFR areas // 16 persons per DU in all other areas. This note will be removed for adoption.**

- d. Three (3) transient occupants per one (1) off-street parking space legally available to the property, the exact number of which is determined by the requirement of Section 23-24 of the Town of Bay Harbor Islands Code of Ordinances.

3. Solid waste handling and containment. Town solid waste containers shall be provided for the maximum transient occupancy permitted by this Article, as required in Chapter 9 of the Town of Bay Harbor Islands Code of Ordinances. Appropriate screening and storage requirements for solid waste containers shall apply per any development approval and be incorporated into the Certificate. For purposes of this section, a solid waste container shall not be placed at curbside before 6:00 p.m. of the day prior to solid waste pickup, and the solid waste container shall be removed from curbside before midnight of the day of pickup.

4. Minimum vacation rental/lease agreement wording. The vacation rental/lease agreement shall contain the minimum information as provided for in this subsection.

5. Minimum vacation rental lessee information. The vacation rental lessee shall be provided with a copy of the information required in this subsection and the Owner or Responsible party shall post all of the following conspicuously within each vacation rental unit:

- a. A statement advising the Occupant that any sound that is a Noise Disturbance as provided per definition in Section 12-21 of the Code of Ordinances of the Town of Bay Harbor Islands is subject to Town code enforcement, including but not limited to fines;

- b. A sketch of the location of the off-street parking spaces available to the property;
- c. The days and times of trash pickup and the solid waste handling and containment requirements of this Article;
- d. The location of the nearest hospital; and
- e. The local non-emergency police phone number.

6. Responsible party designation. The owner shall act as, or retain at all times, a designated Responsible party capable of meeting the duties provided in subsection 23-74.

7. Advertising. Any advertising of the vacation rental unit shall conform to information included in the Vacation Rental Certificate of Compliance and the property's approval, including but not limited to the maximum occupancy.

8. Sexual offenders and sexual predators. It is unlawful to allow another person to occupy an residential property as a Vacation Rental within the Town of Bay Harbor Islands, with the knowledge that it will be occupied by a person prohibited from establishing a permanent residence or temporary residence at said residential property pursuant to Section 14-17 of the Code of Ordinances, if such place, structure, or part thereof, is located within two thousand five hundred (2,500) feet of any school, designated public school bus stop, day care center, park or playground or other place where children regularly congregate.

9. Posting of Certificate of Compliance. The Certificate of Compliance shall be posted on the back of or next to the main entrance door and shall include at a minimum the name, address and phone number of the Responsible party and the maximum occupancy of the Vacation Rental.

10. Other standards. The Occupant shall be advised that all standards contained within the Code of Ordinances and Land Development Regulations of the Town of Bay Harbor Islands including, but not limited to: noise, setbacks, and stormwater, are applicable to the Vacation Rental and may be enforced against the Occupant.

Sec. 23-76. – Administration, penalties, and enforcement.

(A) Initial and Annual Compliance Inspections of Vacation Rentals.

An inspection of the dwelling unit for compliance with this section is required prior to issuance or renewal of a Vacation Rental Certificate of Compliance. If violations are found, all violations must be corrected and re-inspected within thirty (30) calendar days before the initial Vacation Rental Certificate of Compliance may be issued. Failure to correct deficiencies identified in the annual inspections within the timeframes provided shall result in the suspension of the Vacation Rental Certificate of Compliance until such time as the violations are corrected and re-inspected.

****Verify that yearly inspections are desired by Town or require Affidavit indicating unit will be kept the same – see Sec.23-75(a)g]**

(B) Business Tax Receipt (BTR) not transferable.

No BTR issued under this Article shall be transferred or assigned or used by any person other than the person to whom it is issued, or at any location other than the location for which it is issued.

(C) Expiration of BTR.

All BTR issued under the provisions of this Article shall be valid for no more than one year, and all BTR shall expire on September 30th of each year. Fees for renewal and applicable late renewal fees shall be established by resolution of the Town Council.

(D) Revocation.

1. Any Certificate of Compliance issued pursuant to this Article may be denied, revoked, or suspended by the Town Manager for the violation of this Article, any provision of the Town of Bay Harbor Code of Ordinances, or state law by the owner, Responsible party or Occupants. Such denial, revocation or suspension is in addition to any penalty provided herein.

2. Offenses/violations.

a. Non-compliance with any provisions of this Article shall constitute a violation of this Article.

b. Separate violations. Each day a violation exists shall constitute a separate and distinct violation, except that maximum occupancy violations shall also be subject to subsection 23-76(D).

3. Remedies/enforcement. Violations of this article shall be subject to penalties as part of a progressive enforcement program with the primary focus on compliance and compatibility with adjoining properties, versus penalties and legal actions. To accomplish a safe and effective vacation rental program it is key that vacation rental owners and Responsible parties are responsive and responsible in the management of the property for compliance with this section. Code enforcement activities will be conducted in accordance with Florida Statutes Chapter 162 and Code of Ordinances of the Town of Bay Harbor Islands. The remedy / enforcement provisions set forth herein shall take precedent over other Town Code Enforcement regulations.

a. Warnings. A warning shall be issued for a first-time violation and have a correction / compliance period associated with it. Such a warning may include notice to other agencies for follow-up by such agencies, such as the Florida Department of Business and Professional Regulation, the Florida Department of Revenue, the Miami-Dade County Tax Collector and the Miami-Dade County Property Appraiser, as applicable. Non-compliance within a correction compliance period shall result in the issuance of a Notice of Violation (NOV).

- b. Fines per violation shall be set by resolution of the Town Council for the first, second, third and further repeat violations. The Town shall prosecute a code violation and in such case a special magistrate shall be authorized to hold hearings, assess fines and order relief in lieu of any code enforcement board. Refer to Section 1-8 for applicable fines. The Town may also rely on an appropriate enforcing agency at the state or local level.
- c. Additional remedies. Nothing contained herein shall prevent the Town from seeking all other available remedies which may include, but not be limited to suspension or revocation of a Vacation Rental certificate, injunctive relief, liens, and other civil and criminal penalties as provided by law, as well as referral to other enforcing agencies.

4. Suspension of Vacation Rental Certificate of Compliance. In addition to any fines and any other remedies described herein or provided for by law or equity, the Town of Bay Harbor Islands may suspend a Vacation Rental certificate of compliance for multiple violations of the maximum occupancy in any continuous thirty-six (36) month period, in accordance with the following:

a. Suspension timeframes.

***Note: Some other cities (FTL) have more lenient timeframes / suspension periods. Discuss further with the Town. These will be mandatory with no flexibility.**

- 1. Upon a third violation of the maximum occupancy the Vacation Rental Certificate shall be suspended for a period of thirty (30) calendar days.
- 2. Upon a fourth violation of the maximum occupancy the Vacation Rental Certificate shall be suspended for a period of twelve (12) calendar months.
- 3. For each additional violation of the maximum occupancy the Vacation Rental Certificate shall be suspended for an additional twelve (12) calendar months.

b. Suspension restrictions. An Occupant may not occupy a Vacation Rental during any period or suspension of a Vacation Rental certificate.

- 1. The suspension shall begin immediately following notice, commencing either:
 - i. At the end of the current vacation rental lease period; or
 - ii. Within thirty (30) calendar days, whichever date commences earlier, or as otherwise determined by the Town of Bay Harbor Islands.

5. Operation of a Vacation Rental during any period of suspension shall be deemed a violation pursuant to this Article and shall be subject to daily fine, up to the maximum amount as otherwise provided in Florida Statutes for repeat violations, for each day that the Vacation Rental operates during a period of violation.

6. Number of violations. For purposes of this section only, violations shall be identified per the rental period or per every seven (7) days, whichever is less and for only those violations in which a code enforcement citation or criminal charge was issued. Violations could potentially occur multiple times over the same rental period.

Note: Some other cities (FTL) have more lenient timeframes / suspension periods. Discuss further with the Town.

(E) Complaints.

Whenever a violation of this Article occurs, or is alleged to have occurred, any person may file a complaint. Such complaint, stating fully the causes and basis thereof, shall be filed with the Town Manager or his designee. The Town Manager or his designee shall promptly record such complaint, investigate, and take action thereon in accordance with this article.

(F) Enforcement.

The Town Manager or his designee shall enforce the provisions of this Article.

(G) Vesting.

1. Any existing, legally established Vacation Rental located in the RM-1, RM-2 and RM-3 zoning districts as of [The Effective Date of this Ordinance] shall be considered a vested Vacation Rental only as related to contracts entered into prior to the [The Effective Date of this Ordinance]. Rental / lease agreements that were entered prior to [The Effective Date of this Ordinance], as evidenced by a written and validly executed rental agreement or contract provided to the Town Manager no later than [The Effective Date of this Ordinance plus 3 months] shall be considered vested.
2. Vesting shall:
 - a. Apply only to date specific rentals; and
 - b. Not apply to renewals of existing rental agreements or contracts which are at the option of either of the parties.
3. The Town shall, at a minimum, provide written notice of this Ordinance and vesting procedure by certified mail to each property owner in the RM-1, RM-2 and RM-3 zoning districts; or in the case of a condominium property, by notice to the condominium association.

4. All rental agreements entered into after [The Effective Date of this Ordinance] shall comply with the provisions of this Article. No Vacation Rental shall be occupied pursuant to a contract / lease entered into after [The Effective Date of this Ordinance], until the Owner has obtained the required Vacation Rental Certificate of Compliance.
5. A vested contract / lease transferred to a subsequent Owner shall continue to be vested, but shall not be transferred to a different Vacation Rental property.

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

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

CC: Ronald J. Wasson - Town Manager
Marlene Siegel - Town Clerk
Craig Sherman, Esq. / Frank Simone, Esq. - Town Attorney
Susan Trevarthen, Esq., Special Council

From: Michael J. Miller, AICP 
Consultant Town Planner

Date: July 25th, 2016

Subject: Town of Bay Harbor Islands
Proposed Land Development Code Amendments
Vacation Rentals
MMPA Acct. No. 01-0702-0800

ISSUE:

The Town has expressed an interest in possibly adopting regulations for Vacation Rentals on the East Island. Such uses were banned on the West Island prior to state law provisions becoming effective. State law now provides that such uses cannot be banned entirely but can be regulated. Several South Florida communities have recently adopted regulations governing Vacation Rentals. While the general framework of the regulations is similar, some communities have different criteria for various geographic subareas. MMPA was requested to research this matter, coordinate with Susan Trevarthen @ WSH, and draft suggested regulations for the Town to consider. MMPA has assisted other local governments in the drafting of regulations to govern Vacation Rentals. MMPA obtained copies of the regulations of several other municipalities (Miami Beach / Fort Lauderdale / Hollywood / Lighthouse Point / etc.) and used the format to create the draft Town regulations. Within the draft regulations the Town Council will need to assist staff to select a few appropriate criteria for the Town (noted in yellow). These include the following:

- 1) Establish a minimum size for a "Sleeping Room" (Bedroom).
- 2) Establish a maximum occupancy limit (MMPA suggests 2 persons per sleeping room / 4 persons per 1 BR Unit / 6 persons per 2 BR Unit / add 2 persons per BR). The Town

**Town of Bay Harbor Islands
Town Council Staff Report
Vacation Rental Regulations
July 25th, 2016
Page 2**

does not have a dwelling unit occupancy limit. MMPA examined the Miami-Dade Housing Code and found criteria for housing and transient uses (hotels / motels). For a 1,000 sq. ft. DU the M-D Code would allow about 6-8 people per 2 bedroom unit (1st person 80 sq. ft. + 50 sq. ft. for others).

- 3) Chose if the Town wished to perform yearly inspections or accept an affidavit indicating unit will be kept the same.

MMPA was requested to look at the most recent Miami Beach Vacation Rental Codes, as modifications were recently made. Miami Beach has older regulations but recently studied the eligibility requirements within their Collins Waterfront Local Historical District. Several communities are considering adjusting their fines for violations – increasing due to repeat violations / non-compliance. Chapter 161 F.S. limits the Town fining limits (\$250-\$500 per day). Cities larger than 50,000 persons may adopt much higher fines (M-B @ 1st = \$20,000 / 2nd = \$40,000 / 3rd = \$60,000 / etc.).

MMPA recommends the Town Council consider the attached draft regulations to address Vacation Rentals on the Town's East Island.

Sec. 17-62. - Minimum space, use and location requirements.

No person shall occupy, or let to another for occupancy, any dwelling or dwelling unit for the purpose of living therein, which does not comply with the following requirements:

- (1) Every dwelling unit shall contain a minimum gross floor area of at least one hundred fifty (150) square feet for the first occupant, one hundred (100) square feet for each of the next two (2) occupants, and at least seventy-five (75) square feet for each occupant thereafter. Floor space shall be calculated on the basis of total habitable room area.
- (2) In every dwelling unit of two (2) or more habitable rooms, every room occupied for sleeping purposes by one (1) occupant shall have a minimum gross floor area of at least eighty (80) square feet. Every room occupied for sleeping purposes by more than one (1) occupant shall have a minimum gross floor area of fifty (50) square feet per occupant. Every room used for sleeping purposes shall have a minimum width of eight (8) feet. Kitchens shall not be used for sleeping purposes. Porches shall not be used as permanent sleeping quarters.
- (3) At least one-half of the floor area of every habitable room shall have a ceiling height of at least seven (7) feet. Any portion of a room having a ceiling height of less than five (5) feet shall not be considered in computing the total floor area of such room.
- (4) No dwelling or dwelling unit containing two (2) or more sleeping rooms shall be so arranged that access to a bathroom, shower room, or water closet compartment intended for use by occupants of more than one (1) sleeping room can be had only by going through another sleeping room or outside the structure, nor shall room arrangements be such that access to a sleeping room can be had only by going through another sleeping room, bathroom, shower room, or water closet compartment.
- (5) No cellar or basement space shall be used as a habitable room or dwelling unit.

(Ord. No. 68-14, § 23, 3-5-68)

Sec. 17-65. - Minimum standards for hotels and rooming houses.

No person shall operate a hotel or rooming house, or shall occupy or let to another for occupancy, any hotel unit or rooming unit which does not meet with all of the other standards of this article, except as provided by the following requirements:

- (1) No person shall operate a hotel or rooming house unless he has complied with all applicable licensing and permit requirements.
- (2) Every room occupied for sleeping purposes by one (1) person shall contain at least seventy (70) square feet of floor space and every room occupied for sleeping purposes by more than one (1) person shall contain at least fifty (50) square feet of floor space for each occupant thereof. Every room occupied for sleeping purposes shall have a minimum width of eight (8) feet and an average floor to ceiling height of seven (7) feet.
- (3) At least one (1) flush water closet, lavatory basin and bathtub or shower, properly connected to an approved water system and sewer system or an approved septic tank installation and absorption bed, and in good working condition, shall be supplied for each six (6) persons or fraction thereof residing within a hotel or rooming house, including members of the operator's family whenever they share the use of said facilities. In a hotel or rooming house where rooms are let only to males, flush urinals may be substituted for not more than one-half the required number of water closets. All water closets, urinals, bathtubs, or showers shall be located within a room or rooms which afford privacy to the user and are not more than one (1) story removed from the hotel or rooming unit of any occupant intended to share the facilities. All such facilities shall be so located within the hotel or rooming house as to be accessible to the occupants of each hotel or rooming unit sharing such facilities without going outside of the building or without going through a dwelling, hotel, or rooming unit of another occupant. Every lavatory basin, bathtub or shower shall be supplied with hot and cold water at all times.
- (4) No cellar or basement space shall be used as a habitable room or as a hotel or rooming unit.
- (5) The operator of every hotel or rooming house shall change supplied bed linen and towels at least once each week and prior to the letting of any room to any occupant. The operator shall be responsible for maintaining all supplied bedding in a clean and sanitary manner.
- (6) The operator of every hotel or rooming house shall be responsible for the sanitary maintenance of all walls, floors, ceilings and other parts and further he shall be responsible for the sanitary maintenance of the entire premises where all of the building is under the control of such operator.
- (7) Every window of every hotel or rooming unit shall be supplied with shades, draw drapes, or other devices or materials which, when properly used, will afford privacy to the occupant of the hotel or rooming unit. No cooking shall be permitted in hotel and rooming units which are not equipped with approved kitchen facilities and do not meet minimum dwelling unit standards.
- (8) Every hotel or rooming structure and hotel or rooming unit of types of construction I, II, III, IV and V as defined by Chapter 17, 18, 19, 20, 21 and 22 respectively of the South Florida Building Code shall have means of egress which conform to the standards of Chapter 31 of the South Florida Building Code and any applicable fire codes, fire regulations or ordinances now in existence or adopted subsequent hereto. Every hotel or rooming structure of type of construction V, built

AGENDA ITEM REPORT

August 8, 2016

ITEM NUMBER: 14.

ITEM: Request for extension to close on a agreement for the sale and purchase of a Transfer of Development Rights (TDR) between the Town and Global Reach Investments, LLC. The Town approved the TDR transaction on August 10, 2015 for the transfer of two (2) TDR's to property located at 9290 W. Bay Harbor Drive. Enclosed find supporting documents.

DESCRIPTION:

The applicant (Global Reach Investments, LLC) is requesting to extend the closing date on the purchase agreement for up to 120 days. The original agreement was approved on August 10, 2015 at the previous TDR price of \$47,500 per TDR.

Property Address: 9290 W. Bay Harbor Drive

Number of TDR units: 2

Current Price of TDRs: \$70,000

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

The applicant has paid the 25% deposit to the Town which is held in escrow by the Town Attorney.

If the Town Council approves the extension and requires the applicant to pay the current TDR value price of \$70,000 per unit, then an additional \$45,000 would be due to the Town.

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk

ATTACHMENTS

1.	TDR contract extension	TDR Extension- 9290 WVHD.pdf
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Global Reach Investments LLC
115 E. Palm Midway
Miami Beach, FL 33139

July 18, 2016

Town of Bay Harbor Islands
Attn: Ms. Marlene Siegel, Town Clerk
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

Re: Extension of Closing Date of Purchase Agreement
for Purchase and Sale of Transferable Development Rights
Dated August 10, 2015

Dear Ms. Siegel,

I am writing to you to formally request an extension to the closing date of the Purchase Agreement for the Purchase and Sale of Transferable Development Rights dated August 10, 2015, between the Town of Bay Harbor Islands and Global Reach Investments LLC, as we discussed the other day.

The reason that we need more time to close on the purchase is that the completion of the building plans, drawings and approvals has taken longer than expected, which has required that we re-structure the financial arrangements and planning of the project .

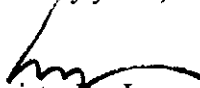
For this reason, we hereby formally request an extension of up to 120 days.

As you requested, I am attaching a copy of Bay Harbor Island Resolution 2062 approving the contract between the Town and Global Reach, together with a copy of the executed Purchase Agreement.

I understand that you will place this request on the agenda for the next Town Council meeting. Please let me know whether you need any additional information or documents from me and please let me know when the next meeting will take place so that I can attend to answer any questions.

Thank you very much for your help.

Sincerely yours,


Christopher Langen, Manager

RESOLUTION NO. 2062

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AUTHORIZING THE TRANSFER OF DEVELOPMENT RIGHTS (TDRs) TO GLOBAL REACH INVESTMENTS, LLC FOR ITS PROJECT, VISTA AT BAY HARBOR, LOCATED AT 9290 WEST BAY HARBOR DRIVE, BAY HARBOR ISLANDS, FLORIDA (RECEIVING SITE), FROM THE TOWN OF BAY HARBOR ISLANDS' POOL OF TDRs (DONOR), AUTHORIZING THE TOWN MANAGER TO MAKE THE APPROPRIATE NOTATIONS IN THE PUBLIC RECORDS AS TO THE DONOR AND RECEIVING SITE.

WHEREAS, pursuant to the Town's Code of Ordinances (Ordinance No. 769 and Section 23-22.2), the Town established a system of Transfer of Development Rights ("TDRs"); and

WHEREAS, on May 6, 2014, Global Reach Investments, LLC received authorization from the Planning and Zoning Board to develop its Project, Vista at Bay Harbor, a fourteen (14) unit condominium building on Lot 6, Block 2, Plat Book 46, Page 5, located at 9290 West Bay Harbor Drive, (the "Vista Bay Harbor Project") pending approval of the transfer of five (5) TDR units.

WHEREAS, an application for Transfer of Development Rights was submitted by Global Reach Investments, LLC ("Applicant") for its property located at 9290 West Bay Harbor Drive, Bay Harbor Islands ("Receiving Site") from the Town of Bay Harbor Islands pool of TDRs ("Donor") (the "Application"); and

WHEREAS, the Town conducted a public meeting in accordance with law on August 10, 2015, and approved the transfer of two (2) dwelling units from the Town (as the Donor) to the Receiving Site for the Vista Bay Harbor Project for a purchase price of \$47,500.00 per TDR by the Applicant; and

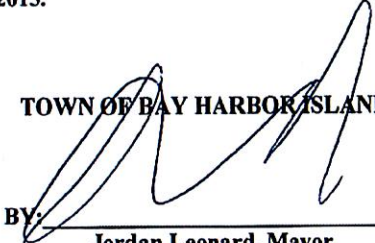
NOW THEREFORE, be it resolved that:

1. The Application for the transfer of two (2) TDR units from the Town to the Receiving Site for the Vista Bay Harbor Project is hereby authorized and approved subject to the Closing of the Agreement for Purchase and Sale of Transferable Development Rights between the Town and Applicant.
2. The Town Council hereby authorizes the Town Manager and the Town Planner to make the appropriate notations in the Public Record memorializing the Transfer of Development Rights from the Donor to the Receiving Site, for a purchase price of \$47,500.00 per TDR, upon the Closing of the Agreement for Purchase and Sale of Transferable Development Rights.

3. This Resolution shall become effective immediately upon its adoption.

PASSED this 10th day of August, 2015.

TOWN OF BAY HARBOR ISLANDS

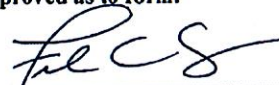
BY: 

Jordan Leonard, Mayor

ATTEST:


Maylene Siegel, Town Clerk

Approved as to form:


Frank C. Simone, Esq., CFP®
Assistant Town Attorney



Application Fee: \$1,000 Private Transaction - \$500 Town Owned Units

(For official use only)	
DATE RECEIVED: <u>7/16/15</u>	TDR UNIT COST: \$ <u>47,500</u>
TDR UNITS REQUESTED <u>2</u>	PROJECT TOTAL UNITS <u>11</u>
APPROVAL DATE: _____	APPROVED BY: _____

TOWN OF BAY HARBOR ISLANDS APPLICATION FORM TRANSFER OF DEVELOPMENT RIGHTS

APPLICANT INFORMATION

Name <u>GLOBAL REACH INVESTMENTS, LLC</u>		
Phone <u>(305) 674-0023</u>	e-mail <u>CHRIS@LANGEN.ORG</u>	Fax <u>(305) 674-0022</u>
Address <u>115 E. PALM MIDWAY</u>		
City and State <u>MIAMI BEACH, FL</u>	Zip Code <u>33139</u>	
Relationship to Property: <u>FEE SIMPLE OWNER</u>		

RECEIVER SITE INFORMATION

Owner's Name <u>GLOBAL REACH INVESTMENTS, LLC</u>		
Phone <u>(305) 674-0023</u>	e-mail <u>CHRIS@LANGEN.ORG</u>	Fax <u>(305) 674-0022</u>
Address <u>115 E. PALM MIDWAY</u>		
City and State <u>MIAMI BEACH, FL</u>	Zip Code <u>33139</u>	
Property Address/Location <u>9290 W BAY HARBOR DR</u>		
Legal Description: LOT(S) <u>16</u> BLOCK <u>2</u>		
Folio Number <u>13-22-27-001-0360</u>	Current Zoning	
Property size <u>11,250 SFT</u>	Purchase date <u>11/18/2013</u>	
Existing use of the property <u>VACANT LAND</u>		
Describe Existing Structure on Property <u>NONE</u>		
Dwelling units to be received <u>2</u>		
Total Dwelling units including TDR <u>11</u>		

HAS SITE PLAN FOR RECEIVING PROPERTY BEEN APPROVED?

☒ Yes ☐ No

If Yes, then provide date of approval 5/6/2014

If Not, then attach preliminary site plan.

ARE TDRs BEING REQUESTED FROM THE TOWN? Yes ☒ No ☐

If Yes, skip the donor site portion

If Not, then fill in the donor site portion.

DONOR SITE INFORMATION, IF APPLICABLE

Owner's Name <u>Town of Bay Harbor Islands</u>		
Phone ()	e-mail	Fax ()
Address <u>9665 Bay Harbor Terrace</u>		
City and State <u>Bay Harbor Islands, Fl.</u>		Zip Code <u>33154</u>
Property Address/Location		
Legal Description: LOT(S) BLOCK		
Folio Number	Current Zoning	Year built
Property size	Purchase date	
Existing use of the property		
Describe Existing Structure on Property		
Dwelling units to be transferred to TDR Bank		
Units permitted		

APPRAISAL INFORMATION - IF APPLICABLE

(Appraiser must be approved by the Town)

(Only fill this portion out if purchasing TDRs from the Town and if the amount set by the Town is not accepted by you.)

Name:		
Phone ()	e-mail	Fax ()
Address		
City and State		Zip Code
Date of Appraisal / /	Appraisal Value of TDR unit \$	
Proposed TDR Unit Value \$		

SURVEY COMPANY INFORMATION - (provide survey's for both receiver and donor sites)
Survey must be current (no more than 6 months old)

Name of Surveyor ALVAREZ, AIGUESVIVES + ASSOCIATES, INC		
Address 5701 SW 107 AVE #204, MIAMI, FL 33173		
Phone (305) 385-0385	e-mail FASTSURVEYS@AOL.COM	Fax (305) 385-0623

Name of Surveyor		
Address		
Phone ()	e-mail	Fax ()

PROPERTY CODE INSPECTION RESULTS - (Donor Site)

The Town requires, as a condition of permitting any transfer or development rights, that the donor parcel and/or receiving parcel improve the site to meet as many current day code requirements as possible, as determined by the Town. This may include the Town's land development code such as zoning, landscaping, signage and property maintenance. It may also include Building Code and Life Safety Code improvements.

- N/A** ☒ Building must have obtained 40 or 50 Year Certification - If Applicable
☒ Outstanding Liens or Code Violations must be cured and/or paid - If Applicable

Other inspections to be performed may include, but are not limited to, the following items:

- | | | | |
|---|--|---|---------------------------------------|
| ☐ Exterior paint | ☐ Windows | ☐ Doors | ☐ Elevators |
| ☐ Steps | ☐ Railings | ☐ Landscaping | ☐ Parking area |
| ☐ Pool/Recreation facilities | ☐ Fences/Walls | ☐ Plumbing | |
| ☐ Electrical System | ☐ A/C equipment | ☐ Roof mounted equipment/screening | |
| ☐ Roofing | | | |

I hereby certify that:

- 1) The information furnished on this application and the attachments is true.
- 2) I am the owner(s) of record of the property described in this application.
- 3) If the application, as modified or amended during the review and approval process, is granted, I agree, in consideration therefore, to indemnify and hold harmless, and promise not to sue, the Town of Bay Harbor Islands, include its officers and employees, in connection with any claims or other actions arising out of said review and approval.

A Contract for Sale and Purchase of Development Rights and Deed of Transfer of Development Rights shall be required as part of the approval of a TDR transfer. The deed transferring the development rights shall be recorded in the public records prior to the issuance of a development permit.

RECEIVER SITE

Signature of Owner (Applicant)

7/10/15
Date

Signature of Owner (Co-Applicant)

Date

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 10 day of JULY, 2015,
by CHRISTOPHER LANGEN on behalf of
GLOBAL REACH INVESTMENTS LLC, a Florida (corporation) (partnership) (Other:
_____.) He/She is personally known to me or has produced
Florida Driver's License (type of identification produced) as identification and did take
an oath.

My Commission Expires: 9-25-2018



IGNACIO MENEJAS
MY COMMISSION # FF 163412
EXPIRES: September 25, 2018
Bonded Thru Budget Notary Services

Notary Public, State of Florida

Print Name: Ignacio Menejas

DONOR SITE

Signature of Owner (Applicant)

Date

Signature of Owner (Co-Applicant)

Date

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this ____ day of _____, 20____,
by _____ on behalf of
_____, a Florida (corporation) (partnership) (Other:
_____.) He/She is personally known to me or has produced
_____ (type of identification produced) as identification and did take
an oath.

My Commission Expires:

Notary Public, State of Florida

Print Name: _____

**AGREEMENT FOR PURCHASE AND SALE OF
TRANSFERABLE DEVELOPMENT RIGHTS**

THIS AGREEMENT FOR PURCHASE AND SALE OF TRANSFERABLE DEVELOPMENT RIGHTS (the "Agreement") is made and entered into as of the 10th day of ~~July~~ ^{Aug.}, 2015 (the "Effective Date") by and between the TOWN OF BAY HARBOR ISLANDS (the "Town" or "Seller") and GLOBAL REACH INVESTMENTS, LLC, a Florida limited liability company, (the "Buyer"). Buyer and Seller are referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS:

A. Buyer is the owner of that certain real property located in Miami-Dade County, Florida more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property") and seeks to purchase two (2) transferable development rights (collectively, the "TDRs") from Seller for and in connection with the development and construction of the Project (defined below) on the Property.

B. Buyer has submitted a Site Development Plan to the Town for the approval of a Project known as Vista at Bay Harbor to be developed on the Property (the "Project").

C. The Site Development Plan was approved by the Town's Planning and Zoning Board by Resolution Number 2010 (the "Resolution").

D. The Resolution contains certain conditions for approval including, but not limited to, the number of TDRs required for the Project and the period of time in which Buyer must obtain the building permit for the Project.

E. Seller has agreed to sell the TDRs to Buyer, and Buyer has agreed to purchase the TDRs from Seller, upon the terms and conditions contained hereinafter.

NOW, THEREFORE, for good and valuable consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, the Parties, intending to be legally bound, do hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. Agreement to Sell and Purchase. Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, upon the terms and conditions set forth herein, two (2) TDRs.

3. Purchase Price; Deposit.

(a) Subject to the credits set forth in this Agreement, Buyer shall pay Seller \$47,500.00, per TDR -- for a total purchase price of \$95,000.00 (the "Purchase Price") for the

TDRs at "Closing" (as hereinafter defined) in good and immediately available United States funds by wire transfer to an account designated by Seller.

(b) Buyer shall deliver to Sherman & Sherman, P.A. (the "Escrow Agent"), within three (3) business days after the Effective Date, a "Deposit" in the amount equal to 25% of the Purchase Price to be held in escrow by the Escrow Agent. The Escrow Agent shall hold and disburse the Deposit in and from escrow pursuant to the terms and provisions of this Agreement. Provided this Agreement is not earlier terminated, the Escrow Agent shall hold the Deposit in escrow until Closing, and at Closing: (i) the Escrow Agent shall deliver the Deposit to Seller in good and immediately available United States funds by wire transfer to an account designated by Seller; and (B) Buyer shall receive a credit against the Purchase Price in the amount of the Deposit.

4. Fees, Costs, Expenses, Credits and Prorations. The Parties agree that:

(a) Seller shall pay all fees, costs, expenses and other charges payable to the consultants, attorneys and other third parties retained by Seller in connection with the transaction contemplated by this Agreement.

(b) Buyer shall pay: (i) all fees, costs, expenses and other charges payable to the consultants, attorneys and other third parties retained by Buyer in connection with the transaction contemplated by this Agreement; and (ii) the cost of all documentary stamp tax, surtaxes and other governmental impositions due on the "Deed" (as hereinafter defined), including the cost to record the Deed.

5. As-Is, Where-Is; No Representations. Buyer acknowledges that it is purchasing the TDRs in their "AS-IS, WHERE-IS" condition. Buyer also acknowledges that, except only for the specific representations, warranties, covenants, statements and agreements expressly made by Seller in this Agreement and in the documents executed and delivered by it at Closing, Seller has not made, does not make, and specifically negates and disclaims any and all other representations, warranties, covenants, statements and agreements of any kind, nature or character whatsoever, whether express or implied, oral or written, concerning or relating to the TDRs.

6. Representations, Warranties, Covenants and Agreements of Seller. Seller hereby represents, warrants, covenants, agrees and states to and with Buyer as follows:

(a) Seller shall convey to Buyer good and marketable fee simple title to the TDRs free and clear of any and all claims, liens, mortgages, security agreements, financing statements and other encumbrances.

(b) Seller has the full right, power, and authority to enter into and perform under this Agreement and to consummate the transaction contemplated herein. Upon approval of this Agreement, by the Town Council, Seller does not need any further consent, joinder or other authorization from any governmental/quasi-governmental entity or authority, court, corporation, partnership, company, entity, trust, person or individual to: (i) execute and deliver this

Agreement or any agreement, document or instrument executed or to be executed in connection herewith; or (ii) perform any of its obligations under this Agreement or any agreement, document or instrument executed or to be executed in connection herewith. The person executing this Agreement on behalf of Seller is duly authorized to execute and bind Seller to this Agreement and all other agreements, documents and instruments executed and to be executed in connection with the transaction contemplated herein, and upon such execution and delivery, this Agreement and such other agreements, documents and instruments shall be valid, binding and enforceable against Seller.

(c) Neither the entering into of this Agreement, nor the performance any obligation under this Agreement, nor the consummation of the transaction contemplated herein, will: (i) constitute a violation or breach by Seller of (A) any agreement, document or instrument to which Seller is a party or by which Seller or the TDRs is subject or bound, or (B) any judgment, order, writ, injunction or decree issued against or imposed upon Seller or the TDRs; or (ii) result in the violation of any law, rule, regulation, ordinance, code or order promulgated or issued by any governmental/quasi-governmental entity or authority or court of competent jurisdiction that is applicable to Seller or the TDRs.

All of the representations, warranties, covenants, agreements and statements of Seller set forth in this Section shall be true and correct at all times from the Effective Date through and including the "Closing Date" (as hereinafter defined) and shall survive Closing.

7. Representations, Warranties, Covenants and Agreements of Buyer. Buyer hereby represents, warrants, covenants, agrees and states to and with Seller as follows:

(a) Buyer is a validly formed business entity in good standing in the state of its formation and is duly authorized to conduct and transact business in the State of Florida. Buyer has the full right, power and authority to enter into and perform under this Agreement and consummate the transaction contemplated herein. Buyer does not need any further consent, joinder or other authorization from any governmental/quasi-governmental entity or authority, court, corporation, partnership, company, entity, trust, person or individual to: (i) execute and deliver this Agreement or any agreement, document or instrument executed or to be executed in connection herewith; or (ii) perform any of its obligations under this Agreement or any agreement, document or instrument executed or to be executed in connection herewith. The person executing this Agreement on behalf of Buyer is duly authorized to execute and bind Buyer to this Agreement and all other agreements, documents and instruments executed and to be executed in connection with the transaction contemplated herein, and upon such execution and delivery, this Agreement and such other agreements, documents and instruments shall be valid, binding and enforceable against Buyer.

(b) Neither the entering into of this Agreement, nor the performance any obligation under this Agreement, nor the consummation of the transaction contemplated herein, will: (i) constitute a violation or breach by Buyer of (A) any agreement, document or instrument to which Buyer is a party or by which Buyer is subject or bound, or (B) any judgment, order, writ, injunction or decree issued against or imposed upon Buyer; or (ii) result in the violation of

any law, rule, regulation, ordinance or order promulgated or issued by any governmental/quasi-governmental entity or authority or court of competent jurisdiction that is applicable to Buyer.

(c) Buyer understands and agrees that this Agreement shall not become effective until it is ratified and approved by the Town Council, and the Town Council has the sole and exclusive right to approve or deny the approval of this Agreement and the TDRs contemplated in this Agreement in its sole and absolute discretion.

(d) Buyer understands and agrees to comply with all conditions set forth in the Resolution including, but not limited to, timely obtaining a building permit for the Project.

All of the representations, warranties, covenants, agreements and statements of Buyer set forth in this Section shall be true and correct at all times from the Effective Date through and including the Closing Date and shall survive Closing.

8. Closing Conditions. Notwithstanding anything to the contrary contained in this Agreement, it shall be a condition precedent (each, a "Condition Precedent") to the Parties' obligation to close on the transaction contemplated by this Agreement that as of the "Closing Date" (as hereinafter defined): (i) the Town Council approves the instant Agreement and adopts a resolution approving this Agreement and the transaction contemplated herein (the "TDR Approval"), which TDR Approval shall be held by the Escrow Agent subject to Closing; and (ii) Buyer complies with all conditions set forth in the Resolution including, but not limited to, timely obtaining a building permit for the Project.

9. Documents to be Delivered at Closing. At Closing: (a) Seller shall execute and deliver to Buyer a Warranty Deed for Transfer of Development Rights (the "Deed"), in recordable form, conveying the TDRs to Buyer in fee simple free and clear of any and all claims, liens, mortgages, security agreements, financing statements and other encumbrances. The Deed shall be approved by the Town Attorney and shall restrict the future use of both the donor and receiving lands; and (b) Seller shall execute and deliver to Buyer a resolution evidencing its authority to execute and deliver the Deed.

10. Closing. The "Closing" subject to the terms and provisions of this Agreement, shall take place at the offices of the Escrow Agent commencing at 11:00 AM twenty (20) days after Buyer obtains a building permit for vertical construction of the Project (the "Closing Date"). However, notwithstanding anything set forth above or below, in no event shall the Closing Date occur more than one (1) year from the Effective Date of this Agreement. In the event that Buyer does not Close on this Agreement within one (1) year from the Effective Date of this Agreement, Buyer shall be in Default of this Agreement and the Seller shall retain the Deposit and all TDRs contemplated for sale by this Agreement.

11. Default.

(a) If Buyer defaults on any term, covenant, condition or other provision of this Agreement and the Resolution, then Seller shall have as its sole and exclusive remedy for such default the right to terminate this Agreement by giving a written notice of termination to

Buyer and retain the Deposit as full and agreed upon liquidated damages in full and final settlement of any and all claims for damages Seller has or may have against Buyer and, upon the giving of such termination notice and the delivery of the Deposit to Seller, this Agreement shall terminate and the Parties shall be released from all terms, provisions, obligations and liabilities of this Agreement, except from those that expressly survive its termination. The Parties acknowledge and agree that this provision for liquidated damages is a fair and reasonable measure of the damages to be suffered by Seller in the event of Buyer's default under this Agreement based on the fact that the exact amount of damages that Seller may incur is incapable of ascertainment. Notwithstanding the foregoing, Buyer shall not be in default under this Agreement unless (i) Seller shall have first provided written notice of the default to Buyer, and (ii) Buyer shall have failed to cure the default within a period of twenty (20) days after receiving notice of such default.

(b) If Seller defaults on any material term, covenant, condition or other provision of this Agreement, then Buyer shall have the following remedies: (i) to terminate this Agreement by giving a written notice of termination to Seller and receive the return of the Deposit, and upon the giving of such termination notice and the delivery of the Deposit to Buyer, this Agreement shall terminate and the Parties shall be released from all terms, provisions, obligations and liabilities of this Agreement, except from those that expressly survive its termination; and/or (ii) to commence an action for specific performance against Seller to compel Seller to perform in accordance with the terms and provisions of this Agreement. Notwithstanding the foregoing, Seller shall not be in default under this Agreement unless (1) Buyer shall have first provided written notice of the default to Seller, and (2) Seller shall have failed to cure the default within a period of sixty (60) days after receiving notice of such default.

12. **Notices.** All notices to be given under this Agreement shall be in writing and sent to the Parties at the addresses set forth below, by hand delivery; by email with any attachment thereto in PDF format, provided that the Party receiving such email confirms receipt thereof by return email and the Party sending such email notice also delivers a second form of notice by hand delivery or overnight mail that is received the following day; or by a nationally recognized overnight courier service. Any such notice shall be deemed received upon the earlier of receipt or refusal by the addressee.

Notices to Buyer shall be sent to Global Reach Investments, LLC Attn: Christopher Langen, Manager Phone No. (305) 674-0023, email address chris@langen.org; together with a copy to email address: gabriel@artandtech.net.

Notices to Seller shall be sent to 9665 Bay Harbor Terrace, Bay Harbor Islands, Florida 33154, Attn: Ronald Wasson, Phone No. (305) 866-6241, email address rwasson@bayharborislands.net with a copy to craig@shermanslaw.com

Notices to Escrow Agent shall be sent to Sherman & Sherman, P.A., 2000 Glades Road, Suite 204, Boca Raton, Florida 33431 Attn: Craig B. Sherman, Esq., Phone No. (561) 300-5888, email address craig@shermanslaw.com; together with a copy to the other Party and any person designated by such other Party to receive notice on its behalf.

The place to which any Party, or person designated to receive any notice on behalf of any Party, is entitled to receive any notice may be changed by such Party by giving notice thereof in accordance with the foregoing provisions. The attorneys for the Parties are authorized to send and receive notices and demands for and on behalf of their respective clients under this Agreement.

13. Broker. Each Party represents and warrants to the other that there are and have been no real estate brokers, agents or finders involved with respect to this Agreement or the transaction contemplated herein. Each Party (the "Indemnifying Party") shall indemnify, defend and hold the other Party (the "Indemnified Party") harmless from and against any claim, cause of action, loss, damage, liability, fee, cost or expense incurred by the Indemnified Party (including reasonable attorneys' fees and costs through all trial, appellate and post-judgment levels and proceedings) as a result of any breach by the Indemnifying Party of the foregoing representation and warranty. This Section shall survive Closing or any earlier termination of this Agreement.

14. Escrow Agent. The Escrow Agent shall hold in and disburse from escrow any monies and documents delivered to it by the Parties in accordance with the terms and provisions of this Agreement. The Escrow Agent is authorized and directed to place the Deposit in a non-interest bearing escrow account with any financial institution having branches in Miami-Dade County, Broward County and/or Palm Beach County. The Escrow Agent shall not be liable for any actions taken by it in good faith, but only for its gross negligence or willful misconduct. Each Party agrees to indemnify and hold the Escrow Agent harmless from and against any and all claims, demands, losses, liabilities, damages, fees, costs and expenses (including reasonable attorneys' fees and costs through all trial, appellate and post-judgment levels and proceedings) which the Escrow Agent may incur in its capacity as escrow agent under this Agreement, except for any such claim, demand, loss, liability, damage, fee, cost and/or expense incurred as a result of the Escrow Agent's gross negligence or willful misconduct. If there is any dispute as to the disposition of any monies or documents held by the Escrow Agent, then the Escrow Agent is hereby authorized to interplead such monies and/or documents into any court of competent jurisdiction and thereby be released from all obligations and liabilities hereunder. Seller hereby acknowledges that the Escrow Agent represents Buyer in the transaction contemplated by this Agreement and hereby consents to and approves of such representation.

15. Miscellaneous.

(a) This Agreement shall be governed by, enforced and construed under the laws of the State of Florida. Venue for all actions, litigation and/or other proceedings arising out of this Agreement shall be exclusively in Miami-Dade County, Florida. The Parties hereby knowingly and voluntarily waive the right to a trial by jury of any claim, controversy or disputed matter between them. The prevailing Party in any action, litigation or other proceeding that is based on any claim, controversy or other disputed matter arising under, out of or in connection with this Agreement (or any agreement, document or instrument executed or contemplated to be executed in conjunction herewith) shall recover from the non-prevailing Party all fees, costs and expenses (including, without limitation, reasonable attorneys' fees and costs through all trial, appellate and post-judgment levels and proceedings) incurred by the prevailing Party in such

action, litigation or other proceeding. This Section shall survive Closing or any earlier termination of this Agreement.

(b) The Parties hereby acknowledge and agree that each has had an opportunity to be represented by or consult with independent legal counsel and that any rule of construction which provides that ambiguities are to be construed against the drafter shall not apply in the interpretation or construction of this Agreement. If any term, provision or portion of this Agreement is for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction, then such term, provision or portion of this Agreement shall be given it nearest valid, legal and enforceable meaning, or construed as deleted, whichever such court may determine, and the same shall not invalidate the remaining terms, provisions and/or portions of this Agreement, which remaining terms, provisions and portions of this Agreement will remain in full force and effect.

(c) This Agreement includes all exhibits and amendments that are executed in connection herewith, whether executed simultaneously with or subsequent to the execution of this Agreement. This Agreement, together with all such now or hereafter existing exhibits and amendments, contains the entire agreement and understanding between the Parties relating to the subject matter of this Agreement, and all prior or contemporaneous terms, covenants, conditions, representations, warranties, statements, agreements and understandings made by or on behalf of the Parties, whether oral or written, are merged herein. This Agreement may not be amended or modified except by a written instrument executed by the Party against whom enforcement of such amendment or modification is sought. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns.

(d) No default, term, covenant, condition or other provision of this Agreement may be waived by a Party, except by a written instrument executed by the Party against whom enforcement of such waiver is sought.

(e) Time is of the essence with respect to each and every term, covenant and condition of this Agreement and the Parties' performance of the same; provided, however (i) any reference in this Agreement to a time period of less than six (6) days shall, in the computation thereof, exclude Saturdays, Sundays and legal holidays, (ii) any reference in this Agreement to a time period of six (6) days or more shall, in computation thereof, include Saturdays, Sundays and legal holidays, and (iii) if the last day of any time period is a Saturday, Sunday or legal holiday, then such period shall be extended to 5:00 PM. Eastern Standard Time on the next day that is not a Saturday, Sunday or legal holiday.

(f) Buyer may not assign this Agreement without prior written approval from Seller, which approval shall be in Seller's sole and absolute discretion. Notwithstanding the foregoing, Seller's approval shall not be withheld for an assignment to a successor-in-interest to the Property for which the TDRs attach. This Section shall survive Closing.

(g) Wherever appropriate in this Agreement, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of each gender shall be deemed to comprehend either or both of the other genders. The Section and paragraph headings in this

Agreement are for convenience only and shall not affect the meaning, interpretation or scope of the terms or provisions set forth therein.

(i) This Agreement may be executed in multiple counterparts, each of which individually shall be deemed an original, but when taken together shall be deemed to be one and the same Agreement. The signature of any Party on copies of this Agreement (or any exhibit or amendment hereto) may be signed by electronic signature, such as facsimile transmission or electronic mail by PDF format, and any such electronic signature shall be deemed to be an original for all purposes.

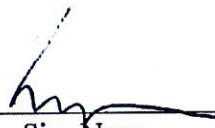
IN WITNESS WHEREOF, the Parties have hereunto set their hands and seals as of the date first set forth above.

Signed, sealed and delivered
in the present of:

BUYER:


Print Name: Ignacio Mejia

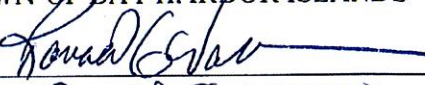

Print Name: Paul Chugilly

By: 
Sign Name

CHRISTOPHER LANGEN
Print Name

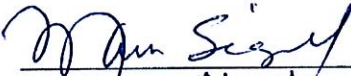
SELLER:

TOWN OF BAY HARBOR ISLANDS

By: 

Name: Ronald J. Wasson
Title: Town Manager

Date: 10/13/15


Print Name: Marlene Siegel

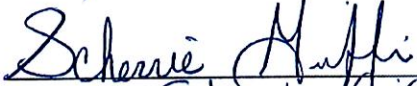

Print Name: Scherie Griffin

EXHIBIT "A"

The Legal Description of the Property

Bay Harbor island 7B 46-5

LOT 16 BLK 2

LOT SIZE 75.000 x 150

OR 19035-2423 03 2000 S

RESOLUTION NO. 2010

A RESOLUTION OF THE PLANNING AND ZONING BOARD OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, APPROVING THE SITE DEVELOPMENT PLAN APPLICATION FOR THE 9290 CONDOMINIUM PROJECT.

WHEREAS, on March 5, 2014, Global Reach Investments, LLC, (hereinafter the "Applicant"), filed an initial application for site plan approval. On April 24, 2014, Applicant submitted a revised site plan for a fourteen (14) unit condominium building, consisting of one (1) story of underground parking and seven (7) stories of habitable units thereupon located at 9290 West Bay Harbor Drive, Bay Harbor Islands, Florida, and legally described as:

Lot 16 of Block 2, "Bay Harbor Island" Subdivision according to the plat thereof, as recorded in Plat Book 46, at Page 5 of the Public Records of Miami-Dade County;

(Hereinafter the "Site Plan" or "Project"); and

WHEREAS, a site plan for new construction requires approval by the Planning and Zoning Board pursuant to Section 5-23.1(a) of the Town of Bay Harbor Islands' Code of Ordinances (hereinafter the "Code"); and

WHEREAS, on May 6, 2014, the Town's Planning and Zoning Board approved the Site Plan, pursuant to Section 5-23.1(a) of the Code, with the conditions set forth below.

NOW THEREFORE, be it resolved that:

1. **Recitals.** The foregoing recitals are hereby ratified as true and correct and incorporated herein by reference.

2. **Finding.** The Planning and Zoning Board finds that the Site Plan is consistent with the criteria set forth in Section 5-23.1(a) of the Code and approves the Site Plan dated April 21, 2014, subject to the below conditions for approval.

3. **Effective Date.** This Resolution shall take effect upon the date of its adoption (the "Effective Date").

4. **Conditions of Approval.**

A. This approval is based on the Site Plan dated April 21, 2014. Any modifications thereto shall require separate approvals from either staff or the Planning and Zoning Board, as specified in the Code.

- B. Prior to the issuance of a building permit, the Applicant shall obtain and present a concurrency determination demonstrating that the Project meets school concurrency requirements. Applicant shall coordinate with Miami-Dade County School Board staff through the Town staff (Building Dept.) to provide calculations and address any deficiencies at the public schools that serve the Project. If mitigation is required, an agreement, including any payment, must be finalized prior to the issuance of building permits.
- C. The Project is required to obtain five (5) TDR dwelling units prior to the issuance of a building permit; and the five (5) TDRs must be approved by the Town Council. If the number of required TDRs are not approved by the Town Council, the instant Site Plan approval shall be deemed null and void and the Project shall be redesigned.
- D. When the Miami-Dade Fire Department formally reviews the Project, if any material site design changes are required, a re-approval of the Site Plan shall be required by staff or the Planning and Zoning Board, as specified in the Code.
- E. Applicant shall submit final working plans within 180 days after the Effective date of this Resolution, unless extended by the Town Manager, or his designee, for up to 180 days. Applicant shall obtain a building permit within 90 days after the approval of final working plans, unless extended by the Town Manager, or his designee, for up to 90 days. Failure to obtain a building permit within the prescribed time shall result in the invalidation of the Site Plan, except and unless this Resolution is extended pursuant to the Code or other valid extension as prescribed by Florida law.
- F. The existing overhead power lines adjoining the Project shall be relocated underground during the redevelopment of the site at the sole expense of the Applicant. If undergrounding is not permitted by Florida Power & Light ("FPL") prior to the issuance of a certificate of occupancy, Applicant shall pay the Town the cost to underground the power lines and the Town shall hold such monies in trust and use such monies to underground the power lines once FPL approves the undergrounding of the power lines.
- G. The swimming pool safety railing shall be relocated to a location that is no less than five (5) feet from the edge of building's facade (parapet wall).
- H. The Project shall have valet parking as a result of the car lifts and car elevators selected by Applicant. Valet parking shall be provided twenty-four (24) hours per day. This valet parking requirement shall be a condition of this Site Plan approval and the Project's Certificate of Occupancy.

5. **Severability.** If any provision, section, phrase or word of this Resolution is declared invalid or unenforceable by a court of competent jurisdiction, the remaining provisions, sections, phrases or words of this Resolution shall remain in full force and effect.

6. This Resolution shall become effective immediately upon its adoption, unless a timely appeal is filed with the Town Council.

PASSED this 6th day of May, 2014.

**PLANNING AND ZONING BOARD
TOWN OF BAY HARBOR ISLANDS**

By: _____


Chair Person

ATTEST:


Town Clerk

Town of Bay Harbor Islands
P.O. Box 546620
Bay Harbor Islands, FL 33154

Payee: LANGEN & LANGEN, P.A.
Date: 7/15/2015 Time: 1:43 PM
Receipt Number: MAIN / 89336
Clerk: scherrie

9290 W. BAY HARBOR DRIVE

ITEM	REFERENCE	AMOUNT
MISC TDR FEE		500.00
Total:		500.00
Check	12762	500.00
Change:		0.00

LANGEN & LANGEN, P.A. TRUST ACCOUNT P.O. BOX 398670 305-874-0023 MIAMI BEACH, FL 33239-8670		901 000	12762
DATE		7/10/15	
PAY TO THE ORDER OF	Town of Bay Harbor Islands		\$ 500 ⁰⁰ / ₁₀₀
Five hundred ⁰⁰ / ₁₀₀		DOLLARS	
THE NORTHERN TRUST COMPANY			
 Northern Trust			
MEMO			
⑆066009650⑆ 101002431210 12762			

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

To: Marlene Siegel - Town Clerk / Director of Code Compliance
Town of Bay Harbor Islands

CC: Ronald Wasson - Town Manager
Craig Sherman, Esq. / Frank Simone, Esq. - Town Attorneys

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

Date: July 15th, 2015

Subject: 9290 W. Bay Harbor Drive - 11 DU Multifamily Residential Development
9290 W. Bay Harbor Drive / Lot 16 of Block 2
Public TDR Request from Town-Owned Pool
Bay Harbor Islands Acct. No. MB2015-172
MMPA Acct. No. 01-0702-0985

ISSUE

In mid-2014 the Town reviewed / processed / approved a Site Development Plan for the above referenced land re-development project. The Planning and Zoning Board approved the Site Development Plan on May 6th, 2014. This single-lot development included fourteen (14) DU on the approved plans, which required the developer to obtain five (5) TDR units. The Town recently received and is currently reviewing the Building Permit plans for this development. Initial construction has not yet commenced. The most recent Building Permit plans show an intent to only build eleven (11) DU as some of the units are being combined. The subject site is entitled to 9 DU via the 34 DUA base density; therefore, the developer is required to acquire an additional 2 DU via the Town's TDR system to proceed with the development. The developer is seeking to acquire the 2 TDR units from the Town (public).

RECOMMENDED ACTION / OPTIONS

Review the contents of this staff report and, if the Town Council likes the redevelopment project, favorably consider the applicant's request to acquire two (2) TDR units from the Town-owned "pool" of TDR units. If the Town Council does not like the project and/or does not want to allocate Town-owned TDR units, deny the request in whole or in part. In this instance the applicant will need to acquire the 2 TDR units from private property owners.

The applicant has offered to acquire the TDR units for the current Town per-unit value (\$47,500) for a waterfront development. Section 23-22.2(d) allows the Town Council to "set the value of any public development rights. The Council may use current market value to set the price or develop an alternative value method consistent with the goals, objectives and vision of the Town including but not limited to capital or land contributions for parks, open space and parking."

BACKGROUND

The Town established its Transfer of Development Rights (TDR) program in 2004-05 via the adoption of the Phase I EAR-Based Comprehensive Plan to the Future Land Use Element. This system was necessary and required by the State (DCA) to ensure a method was in place to regulate the equitable allocation of dwellings units to individual building sites in the Town. The Town's original 1988 Comprehensive Plan included major errors in calculating existing residential densities by utilizing an "average" block-by-block analysis (34 DUA overall average), even though individual project densities ranged from 7 DUA (duplex) to over 70 per acre (midrise).

Over one third of the older existing developments have densities over 34 DUA. Conversely, many properties are "underdeveloped" with villas / duplexes / triplexes / etc., and while 8-9 DU could be built on a typical 75' x 150' site, the original developer chose not to build that many DU. However, those properties are entitled to build more DU if they desire to redevelop the sites. The Town's TDR system ensures that all property owners have the right to build to at least the base density – 34 DUA. If a developer desires to build to a higher residential density than 34 DUA, and they can meet all the Town's land development criteria, the Planning and Zoning Board approves the site design, and the Town Council likes the design and approves TDR allocations, which occur on a case-by-case basis, the project can be built to include additional DU.

On November 12th, 2013, the Town Council amended the Zoning Code to establish maximum multifamily residential density limits per Zoning District. Lots zoned RM-1 Multiple Family Residential District (waterfront lots) now allow for a maximum overall density (includes base density / TDR units) of 70 dwelling units per acre. Lots zoned RM-2 Multiple Family Residential District (non-waterfront lots) now allow for a maximum overall density (includes base density / TDR units) of 60 dwelling units per acre. Lots zoned RM-3 Multiple Family Residential District now allow for a maximum overall density (includes base density / TDR units) of 80 dwelling units per acre. If the Town approves a development in the RM-3 Zoning District with a height exceeding 75 feet in accordance with the Town Charter / Code provisions, the maximum density is determined at the time of Site Development Plan / TDR approval (can exceed 80 DUA).

In the earlier years of the Town's TDR program about 40% of the 30+/- new redevelopment projects requested some TDR units. The initial price of publically-owned TDR units was \$75,000 for waterfront and \$45,000 for non-waterfront sites, which was based on actual real estate sales at that time. However, due to the real estate market collapse (2006-11) only two (2) TDR allocations were consummated from that time period (total of 13 TDR units). Both TDR transactions were done via private sales for values just below \$70,000 per DU. Both were for waterfront locations and only one was built (Millennium West / Riva). Due to development inactivity and the cost of appraisal updates the Town did not update the TDR values for several years. In April 2011 due to an increase in development activity the Town requested the appraiser (Quinlivan) to update the TDR values of publically-owned TDR units. Several price adjustments have been done since.

The current Town-owned TDR values set by Resolution in September 2014 are \$47,500 for waterfront sites and \$40,000 for non-waterfront sites. In May 2015 the Town received an updated appraisal recommending the prices remain at the current values.

In the last 3 years+/- there have been several Town-owned TDR allocations approved by the Town Council. As of 07/15/15 the Town has contracted to sell 201 of the 330 available Town-owned TDR units (east island multi-family area). Of the contracts to sell the TDR units, 132 TDR units are for waterfront sites and 69 are for non-waterfront sites. Of the 132 waterfront TDR units, 63 were sold for \$20,000 each between November 2011 and February 2013. The remaining waterfront TDR units under contract sold for \$30,000 each in March 2013. 24 of the non-waterfront TDR units under contract sold for \$15,000 each in February 2013, 34 non-waterfront TDR units under contract sold for \$35,000 each between October and November 2013, 5 non-waterfront TDR units under contract sold for \$37,500 each in May 2014 and the remaining 6 non-waterfront TDR units under contract sold for \$40,000 each in September 2014. There have also been many "sales" of TDR units approved by the Town from private property owners. Our records reflect these private "sales" total 127 TDR units and 913 privately owned TDR units are available. Some have been approved by the Town but not closed as yet.

SUMMARY

The PZB approved the Site Development Plan on May 6th, 2014. This single-lot development included fourteen (14) DU on the approved plans, which required the developer to obtain five (5) TDR units. The Town recently received and is currently reviewing the Building Permit plans for this development. Initial construction has not yet commenced. The most recent Building Permit plans show an intent to only build eleven (11) DU as some of the units are being combined. The subject site is entitled to 9 DU via the 34 DUA base density; therefore, the developer is required to acquire an additional 2 DU via the Town's TDR system to proceed with the development. The developer is seeking to acquire the 2 TDR units from the Town (public).

The Code allows the Town Council to set the current price or use an alternative method to determine the TDR values. The applicant's current offer of \$47,500 per DU matches the current value for waterfront sites set by the Town Council in September 2014. If the Town Council likes the redevelopment project, favorably consider the applicant's offer to acquire two (2) TDR units (or an alternate amount) from the Town-owned "pool" of TDR units. If the Town Council does not like the project and/or does not want to allocate Town-owned TDR units, deny the request in whole or in part. As the Town's number of "public" DU decreases the availability of DU for future development has caused the Town Council to limit the sale of Town TDR "pool" units as a last resort / 50% max. from the Town. If the Town denies the request for 2 Town-owned TDR units the applicant must acquire the additional TDR units from private property owners.

If the Town Council approves the request of allocating 2 TDR units at \$47,500 each, the total value would be \$95,000. MMPA records reveal there are 129 DU remaining Town-owned TDR units at this time. If the Town allocates 2 TDR units this would leave 127 TDR DU in the Town-owned pool.

Suggested Condition - TDR allocations are meant for site specific allocations and the intention is the development will move forward. TDR units cannot be "banked" by a party indefinitely. Once a site plan is approved by the Town a building permit must be requested by a time certain (1 year) and extensions may be granted (6 months Town Code / various state Bills).

Town of Bay Harbor Islands
9290 W. Bay Harbor Drive - TDR Request (Public)
July 15th, 2016
Page 4

MMPA suggests the sales contract include a "reverter" clause that provides that if the project does not proceed within a specified time period, the TDR units revert back to the Town-owned pool.

AGENDA ITEM REPORT

August 8, 2016

ITEM NUMBER: 15.

ITEM: Approval of Change Order in favor of FXP Corporation in the amount of \$38,750 to replace the condensers that are associated with project number BHI-171 for the installation of a new A/C chiller for Town Hall. Enclosed find a copy of the change order.

DESCRIPTION:

At the April 11th, Regular Council Meeting, the Town Council approved project BHI 171 in the amount of \$108,000 for a new AC chiller for Town Hall, the Council Chambers and the Police Department.

During the new AC unit installation, staff was informed that the rooftop condenser became contaminated and that replacement of the units should be considered.

As a result bids were requested from (3) three vendors (Airstron, Ed Helms and Debonair) for cost estimates to replace the rooftop condensers.

Enclosed find a change order proposal from the only responsive vendor in the amount of \$38,750.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

Appropriation from the General Reserves would be required in the amount of \$38,750

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk

ATTACHMENTS

1.	Change Order	CO- AC Town Hall.pdf
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interoffice
MEMORANDUM



From: Randy Daniel, P.E. – Town Engineer/ Director
of Public Works

Randy Daniel

To: Ron Wasson - Town Manager

Copy: JC Jimenez – Assistant Town Manager
Alan Short – Finance Officer
Dale Lee –Chief Building Official

Date: July 27, 2016

Subject: Contract No. BHI 171 - New AC Chiller for Town Hall
Change Order in the amount of \$38, 750.00

At the April 11th regular Council Meeting, the Council approved an amount of \$108,000 in favor of FXP Corporation (FXP), to replace the chilled water system used to air condition Town Hall, Building Department, the Council Chambers and the Police Department.

After Engineering submittals were prepared by FXP and reviewed by the Mechanical Inspector and the Town Engineer, a construction permit was issued on 06/22/2016 to FXP.

On July 18th FXP submitted a request for a change order to decontaminate the existing condensers. During malfunction of the old chiller unit, oil leaked into the chill water system. When refrigerant is added to this mixture, a toxic liquid (an acid) will be formed that will damage the new Chiller.

FXP submitted a price of \$5,947.00 to decontaminate the system which required flushing "as many times as required to ensure there are no contaminated particles" that remain in the system. A copy of their proposal is attached as Appendix I.

Upon review it became clear that FXP could not guarantee that all the contaminated particles could be evacuated and the potential for damage to the new Chiller will continue to exist. After consultation with the Mechanical Inspector, Juan Zuniga, it was agreed that it was in the best interest of the Town to replace the condensers.

FXP and three (3) other vendors (Airstron, Ed Helms and Debonair) were requested on July 19th to supply pricing for removing and replacing the roof top condensers.

**CHANGE ORDER PROPOSAL**

TO: Town of Bay Harbor
9665 Bay Harbor Terrace
Bay Harbor, Islands 33154

Attn: Randy Daniel

Change Order
Request No.
Date:

4

7/18/2016

Contract No.
Project: BHL-171 Supply & Install New Carrier Water Cooled
Project No.

Description of Proposed Change:

Due to existing condenser system contamination, it is mandatory to decontaminate system, flush system as many times as require to ensure there are not contaminated particles in the system that can affect new chiller functionality. Evacuation of the system must be done as long as it takes in order to remove the excessive amount of humidity in the existing condenser. Vacuum must be brake with nitrogen several times in order to absorb and extract the humidity until it reach the 500 microns.

Reason for Change:

HIDDEN/UNFORESEEN CONDITIONS RELATED TO THE DETERIORATED CONDITION OF THE EXISTING CONDENSER

Does Proposed Change involve a change in Contract Sum or Time?

If yes: Proposed Change in Contract Sum:

Yes

\$ 5,947.80

Proposed Change in Contract Time: 30 days

Summary of Additional Costs

Material & Equipment Subtotal	\$	2,366.00
Sales Tax @ 7%	\$	166.00
Labor and Subcontractor Subtotal	\$	2,640.00
Subtotal	\$	5,172.00
Overhead and Profit	15% \$	775.80
Subtotal	\$	5,947.80
Bond Cost	\$	
Subtotal	\$	5,947.80
TOTAL PRICE OF CHANGE	\$	5,947.80

Contractor: FXP Corp
2897 SW 69th Court
Miami, FL 33155

By:

Francisco X. Perez, P.E.
President

Accepted and Approved by: _____

[illegible]

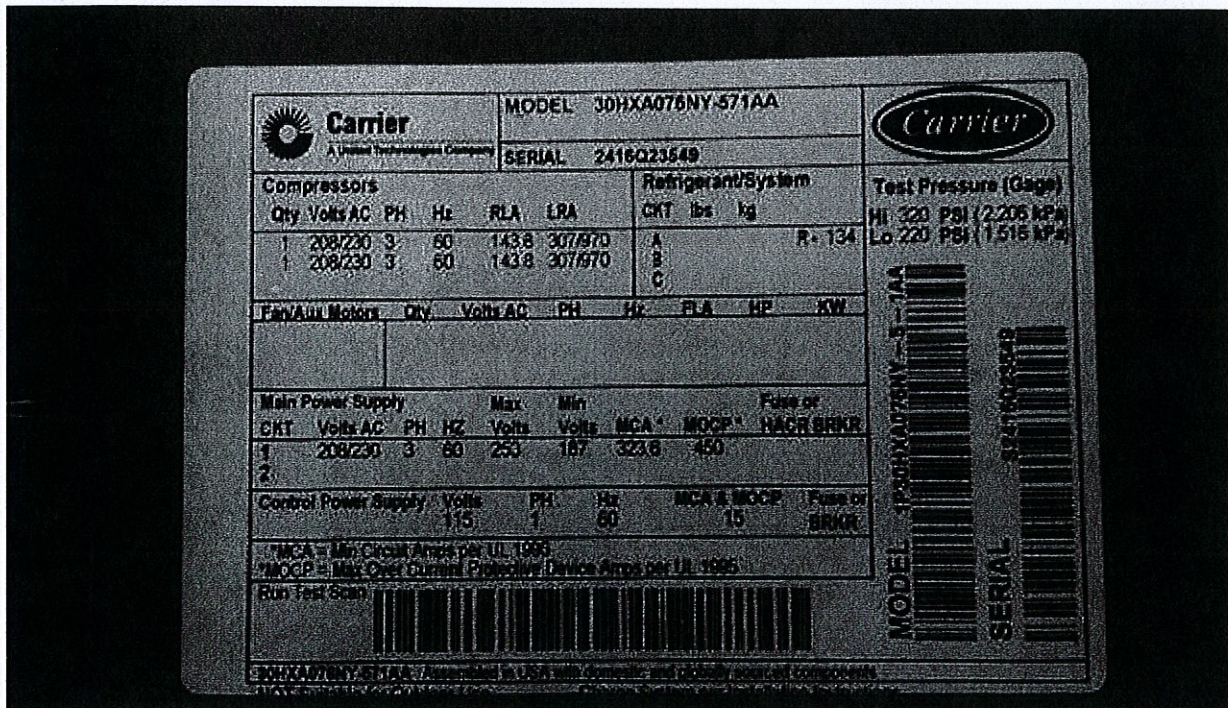
From: Douglas Armstrong
Sent: Tuesday, July 19, 2016 11:45 AM
To: fperez@fxpcorp.com; Jim Devlin (jimmyd@airstron.com); Jamie Cumming (JCumming@eddhelms.com); 'rprenderast@eddhelms.com'; Seiji Menendez (smenendez@debonairac.com)
Cc: Randy Daniel; Ronald J. Wasson; J C Jimenez
Subject: Proposal to Supply, Install, and Connect New Rooftop Condenser(s)

All,

While installing our new Carrier water-cooled condenserless AC unit, it was brought to our attention that the rooftop condenser(s) became contaminated and that replacement of the unit should be considered. We are therefore soliciting bids from qualified contractors to supply, install, and connect new rooftop condensers.

Attached is a photo of the manufacturer's plate for the newly installed water-cooled unit. The new rooftop unit shall be a Carrier, be compatible with all specifications of the new chiller unit as shown in the photo, and be epoxy-coated to retard corrosion. The new chiller has a tonnage capacity of 67.6.

If interested in providing a proposal to remove old unit(s), furnish, install, and connect a compatible rooftop condenser unit(s), please reply to this email to arrange a time/date to inspect and gather any information needed. The closing date for bid submittal is Monday, July 25, 2016 at 10:00am. Please contact Assistant Public Works Director, Douglas Armstrong at 786-877-4130 if you have additional questions.



Regards,

DOUGLAS P. ARMSTRONG

Assistant Public Works Director,



APPENDIX III

HVAC PROPOSAL

VIA E-MAIL

July 25, 2016

RE: Supply, Install and Connect Rooftop Condenser(s)

Attn: Douglas Armstrong
Town of Bay Harbor

HVAC Costs (base price):

\$38,750.00

QUALIFICATIONS

1. We include only what the solicitation requested.
2. This price is based on an 80-ton nominal ton condenser which will provide 67 tons when matched with the existing chiller in place.
3. We do not include any other work that may be necessary such as replacing the existing beams to accommodate the new condenser.

Sincerely,
FXP CORP

Francisco X. Perez, P.E.
President

AGENDA ITEM REPORT

August 8, 2016

ITEM NUMBER: 16.

ITEM: Approval of Change Order 21 in favor of M&J Construction of Pinellas County Inc., in the amount of \$16,502.59 for steel reinforcement to the bent caps & plinths of the Broad Causeway Bridge. Enclosed find a copy of the change order and supporting documents.

DESCRIPTION:

Approval is hereby sought for Change Order (CO) number 21 in the amount of \$16,502.59. in favor of M&J Construction of Pinellas County Inc.

This CO addresses the quantity over-run from additional work necessary to restore the deteriorated reinforcement of the bent caps and plinths to acceptable structural standards.

Attached are the details of the CO, that have been approved by the Consultant Engineer, Hardesty and Hanover, LLC.

Staff recommend approval of Change Order # 21 in favor of M&J Construction of Pinellas County Inc. in the amount of \$16,502.59.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

It is further recommended that the source of funding for Change Order # 21 in the amount of \$16,502.59 come from the Broad Causeway Reserves.

BUDGET IMPACT:

Submitted By: Randy Daniel, Town Engineer

ATTACHMENTS

1.	Change Order # 21	Change Order 21 - Reinforcing Steel.pdf
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Change Order

No. 021

Date of Issuance: May 28, 2016

Effective Date: May 28, 2016

Project: Rehabilitation of Broad Causeway Bridges	Owner: Town of Bay Harbor Islands	Owner's Contract No.: BC-142
Contract: FDOT Financial Management Number 436093-1	Date of Contract: Contract Time started February 2, 2015	
Contractor: M&J Construction of Pinellas County, Inc.	Engineer's Project No.: 2286.05	

The Contract Documents are modified as follows upon execution of this Change Order:

Description:

Supplement to Contract Pay Item 415-1-15: Reinforcing Steel - Substructure, to address quantity over-run from additional work necessary to restore the deteriorated reinforcement of the bent caps & plinths to acceptable structural standards.

Attachments (list documents supporting change):

1. Copies of original contract drawings B3, B-13-14 thru B-14, B1-5, and B1-12 thru B1-13 showing original locations and Contract Quantity;
2. Summary spread sheet reflecting As-Built conditions.

CHANGE IN CONTRACT PRICE:

Original Contract Price:

\$ 11,467,614.18

[Increase] [~~Decrease~~] from previously approved Change Orders No. 001 to No. 020 :

\$ 2,819,796.16

Contract Price prior to this Change Order:

\$ 14,287,410.34

[Increase] [~~Decrease~~] of this Change Order:

\$ 16,502.59

Contract Price incorporating this Change Order:

\$ 14,303,912.93

CHANGE IN CONTRACT TIMES:

Original Contract Times: ☐ Working days ☒ Calendar days

Substantial completion (days or date): 480

Ready for final payment (days or date): 540

[Increase] [~~Decrease~~] from previously approved Change Orders No. N/A to No. N/A :

Substantial completion (days): 480

Ready for final payment (days): 540

Contract Times prior to this Change Order:

Substantial completion (days or date): 480

Ready for final payment (days or date): 540

[Increase] [~~Decrease~~] of this Change Order:

Substantial completion (days or date): N/A

Ready for final payment (days or date): N/A

Contract Times with all approved Change Orders:

Substantial completion (days or date): 480

Ready for final payment (days or date): 540

RECOMMENDED:

By: [Signature]
Engineer (Authorized Signature)

Date: 28 MAY 2016

Approved by Funding Agency (if applicable):

N/A

ACCEPTED:

By: _____
Owner (Authorized Signature)

Date: _____

ACCEPTED:

By: [Signature]
Contractor (Authorized Signature)

Date: 6-2-16

Date: _____

Change Order

Instructions

A. GENERAL INFORMATION

This document was developed to provide a uniform format for handling contract changes that affect Contract Price or Contract Times. Changes that have been initiated by a Work Change Directive must be incorporated into a subsequent Change Order if they affect Price or Times.

Changes that affect Contract Price or Contract Times should be promptly covered by a Change Order. The practice of accumulating Change Orders to reduce the administrative burden may lead to unnecessary disputes.

If Milestones have been listed in the Agreement, any effect of a Change Order thereon should be addressed.

For supplemental instructions and minor changes not involving a change in the Contract Price or Contract Times, a Field Order should be used.

B. COMPLETING THE CHANGE ORDER FORM

Engineer normally initiates the form, including a description of the changes involved and attachments based upon documents and proposals submitted by Contractor, or requests from Owner, or both.

Once Engineer has completed and signed the form, all copies should be sent to Owner or Contractor for approval, depending on whether the Change Order is a true order to the Contractor or the formalization of a negotiated agreement for a previously performed change. After approval by one contracting party, all copies should be sent to the other party for approval. Engineer should make distribution of executed copies after approval by both parties.

If a change only applies to price or to times, cross out the part of the tabulation that does not apply.

\\Fs1\Projects\378507 Bay Harbor Rehabilitation\COO Rev02\Struct\BtPay\Summary.D

Bridge Nos. 875101, 875102, 875103

MECHANICAL COUPLER DETAIL

MECHANICAL COUPLER DETAIL NOTES:

- As an alternative to splicing or doweling, the Contractor may use Mechanical Couplers to prevent excess removal of sound concrete, etc.
- Provide Mechanical Couplers in order to maintain continuity of reinforcing steel.
- The mechanical couplers used as splice alternative shall be from the FDOT QPL list.
- After installing Mechanical Couplers, use Splice Repair Detail-2 on DWG. No. G-14.

SPLICE DETAIL

SPLICE NOTES:

- This detail is applicable when the existing reinforcement exhibits 80% reduction in its cross sectional area due to corrosion.
- Splices shall be staggered.
- After splicing, use Splice Repair Detail-2 (DWG. No. G-14) for splice repair.
- As an alternative to splicing, reference the Mechanical Coupler Detail.

DOWEL DETAIL

DOWEL NOTES:

- Dowels shall be utilized at locations where splicing may result in the removal of excess sound concrete, etc.
- Before drilling, locate all existing bars next to proposed holes. Prevent any damage to existing reinforcement.
- Drilled hole diameter shall be 1/2\"/>
- Holes for dowel bars shall be thoroughly cleaned prior to placing epoxy resin & dowels.
- The adhesive anchor system used shall be class IV as listed in FDOT Qualified Products List (QPL)
- Support dowels in position until epoxy is set.
- The embedment dowel length and size of drilled holes shall be determined by adhesive manufacturer requirements.

SPLICE TABLE

BAR SIZE	LAP LENGTH
4	1'-9"
5	2'-2"
6	2'-7"

SPLICE REPAIR DETAIL-1

SPLICE REPAIR DETAIL-1 NOTES:

- Chip to sound concrete.
- If more than half of perimeter of reinforcing bar is exposed or bond around bar is broken use Splice Repair Detail 2.
- Thoroughly clean reinforcing steel and concrete surfaces by hand grind and / or brush clean followed by blowing with compressed air.
- Prime the surface to be repaired with recommended product, using stiff brushes to work into surface.
- While priming material is tacky, fill voids with recommended product to original, near lines.

REVISIONS

DATE	BY	REVISION
10-07-14	SWH	Revise Notes, Add Fabric, Remove Detail

PROFESSIONAL ENGINEER

THOMAS J. MOLES
No. 49891
Professional Engineer
State of Florida

PROJECT INFORMATION

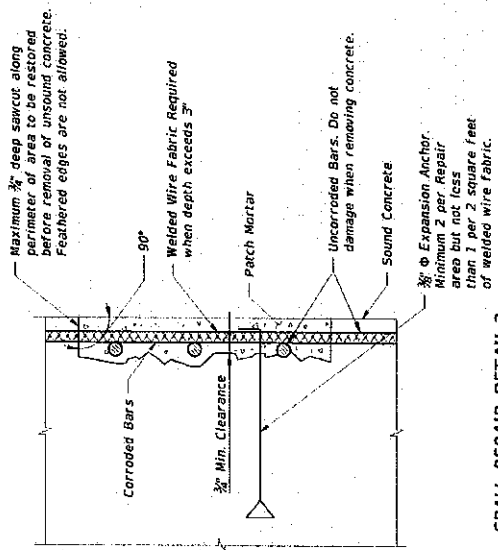
PROJECT NO: 875101, 875102, 875103

PROJECT NAME: SPALL REPAIR DETAILS (1 OF 2)

LOCATION: TOWN OF BAY HARBOR ISLANDS

SECTION: 922

DATE: 11/28/14

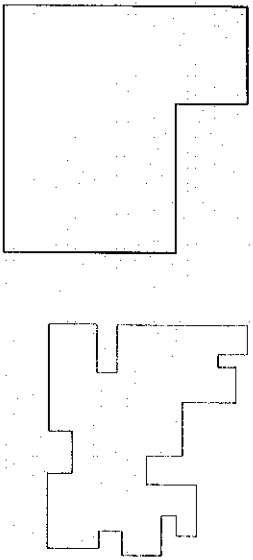


SPALL REPAIR DETAIL-2

SPALL REPAIR DETAIL-2 NOTES:

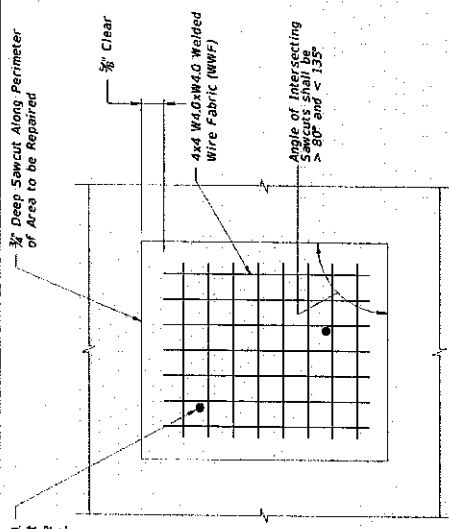
1. The Contractor shall inspect, sound test, and mark the perimeter of the concrete areas to be repaired. Submit proposed repair areas to the Engineer for approval.
2. Saw cut along the perimeter of concrete to be restored. (See Detail-2, this sheet). Remove all unsound concrete to the satisfaction of the Engineer. The reinforcing steel shall be completely exposed with enough clearance behind the bar to assure full encasement and bond with the new concrete repair material. Provide $\frac{3}{4}$ " to 1" clearance between exposed reinforcing and surrounding concrete. Supplement any existing reinforcing steel found to have 50% or more loss of area by splicing a new bar of equal size over affected section (see Splice Detail, Dwg. No. G-13).
3. Keep repair configuration as simple as possible, preferably with squared corners as shown in Detail 2, this sheet.
4. Unsound concrete shall be removed using hand-held equipment only. Pneumatic hammers heavier than 15 pounds class (nominal) (30 pounds maximum) shall not be used.
5. Exercise special care when removing unsound concrete to avoid damaging existing reinforcing steel, embedded anchorages or break the bond between the steel and sound concrete to remain.
6. When unsound material has been removed but corrosion on the existing reinforcing steel extends into the concrete, the concrete shall be removed to 1" beyond the end of the area of corrosion, where the bar is free of corrosion and is well bonded to solid concrete.
7. If non-corroded reinforcing steel is exposed during concrete removal, care shall be taken to not damage the bar's bond to solid concrete. If bond between bar and concrete is broken, the concrete shall be removed to provide clearance as detailed in Note 3.

$\frac{3}{4}$ " Dia. Expansion Anchor (Type 1) Minimum 2 per Repair area but not less than 1 per 2 square feet of welded wire fabric.



BOUNDARY OF LOOSE / DELAMINATED CONCRETE RECOMMENDED LAYOUT

8. Any existing reinforcing steel damaged by the Contractor's actions in the process of removing unsound concrete or clearing reinforcing steel shall be repaired to the satisfaction of the Engineer at the Contractor's expense.
9. All existing reinforcing steel to remain shall be media blasted prior to application of the patch material to SSPC SP10.
10. The concrete surface prior to applying repair material shall be cleaned by media blasting to remove loose particles, dirt, tar, oil and dust.
11. The placement of forms and pouring shall be completed as soon as practical after surface cleaning (72 hours max.).
12. When depth of concrete removal exceeds 3" install galvanized welded wire fabric and expansion anchors as shown in the Concrete Spall Repair Detail-1, this sheet.
13. Repair concrete spall areas using Polymer Modified-Portland-Cement Mortar. Material shall be selected from the Florida Department of Transportation's Qualified Products List and submitted to the Engineer for approval. Match repair service to surrounding concrete surfaces.
14. For spalls in which formwork is not needed, the repair material can be placed by hand and troweled to match the original section. Defects in the base concrete such as broken pieces, voids, honeycombs, corrosion, etc. must be removed. Notes 3 thru 13 above shall also apply to these areas.
15. The Contractor shall stop work immediately and notify the Engineer prior to proceeding with the work when:
 - Substructure repair requires more than six (6) inches of concrete depth removal.
 - Repair area extends more than twelve (12) inches in any direction beyond the repair area initially identified.
16. Details are applicable to all orientations: Horizontal (including overhead) and Vertical.

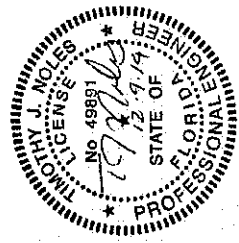


WELDED WIRE FABRIC DETAIL

(Exposed Existing Reinforcing Steel Not Shown for Clarity)

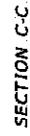
SPECIAL NOTES FOR WELDED WIRE FABRIC:

1. Field bond WWF to conform with any changes in the concrete surface configuration.
2. Tie each expansion anchor bolt to welded wire fabric with galvanized wire.
3. Expansion anchor bolts and WWF installation shall be approved by the Engineer prior to placement of repair mortar.



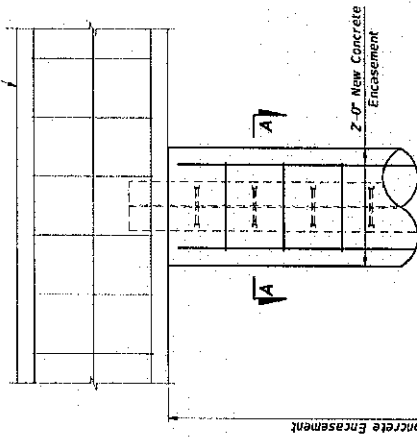
Bridge Nos. 875101, 875102, 875103

REVISIONS				TOWN OF BAY HARBOR ISLANDS				SPALL REPAIR DETAILS (2 OF 2)			
DATE	BY	REVISION	DESCRIPTION	PROJECT NO.	COUNTY	PROJECT O	PROJECT NAME	DATE	BY	REVISION	DESCRIPTION
10-27-14	SNH	Revise Notes		922	MIAMI-DADE	BC142	BROAD CAUSEWAY BASCULE, NE 96TH ST. AND KANE CONCRETE BRIDGES REHABILITATION	10/27/2014	SNH	1	
				PROJECT NO. 922				PROJECT NAME			
				CONTRACT NO. 11/01/14-01/01/14				CONTRACT NO. 11/01/14-01/01/14			
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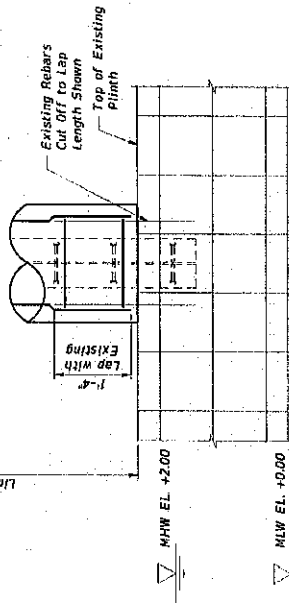


Change Order #021: Supporting Document 1 of 2, Page 4 of 6

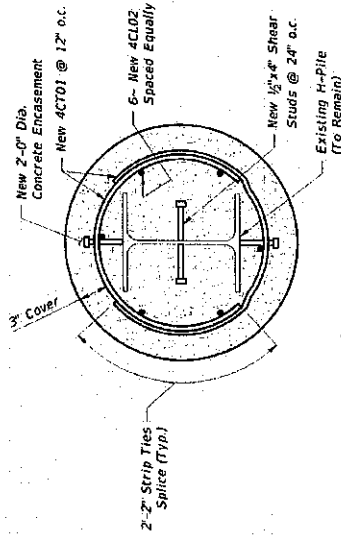
Top of Existing Pier Cap



Limit of New Concrete Encasement



SECTION A-A



NOTES:

1. Remove existing delaminated concrete encasement using a pneumatic chipping hammer and water blasting.
2. The Contractor shall exercise special care not to damage any elements of the structures that are to remain, including H-Piles and Plinth Reinforcements.
3. Turbidity screens shall be used to prevent the turbidity levels in the project area from exceeding 25 NTU's above the natural background. Contractor shall submit to the Engineer details of the floating turbidity barrier for approval.
4. Repair a maximum of four (4) columns at a time in a bent; do not repair two adjacent columns at the same time. Do not repair consecutive columns along a bent.
5. Pay for work to remove existing delaminated concrete encasement and furnish and install new concrete encasement and shear studs under Pay Item No. 400-4-5, Class IV Concrete (Substructure).

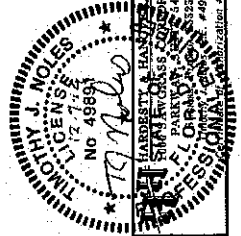
COLUMN REPAIR DETAIL

Repair Typical for Bents No. 5-9 and 12-22
Bents No. 2-4 and 23-30

Bridge No. 875101

REVISIONS		DESCRIPTION		DATE		BY		CHECKED		DATE		BY	
10-07-14	50H	Δ	Added N/C										
PROJECT NAME: BROAD CAUSEWAY BASCULE BRIDGE REHABILITATION OVER INTRACOSTAL WATERWAY													
SHEET NO: 81-12													
TOWN OF BAY HARBOR ISLANDS													
COUNTY: MIAMI-DADE													
ROAD NO: 972													
PROJECT NO: 875101													
DATE: 12/12/14													
DRAWN BY: J. NOLES													
CHECKED BY: J. NOLES													
SCALE: AS SHOWN													
PROJECT NO: 875101													
SHEET NO: 81-12													

S E	M R	LENGTH	NO BARS REQ'D	STYLE		B	C	D	E	F	H	J	K	N	φ	BENT #
				A	G											
LOCATION : COLUMN BAR LIST																
4	CT01	3'-3 3/4"	3489	1		3'-3 3/4"										2-30
4	CT02	3'-8"	11	1		3'-8"										2-4, 23-30
4	CT03	4'-6"	11	1		4'-6"										2-4, 23-30
4	CT04	5'-3 3/4"	11	1		5'-3 3/4"										2-4, 23-30
4	CT05	5'-10"	11	1		5'-10"										2-4, 23-30
4	CT06	5'-10"	528	1		3'-6"										2-4, 23-30
4	CT07	4'-5"	48	1		4'-5"										2
4	CT08	6'-1 1/2"	48	1		6'-1 1/2"										3
4	CT09	7'-10 3/4"	48	1		7'-10 3/4"										4
4	CT10	5'-0"	48	1		5'-0"										5
4	CT11	6'-8 1/2"	48	1		6'-8 1/2"										6
4	CT12	8'-5 1/2"	48	1		8'-5 1/2"										7
4	CT13	10'-7"	48	1		10'-7"										8
4	CT14	11'-5 1/2"	48	1		11'-5 1/2"										9
4	CT15	11'-8 1/2"	48	1		11'-8 1/2"										12
4	CT16	11'-1 1/2"	48	1		11'-1 1/2"										13
4	CT17	10'-4 1/2"	48	1		10'-4 1/2"										14
4	CT18	9'-5 1/2"	48	1		9'-5 1/2"										15
4	CT19	8'-9 1/2"	48	1		8'-9 1/2"										16
4	CT20	8'-0 1/2"	48	1		8'-0 1/2"										17
4	CT21	7'-2 1/2"	48	1		7'-2 1/2"										18
4	CT22	6'-5 1/2"	48	1		6'-5 1/2"										19
4	CT23	5'-8 1/2"	48	1		5'-8 1/2"										20
4	CT24	4'-11"	48	1		4'-11"										21
4	CT25	4'-11"	48	1		4'-11"										22
4	CT26	7'-11 1/2"	48	1		7'-11 1/2"										23
4	CT27	7'-2 1/2"	48	1		7'-2 1/2"										24
4	CT28	6'-4 1/2"	48	1		6'-4 1/2"										25
4	CT29	5'-7 1/2"	48	1		5'-7 1/2"										26
4	CT30	4'-10 1/2"	48	1		4'-10 1/2"										27
4	CT31	4'-0 1/2"	48	1		4'-0 1/2"										28
4	CT32	3'-3 3/4"	48	1		3'-3 3/4"										29
4	CT33	2'-6 3/4"	48	1		2'-6 3/4"										30



Bridge No. 875101

DATE		REVISIONS		DESCRIPTION		TOWN OF BAY HARBOR ISLANDS		PROJECT NO.		PROJECT NAME		SHEET NO.		SHEET TOTAL	
DATE	BY	DATE	BY	DATE	BY	PROJECT NO.	PROJECT NAME	PROJECT NO.	PROJECT NAME	PROJECT NO.	PROJECT NAME	PROJECT NO.	PROJECT NAME	PROJECT NO.	PROJECT NAME
						922	MIAMI-DADE	922	MIAMI-DADE	922	MIAMI-DADE	922	MIAMI-DADE	922	MIAMI-DADE
COLUMN REPAIR BAR LIST BROAD CAUSEWAY BASCULE BRIDGE REHABILITATION OVER INTRACOASTAL WATERWAY 12/07/2016 11:52:21 AM 6:\PROJECTS\2016\01_Bay_Harbor_Rehabilitation\002_Repair\STREET\NET\CapRepair02.dwg															

Rebar Weights for one Transition Wall

Size	Length	Count	LF	LBS
# 5	9.083	22	199.826	208.419
# 5	5.583	30	167.490	174.692
# 5	7.167	2	14.334	14.950
# 5	11.917	2	23.834	24.859
# 5	4.345	45	195.525	203.933
# 5	10.750	10	107.500	112.123
# 5	3.500	15	52.500	54.758
# 5	8.833	2	17.666	18.426

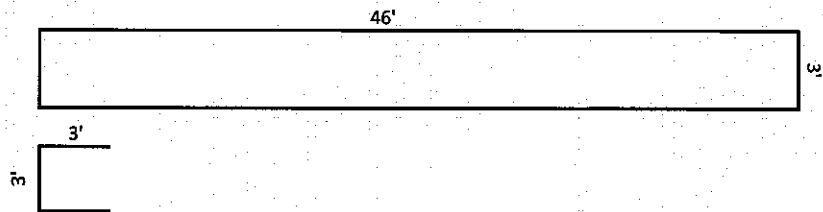
Total	812.158
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Rebar Weights for Parapet/Sidewalk PI

Size	Length	Count	LF	LBS
# 5	43.000	1	43.000	44.849
# 4	50.000	1	50.000	33.400

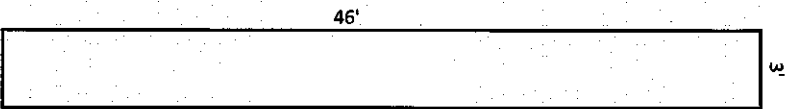
Total	78.249
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Rebar Plinth 9



Plinth 9		
Total	107.000	LF
Total	71.476	LB

Rebar Plinth 8 through 22 (Typical)



Plinth Totals		
Total	98.000	LF
Total	65.464	LB

Substructure Rebar

Location		Projected Weight	Completed Weight
Bent Caps	2	671.100 lbs.	671.100 lbs.
	3	671.100 lbs.	671.100 lbs.
	4	671.100 lbs.	671.100 lbs.
	5	77.154 lbs.	77.154 lbs.
	23	671.100 lbs.	671.100 lbs.
	24	671.100 lbs.	671.100 lbs.
	25	671.100 lbs.	671.100 lbs.
	26	671.100 lbs.	671.100 lbs.
	27	671.100 lbs.	671.100 lbs.
	28	671.100 lbs.	671.100 lbs.
	29	671.100 lbs.	671.100 lbs.
Columns	30	671.100 lbs.	671.100 lbs.
	2	305.276 lbs.	305.276 lbs.
	3	370.083 lbs.	370.083 lbs.
	4	497.003 lbs.	497.003 lbs.
	5	378.099 lbs.	378.099 lbs.
	6	501.684 lbs.	501.684 lbs.
	7	626.584 lbs.	626.584 lbs.
	8	718.100 lbs.	718.100 lbs.
	9	828.988 lbs.	828.988 lbs.
	12	839.024 lbs.	839.024 lbs.
	13	785.568 lbs.	785.568 lbs.
	14	761.520 lbs.	761.520 lbs.
	15	702.068 lbs.	702.068 lbs.
	16	639.955 lbs.	639.955 lbs.
	17	580.503 lbs.	580.503 lbs.
	18	518.357 lbs.	518.357 lbs.
	19	375.405 lbs.	375.405 lbs.
	20	434.857 lbs.	434.857 lbs.
	21	375.405 lbs.	375.405 lbs.
	22	313.292 lbs.	313.292 lbs.
	23	505.019 lbs.	505.019 lbs.
	24	442.873 lbs.	442.873 lbs.
	25	424.180 lbs.	424.180 lbs.
	26	356.712 lbs.	356.712 lbs.
	27	297.260 lbs.	297.26 lbs.
	28	240.469 lbs.	240.469 lbs.
	29	245.824 lbs.	245.824 lbs.
	30	175.695 lbs.	175.695 lbs.
(YTD)			
Totals			28932.162 lbs.

Transition Walls	
SW	812.158 LB
SE	812.158 LB
NW	812.158 LB
NE	812.158 LB

Transition Wall Footers	
SW	1028.661 LB
SE	1028.661 LB
NW	1028.661 LB
NE	1028.661 LB

Plinths	
9	71.476 LB
8	65.464 LB
7	65.464 LB
14	65.464 LB
15	65.464 LB
16	65.464 LB
17	65.464 LB
18	65.464 LB
19	65.464 LB
20	65.464 LB
21	65.464 LB
22	65.464 LB

Phase I Parapet	
	78.249 LB

PI 415-1-15 SUMMARY

As-built Quantity	28932.162 lbs
Contract Quantity	15180.000 lbs
Quantity Over-run	13752.162 lbs
Add'l Dollar Amount (Unit price x Over-run)	\$16,502.59

AGENDA ITEM REPORT

August 8, 2016

ITEM NUMBER: 17.

ITEM: Discussion and possible **approval** of the attached Gift Agreement between the Town of Bay Harbor Islands and Shirley Martinelli Restated Revocable Trust (the Donor) for a donation in the amount of \$5,000 to be used for new computers at the Town's new community center. Enclosed find a copy of the gift agreement.

DESCRIPTION:

The Donor is asking that in exchange for the donation, the town place a plaque inside the community center in honor of Shirley Martinelli. Attached is the Gift Agreement which has been reviewed by the Town Attorney.

RECOMMENDED ACTION:

Approval.

FINANCIAL ANALYSIS:

Approval of this item has a positive fiscal impact.

BUDGET IMPACT:

Submitted By: Juan Jimenez, Assistant Town Manager

ATTACHMENTS

1.	Gift Agreement	Gift Agreement - BHI-1.docx
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GIFT AGREEMENT

This **Gift Agreement** (this "Agreement") is made and entered into by and between the **Shirley Martinelli Restated Revocable Trust** (the "Donor"), and **Town of Bay Harbor Islands**, a Florida township, with a mailing address of 9665 Bay Harbor Terrace, Bay Harbor Islands, FL 33154 (the "Town") in connection with the purpose, conditions, recognition and administration of the one-time gift to the Town in the amount of \$5,000 (the "Gift").

- 1) **Purpose of the Gift.** The Donor wishes to further the community center and computer lab of the Town by establishing the Gift. In recognition of the Gift, the Town agrees to honor Shirley Martinelli with a Plaque at the Bay Harbor Islands Community Center Computer Lab.
- 2) **Recognition.** The Donor agrees to allow the Town to publish the Donor's name and information about the gift in various publications and press releases in connection with the Gift. For recognition purposes, the Donor wishes the Gift be recognized as "In Memory of Shirley Martinelli - In Honor of Trustees Seymour Ikenson and Marc Gidney".
- 3) **Contribution.**
 - a) The Donor has determined to name the Town to receive the gift valued at a cumulative amount of five thousand dollars (\$5,000), payable in one payment tendered to the Town.
 - b) For inquiries and/or other notice, the Donor may be contacted through Jonathan Macy, Esq., 326 71st Street, Miami Beach, FL 33141. Phone: (305) 866-6266. Email: jmacyesq@gmail.com.
- 4) **Administration of the Gift.**
 - a) This Agreement will be part of the Town's records and is intended to serve as documentation in connection with administration of the Gift.
 - b) For tax purposes, the Town will provide Donor with an acknowledgement of Donor's charitable contribution in accordance with applicable law.
 - c) The Town agrees to return to the Donor, upon demand, any property improperly received and its income since distribution or, if the beneficiary does not have such property, then to the Donor the value of the property at the date of disposition and its income and gain received.
- 5) **Acknowledgment.** The Donor and the Town each acknowledges that it has had the opportunity to seek independent professional advice relating to legal, accounting and tax issues with respect to this Agreement and has not relied on any statements made by the other party or its representatives. In view of the foregoing and notwithstanding any otherwise applicable principles of construction or interpretation, this Agreement shall be deemed to have been drafted jointly by the parties and in the event of any ambiguity, shall not be construed or interpreted against the drafting party.
- 6) **Miscellaneous Considerations.**
 - a) Limitation on Liability. The Donor shall not be liable in any manner, including for direct, indirect, incidental, consequential, special, exemplary or punitive damages for any matter arising out of this Agreement.
 - b) Governing Law; Venue. This Agreement and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided therein or performance shall be governed or interpreted in accordance with the laws of the State of

Florida applicable to agreements entered into and to be wholly performed therein, without regard to choice of law considerations, and the parties hereto agree to submit to the exclusive jurisdiction of the federal and state courts of the State of Florida located in Miami-Dade County. In the event of any dispute arising in connection with this Agreement, the prevailing party will be entitled, in addition to any other rights or remedies provided by Florida law, to recover such party's costs and expenses and reasonable attorney's fees from the non-prevailing party.

- c) Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, except by a statement in writing signed by the party or parties against which enforcement or the change, waiver discharge or termination is sought.
- d) No Waiver. No waiver by either of the parties of any breach by the other party hereto of any condition or provision of this Agreement to be performed by the other party hereto shall be deemed a waiver of any similar or dissimilar provision or condition at the same or any prior or subsequent time, nor shall the failure of or delay by either of the parties in exercising any right, power or privilege hereunder operate as a waiver thereof to preclude any other or further exercise thereof or the exercise of any other such right, power or privilege.
- e) Severability. If any provision of this Agreement otherwise is deemed to be invalid or unenforceable or is prohibited by the laws of the state or jurisdiction where it is to be performed, (a) this Agreement shall be considered divisible as to such provision and the remaining terms and provisions hereof shall be unimpaired and (b) the invalid or unenforceable term or provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the parties as expressed herein.
- f) Effective and Termination Dates. This Agreement shall become effective on the date it is executed by both parties and may be terminated at any time, without penalty or further obligation or liability, by the Donor. Upon expiration hereof or in the unlikely event of earlier termination, any unspent tendered monies remaining with the Town at the time of any such expiration or termination shall be used to fulfill previously awarded scholarships or otherwise, in the sole discretion of the Donor.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date(s) indicated.

DONOR

TOWN

Marc A. Gidney
Co-Successor Trustee
Shirley Martinelli Restated Revocable Trust

By: _____

Title: _____

Date: _____

Date: _____

AGENDA ITEM REPORT

August 8, 2016

ITEM NUMBER: 18.

ITEM: Town Manager Wasson requests **authorization** to negotiate the possibility of acquiring a waterfront lot on the corner of W. Bay Harbor Drive and Kane Concourse. Attached is an appraisal ordered to determine the value of the property being considered.

DESCRIPTION:

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk

ATTACHMENTS

1.	Property appraisal	appraisal - 9600 WBHD.pdf
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APPRAISAL REPORT

AN 11,250 SQUARE FOOT LAND SITE

LOCATED AT:

**9600 WEST BAY HARBOR DRIVE
BAY HARBOR ISLANDS, FLORIDA**

PREPARED FOR:

**TOWN OF BAY HARBOR ISLANDS
9665 BAY HARBOR TERRACE
BAY HARBOR ISLANDS, FLORIDA**

AS OF:

JULY 18, 2016

PREPARED BY:

**QUINLIVAN APPRAISAL, P.A.
7300 NORTH KENDALL DRIVE- SUITE 530
MIAMI, FLORIDA 33156**

QUINLIVAN APPRAISAL
A PROFESSIONAL ASSOCIATION
7300 NORTH KENDALL DRIVE, SUITE 530
MIAMI, FLORIDA 33156

J. Mark Quinlivan, MAI
State Certified General Appraiser
RZ 0000112

Telephone (305) 663-6611
Fax (305) 670-4330
jmqmai@aol.com

Thomas F. Magenheimer, MAI
State Certified General Appraiser
RZ 0000553

July 11, 2016

Ronald J. Wasson, Town Manager
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, Florida 33154

Dear Mr. Wasson:

In accordance with your request and authorization, I have prepared this Appraisal Report covering the following described property:

An 11,250 square foot site, located at 9600 West
Bay Harbor Drive, Bay Harbor Islands, Florida

The purpose of this Appraisal is to estimate the Market Value of the described property as of July 8, 2016, being one of the dates of personal inspection.

To the best of our knowledge, the opinions and conclusions were developed and this Appraisal Report was prepared in accordance with the standards and reporting requirements of the FIRREA of 1989 – Title XI and its updates, and the most current Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards Board of the Appraisal Foundation.

The narrative Appraisal Report that follows sets forth the identification of the property, the assumptions and limiting conditions, pertinent facts about the area and the subject property, comparable data, the results of the investigations and analyses, and the reasoning leading to the conclusions set forth. This appraisal is not based on any hypothetical conditions or extraordinary assumptions.

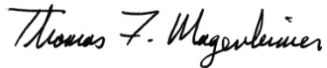
Mr. Ronald J. Wasson, Town Manager
Town of Bay Harbor Islands
July 11, 2016
Page 2

Based on the inspection of the property and the investigation and analyses undertaken, I have formed the opinion that, as of July 8, 2016, the subject property had a Market Value of:

ONE MILLION SIX HUNDRED NINETY THOUSAND DOLLARS

\$1,690,000

Respectfully submitted,

A handwritten signature in cursive script that reads "Thomas F. Magenheimer".

Thomas F. Magenheimer, MAI
State-Certified General Appraiser
Certification Number: RZ0000553

TFM/jb
(16-056)

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CERTIFICATION OF VALUE

The undersigned hereby certifies that, to the best of my knowledge and belief:

- (A) The statements of fact contained in the report are true and correct.
- (B) The reported analyses, opinions and conclusions are limited only by the assumptions and limiting conditions set forth, and are my personal, unbiased professional analyses, opinions and conclusions.
- (C) I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.
- (D) I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- (E) My engagement in this assignment is not contingent upon developing or reporting predetermined results.
- (F) The appraiser's compensation for completing this assignment is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal. Furthermore, the appraisal assignment is not based on a requested minimum valuation, a specific valuation or the approval of a loan.
- (G) The appraiser's analyses, opinions and conclusions are developed, and this report is prepared, in conformity with the Uniform Standards of Professional Appraisal Practice, and the requirements of the State of Florida for state-certified appraisers.
- (H) Use of this report is subject to the requirements of the State of Florida relating to review by the Real Estate Appraisal Subcommittee of the Florida Real Estate Commission.
- (I) Thomas F. Magenheimer has made a personal inspection of the property that is the subject of this report.
- (J) No one provided significant professional assistance to the person signing this report.
- (K) The reported analyses, opinions, and conclusions are developed, and this report is prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute.

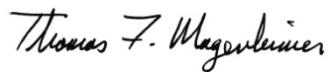
- (L) The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
- (M) The undersigned has not performed any appraisal services regarding the subject property in the three year period immediately preceding the acceptance of this assignment..

As of the date of this report, J. Mark Quinlivan and Thomas F. Magenheimer have completed the requirements under the continuing education program for The Appraisal Institute.

Based on the inspection of the property and the investigation and analyses undertaken, subject to the assumptions and limiting conditions set forth in the Addendum of this report, I have formed the opinion, as of the date of valuation, the subject property had a Market Value of:

ONE MILLION SIX HUNDRED NINETY THOUSAND DOLLARS

\$1,690,000



THOMAS F. MAGENHEIMER, MAI
STATE-CERTIFIED REAL ESTATE APPRAISER
CERTIFICATION NUMBER: RZ0000553

SUMMARY OF SALIENT FACTS AND CONCLUSIONS

Purpose of Appraisal	Market Value
Property Rights Appraised	Fee Simple
Location	Northwest corner of West Bay Harbor Drive and 96 th Street, Bay Harbor Islands, Florida
Address	9600 West Bay Harbor Drive Bay Harbor Islands, Florida
Legal	Lot 32, Block 3, BAY HARBOR ISLAND , according to the Plat thereof, as recorded in Plat Book 46, Page 5, of the Public Records of Miami-Dade County, Florida.
Land Size	11,250 Square Feet 0.26 Acres
Improvements	Parking lot
Zoning	G, Gateway District
Highest and Best Use:	Mixed use commercial and residential use
Land Value Indication	\$1,690,000
Final Estimate of Market Value	\$1,690,000
Date of Inspection	July 8, 2016
Date of Value Estimate	July 8, 2016
Date of Report	July 11, 2016



LOOKING NORTHWESTERLY AT SUBJECT FROM WEST BAY HARBOR DRIVE



LOOKING SOUTHWESTERLY AT SUBJECT FROM WEST BAY HARBOR DRIVE



LOOKING NORTHEASTERLY AT SUBJECT FROM 96TH STREET



LOOKING NORTHWESTERLY AT SUBJECT FROM 96TH STREET



LOOKING SOUTHERLY ON WEST BAY HARBOR ISLAND DRIVE – SUBJECT TO RIGHT



LOOKING NORTHERLY ON WEST BAY HARBOR ISLAND DRIVE – SUBJECT TO LEFT



LOOKING EASTERLY ON 96TH STREET – SUBJECT TO LEFT



LOOKING WESTERLY ON 96TH STREET – SUBJECT TO RIGHT

INTRODUCTION

INTRODUCTION

IDENTIFICATION OF THE PROPERTY

An 11,250 square foot site that is presently utilized as a parking lot.

LOCATION

Northeast corner of West Bay Harbor Drive and 96th Street,
Bay Harbor Islands, Florida

ADDRESS

9600 West Bay Harbor Drive
Bay Harbor Islands, Florida

PURPOSE AND DATE OF APPRAISAL

The purpose of this Appraisal is to estimate the Market Value of the property as of July 8, 2016, being one of the dates of personal inspection.

INTENDED USE AND USER OF APPRAISAL

The intended use of this appraisal is to assist the client (Town of Bay Harbor Islands) in determining an acquisition price. The intended user is the Town of Bay Harbor Islands.

LEGAL DESCRIPTION

Lot 32, Block 3, **BAY HARBOR ISLAND**, according to the Plat thereof, as recorded in Plat Book 46, Page 5, of the Public Records of Miami-Dade County, Florida.

PROPERTY RIGHTS APPRAISED

The property is appraised in fee simple: a fee without limitations to any particular class of heirs or restrictions, but subject to the limitations of eminent domain, escheat, police power and taxation, as well as utility easements of record.

DEFINITION OF MARKET VALUE

Market Value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- (1) buyer and seller are typically motivated;
- (2) both parties are well informed or well advised and acting in what they consider their own best interest;
- (3) a reasonable time is allowed for exposure to the open market;
- (4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- (5) the price represents a normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Source: Interagency Appraisal and Evaluation Guidelines, December 10, 2010, Federal Register, Volume 75, No. 237, Page 77472

ASSESSMENT AND TAXES – 2015

The subject property is assessed under the jurisdiction of the Town of Bay Harbor Islands, Florida.

The assessment for the property is established each year as of January 1st by the Miami-Dade County Property Appraiser's Office at 100% of "Just Value." Just Value has been equated to Market Value less closing costs. While the State of Florida requires real estate to be assessed at 100% of Just Value, in reality the ratio of the assessed value to sales price is generally below 100%.

Folio Number:	13-2227-001-0790
County Market Value:	Land \$ 1,125,000
	Improvements \$ <u>19,388</u>
	Total \$ 1,144,388
Assessed Value:	\$674,549
Millage Rate:	\$20.5953 per \$1,000
Tax Amount:	\$17,468.94

OWNER OF RECORD AND ADDRESS

The 1177 Kane Concourse Partnership, Ltd.
1177 Kane Concourse
Bay Harbor Islands, FL 33154

THREE-YEAR HISTORY OF TITLE

A search of the Public Records of Miami-Dade County indicates no sale transactions of the subject property during the past three years.

ESTIMATED EXPOSURE TIME

Exposure time is defined as the estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; a retrospective estimate based upon an analysis of past events assuming a competitive and open market.

The overall concept of reasonable exposure encompasses not only adequate, sufficient and reasonable time but also adequate, sufficient and reasonable effort.

In estimating a reasonable exposure time for the subject property, the following steps have been taken:

Discussion with buyers, sellers, brokers and/or a review of multiple listings of similar properties in the area related to historic marketing periods.

Based on the above sources, exposure time is estimated to have been twelve months for the subject property.

ESTIMATED MARKETING PERIOD

The estimated value of the subject is predicated upon a normal marketing period. A normal marketing period is generally defined as the most probable amount of time necessary to expose and actively market a property on the open market to achieve a sale. Implicit in this definition are the following assumptions:

- (A) The property will be actively exposed and aggressively marketed to potential purchasers through marketing channels commonly used by sellers and buyers of similar type properties.
- (B) The property will be offered at a price reflecting the most probable markup over market value used by sellers of similar type properties.
- (C) A sale will be consummated under the terms and conditions of the definition of Market Value required by the regulation.

In order to estimate the marketability of this property, the sales activity in this market area was reviewed, multiple listings were reviewed and/or real estate brokers who operate in this area were interviewed.

Based on the above sources, the subject property could be sold within a twelve month time period.

SCOPE OF THE APPRAISAL

SCOPE OF THE APPRAISAL

The scope of the assignment relates to the extent and manner in which research is conducted, data is gathered and analysis is applied, all based upon the following problem-identifying factors stated elsewhere in this report.

This appraisal of the subject has been presented in the form of an Appraisal Report, which is intended to comply with the reporting requirements set forth under Standards Rule 2-2 of the USPAP.

The value of a site can be estimated by various methods which include Direct Sales Comparison, Allocation, Extraction, Development Approach, Land Residual or Ground Rent Capitalization. However, the Direct Sales Comparison Approach is the most preferred and utilized technique when sales of comparable sites are available. The other methodologies are indirect techniques which are generally used when an area is mostly developed and sales of comparable sites are scarce.

The Direct Sales Comparison Method was utilized in valuing the subject property due to the availability of recent sales. In the Direct Sales Comparison Method, sales of similar recently sold properties with a similar highest and best use as the subject property are analyzed, compared and adjusted by time, property characteristics and location to indicate the Market Value of the subject property. The reliability of this approach is dependent upon the availability of comparable sales data, the verification of the sales data, the degree of comparability and the absence of non-typical conditions affecting the sale.

Data related to the subject property was derived from various sources including but not limited to the Miami-Dade County Property Appraiser's office, Hopkins Plat Book, Miami-Dade County plats, FEMA flood zone maps, Land Development Regulations of the Town of Bay Harbor Islands, and tax roll information provided by the Miami-Dade County Property Appraiser's office. A survey of the site was provided by the client.

Comparable sale sources include the Miami-Dade County Property Appraiser's office, Board of Realtors' Multiple Listing Service, Tri-County Clipping Service and Loopnet. Sale prices are typically confirmed with a party to the transaction, i.e. buyer, seller, real estate agent or attorney to the transaction.

A search for land sales was conducted in the area of the subject. The initial sales period researched was from January of 2013 through the date of valuation. Several other sales were considered, but were not included because there was too wide a difference in physical factors, location and time.

LOCATION ANALYSIS

COUNTY DATA

Miami-Dade County - Location and Size

Miami-Dade County, which comprises the metropolitan area of Miami, is situated on the southeast tip of the state of Florida. It is bordered on the east by the Atlantic Ocean, on the west by Monroe and Collier Counties, on the north by Broward County, and on the south by Monroe County (the Florida Keys).

Miami-Dade County, the largest county in area and population in the state of Florida, covers an area of 2,054 square miles with an altitude ranging from sea level to 25 feet. Water covers 354 square miles of the County.

Although the County is relatively large, approximately half of the total area is comprised of the Everglades, which is a natural area that will not be developed. Therefore, only the eastern section of Miami-Dade County encompasses the area which is currently developed or available for future development.

Miami-Dade County's location, its southern latitude and proximity to the Gulf Stream provide for mild winters and pleasant summers.

Population

The state of Florida has increased rapidly in population from 9,740,000 in 1980 to 12,937,926 in 1990 and 15,982,378 in 2000. The 2010 population of Florida was 18,801,310, an increase of 17.6% over the 2000 population.

Miami-Dade County's population increased from 1,626,000 in 1980 to 1,937,094 in 1990, reflecting an average annual compounded growth rate of 1.77%, compared with 2.88% for the state of Florida. By 2000, Miami-Dade County's population increased to approximately 2,253,362. The population grew to 2,496,435 by the Year 2010, an increase of 10.8% over the 2000 population. By the Year 2014 the population increased to 2,604,265, an increase of 4.3% over the 2010 population.

Miami-Dade County's population growth during the last four decades has been dramatic especially in relation to national trends. From 1950 to 1990 the United States population increased by 60% while the population of Miami-Dade County has almost quadrupled from 495,084 to 1,937,000. During this period, the state of Florida was elevated from the 20th most populous state to the 4th in 1990 and continues to be the fourth most populous state.

During the 1960s, the major increase in Miami-Dade County's population was due to the large immigration of Cubans. Today, Cuban and other Spanish speaking people comprise approximately 62% of Miami-Dade County's population. The increase in Hispanic population has had favorable effects on the local economy and has helped to create a multi-national cultural environment in the area.

The overall population of Miami-Dade County is well dispersed throughout the entire area, yet has several key areas of concentration. During the 1960s, several sub-areas accounted for approximately 70% of the growth. These areas include Hialeah, northern Miami-Dade County, the Beach area, the Miami River area, the area southwest of Miami International Airport, as well as the Kendall and Cutler Ridge areas. In the first half of the 1970s, population growth continued in an uneven fashion especially in the urban fringes.

Since 1970, approximately three-fourths of the total population growth for the County has occurred in the unincorporated areas. The older centrally located cities such as Miami, Miami Beach and Coral Gables have grown at modest rates from 1970 to 1990. Unincorporated Miami-Dade County has evidenced the most rapid growth which continues to occur in areas in northeast Miami-Dade County (Aventura), as well as the currently expanding southwest area, especially in sections of Flagler Street, S.W. 8th Street, North Kendall Drive and Homestead.

Population trends indicate that most of the population growth in Miami-Dade County between 2010 and 2015 will occur in outlying areas such as North Miami Beach, the Kendall area west of the Florida Turnpike, the S.W. 8th Street area west of the Florida Turnpike, the Hialeah-Miami Lakes area, as well as those areas both east and west of U.S. Highway 1 between Cutler Ridge and Florida City.

Employment Trends

The dominant characteristic of Miami-Dade County is that it is primarily trade and service based. Personal, business and repair services have had a substantial increase in importance in the economic base over the last decade. The major sectors of the economy include services, wholesale and retail trade, transportation, communications, public utilities, government and manufacturing. The most dominant industries which form the County's economic base are construction and tourism.

Tourism is Miami-Dade County's biggest industry with an estimated 13.9 million visitors in 2012 contributing to more than 50 percent of the area's economy. Aviation and related industries are responsible for another large segment of the economy.

The largest employer in Miami-Dade County is the Miami-Dade County School Board, followed by Miami-Dade County, Federal Government, State of Florida, Jackson Health System, American Airlines, University of Miami, Baptist Health Systems of South Florida, AT&T, and Florida Power and Light. Assuming additional importance is the growing prominence of Miami-Dade County as a center for international trade, finance and tourism. The establishment of Miami as the "Gateway of the Americas" should provide the area with a much needed degree of economic diversification. This should enable Miami-Dade County to weather slowdowns in the national economy by an increase of trade through the Port of Miami, growth of international arrivals at the airport, the Free Trade Zone, and the substantial foreign investment in the local economy, particularly in real estate.

In October of 2015, Florida's unemployment rate was 5.1 percent, down from 13.7 percent in November of 2014 and a high of 10.7 percent in March of 2011. The unemployment rate for Miami-Dade County in October of 2015 was 6.2 percent, down from 8.1 percent a year earlier.

TABLE 1

ESTIMATES OF MIAMI-DADE COUNTY TOURIST TRENDS

	INTERNATIONAL	DOMESTIC	TOTAL
2008	6,169,043	6,662,546	12,831,589
2009	5,684,400	6,251,564	11,935,964
2010	6,060,100	6,544,000	12,604,100
2011	6,461,900	6,908,600	13,370,600
2012	6,801,200	7,102,032	13,903,232
2013	7,131,700	7,087,200	14,218,900
2014	7,260,000	7,303,200	14,563,200

Source: Greater Miami Convention and Visitors Bureau, Tourism Facts and Figures

Figures for 2014 indicate 14,563,200 overnight visitors came to Miami-Dade County, a 2.4% increase from 2013. In 2013, the total overnight visitors increased to 14,218,900, an increase of 2.2% over 2012.

TABLE 2

ESTIMATES OF DOMESTIC VISITORS BY REGION

DOMESTIC MARKET	2010	2011	2012	2013	2014
NEW YORK	25.5%	25.3%	25.5%	25.9%	26.0%
CHICAGO	5.9%	5.9%	5.8%	5.9%	5.9%
PHILADELPHIA	5.8%	5.7%	5.7%	5.6%	6.0%
BOSTON	4.3%	4.3%	4.3%	4.3%	4.3%
ATLANTA	3.7%	3.8%	3.9%	3.9%	3.9%
WASHINGTON, DC	2.8%	2.8%	2.8%	2.8%	2.8%
DALLAS	2.6%	2.6%	2.7%	2.7%	2.7%
DETROIT	2.1%	2.1%	2.1%	2.0%	1.9%
LOS ANGELES	1.9%	2.0%	1.9%	2.1%	2.1%
HOUSTON	1.7%	1.8%	1.8%	1.8%	1.8%

Source: Greater Miami Convention and Visitors Bureau, Tourism Facts and Figures

Table 2 indicates that the bulk of domestic visitors to Miami-Dade County originate from the New York (26%), Chicago (5.9%) and Philadelphia (6.0%) market areas. Of the top ten domestic market visitors, the majority (48.2%) are from northeastern market areas.

TABLE 3

ESTIMATES OF INTERNATIONAL VISITORS BY REGION

REGION	2010	2011	2012	2013	2014
EUROPEAN COUNTRIES	21.6%	20.2%	20.0%	19.2%	19.7%
CARIBBEAN COUNTRIES	11.4%	10.8%	10.5%	10.0%	10.4%
CENTRAL AMERICAN COUNTRIES	8.7%	8.3%	8.0%	7.8%	8.2%
SOUTH AMERICAN COUNTRIES	46.8%	49.2%	50.3%	52.1%	50.4%
CANADA	9.7%	9.7%	9.4%	9.2%	9.5%
OTHER COUNTRIES	1.8%	1.8%	1.8%	1.7%	1.8%
TOTAL	100%	100%	100%	100%	100%

Source: Greater Miami Convention and Visitors Bureau, Tourism Facts and Figures

Table 3 shows that the bulk of international visitors to Miami-Dade County originate from Central and South American Countries (58.6%), followed by European Countries (19.7%) and Caribbean Countries (10.4%). England and Germany accounted for the largest proportion of European visitors.

In 2014 there were a total of 4.939 million passengers passing through the Port of Miami. During 2014, the number of Port of Miami passengers increased 21.1% from 2013. The passenger count for 2015 is expected to increase to nearly 5.0 million with the introduction of three new ships to the port. Through June of 2015 approximately 11,051,259 passengers arrived through Miami International Airport. The passengers arriving at the airport increased 6.2% from the same period the previous year. The arrivals at the airport are fairly evenly distributed between international and domestic passengers. Through June 2015, domestic arrivals totaled 5,732,473 and international arrivals totaled 5,318,786.

There are approximately 50,901 motel and hotel rooms in 392 lodging facilities in Greater Miami and the Beaches. The area had an occupancy rate of 80.8 percent in 2015, down 0.2% from 2014. The airport area had the highest occupancy rate as of June 2015 at around 90.2%. The average room rate for hotel rooms in Miami-Dade County was \$217.62 in 2015, up from \$202.20 in 2014. Therefore, the average hotel room rates in 2015 indicate an increase of 7.6% over the 2014 rate.

The first in a series of new luxury properties opened in February 2004 when the 380-room Ritz Carlton opened in Miami Beach. In May of 2005, the 210-room Le Meridian opened in Sunny Isles Beach. Three other new hotels with a total of 271 rooms opened in Miami Beach during 2005. In 2014, new hotel openings included the Courtyard Cadillac Miami Beach Hotel (93-rooms) in Miami Beach, EB Hotel Miami (133-rooms) in Miami Springs, and the Grand Beach Hotel (268-rooms) in Surfside. New hotels expected to open in 2015 include Aloft South Beach (235-rooms) in Miami Beach, East Hotel (263-rooms) in the Brickell Financial District, The Feena Hotel (169-rooms) in Miami Beach, the Nautilus (251-rooms) in Miami Beach, and Langford (126-rooms) in downtown Miami.

Miami-Dade Financial Resources

Over the course of the last decade, Greater Miami has evolved into a major international financial center. Domestic and international businesses find convenient access to a full array of services provided by locally-based state and national commercial banks, savings and loan associations, foreign banks, non-depository credit institutions, securities and commodities brokers and insurance companies.

Greater Miami has the largest concentration of domestic and international banks south of New York City. With more than 90 percent of the state's foreign banks operating offices in Miami, this market dominates international banking in Florida.

Overall, about 150 domestic banks, foreign banks and Edge Act banks operate in Greater Miami. The greatest concentration is located along Brickell Avenue in downtown Miami.

Transportation

Miami-Dade County has an extensive expressway system with access to all points in the County. However, due to the rapidly increasing population, some of the expressways, especially Interstate 95, are becoming overburdened. In 1985 Miami-Dade County completed a 20.5 mile elevated rapid transit system. This system originally extended southward from downtown Miami to Dadeland, paralleling U.S. Highway 1 and northwesterly from downtown Miami to Hialeah. In 1999, the system was extended about a mile from Hialeah to the Palmetto Expressway at NW 74th Street. An expansion to the Miami International Airport opened in 2013. In conjunction with this system, there is a Downtown People Mover Automated Transit system which encircles the central business district of Miami and extends south to the Brickell area and north to the Omni area.

Miami-Dade County is served by the CSX and Florida East Coast Railroads for freight and Amtrak Rail, Greyhound and Trailways Interstate bus lines for passenger service.

Miami International Airport, one of the nation's largest and busiest, had 307,503 aircraft arrivals and departures through September 2015, an increase of 2.14% over the previous year. The airport is currently undergoing a \$5.4 billion expansion. A South Terminal has recently been completed and a North Terminal completed in 2013 and a fourth runway has been constructed.

Miami has become a port of embarkation for airlines and ships bound for Central and South American Countries. The Port of Miami, besides being the largest passenger port in the nation, is also important as a cargo center with a 2014 annual tonnage of approximately 7.7 million, down 3.5% from 7.981 million in 2013. The port's traditional customer base has been Europe, China, Latin America and the Caribbean, accounting for 65% of the port's total volume.

Miami's comprehensive transportation system and its strategic location have enabled it to become an important international transportation center, providing commercial access to Latin America and the Caribbean.

Government

Miami-Dade County is comprised of unincorporated areas, as well as 36 municipalities, the largest of which is the city of Miami.

Miami-Dade County is governed under a modified two-tier metropolitan government. The purpose of this type government was to establish one governing body for the county, and to establish one supply of services such as fire, police, etc. for the county. The upper tier is the County, which provides broad "regional" or county functions, such as metropolitan planning, welfare, health and transit services. The thirty-six municipalities represent the lower tier of government, providing a varying array of services within their jurisdictional boundaries. The County also maintains lower tier functions, such as the provision of municipal-type services, including police and fire, to the unincorporated areas and certain municipalities on a negotiated basis.

The County operates under the Commission-Manager form of government. Legislative and policy-making authority is vested in the elected thirteen-member Board of County Commissioners; the Commission appointed County Manager is the chief administrator. Miami-Dade County has operated under the metropolitan form of government since 1957, when the Home Rule Charter was passed by the local electorate. Prior to Home Rule, the County had to rely on the State Legislature for the enactment of its laws.

County government had not been able to respond to the tremendous demand for municipal services in this rapidly urbanizing area, which is larger than the State of Rhode Island or Delaware. The need to combine services duplicated by the County and numerous cities was also clearly evident. The Charter permitted the limited County government to reorganize into a general purpose "municipal-type" government capable of performing the full range of public functions into an area wide operation.

Real Estate

The Miami-Dade County Office Market contains approximately 47.337 million square feet of office space. Approximately 31.0% of this space is located in the Miami central business district and adjacent Brickell Avenue, 25% in the Airport West area, and 15% in Coral Gables. The vacancy rate of office buildings in Miami-Dade County declined during the second quarter of 2015 to about 12.8%, down from 14% in 2013. During 2015, 804,359 square feet of office space is under construction in Miami-Dade County. During the second quarter of 2015,

328,500 square feet of office space was absorbed. Through the second quarter of 2015 a total of 804,360 square feet was absorbed in the market.

Office rental rates in new buildings typically range from \$23.00 to \$43.00 per square foot. The low end of the range is for office space in the suburban markets. The upper end of the range is for first class office space in Downtown Miami, Brickell Avenue, Coconut Grove and Coral Gables.

The Greater Miami Industrial Market consists of approximately 230.11 million square feet of industrial space in 8,808 buildings.

The approximate percentage location of this space is as follows:

MARKET AREA	% OF TOTAL MARKET SPACE
AIRPORT WEST	29.6%
HIALEAH	25.6%
MEDLEY	16.7%
MIAMI LAKES	3.3%
NORTHEAST DADE	4.8%
NORTHCENTRAL DADE	14.9%
SOUTH DADE	5.1%
TOTAL	100%

The county's vacancy rate for the overall Miami-Dade County industrial market as of the end of 2015 was 4.7%. The county's overall vacancy rate has fallen from a high of 10% in 2008. Airport West, the largest industrial area, had a vacancy rate of 5.3% as at the end of 2015. Industrial rental rates generally average \$8.77 per square foot in the fourth quarter of 2014, up from an average of \$8.39 per square foot in 2014. New industrial space under constructed in the third quarter of 2015 totaled 599,946 square feet, down from the 761,879 square feet under construction in the fourth quarter of 2014.

Miami-Dade's single-family home sales increased 1.0% in August of 2015 in comparison with August of 2014 according to the Miami Association of Realtors. A total of 1,145 homes were reported sold in August of 2015. Through August of 2015, 9,599 homes sold in the county, which is on pace to exceed the 13,521 homes sold in 2014. In August of 2015, the median sales price for single-family units was \$260,500, up 6.3% from the previous year.

Existing condo sales showed an increase of 6.5% in August of 2015 from August of 2014 according to the Miami Association of Realtors. A total of 1,334 condo units were reported sold in August of 2015. The median sales price for condos increased to \$204,000 or an increase of 11% during the same period.

Marcus & Millichap Apartment Research Market Report shows a vacancy rate of 2.8% for rental apartment buildings in the Fourth Quarter of 2015, 30 basis points lower than in 2013. The vacancy rate had been declining steadily since 2006 due to the reduction of inventory caused by the large amount of condominium conversions. Since 2007 many ownership housing units, including both condominiums and single family houses, were placed into the rental market by developers and individual owners. Apartment rents in Miami-Dade County indicated an increase of 3.6% during 2015. New apartment construction during 2014 was nearly 2,500 units. New apartment construction during 2015 is expected to reach nearly 8,900 units.

The Miami-Dade County retail market contains approximately 125.98 million square feet in 10,003 buildings. The major retail markets in Miami-Dade County include Hialeah, Coral Gables/South Miami-Dade, Aventura and Kendall. Rental rates typically range from \$15.25 to \$48.76 per square foot with rates in the \$80 to \$120 per square foot on South Beach. The overall Miami-Dade County vacancy rate for the third quarter of 2015 was approximately 3.4%, which is marginally up from 3.3% in the third quarter of 2014. As of the third quarter of 2015, 1,749,313 square feet of retail space was under construction.

Conclusions

In the future, one of the principal growth areas for Miami-Dade County is expected to be the international sector. Miami-Dade County, because of its geographic location and excellent transportation facilities, is well-suited to attract both business individuals and tourists from Latin America. It is already one of the principal shopping markets for Central and South Americans visiting the United States and one of the principal export points for goods and services destined for Latin America.

The existence of major financial institutions, retail outlets, corporations and other business entities, coupled with its geographic location, transportation systems and planned international trade centers give Miami-Dade County an excellent opportunity for continued growth as an international center.

During the next 12 months all segments of the commercial real estate market should continue to experience decreasing vacancy rates and increasing rental rates. With decreasing inventories for both single family residences and condominium apartment units, sales activity is expected to rise during the next 12 months.

LOCATION MAP



NEIGHBORHOOD DATA

The subject property is located in Bay Harbor Islands, approximately nine miles northeast of the central business district of Miami.

The subject may further be described as being located on the northwest corner of West Bay Harbor Drive and 96th Street (Kane Concourse).

The town of Bay Harbor Islands is located west of the cities of Bal Harbour and Surfside across Indian Creek. Bay Harbor Island is bordered to the north and west by the Intracoastal Waterway, to the east by Indian Creek Waterway and to the south by Indian Creek Lake.

The town of Bay Harbor Islands is approximately one-half mile in length and one-quarter mile in width. The town was founded in 1947 by local attorney, Shepard Broad. Bay Harbor Islands contains approximately 0.37 square miles of land area and has a population as of 2010 of approximately 5,628. The population of the town increased 9.4% since 2000. Bay Harbor Islands has a total of 3,103 housing units, of which 1,235 are renter-occupied.

Bay Harbor Islands is connected to Miami via the Broad Causeway which crosses the Intracoastal Waterway and joins with N.E. 123rd Street in North Miami.

96th Street (Kane Concourse), is the primary east/west traffic artery in the town of Bay Harbor Islands. Various restaurants, retail stores and office buildings are located along 96th Street. The buildings were constructed primarily in the 1950s and 1960s and are generally in good condition.

The cities of Bal Harbour and Surfside, which are located along the Atlantic Ocean, are primarily tourist oriented. Mid- and high-rise hotels and condominium apartment buildings constructed in the 1950s and 1960s front Collins Avenue. Collins Avenue (State Road A1A) is a primary traffic artery along the east side of Miami-Dade County. Collins Avenue extends northerly from the south tip of Miami Beach to Broward County.

Bal Harbour Shops, located five blocks east of town, is an attractive specialty shopping mall containing 410,000 square feet and anchored by the department stores Neiman-Marcus, and Saks Fifth Avenue.

Single-family residences and multi-family apartment buildings are located to the north and south of the subject. The single-family residences, constructed primarily during the 1950s and 1960s, generally range in sale price from \$500,000 to \$850,000 for non-waterfront residences. Waterfront houses generally range in sale price from \$1,150,000 to \$3,500,000.

In summary, the subject neighborhood is a fully developed area containing commercial properties, single-family residences, apartments and hotels. This is a desirable area which should remain stable for several years into the future.

NEIGHBORHOOD MAP



SITE DATA

SITE DATA

Dimensions and Shape:

The site is rectangular.

The site fronts for 75 feet on the west right-of-way line of West Bay Harbor Drive. The south property line thence extends westerly for 150 feet on the north right-of-way of 96th Street. The west property line thence extends northerly for 75 feet on a canal. The north property line thence extends easterly for 150 feet.

Source: Plat.

Area:

11,250 square feet or 0.26 acre

Source: Survey

Topography and Drainage:

The site is level at an average elevation of approximately equal to the abutting streets.

Flood Zone:

Map No. 12086C0144 L

"AE" Special flood hazard areas subject to inundation by the 1% annual chance flood;
base flood elevation eight feet

Soil and Subsoil:

The immediate area of the subject site appears to have no unusual soil or subsoil conditions. Unusual conditions would be brought out by test borings.

Utilities:

Water:	Miami-Dade Water and Sewer Department
Sewer:	Miami-Dade Water and Sewer Department
Electricity:	Florida Power & Light Company
Telephone:	AT&T

Street Improvements:

West Bay Harbor Drive is asphalt paved with a dedicated width of 60 feet. West Bay Harbor Drive contains one north bound and one south bound lane.

96th Street is asphalt paved with a dedicated width of 80 feet. 96th Street contains two east bound lanes and two west bound lanes.

ZONING

ZONING

Under Ordinance of Bay Harbor Islands, Florida.

Classification: G – GATEWAY DISTRICT

The purpose of the district is to create a set of design standards for the properties at the entrances to the eastern island of the town that are to scale with the established and desired urban form and compatible with the town's desire to have a substantial and elegant pedestrian promenade along the Kane Concourse roadway frontage; to establish a living and working environment that are responsive to the needs of the town's inhabitants; to provide flexibility in planning, design and development; to encourage innovative approaches to the design of the properties; to provide efficient use of land; to provide an environment compatible with surrounding land use; to adapt the zoning process to changes in construction and development technology; and to promote the public health, safety and general welfare of the town.

Permitted Uses include any use permitted in the RD-Single Family District, multiple family dwellings, apartment buildings, bungalow courts, public schools, drive-in bank teller structures and parking for a bank situated in the adjacent block, parks, and public or private off-street parking.

Development Standards

Maximum Density: 34 dwelling units per acre

Maximum Hotel Density: 70 rooms per acre

Maximum Building Height: 25 feet at building setback, increasing at a ratio of one foot for each two feet of building over 25 feet up to 60 feet.

Building Setbacks:

Front:	20 feet
Rear:	10 feet
Side:	10 feet

Minimum Landscaped Area: 15% of lot area

HIGHEST AND BEST USE

HIGHEST AND BEST USE

Fundamental to the concept of value is the theory of highest and best use. Land is valued as if vacant and available for its highest and best use.

The Appraisal Institute in *The Dictionary of Real Estate Appraisal, Fourth Edition*, defines highest and best use as follows:

The reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible, and results in the highest value.

Land has limited value unless there is a present or anticipated use for it; the amount of value depends on the nature of the land's anticipated use, according to the concept of surplus productivity. Among all reasonable, alternative uses, the use that yields the highest present land value, after payments are made for labor, capital, and coordination, is generally regarded as the highest and best use of the land as though vacant.

The highest and best use of a property as improved refers to the optimal use that could be made of the property including all existing structures. The implication is that the existing improvement should be renovated or retained as so long as it continues to contribute to the total market value of the property, or until the return from a new improvement would more than offset the cost of demolishing the existing building and constructing a new one.

In estimating the highest and best use there are essentially four stages of analysis:

1. **Possible Use**. What uses of the site being appraised are physically possible?
2. **Permissible Use (Legal)**. What uses are permitted by Zoning and Deed Restriction, if any?
3. **Feasible Use**. Which possible and permissible uses will produce a net return to the owner of the site?
4. **Maximally Productive**. Among feasible uses, which use will produce the highest net return to the owner of the site?

The highest and best use of the land (or site), if vacant and available for use, may be different from the highest and best use of the improved property. This is true when the improvements are not an appropriate use, but make a contribution to the total property value in excess of the value of the site.

The following four point test is required in estimating the Highest and Best Use. The use must be legal. The use must be probable, not speculative or conjectural. There must be a profitable demand for such use and it must return to the land the highest net return for the longest period of time.

These tests have been applied to the subject property. In arriving at the estimate of Highest and Best Use, the subject site is analyzed as vacant and available for development.

Possible Use

The site fronts 75 feet on the east side of West Bay Harbor Drive and 150 feet on the north side of 96th Street (Kane Concourse). 96th Street is the major east/west traffic artery in Bay Harbor Islands. Therefore, the subject property has good road access and exposure.

The site fronts on a canal with unobstructed access to Biscayne Bay. The site has practical boat access by recreational vessels.

The subject site is rectangular in shape. All necessary utility services are available along existing street right-of-ways. The site is filled to street grade and does not appear to have any drainage or subsoil deficiencies.

The site is 11.250 square feet in size which equates to 0.26 acre. The size of the subject site would restrict development to small to medium scale.

The physical characteristics of the subject site would limit the site to a small to medium scale development.

Permissible Use

Permissible or legal uses are those uses which are permitted by zoning or deed restrictions. There are presently no known private deed restrictions of record.

The subject site is zoned for residential use. The zoning of the site allows single family houses, multifamily apartments, public schools, drive-in bank teller structures and parking for a bank situated in the adjacent block, parks, and public or private off-street parking.

The residential maximum density is 34 dwelling units per acre of land area. The maximum building height is 25 feet. The maximum residential density is 34 dwelling units per acre. The maximum hotel density is 70 rooms per acre.

Feasible Use/Maximally Productive Use

The physical characteristics and zoning of the subject property permit a wide range of potential uses. The possible and permissible uses of the subject site include single family houses, multifamily apartments public schools, drive-in bank teller structures and parking for a bank situated in the adjacent block, parks, and public or private off-street parking. Most uses fronting on Kane Concourse on the east island of Bay Harbor Islands are office buildings or mixed use office and retail buildings. The subject site is located on the western periphery of the business district of Bay Harbor Islands.

Conclusion

Based on the above factors, the highest and best use of the site is estimated to be for multiple family residential uses.

THE APPRAISAL PROCESS

THE APPRAISAL PROCESS

The value of a site can be estimated by various methods which include Direct Sales Comparison, Allocation, Extraction, Development Approach, Land Residual or Ground Rent Capitalization. However, the Direct Sales Comparison Approach is the most preferred and utilized technique when sales of comparable sites are available. The other methodologies are indirect techniques which are generally used when an area is primarily built-up and sales of comparable sites are scarce.

The Direct Sales Comparison Method of valuing the subject site was relied on due to the availability of recent land sales. In the Direct Sales Comparison Method, sales of similar recently sold sites with a similar highest and best use as the subject site are analyzed, compared and adjusted by time, property characteristics and location to indicate the Market Value of the subject site as though unimproved. The reliability of this approach is dependent upon the availability of comparable sales data, the verification of the sales data, the degree of comparability and the absence of non-typical conditions affecting the sale.

Data related to the subject property is derived from various sources including but not limited to the Miami-Dade County Property Appraiser's Office, the Miami-Dade County Clerk's Office, Miami-Dade County plats, FEMA flood zone maps, Land Development Regulations of the Town of Bay Harbor Islands, and tax roll information provided by the Miami-Dade County Property Appraiser's Office.

Comparable sale sources include the Miami-Dade County Property Appraiser's Office, Board of Realtors' Multiple Listing Service, and Loopnet. Sale prices are typically confirmed with a party to the transaction, i.e. buyer, seller, real estate agent or attorney to the transaction.

The sales information was gathered from various sale services and verified through Public Records and/or with a party to the transaction, when possible.

LAND VALUE ANALYSIS

LAND VALUE

A value estimate is concluded by comparing the subject site to comparable land sales. Generally, the comparable land sales are adjusted by time, property, and location to indicate the Market Value of the subject site as though unimproved. This process is known as the Direct Sales Comparison Method.

The Direct Sales Comparison Method is a process of analyzing sales of similar recently sold land parcels in order to derive an indication of the most probable sales price of the site being appraised. The reliability of this approach is dependent upon the availability of comparable sales data, the verification of the sales data, the degree of comparability and the absence of non-typical conditions affecting the sale.

The following pages contain sales of similar land sites which have recently sold. Several other sales were considered, but were not included because there was too wide a difference in physical factors, location and time.

Various analytical techniques may be used to identify and measure adjustments. The techniques of comparative analysis can be grouped into two categories: quantitative and qualitative.

When quantitative analytical techniques are applied, mathematical processes are used to identify which elements of comparison require adjustment and to measure the amount of these adjustments.

The primary quantitative techniques, **Paired Data Analysis**, is a process in which two or more market sales are compared to derive an indication of the size of the adjustment for a single characteristic. Ideally, the sales being compared will be identical in all respects except for the element being measured.

Although paired data analysis is a theoretically sound method, it is sometimes impractical because only a narrow sampling of sufficiently similar properties may be available and it is difficult to quantify the adjustments attributable to all the variables.

The primary qualitative techniques, **Relative Comparison Analysis**, is the study of the relationship indicated by market data without recourse to quantification. This technique is utilized because it reflects the imperfect nature of real estate markets. To apply the technique, the appraisers analyze comparable sales to determine whether the comparables' characteristics are inferior, superior, or equal to those of the subject property.

A search is made of real estate market for all sales within the subject or competitive locations. While many sales were reviewed, the sales contained herein are considered most comparable to the subject properties as to all major factors of comparison.

A detailed breakdown of each sale, a summary of the sales, a sales map and a value conclusion follows herein.

LAND SALE 1

DATE: March 15, 2013

PRICE: \$6,200,000

TYPE INSTRUMENT: Warranty Deed

RECORDATION: O. R. Book 28591, Page 4567

FOLIO NUMBERS: 13-2227-001-0230
13-2227-001-0240

GRANTOR: Monarch at Bay Harbor, LLC

GRANTEE: Bay Village Condos, LLC

LEGAL: Lots 1, 2 & 3, Block 2, **BAY HARBOR ISLAND**, according to the Plat thereof, as recorded in Plat Book 46 Page 5 of the Public Records of Miami-Dade County, Florida.

LOCATION: 9540 West Bay Harbor Drive
Bay Harbor Islands, Florida

SITE DESCRIPTION:

Dimensions: 139 feet x 224 feet
Size: 31,141 Square Feet
0.71 Acres

Zoning: RM-1, Multifamily District
G, Gateway District

Maximum Legal Density: 96 dwelling units (including 12 TDRs)
Current Use: Vacant

UNIT PRICE: \$199.09 per square foot of land area
\$64,583 per dwelling unit

FINANCING: Purchase money mortgage of \$1,900,000.

REMARKS: This is a waterfront site.



SALE 1

LAND SALE 2

DATE: September 8, 2015

PRICE: \$3,500,000

TYPE INSTRUMENT: Warranty Deed

RECORDATION: O. R. Book 29773, Page 3172

FOLIO NUMBER: 13-2227-001-1970

GRANTOR: Genia Enterprises, Inc.

GRANTEE: Tross Infinity, LLC

LEGAL: Lots 13 & 14, Block 9, **BAY HARBOR ISLAND**, according to the Plat thereof, as recorded in Plat Book 46 Page 5 of the Public Records of Miami-Dade County, Florida.

LOCATION: 1175 – 98th Street
Bay Harbor Islands, Florida

SITE DESCRIPTION:

Dimensions: 139 x 139

Size: 19,321 Square Feet
0.44 Acres

Zoning: RM-2, Multifamily District

Maximum Legal Density: 15 dwelling units

Current Use: 24-unit apartment building built in 1957

UNIT PRICE: \$181.15 per square foot of land area
\$233,333 per dwelling unit

FINANCING: Purchase money mortgage of \$2,000,000.

REMARKS: This is a non-waterfront site.



SALE 2

LAND SALE 3

DATE: November 13, 2015

PRICE: \$3,650,000

TYPE INSTRUMENT: Special Warranty Deed

RECORDATION: O. R. Book 29855, Page 2527

FOLIO NUMBER: 13-2227-001-1110

GRANTOR: BP Harbor North, LLC

GRANTEE: Olimpus Investments, LLC

LEGAL: Lots 1 & 2, Block 5, **BAY HARBOR ISLAND**, according to the Plat thereof, as recorded in Plat Book 46 Page 5 of the Public Records of Miami-Dade County, Florida.

LOCATION: 10290 East Bay Harbor Drive
Bay Harbor Islands, Florida

SITE DESCRIPTION:

Dimensions: Irregular

Size: 26,400 Square Feet
0.61 Acres

Zoning: RM-2, Multifamily District

Maximum Legal Density: 21 dwelling units

Current Use: A 12-unit apartment complex built in 1947

UNIT PRICE: \$138.26 per square foot of land area
\$173,809 per dwelling unit

FINANCING: Cash.

REMARKS: This is a non-waterfront site.



SALE 3

LAND SALE 4

DATE: February 6, 2016

PRICE: \$1,653,800

TYPE INSTRUMENT: Special Warranty Deed

RECORDATION: O. R. Book 29955, Page 4814

FOLIO NUMBER: 13-2227-001-2620

GRANTOR: Ellner Realty, Inc.

GRANTEE: Pro-Nan Investments IV, LLC

LEGAL: Lot 15, less the South 11 feet, Block 22, **BAY HARBOR ISLAND**, according to the Plat thereof, as recorded in Plat Book 46 Page 5 of the Public Records of Miami-Dade County, Florida.

LOCATION: 1035 – 94th Street
Bay Harbor Islands, Florida

SITE DESCRIPTION:

Dimensions: 75 feet x 139 feet
Size: 10,425 Square Feet
0.24 Acres
Zoning: RM-2, Multifamily District
Maximum Legal Density: 8 dwelling units
Current Use: Apartment buildings with six units built in 1957

UNIT PRICE: \$158.64 per square foot of land area
\$177,778 per dwelling unit

FINANCING: Cash.

REMARKS: This is a non-waterfront site.



SALE 4

LAND SALE 5

DATE: February 9, 2016

PRICE: \$2,021,300

TYPE INSTRUMENT: Special Warranty Deed

RECORDATION: O. R. Book 29955, Page 4816

FOLIO NUMBER: 13-2227-001-2630

GRANTOR: Ellner Realty, Inc.

GRANTEE: Pro-Nan Investments IV, LLC

LEGAL: Lot 16, Block 22, **BAY HARBOR ISLAND**, according to the Plat thereof, as recorded in Plat Book 46 Page 5 of the Public Records of Miami-Dade County, Florida.

LOCATION: 1029 – 94th Street
Bay Harbor Islands, Florida

SITE DESCRIPTION:

Dimensions: 75 feet x 150 feet
Size: 11,250 Square Feet
0.26 Acres

Zoning: RM-2, Multifamily District

Maximum Legal Density: 9 dwelling units

Current Use: Apartment building with 12 units built in 1951

UNIT PRICE: \$179.67 per square foot of land area
\$224,589 per dwelling unit

FINANCING: Cash.

REMARKS: This is a non-waterfront site.



SALE 5

LAND SALE 6

DATE: February 12, 2016

PRICE: \$4,400,000

TYPE INSTRUMENT: Warranty Deed

RECORDATION: O. R. Book 29965, Page 2423

FOLIO NUMBER: 13-2227-001-2950
13-2227-001-2960

GRANTOR: 1045-92 BH, LLC

GRANTEE: BHI the Club 2, LLC

LEGAL: Lots 13 & 14, Block 5, **BAY HARBOR ISLAND**, according to the Plat thereof, as recorded in Plat Book 46 Page 5 of the Public Records of Miami-Dade County, Florida.

LOCATION: 1055 – 92nd Street
Bay Harbor Islands, Florida

SITE DESCRIPTION:

Dimensions: Irregular
Size: 21,675 Square Feet
0.50 Acres
Zoning: RM-2, Multifamily District
Maximum Legal Density: 18 dwelling units
Current Use: Vacant

UNIT PRICE: \$203.00 per square foot of land area
\$244,444 per dwelling unit

FINANCING: Purchase money mortgage of \$3,400,000 for a 120 day term.

REMARKS: This is a non-waterfront site.



SALE 6

LAND SALES MAP



SUMMARY OF LAND SALES

CHARACTERISTIC	SUBJECT	SALE 1	SALE 2	SALE 3	SALE 4	SALE 5	SALE 6
DATE OF SALE		3/15/13	9/8/15	11/13/15	2/5/16	2/9/16	2/12/16
SALE PRICE		\$6,200,000	\$3,500,000	\$3,650,000	\$1,653,800	\$2,021,300	\$4,400,000
O.R. BOOK/PAGE		28591/4567	29773/3172	29855/2527	29955/4814	29955/4816	29965/2423
ADDRESS	9600 W. Bay Harbor Drive	9450 W. Bay Harbor Drive	1175 – 98 Street	10290 E. Bay Harbor Drive	1036 – 94 Street	1029 – 94 Street	1055 – 92 Street
LAND SIZE (SF)	11,250	31,141	19,321	26,400	10,425	11,250	21,675
LOCATION		Adjacent to South	2 Blocks NE	$\frac{3}{8}$ Miles NE	$\frac{1}{4}$ Mile SE	$\frac{1}{4}$ Mile SE	$\frac{1}{3}$ Mile SE
LAND SIZE (ACRES)	0.26	0.71	0.44	0.61	0.24	0.26	0.50
ZONING	G	RM-1	RM-2	RM-2	RM-2	RM-2	RM-2
MAXIMUM DENSITY	9 units	96	15	21	8	9	18
CURRENT USE	Vacant	Vacant	Apartments	Apartments	Apartments	Apartments	Apartments
WATERFRONT	Yes	Yes	No	No	No	No	No
PRICE PAID/SF		\$199.09	\$181.15	\$138.26	\$158.64	\$179.67	\$203.00
PRICE PAID/UNIT		\$64,583	\$233,338	\$173,809	\$206,725	\$224,589	\$244,444

ANALYSIS OF SALES

The land sales range in unit price from \$138.26 to \$203.00 per square foot. The sales range in time from March of 2013 to February of 2016.

Property Rights

The fee simple interest is the property right of the subject property being valued. The comparable sales involved the same or similar type of property rights.

Conditions of Sale

All of the sales were arm's-length transactions. An arm's-length transaction is defined as a transaction freely arrived at in the open market unaffected by abnormal pressure or by the absence of normal competitive negotiation as might be true in the case of a transaction between related parties.

Financing

The financing of the sales does not indicate any adjustments of their prices for favorable/below market financing.

Date of Sales (Market Conditions)

The land sales occurred between March of 2013 and February of 2016. There appears to have been an upward trend in prices in this market area during this time period. The unit price of Sale 1 requires upward adjustment for increasing market conditions.

Location

The sale properties are all located on the east island of bay Harbor Islands. The locations of the sales are considered similar to the location of the subject property.

Zoning

The subject site is zoned for residential uses. The sale sites are similarly zoned for residential uses. The zoning of the sales sites are fairly similar to the zoning of the subject site. However, the zoning of the subject site is more restrictive in building height and building setbacks than the zoning of the sale sites. Therefore, the zonings of the sale sites are considered better than the zoning of the subject site. The unit prices of the sales require downward adjustments for better zoning.

The Sale 1 site was sold with transferrable development rights (TDRs) that increased the density of the site. The unit price of Sale 1 requires downward adjustment for better zoning.

Land Size

The subject site has a size of 11,250 square feet. The land sales range in size from 10,425 to 31,141 square feet. The size of the subject site is within the range of the size of the sale site. An analysis of the sales indicates that the size of the site does not significantly impact the sale price.

Conclusion

The sales range in unit price from \$138.26 to \$203.00 per square foot of land area.

The unit price of Sale 1, \$199.09 per square foot, is considered an extreme upper limit of value for the value of the subject. The Sale 1 site included TDRs that increased the density of the site.

The unit prices of Sales 2, 3, 4, 5 and 6, ranging from \$138.26 to \$203.00 per square foot, require slight downward adjustments for zoning. The zonings of the Sale 2, 3, 4, 5 and 6 sites permit slightly higher density than the zoning of the subject site.

Based on a careful analysis of the land sales, it is estimated that the subject site has a value of \$150.00 per square foot.

11,250 square feet x \$150.00 per square foot = \$1,687,500

Land Value Indication (Rounded) \$2,690,000

ADDENDA

ASSUMPTIONS AND LIMITING CONDITIONS

This Appraisal Report has been made with the following general assumptions:

1. No responsibility is assumed for the legal description or for matters including legal or title considerations. Title to the property is assumed to be good and marketable unless otherwise stated.
2. The property is appraised free and clear of any or all liens or encumbrances unless otherwise stated.
3. Responsible ownership and competent property management are assumed.
4. The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy.
5. All engineering is assumed to be correct. The plot plans and illustrative material in this report are included only to assist the reader in visualizing the property.
6. If no survey has been furnished to the appraisers, all measurements have been confirmed either in the field, in the plat book or by other reliable sources and are presumed to be accurate.
7. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them.
8. It is assumed that there is full compliance with all applicable federal, state and local environmental regulations and laws unless noncompliance is stated, defined and considered in the Appraisal Report.
9. It is assumed, unless a study has been provided otherwise, that no hazardous material such as asbestos, urea formaldehyde or other toxic waste exists in the property. The existence of a potentially hazardous material could have a significant effect on the value of the property.
10. In reference to proposed construction, the real estate taxes and other expenses are estimated. These amounts are not guaranteed.

11. It is assumed in the valuation of the subject land site, unless a compliance letter has been furnished to us, that the State of Florida Growth Management Act does not prevent the issuance of a building permit.
12. It is assumed that all required licenses, certificates of occupancy, consents, or other legislative or administrative authority from any local, state or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
13. It is assumed that the utilization of the land and improvements is within the boundaries of property lines of the property described and that there is no encroachment or trespass unless noted in the report.

This Appraisal Report has been made with the following general limiting conditions:

1. The distribution, if any, of the total valuation of this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.
2. Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the appraisers, and in any event, only with proper written qualification and only in its entirety.
3. The appraisers herein by reason of this appraisal is not required to give further consultation, testimony, or be in attendance in court with reference to the property in question unless arrangements have been previously made.
4. Neither all nor any part of the contents of this report **(especially any conclusions as to value, the identity of the appraisers, or the firm with which the appraisers are connected)** shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent and approval of the appraisers.

QUALIFICATIONS OF THE APPRAISER

THOMAS F. MAGENHEIMER

Experience:

11/84 - Present **QUINLIVAN APPRAISAL, P.A.**
7300 N. Kendall Drive
Miami, Florida

Education:

University of Richmond, Richmond, Virginia
BA - Bachelor of Arts in History (1982)

Professional Affiliations:

Member of the Appraisal Institute (MAI No. 09166)
Real Estate Salesman - State of Florida - Certificate No. 0344882
Certified General Appraiser, State of Florida, License No. RZ0000553
Member Sigma Alpha Epsilon Fraternity

Qualified as an Expert Witness in the Following Courts:

Miami-Dade County Circuit Court
Broward County Circuit Court
United States Bankruptcy Court

Other Activities:

Admissions Committee - South Florida-Caribbean Chapter of the Appraisal Institute - (1992 - 1993)
Newsletter Editor - South Florida-Caribbean Chapter of the Appraisal Institute - (1991 - 1995)
President - South Florida-Caribbean Chapter of the Appraisal Institute - (1996)
Board of Trustees - Palmer-Trinity School (1989 - 1993)

Quinlivan Appraisal has prepared Appraisal Reports for the following:

Institutions and Corporations:

AT&T
Archdiocese of Miami
Atlantic Security Bank
The Bank of America
Bank United
Barry University
Bessemer Trust Company
California Bank and Trust
Chevron Oil Company
Chase Manhattan Bank
Chemical Bank
Citibank
Citrus Bank
City National Bank of Miami
Coamerica Bank
Coconut Grove Bank
Commerce Bank
Commercial Bank of Florida
Consolidated Bank
County National Bank
Eagle National Bank
Eastern National Bank
Equitable Bank
Espirito Santo Bank
Farm Credit of South Florida
Fidelity Bank
First International Bank
First National Bank of South Miami
Florida International University
First Nationwide Bank
Florida Memorial College
Florida Power and Light Company
Florida Rock Industries
Great Eastern Bank of Florida
Greyhound Lines
HSBC
Hemisphere National Bank
Intercontinental Bank
International Bank of Miami, N.A.

LaSalle National Bank
Marine Midland Bank
McDonalds Corp.
Mellon United National Bank
Metro Bank
Miami-Dade County Community College
Miami-Dade Water and Sewer Authority
Northern Trust Bank of Florida
Ocean Bank
Pacific National Bank
Pan American Bank
Shell Oil Company
South Trust Bank
SunTrust Bank
TotalBank
Trade National Bank
Trust for Public Lands
UniBank
Union Planters National Bank
University of Miami
Wachovia
Wal-Mart
YMCA

Governmental Agencies:

City of Aventura
City of Coral Gables
City of Doral
City of Florida City
City of Hialeah
City of Homestead
City of Miami
City of Miami Parking Authority
City of Miami Beach
City of Miramar
City of North Bay Village
City of North Miami
City of North Miami Beach
City of South Miami
City of Sunny Isles Beach
Miami-Dade County Aviation Department
Miami-Dade County Department of Development & Facilities Management
Miami-Dade County HUD

Miami-Dade County Property Appraisal Adjustment Board
Miami-Dade County Public Schools
Miami-Dade County Public Works Department
Miami-Dade County Transportation Administration
Miami-Dade Water & Sewer Department
South Florida Water Management District
State of Florida, Attorney General's Office
State of Florida, Department of Community Affairs
State of Florida, Department of Corrections
State of Florida, Department of Environmental Protection
State of Florida, Department of Insurance
State of Florida, Department of Rehabilitation and Liquidation
State of Florida, Department of Transportation
Town of Golden Beach
United States Army Corps of Engineers
United States Department of Justice
United States Department of Commerce
United States Department of the Interior
United States General Services Administration
Village of Islamorada
Village of Key Biscayne
Village of Pinecrest

Law Firms:

Akerman Senterfitt
Greenberg, Traurig
Daniels, Kashton, Downs and Robertson
Holland and Knight, LLP
Shutts & Bowen
Ruden McClosky, LLP
Steel, Hector & Davis, LLP
Weiss, Serota, Helfman, Pastoriza, Guedes, Cole and Boniske, P.A.

Types of Properties Appraised:

Single Family Residences	Vacant Land
Apartment Buildings	Hotel/Motels
Office Buildings	Warehouses
Retail Stores	Nursing Homes
Shopping Centers	Mobile Home Parks
Condominium Apartment Buildings	Schools
Golf Courses	Service Stations
Residential Subdivisions	Marinas
Automobile Dealerships	Wetlands

AGENDA ITEM REPORT

August 8, 2016

ITEM NUMBER: 19.

ITEM: Discussion and possible action requested by Mayor Leonard to obtain cost estimates for the painting and striping of dedicated bike lanes. Enclosed find a copy of an initial cost estimate and supporting documents.

DESCRIPTION:

The proposed Bicycle Way design is to improve and create a safer environment for bicyclist through the use of colored pathways.

Bicycle Way is a specially design high friction green bike lane coating for application onto asphalt and / or concrete pavements for the purpose of accenting bike lanes through the use of Florida Highway Administration (FHWA) tested and approved colors.

The initial cost estimate proposed by Atlantic Paver, Inc was approximately \$450,000.

Enclosed find a supporting documents of the proposed colors and work.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Deputy Town Clerk
Jordan Leonard, Mayor

ATTACHMENTS

1.	Atlantic Paving	Atlantic Paving - specs.pdf
2.	MB- Contract	MB- Contract Atlantic Paving.pdf



Estimate

NAME / ADDRESS
CITY OF BAY HARBOR ISLANDS ATTN: Randy Daniel, P.E.

PROJECT

DATE
5/9/2016

DESCRIPTION	QTY	COST	TOTAL
(SQ FT) STREETBRICK- XL (BICYCLEWAY) FDOT QPL # 523-0020 GREEN COLORED BIKE LANE COATING AS PER FHWA GREEN COLOR BOX REQUIREMENTS EAST ISLAND-PERIMETER ROAD BIKE LANE COLOR COATING .	30,000	6.50	195,000.00
NOTES : -- MOT / TRAFFIC CONTROL IS INCLUDED AS NEEDED -- PRESSURE WASHING OF SURFACE PRIOR TO APPLICATION AS NEEDED. -- APPLICATION AREAS TO BE DETERMINED AS PER EXISTING LAYOUT. -- ONE MOBILIZATION IF EXTRA NEEDED ADD (\$ 900.00) EACH -- PRICE IS BASED ON REGULAR DAY TIME HOURS OF OPERATION. -- THIS ESTIMATE MUST BE SIGNED & REFERED TO AS EXHIBIT "A " IN ANY SUBCONTRACT AGREEMENTS FORTHCOMING FROM THE PRIME CONTRACTORS. -- PURCHASE ORDER NEEDED TO SCHEDULE -- ADDITIONAL 2 YEAR WARRANTY FOR A TOTAL OF (5 YEARS) EXCLUSIONS : -- PERMITS -- BONDING -- TRAFFIC POLICE -- THERMOPLASTIC REMOVAL -- INSTALLATION OF THERMOPLASTIC LOGOS, ARROWS OR STRIPING OF ANY KIND.			
PRICE VALID FOR 10 DAYS / ALL WORK IS GUARANTEED FOR 3- YEARS		TOTAL	\$195,000.00

Customer agrees to pay all costs & attorney's fees for collection of any unpaid balance .
Any invoice not paid within 30 days will be subject to a late charge of 18 % per annum .

SIGNATURE _____

8309 N.W. 70th Street Miami, FL 33166
Ph: (305) 513- 8632/ Fax: (305) 513- 8633
www.atlanticpaving.com / e-mail: info@atlanticpaving.com

ABOUT US/ WHY US

Over the last few decades, as technology and manufacturing have improved the quality of decorative surfacing products we at ATLANTIC PAVING COMPANY recognized the benefit of having specific products designed for each type application. It is based on this core concept that we developed one of the most complete full spectrum product lines in the industry. By having such a varied product line we can offer our clients whether FDOT, FHWA, FDEP, Municipalities or Commercial Developers the absolute best pricing with products specifically tailored to their needs. Our full spectrum product line has positioned APC to be at the forefront of this technological revolution in product development coupled with proper implementation. Our varied product line has earned us the reputation as the go to company for many statewide decorative roadway projects and commercial applications of all types.

Our hard earned reputation has only grown stronger over the past almost 20 years through consistently providing our clients throughout the state of Florida with full satisfaction in three key criteria: **# 1 Performance** – We have invested in highly specialized equipment as well as training for key personnel in order to be able to perform regardless of the type of material chosen. **# 2 Pricing** – As a result of having different products for each type surface we can compete on price to a degree that our competitors can only dream of. **# 3 Products** – We have one of the most unique decorative product catalogues in the industry which is supported by one of the best sales and support staff in the state of Florida.

When it comes to artistic and unique designs whether we are working with world renowned artists installing their vision of kinetic art on a roadway or working with local artists installing custom 3-D motifs we are often the chosen company for many regional streetscape and art in public places projects. With our advanced manufacturing capabilities we are able to manufacture any design that your imagination can conceive whether it's an artistic application for crosswalks, intersections or sidewalks and medians we can make your streetscape vision a reality.

With almost 20 years of installation experience working with all kinds of materials and products (18 and counting) our installation crews are experienced in working under the most difficult installation environments and deadlines so you can be sure that we will get your project completed on time. We are able to do this because of our unfailing commitment to customer service, for we know that our success is closely tied to yours, and the more efficiently we can provide our services, the more success we will both enjoy. Our team of customer service professionals works diligently to understand the needs of every one of our customers, taking a complete list of specs and performance criteria and turning them into fully developed projects.

Looking to the future we at APC understand through years of hands on experience installing every type of product available that a product line can never remain static and thus we continually have products in the Research & Development stage. At this point we are very excited about several decorative surfacing products in different stages of development that we feel will continue to give us the lead over our competition especially as pertains to those companies that offer a very limited product catalogue.

In the almost 20 years that we have been involved in the Streetscape decorative surfacing industry it has grown exponentially and we have been involved from the very beginning. With the current advancements in manufacturing technology coupled with our vision to see where improvement is needed we want you to feel confident that you have made the right choice by counting on ATLANTIC PAVING COMPANY of Miami, Florida to satisfy your decorative surfacing needs.



BicycleWay

BICYCLE WAY (FDOT s523-0020 /FHWA approved)

BICYCLE WAY is a specially designed high friction green bike lane coating for application onto asphalt and/ or concrete pavements for the purpose of accenting bike lanes through the use of FHWA tested and approved colors.



CREATING SAFER ENVIROMENTS FOR BICYCLISTS THOUGH THE USE OF FHWA APPROVED COLORED PATHWAYS



BICYCLIST ARE SAFELY LEAD THROUGH MAJOR CONFLICT ZONES

BENEFITS: Integral Colored Coating / Renewable Surface / High Friction / Impervious / Washable / FHWA approved Colors / Fortified with High Friction Abrasives

ATLANTIC PAVING CO,INC. PH: (305) 513- 8632 email: info@atlanticpaving.com website: www.atlanticpaving.com



Jordan W. Leonard
Mayor
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154
Phone: 305-866-6241
Fax: 305-866-4863
jleonard@bayharborislands.net

STREETBRICK- XL "BICYCLE WAY"



Product: STREETBRICK- XL (Bicycle Way) FDOT QPL # s 523-0020 / FHWA approved

Location: Miami

Specification: FDOT / FHWA Green Colored Bicycle lane.

Project requirements:

- FDOT approved QPL # s 523-0200 product (vehicular & non vehicular)
- Ability to be installed on new or existing asphalt and or concrete without affecting the new thermoplastic striping
- ADA compliant
- FHWA approved colors with many more colors available
- Fast installation 4- hour cure to allow traffic loading
- Color fastness with true integral color
- Maintain a high coefficient of friction for the design life of the system
- Renewable and budget friendly surface
- Washable surface

STREETBRICK- XL "BICYCLE WAY"

Project goals: Using approved means and methods to highlight a safe route and pathway for bicyclists thru the use of color at a location where a large number of bicyclist and motorist intersect on a daily basis.

Results:

Project has been included in FDOT 3- year evaluation study to document the changes in behavior of both bicyclist and motorists.



Product specifications available upon request please contact Ray Cruz at info@atlanticpaving.com

STREETBRICK- XL "BICYCLE WAY"



Product: STREETBRICK- XL (Bicycle Way) FDOT QPL # s 523-0020

Location: Bayshore Drive – Collier County

Specification: Colored Bicycle lane.

Project requirements:

- FDOT approved QPL # s 523-0200 product (vehicular & non vehicular)
- Ability to be installed on new or existing asphalt and or concrete without affecting the new thermoplastic striping
- ADA compliant
- UV stable color pigmentation
- Fast installation 4- hour cure to allow traffic loading
- Color fastness with true integral color

STREETBRICK- XL "BICYCLE WAY"

- Renewable / Washable surface treatment
- Maintain a high coefficient of friction for the design life of the system

Project goals: Using approved means and methods to highlight a safe route and pathway for bicyclists thru the use of color at a location where a large number of bicyclist and motorist intersect on a daily basis. Additionally in this case was the intended goal of drawing the bicyclist off the sidewalk in order to avoid the collisions that were occurring between pedestrians & bicyclist prior to BicycleWay color coating being added to the bike lanes.

Results:

Bicyclists have a colored pathway on the shoulder of the roadway that they can call their own and pedestrians have their sidewalk back.



Product specifications available upon request please contact us @ info@atlanticpaving.com

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: March 9, 2016

SUBJECT: **A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CONTRACT WITH ATLANTIC PAVING FOR THE PAINTING AND STRIPING OF DEDICATED BIKE LANES ACROSS THE CITY PURSUANT TO INVITATION TO BID (ITB) NO. 2016-002-KB; AND WAIVING, BY 5/7TH VOTE, THE CITY'S COMPETITIVE BIDDING REQUIREMENTS; FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY.**

ADMINISTRATION RECOMMENDATION

Adopt the Resolution.

KEY INTENDED OUTCOME

Ensure comprehensive mobility addressing all modes throughout the city.

FUNDING

Funding in the amount of \$1,045,042 for additional green bike lanes throughout the City has been budgeted and approved as part of the FY2015/16 Capital budget.

BACKGROUND

On October 14, 2015, the City Commission approved the award of a contract, pursuant to Invitation to Bid (ITB) No. 2016-002-KB for Painting and Striping of Dedicated Bicycle Lanes, to Atlantic Paving Co. for the bike lanes in Flamingo Neighborhood 16th Street Bicycle Lanes from Alton Road to Washington Avenue. The scope of the work includes furnishing of all supervision, labor, materials, tools, equipment and performing all operations required to construct the Work in accordance with the Contract Documents. The contract stipulated a lump sum for the project of \$130,986.00, which calculates to \$6.50 per sq. ft. The contractor is in the process of completing the aforementioned scope.

The Bicycle/Pedestrian Master Plan Update currently under way, has also included the recommendation for painting green all existing bike lanes within City boundaries. The following is a list of green bike lanes projects that are recommended for implementation this fiscal year.

- Alton Road, from South Pointe Drive to 5th Street, including South Pointe Drive from Alton Road to Ocean Drive
- 16th Street from Washington Avenue to Alton Road
- Prairie Avenue from 28th Street to 44th Street
- Royal Palm Avenue from 42nd Street to 47th Street
- 47th Street from Pine Tree Drive to Alton Road

The contract with Atlantic Paving, pursuant to Section 0200 Instructions to Bidders; Subsection 73 Additional Services, allows for additional services to be added to the contract. Atlantic Paving was the lowest, responsible, and responsive bidder to the ITB is currently the only contractor who has completed green bike lane work in Miami Dade County. Therefore, staff recommends that the additional areas, pursuant to the Bicycle/Pedestrian Master Plan, which require dedicated bike lane painting, be added to the contract with Atlantic Paving.

In order to determine fair value for the remainder of the work, staff calculated the per square foot price which was paid for the initial green bike lane work on 16th Street, which equates to \$6.50 per sq. ft. Transportation Department staff has determined that the contractor's bid price is a reasonable cost for additional services required. It is recommended that the contract be extended for a period of one (1) year through March, 31, 2017, to allow for completion of the additional work.

RECOMMENDATION

Based on the aforementioned due diligence analysis prepared by staff, the Administration recommends that the contract with Atlantic Paving be amended to add the additional locations for green bike lanes at a cost of \$6.50 per square foot of additional work.


JLM/KGB/JRG/AD

COMMISSION ITEM SUMMARY

Condensed Title:

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING THE CONTRACT WITH ATLANTIC PAVING FOR THE PAINTING AND STRIPING OF DEDICATED BIKE LANES ACROSS THE CITY PURSUANT TO INVITATION TO BID (ITB) NO. 2016-002-KB; AND WAIVING, BY 5/7TH VOTE, THE CITY'S COMPETITIVE BIDDING REQUIREMENTS; FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY.

Key Intended Outcome Supported:

Ensure comprehensive mobility addressing all modes throughout the city

Supporting Data (Surveys, Environmental Scan, etc.):

N/A

Item Summary/Recommendation:

On October 14, 2015, the City Commission approved the award of a contract, pursuant to Invitation to Bid (ITB) No. 2016-002-KB for Painting and Striping of Dedicated Bicycle Lanes, to Atlantic Paving Co. for the bike lanes in Flamingo Neighborhood 16th Street Bicycle Lanes from Alton Road to Washington Avenue. The scope of the work includes furnishing of all supervision, labor, materials, tools, equipment and performing all operations required to construct the Work in accordance with the Contract Documents. The contract stipulated a lump sum for the project of \$130,986.00, which calculates to \$6.50 per sq. ft. The contractor is in the process of completing the aforementioned scope. The Bicycle/Pedestrian Master Plan Update currently under way, has also included the recommendation for painting green all existing bike lanes within City boundaries. The following is a list of projects that are recommended for implementation this year for painting green:

- Alton Road, from South Pointe Drive to 5th Street, including South Pointe Drive from Alton Road to Ocean Drive
- 16th Street from Washington Avenue to Alton Road
- Prairie Avenue from 28th Street to 44th Street
- Royal Palm Avenue from 42nd Street to 47th Street
- 47th Street from Pine Tree Drive to Alton Road

The contract with Atlantic Paving, pursuant to Section 0200 Instructions to Bidders; Subsection 73 Additional Services, allows for additional services to be added to the contract. Atlantic Paving was the lowest, responsible, and responsive bidder to the ITB and has performed the bulk of dedicated bike lane painting across Miami Dade County. Therefore, staff recommends that the additional areas, pursuant to the Bicycle/Pedestrian Master Plan, which require dedicated bike lane painting, be added to the contract. In order to determine fair value for the remainder of the work, the staff calculated the per square foot price which was paid for the original portion of the work, which equates to \$6.50 per sq. ft. Transportation Department staff has determined that is a reasonable price for additional services required. It is recommended that the contract be extended for a period of one (1) year through March, 31, 2017, to allow for completion of the additional work.

Based on the aforementioned analysis prepared by staff, the City Manager recommends that the contract with Atlantic Paving be amended to add the additional areas of the City which are slated to receive dedicated bike lanes at a cost of \$6.50 per square foot of additional work, as funding becomes available. Funding for the Alton Road and 16th Street projects is available from previously appropriated funds for Bicycle Pedestrian Projects Citywide. The remaining projects have been included in the FY 2015/16 capital budget.

RECOMMENDATION

Approve the Resolution.

Advisory Board Recommendation:

N/A

Financial Information:

Source of Funds:	Amount	Account	Approved
1	\$1,045,042.00	158-2458-069357 187-2458-061357/187-2458-069357/187-2458-069358 187-2791-069357/187-2791-069357/187-2791-069358 187-2789-069357/187-2789-069358 187-2785-069357/187-2785-069358	Funding approved as part of the FY 2015/16 budget
Total	\$1,045,042.00		

Financial Impact Summary:

City Clerk's Office Legislative Tracking:

Alex Denis, Jose Gonzalez

Sign-Offs:

Department Director AD JG	Assistant City Manager MTA KGB	City Manager JLM
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T:\AGENDA\2016\March\Procurement\2016-002-KB Bike Lanes\ITB 2016-002-KB-Contract Amendment Atlantic Paving for



MIAMI BEACH

Agenda Item C7D
Date 3-9-16

RESOLUTION NO. 2016-29312

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE CITY MANAGER'S RECOMMENDATION AND WAIVING, BY 5/7THS VOTE, THE CITY'S COMPETITIVE BIDDING REQUIREMENT, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY, AND APPROVING AND AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AMENDMENT NO. 1 TO THE CITY'S AGREEMENT WITH ATLANTIC PAVING CO., INC. FOR THE PAINTING AND STRIPING OF DEDICATED BICYCLE LANES ACROSS THE CITY, PURSUANT TO INVITATION TO BID (ITB) NO. 2016-002-KB, IN AN AMOUNT NOT TO EXCEED \$886,000.

WHEREAS, on October 14, 2015, and pursuant to Invitation to Bid (ITB) No. 2016-002-KB, the City Commission approved the award of a contract to Atlantic Paving Co., Inc. ("Atlantic Paving") for Painting and Striping of Dedicated Bicycle Lanes, for the bicycle lanes on 16th Street, between Alton Road and Washington Avenue (the "Agreement"); and

WHEREAS, pursuant to the Agreement, the City's cost to paint and stripe dedicated bicycle lanes on 16th Street was \$130,986.00, which calculates to \$6.50 per square foot; and

WHEREAS, the City's Bicycle/Pedestrian Master Plan Update recommends that the City paint green all existing bicycle lanes within City boundaries; and

WHEREAS, the Administration recommends that the City paint green all bicycle lanes along the following additional streets during the course of this year:

- Alton Road, from South Pointe Drive to 5th Street, including South Pointe Drive from Alton Road to Ocean Drive
- Prairie Avenue from 28th Street to 44th Street
- Royal Palm Avenue from 42nd Street to 47th Street
- 47th Street from Pine Tree Drive to Alton Road; and

WHEREAS, in order to protect the public safety of the City's residents and visitors, and especially the City's cyclists, the City desires to paint and stripe bicycle lanes on these additional streets as quickly as possible; and

WHEREAS, the City's Transportation Department has determined that \$6.50 per square foot is a reasonable price to paint and stripe dedicated bicycle lanes on the additional streets specified herein; and

WHEREAS, Atlantic Paving has performed the bulk of dedicated bicycle lane painting across Miami-Dade County; and

WHEREAS, the City desires to amend its Agreement with Atlantic Paving to paint and stripe dedicated bicycle lanes on the additional streets specified herein (the "Amendment"); and

WHEREAS, due to the fact that the Amendment will greatly expand the scope of the Agreement, the City Commission is required to waive, by 5/7ths vote, the City's competitive bidding requirement, in order to approve the Amendment; and

WHEREAS, because of the urgent need to protect cyclists traveling along the City's streets, the City Manager recommends that the City Commission waive the City's competitive bidding requirement.

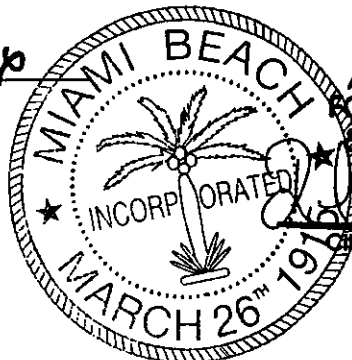
NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that the Mayor and City Commission hereby (1) accept the City Manager's recommendation and waive, by 5/7ths vote, the City's competitive bidding requirement, finding such waiver to be in the best interest of the City, and (2) approve and authorize the Mayor and City Clerk to execute Amendment No. 1 to the City's Agreement with Atlantic Paving Co., Inc. for the painting and striping of dedicated bike lanes across the City, pursuant to ITB No. 2016-002-KB, in an amount not to exceed \$886,000.

PASSED and ADOPTED this 9th day of March, 2016.

ATTEST:

3/16/16
Rafael E. Granado
City Clerk

[Signature]
Philip Levine
Mayor



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

[Signature]
City Attorney

3-4-16
Date

NK

C2 - Competitive Bid Reports

- C2G Request Approval To Award A Contract Pursuant To Invitation To Bid (ITB) 2016-002-KB
For The Painting And Striping Of Dedicated Bicycle Lanes.
(Procurement/Transportation)
(Item to be Submitted in Supplemental)

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Philip Levine and Members of the City Commission

FROM: Jimmy L. Morales, City Manager

DATE: October 14th, 2015

SUBJECT: **REQUEST FOR APPROVAL TO AWARD A CONTRACT PURSUANT TO INVITATION TO BID (ITB) NO. 2016-002-KB FOR THE PAINTING AND STRIPING OF DEDICATED BIKE LANES.**

KEY INTENDED OUTCOME

Ensure comprehensive mobility addressing all modes throughout the city.

FUNDING

The cost associated with for the painting and striping of dedicated bike lanes is subject to the funds availability approved through the City's budgeting process.

BACKGROUND INFORMATION

The City is seeking to paint and stripe dedicated bike lanes on 16th Street from Washington Avenue to Alton Road. The scope of work under this ITB includes furnishing of all supervision, labor, materials, tools, equipment and performing all operations required to construct the Work in accordance with the Contract Documents. The improvements for 16th Street from Washington Avenue to Alton Road will consist of painting green the existing bike lanes on the eastbound and westbound directions, striping and pavement markings. This project enhances existing bicycle facilities along 16th Street.

ITB PROCESS

To seek bids for the desired work, ITB No. 2015-002-KB, was issued on October 1st, 2015, with a bid opening date of October 9th, 2015. Two (2) addenda were issued. The Procurement Department issued bid notices to 105 companies. The notices resulted in the receipt of two (2) responses from Atlantic Paving Company and McShea Contracting, LLC. See tabulation sheet (Appendix A).

The ITB stated that the lowest responsive, responsible bidder meeting all terms, conditions, and specifications of the ITB will be recommended for award. In its due diligence, the Procurement Department verified that the low bidder, Atlantic Paving Company has met the requirements of the ITB, including:

1. **Previous Experience:** Bidder (defined as the Firm) shall have completed or in the process of completing at least two projects for lane striping and painting within the last five years.

Atlantic Paving Company. submitted two (2) projects completed in the last five years which demonstrate their experience in projects for lane striping and painting as indicated in the ITB.

Accordingly, Atlantic Paving Company, has been deemed the lowest responsive and responsible bidder(s) meeting all terms, conditions, and specifications of the ITB.

CITY MANAGER'S REVIEW AND RECOMMENDATION

The City Manager has considered the bids received, pursuant to ITB 2015-002-KB, and recommends that the Mayor and City Commission of the City of Miami Beach, Florida, approve the award of a contract to Atlantic Paving Company, the lowest responsive, responsible bidder to the ITB; and further authorize the Mayor and City Clerk to execute the contract.

RECOMMENDATION

The Administration recommends that the Mayor and City Commission of the City of Miami Beach, Florida approve the City Manager's recommendation pertaining to the bids received, pursuant to ITB 2015-002-KB, for the painting and striping of dedicated bike lanes.

JLM/MT/KGB/JRG/AD

T:\AGENDA\2015\October\PROCUREMENT\ITB 2016-002-KB Painting and Striping of Dedicated Bike Lanes - Memo.doc

EXHIBIT A

VERIFIED BID SUBMITTAL TABULATION
ITB 2016-002-KB - Painting & Striping of Dedicated Bicycle
Lanes

	McShea Contracting LLC	Atlantic Paving Co.
Lump Sum Amount:	\$489,320.00	\$130,986.00

J

APPENDIX E



MIAMI BEACH

Cost Proposal Form

ITB 2016-002-KB PAINTING & STRIPING OF DEDICATED BICYCLE LANES

DEPARTMENT OF PROCUREMENT MANAGEMENT
1700 Convention Center Drive
Miami Beach, Florida 33139

APPENDIX A PROPOSAL TENDER FORM

GROUP I

Flamingo Neighborhood 16th Street Bicycle Lanes from Alton Road to Washington Avenue

The TOTAL BID amount includes the all-inclusive total cost for the work specified in this bid, consisting of furnishing all materials, labor, equipment, supervision, mobilization, demobilization, overhead and profit, insurance, and taxes to complete the work to the full intent as shown or indicated in the contract documents. Any or all alternates, if applicable, may be selected at the City's sole discretion and based on funding availability.

Bidders must submit this ITB Price Form fully completed as part of the Bid response. Failure to do so shall deem the Bidder nonresponsive.

In the event of arithmetical errors between the division totals and the total base bid, the Bidder agrees that the total bid shall govern. In the event of a discrepancy between the numerical total base bid and the written total base bid, the written total base bid shall govern. In absence of totals submitted for any division cost, the City shall interpret as no bid for the division, which may disqualify bidder.

PROJECT TITLE:	Flamingo Neighborhood 16 th Street Bicycle Lanes from Alton Road to Washington Avenue Per Plans and Specifications
TOTAL BID	130,986. ⁰⁰

Bidder's Affirmation:

Company: Atlantic Paving Co.
 Address Line 1: 8309 N.W. 70th St
 Address Line 2: Miami, FL 33166
 Telephone: 305-513-8632
 Email: ray@atlantypaving.com
 Signature: [Signature]
 Title/Printed Name: Vice President Rinaldo Cruz

**FAILURE TO SUBMIT THIS FORM AND BID BOND (IF APPLICABLE)
WITH BID SUBMITTAL SHALL RESULT IN BEING DEEMED NONRESPONSIVE.**



Solicitation No: 2016-002-KB	Solicitation Title: PAINTING & STRIPING OF DEDICATED BICYCLE LANES	
Procurement Contact: Kristy Bada	Tel: 305-673-7490	Email: kristybada@miamibeachfl.gov

PROPOSAL CERTIFICATION, QUESTIONNAIRE & REQUIREMENTS AFFIDAVIT

Purpose: The purpose of this Proposal Certification, Questionnaire and Requirements Affidavit Form is to inform prospective Proposers of certain solicitation and contractual requirements, and to collect necessary information from Proposers in order that certain portions of responsiveness, responsibility and other determining factors and compliance with requirements may be evaluated. **This Proposal Certification, Questionnaire and Requirements Affidavit Form is a REQUIRED FORM that must be submitted fully completed and executed.**

1. General Proposer Information.

FIRM NAME: <i>Atlantic Paving Co.</i>	
No of Years in Business: <i>19</i>	No of Years in Business Locally: <i>19</i>
OTHER NAME(S) PROPOSER HAS OPERATED UNDER IN THE LAST 10 YEARS:	
FIRM PRIMARY ADDRESS (HEADQUARTERS): <i>8309 N.W. 70th St</i>	
CITY: <i>Miami</i>	
STATE: <i>FL</i>	ZIP CODE: <i>33166</i>
TELEPHONE NO.: <i>305-573-8632</i>	
TOLL FREE NO.:	
FAX NO.: <i>305-573-8633</i>	
FIRM LOCAL ADDRESS: <i>8309 N.W. 70th St</i>	
CITY: <i>Miami</i>	
STATE: <i>FL</i>	ZIP CODE: <i>33166</i>
PRIMARY ACCOUNT REPRESENTATIVE FOR THIS ENGAGEMENT: <i>Ray Cruz</i>	
ACCOUNT REP TELEPHONE NO.: <i>305-216-7548</i>	
ACCOUNT REP TOLL FREE NO.:	
ACCOUNT REP EMAIL: <i>ray@atlanticpaving.com</i>	
FEDERAL TAX IDENTIFICATION NO.: <i>65-0737990</i>	

The City reserves the right to seek additional information from Proposer or other source(s), including but not limited to: any firm or principal information, applicable licensure, resumes of relevant individuals, client information, financial information, or any information the City deems necessary to evaluate the capacity of the Proposer to perform in accordance with contract requirements.

1. **Veteran Owned Business.** Is Proposer claiming a veteran owned business status?
☐ YES ☒ NO

SUBMITTAL REQUIREMENT: Proposers claiming veteran owned business status shall submit a documentation proving that firm is certified as a veteran-owned business or a service-disabled veteran owned business by the State of Florida or United States federal government, as required pursuant to ordinance 2011-3748.

2. **Financial Capacity.** If requested by the City, bidder shall arrange for Dun & Bradstreet to submit a Supplier Qualification Report (SQR) directly to the Procurement Contact named herein. No proposal will be considered without receipt, by the City, of the SQR directly from Dun & Bradstreet. The cost of the preparation of the SQR shall be the responsibility of the bidder. The bidder shall request the SQR report from D&B at:

<https://supplierportal.dnb.com/webapp/wcs/stores/servlet/SupplierPortal?storeId=11696>

Bidder are responsible for the accuracy of the information contained in its SQR. It is highly recommended that each Bidder review the information contained in its SQR for accuracy prior to submittal to the City and as early as possible in the solicitation process. For assistance with any portion of the SQR submittal process, contact Dun & Bradstreet at 800-424-2495.

SUBMITTAL REQUIREMENT: Upon request by the City, Bidder shall request that Dun & Bradstreet submit its Supplier Qualifier Report directly to the City, with bid or within 2 days of request.

3. **Litigation History.** Proposer shall submit a statement of any litigation or regulatory action that has been filed against your firm(s) in the last five years. If an action has been filed, state and describe the litigation or regulatory action filed, and identify the court or agency before which the action was instituted, the applicable case or file number, and the status or disposition for such reported action. If no litigation or regulatory action has been filed against your firm(s), provide a statement to that effect. If "No" litigation or regulatory action has been filed against your firm(s), please provide a statement to that effect. **Truthful and complete answers to this question may not necessarily disqualify a firm from consideration but will be a factor in the selection process. Untruthful, misleading or false answers to this question shall result in the disqualification of the firm for this project.**

SUBMITTAL REQUIREMENT: Proposer shall submit history of litigation or regulatory action filed against proposer, or any proposer team member firm, in the past 5 years. If Proposer has no litigation history or regulatory action in the past 5 years, submit a statement accordingly.

4. **Conflict Of Interest.** All Proposers must disclose, in their Proposal, the name(s) of any officer, director, agent, or immediate family member (spouse, parent, sibling, and child) who is also an employee of the City of Miami Beach. Further, all Proposers must disclose the name of any City employee who owns, either directly or indirectly, an interest of ten (10%) percent or more in the Proposer entity or any of its affiliates.

SUBMITTAL REQUIREMENT: Proposers must disclose the name(s) of any officer, director, agent, or immediate family member (spouse, parent, sibling, and child) who is also an employee of the City of Miami Beach. Proposers must also disclose the name of any City employee who owns, either directly or indirectly, an interest of ten (10%) percent or more in the Proposer entity or any of its affiliates.

5. **References & Past Performance.** Proposer shall submit at least three (3) references for whom the Proposer has completed work similar in size and nature as the work referenced in solicitation.

SUBMITTAL REQUIREMENT: For each reference submitted, the following information is required: 1) Firm Name, 2) Contact Individual Name & Title, 3) Address, 4) Telephone, 5) Contact's Email and 6) Narrative on Scope of Services Provided.

6. **Suspension, Debarment or Contract Cancellation.** Has Proposer ever been debarred, suspended or other legal violation, or had a contract cancelled due to non-performance by any public sector agency?
- ☐ YES ☒ NO

SUBMITTAL REQUIREMENT: If answer to above is "YES," Proposer shall submit a statement detailing the reasons that led to action(s).

7. **Vendor Campaign Contributions.** Proposers are expected to be or become familiar with, the City's Campaign Finance Reform laws, as codified in Sections 2-487 through 2-490 of the City Code. Proposers shall be solely responsible for ensuring that all applicable provisions of the City's Campaign Finance Reform laws are complied with, and shall be subject to any and all sanctions, as prescribed therein, including disqualification of their Proposals, in the event of such non-compliance.

SUBMITTAL REQUIREMENT: Submit the names of all individuals or entities (including your sub-consultants) with a controlling financial interest as defined in solicitation. For each individual or entity with a controlling financial interest indicate whether or not each individual or entity has contributed to the campaign either directly or indirectly, of a candidate who has been elected to the office of Mayor or City Commissioner for the City of Miami Beach.

8. **Code of Business Ethics.** Pursuant to City Resolution No.2000-23879, each person or entity that seeks to do business with the City shall adopt a Code of Business Ethics ("Code") and submit that Code to the Procurement Division with its proposal/response or within five (5) days upon receipt of request. The Code shall, at a minimum, require the Proposer, to comply with all applicable governmental rules and regulations including, among others, the conflict of interest, lobbying and ethics provision of the City of Miami Beach and Miami Dade County.

SUBMITTAL REQUIREMENT: Proposer shall submit firm's Code of Business Ethics. In lieu of submitting Code of Business Ethics, Proposer may submit a statement indicating that it will adopt, as required in the ordinance, the City of Miami Beach Code of Ethics, available at www.miamibeachfl.gov/procurement/.

9. **Living Wage.** Pursuant to Section 2-408 of the Miami Beach City Code, as same may be amended from time to time, Proposers shall be required to pay all employees who provide services pursuant to this Agreement, the hourly living wage rates listed below:

- Commencing with City fiscal year 2012-13 (October 1, 2012), the hourly living rate will be \$11.28/hr with health benefits, and \$12.92/hr without benefits.

The living wage rate and health care benefits rate may, by Resolution of the City Commission be indexed annually for inflation using the Consumer Price Index for all Urban Consumers (CPI-U) Miami/Ft. Lauderdale, issued by the U.S. Department of Labor's Bureau of Labor Statistics. Notwithstanding the preceding, no annual index shall exceed three percent (3%). The City may also, by resolution, elect not to index the living wage rate in any particular year, if it determines it would not be fiscally sound to implement same (in a particular year).

Proposers' failure to comply with this provision shall be deemed a material breach under this proposal, under which the City may, at its sole option, immediately deem said Proposer as non-responsive, and may further subject Proposer to additional penalties and fines, as provided in the City's Living Wage Ordinance, as amended. Further information on the Living Wage requirement is available at www.miamibeachfl.gov/procurement/.

SUBMITTAL REQUIREMENT: No additional submittal is required. By virtue of executing this affidavit document, Proposer agrees to the living wage requirement.

10. **Equal Benefits for Employees with Spouses and Employees with Domestic Partners.** When awarding competitively solicited contracts valued at over \$100,000 whose contractors maintain 51 or more full time employees on their payrolls during 20 or more calendar work weeks, the Equal Benefits for Domestic Partners Ordinance 2005-3494 requires certain contractors doing business with the City of Miami Beach, who are awarded a contract pursuant to competitive proposals, to provide "Equal Benefits" to their employees with domestic partners, as they provide to employees with spouses. The Ordinance applies to all employees of a Contractor who work within the City limits of the City of Miami Beach, Florida; and the Contractor's employees located in the United States, but outside of the City of Miami Beach limits, who are directly performing work on the contract within the City of Miami Beach.



- A. Does your company provide or offer access to any benefits to employees with spouses or to spouses of employees?
☐ YES ☒ NO
- B. Does your company provide or offer access to any benefits to employees with (same or opposite sex) domestic partners* or to domestic partners of employees?
☐ YES ☒ NO
- C. Please check all benefits that apply to your answers above and list in the "other" section any additional benefits not already specified. Note: some benefits are provided to employees because they have a spouse or domestic partner, such as bereavement leave; other benefits are provided directly to the spouse or domestic partner, such as medical insurance.

BENEFIT	Firm Provides for Employees with Spouses	Firm Provides for Employees with Domestic Partners	Firm does not Provide Benefit
Health			☒
Sick Leave			☒
Family Medical Leave			☒
Bereavement Leave			☒

If Proposer cannot offer a benefit to domestic partners because of reasons outside your control, (e.g., there are no insurance providers in your area willing to offer domestic partner coverage) you may be eligible for Reasonable Measures compliance. To comply on this basis, you must agree to pay a cash equivalent and submit a completed Reasonable Measures Application (attached) with all necessary documentation. Your Reasonable Measures Application will be reviewed for consideration by the City Manager, or his designee. Approval is not guaranteed and the City Manager's decision is final. Further information on the Equal Benefits requirement is available at www.miamibeachfl.gov/procurement/.

11. **Public Entity Crimes.** Section 287.133(2)(a), Florida Statutes, as currently enacted or as amended from time to time, states that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a proposal, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit proposals, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list.

SUBMITTAL REQUIREMENT: No additional submittal is required. By virtue of executing this affidavit document, Proposer agrees with the requirements of Section 287.133, Florida Statutes, and certifies it has not been placed on convicted vendor list.

12. **Acknowledgement of Addendum.** After issuance of solicitation, the City may release one or more addendum to the solicitation which may provide additional information to Proposers or alter solicitation requirements. The City will strive to reach every Proposer having received solicitation through the City's e-procurement system, PublicPurchase.com. However, Proposers are solely responsible for assuring they have received any and all addendum issued pursuant to solicitation. This Acknowledgement of Addendum section certifies that the Proposer has received all addendum released by the City pursuant to this solicitation. Failure to obtain and acknowledge receipt of all addendum may result in proposal disqualification.

Initial to Confirm Receipt		Initial to Confirm Receipt		Initial to Confirm Receipt	
<i>RC</i>	Addendum 1		Addendum 6		Addendum 11
<i>RC</i>	Addendum 2		Addendum 7		Addendum 12
	Addendum 3		Addendum 8		Addendum 13
	Addendum 4		Addendum 9		Addendum 14
	Addendum 5		Addendum 10		Addendum 15

If additional confirmation of addendum is required, submit under separate cover.



DISCLOSURE AND DISCLAIMER SECTION

The solicitation referenced herein is being furnished to the recipient by the City of Miami Beach (the "City") for the recipient's convenience. Any action taken by the City in response to Proposals made pursuant to this solicitation, or in making any award, or in failing or refusing to make any award pursuant to such Proposals, or in cancelling awards, or in withdrawing or cancelling this solicitation, either before or after issuance of an award, shall be without any liability or obligation on the part of the City.

In its sole discretion, the City may withdraw the solicitation either before or after receiving proposals, may accept or reject proposals, and may accept proposals which deviate from the solicitation, as it deems appropriate and in its best interest. In its sole discretion, the City may determine the qualifications and acceptability of any party or parties submitting Proposals in response to this solicitation.

Following submission of a Bid or Proposal, the applicant agrees to deliver such further details, information and assurances, including financial and disclosure data, relating to the Proposal and the applicant including, without limitation, the applicant's affiliates, officers, directors, shareholders, partners and employees, as requested by the City in its discretion.

The information contained herein is provided solely for the convenience of prospective Proposers. It is the responsibility of the recipient to assure itself that information contained herein is accurate and complete. The City does not provide any assurances as to the accuracy of any information in this solicitation.

Any reliance on these contents, or on any permitted communications with City officials, shall be at the recipient's own risk. Proposers should rely exclusively on their own investigations, interpretations, and analyses. The solicitation is being provided by the City without any warranty or representation, express or implied, as to its content, its accuracy, or its completeness. No warranty or representation is made by the City or its agents that any Proposal conforming to these requirements will be selected for consideration, negotiation, or approval.

The City shall have no obligation or liability with respect to this solicitation, the selection and the award process, or whether any award will be made. Any recipient of this solicitation who responds hereto fully acknowledges all the provisions of this Disclosure and Disclaimer, is totally relying on this Disclosure and Disclaimer, and agrees to be bound by the terms hereof. Any Proposals submitted to the City pursuant to this solicitation are submitted at the sole risk and responsibility of the party submitting such Proposal.

This solicitation is made subject to correction of errors, omissions, or withdrawal from the market without notice. Information is for guidance only, and does not constitute all or any part of an agreement.

The City and all Proposers will be bound only as, if and when a Proposal (or Proposals), as same may be modified, and the applicable definitive agreements pertaining thereto, are approved and executed by the parties, and then only pursuant to the terms of the definitive agreements executed among the parties. Any response to this solicitation may be accepted or rejected by the City for any reason, or for no reason, without any resultant liability to the City.

The City is governed by the Government-in-the-Sunshine Law, and all Proposals and supporting documents shall be subject to disclosure as required by such law. All Proposals shall be submitted in sealed proposal form and shall remain confidential to the extent permitted by Florida Statutes, until the date and time selected for opening the responses. At that time, all documents received by the City shall become public records.

Proposers are expected to make all disclosures and declarations as requested in this solicitation. By submission of a Proposal, the Proposer acknowledges and agrees that the City has the right to make any inquiry or investigation it deems appropriate to substantiate or supplement information contained in the Proposal, and authorizes the release to the City of any and all information sought in such inquiry or investigation. Each Proposer certifies that the information contained in the Proposal is true, accurate and complete, to the best of its knowledge, information, and belief.

Notwithstanding the foregoing or anything contained in the solicitation, all Proposers agree that in the event of a final unappealable judgment by a court of competent jurisdiction which imposes on the City any liability arising out of this solicitation, or any response thereto, or any action or inaction by the City with respect thereto, such liability shall be limited to \$10,000.00 as agreed-upon and liquidated damages. The previous sentence, however, shall not be construed to circumvent any of the other provisions of this Disclosure and Disclaimer which imposes no liability on the City.

In the event of any differences in language between this Disclosure and Disclaimer and the balance of the solicitation, it is understood that the provisions of this Disclosure and Disclaimer shall always govern. The solicitation and any disputes arising from the solicitation shall be governed by and construed in accordance with the laws of the State of Florida.



PROPOSER CERTIFICATION

I hereby certify that: I, as an authorized agent of the Proposer, am submitting the following information as my firm's proposal; Proposer agrees to complete and unconditional acceptance of the terms and conditions of this document, inclusive of this solicitation, all attachments, exhibits and appendices and the contents of any Addenda released hereto, and the Disclosure and Disclaimer Statement; Proposer agrees to be bound to any and all specifications, terms and conditions contained in the solicitation, and any released Addenda and understand that the following are requirements of this solicitation and failure to comply will result in disqualification of proposal submitted; Proposer has not divulged, discussed, or compared the proposal with other Proposers and has not colluded with any other Proposer or party to any other proposal; Proposer acknowledges that all information contained herein is part of the public domain as defined by the State of Florida Sunshine and Public Records Laws; all responses, data and information contained in this proposal, inclusive of the Proposal Certification, Questionnaire and Requirements Affidavit are true and accurate.

Name of Proposer's Authorized Representative: <u>Rinaldo Cruz</u>	Title of Proposer's Authorized Representative: <u>Vice President</u>
Signature of Proposer's Authorized Representative: <u>[Signature]</u>	Date: <u>10/08/15</u>

State of FLORIDA)

County of Broward)

of Atlantic Paving, a corporation, and that the instrument was signed in behalf of the said corporation by authority of its board of directors and acknowledged said instrument to be its voluntary act and deed. Before me:

On this 8th day of October, 2015, personally appeared before me Rinaldo Cruz who stated that (s)he is the VP

Notary Public for the State of Florida
My Commission Expires: 10/29/2018



Sixto Medina
State of Florida
My Commission Expires 10/29/2018
Commission No. FF 172713



To: CITY OF MIAMI BEACH

Ref: 2016-002-KB PAINTING & STRIPING OF DEDICATED BIKE LANES

To whom it may concern,

Let this letter serve as confirmation that Atlantic Paving and its officers are in compliance with the CITY'S CAMPAIGN FINANCE REFORM LAWS as indicated below with the list of officers and their compliance with the City code.

Richard A. Still – no contributions directly or indirectly to any candidate who has been to the office of mayor or City Commissioner for the City of Miami Beach.

June F. Still - no contributions directly or indirectly to any candidate who has been to the office of mayor or City Commissioner for the City of Miami Beach.

Adrianna Cruz – no contributions directly or indirectly to any candidate who has been to the office of mayor or City Commissioner for the City of Miami Beach.

Rinaldo Cruz - no contributions directly or indirectly to any candidate who has been to the office of mayor or City Commissioner for the City of Miami Beach.

Elected RC
Elected RC
Elected RC
Elected RC

SINCERELY,


Rinaldo Cruz

VP/ GM

ATLANTIC PAVING COMPANY



To: CITY OF MIAMI BEACH

Ref: 2016-002-KB PAINTING & STRIPING OF DEDICATED BIKE LANES

To whom it may concern,

Let this letter serve as confirmation that Atlantic Paving will adopt as required in the ordinance, THE CITY OF MIAMI BEACH CODE OF ETHICS.

SINCERELY,

A handwritten signature in dark ink, appearing to be "R. Cruz", is written over a horizontal line.

Rinaldo Cruz

VP/ GM

ATLANTIC PAVING COMPANY



To: City of Miami Beach

Ref: 2016-002-KB PAINTING & STRIPING OF DEDICATED BIKE LANES

To whom it may concern,

Attached is the initial filing of a lawsuit against all parties who worked on said project. Disposition is that after mediation we were dropped from lawsuit. Atlantic Paving no longer a party to the lawsuit.

IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 2014-05140-CA (08)

ICONBRICKELL MASTER ASSOCIATION, INC.,

Plaintiff,

v.

ICONBRICKELL, LLC;
JOHN MORIARTY & ASSOCIATES OF FLORIDA, INC.;
ARQUITECTONICA INTERNATIONAL CORP.;
CHM STRUCTURAL ENGINEERS, LLC; and
STEVEN FELLER, P.E., PL,

Defendants.

JOHN MORIARTY & ASSOCIATES OF FLORIDA, INC.,

Third Party Plaintiff,

v.

RC ALUMINUM INDUSTRIES, INC.;
LEJESA FINISH, INC.;
M&R DRYWALL, INC.;
NORCA AIR CONDITIONING AND REFRIGERATION, CORP.;
OLYMPIA PLUMBING CORP.;
RODEL FIRE PROTECTION SYSTEMS, INC.;
TERRELL DUKE MASONRY, INC.;
THYSSENKRUPP ELEVATOR CORPORATION;
PRO-TECH WATERPROOFING AND CAULKING, INC.;
SOUTHLAND FORMING, INC.;
FLORIDA ERECTION SERVICE, INC.;
WARREN'S CONCRETE SERVICES, INC.;
SUNCOAST POST-TENSION, LTD. CORPORATION;
AQUALOGIC POOLS, LLC;
ASSOCIATED STEEL AND ALUMINUM LIMITED, INC.;
MCCAROL PARTNERS, INC.;
TILE & MARBLE WORKS, INC.;
PRO-BEL USA, INC.;
SPECIALIZED SUPPLIES & SERVICES, INC.; AND
ATLANTIC PAVING CO., INC.,

Served _____
Date 12-24-14 *Time* 10:15 *AM*

P.S. J.C. *#* 708

Tenacious Research & Process

SINCERELY,

A handwritten signature in blue ink, appearing to be 'R. Cruz', written over a horizontal line.

Rinaldo Cruz

VP/ GM

ATLANTIC PAVING COMPANY



To: CITY OF MIAMI BEACH

Ref: 2016-002-KB PAINTING & STRIPING OF DEDICATED BIKE LANES

To whom it may concern,

In response to past or current projects of like manner please refer to the below list of projects that we have performed or are currently working on.

2012 # 1- David Buchheit

MSTU Project Manager
BGT CRA
4069 Bayshore Drive
Naples, Fl 34112
(239)-643-1115

Project consisted of approx 54,000 sq ft of bike lane coloring / Price (\$ 104,000.00)

CURRENT # 2- MIAMI-DADE COUNTY – CRANDON PARK BIKE LANE IMPROVEMENTS

APPROX 105,000 SQ FT OF GREEN BIKE LANE COLORING / CONTACT INSPECTOR Freddy Valero

CONTRACTOR – GENERAL ASPHALT COMPANY

SINCERELY,

Rinaldo Cruz

VP/ GM

ATLANTIC PAVING COMPANY

Bada, Kristy

From: miamibeach@instracking.com
Sent: Friday, October 16, 2015 2:58 PM
To: Bada, Kristy
Subject: Insured: Atlantic Paving Co, Inc. | Insured ID: 035093-MBF | ITS Account #: MBF657

Hello,

Please see below the updated insurance compliance status for:

Insured: **Atlantic Paving Co, Inc.** | Insured ID: **035093-MBF** | ITS Account #: **MBF657**

Status: **Compliant**

Insurance Policy Expiration Dates:

- General Liability: (8/1/2016)
- Automobile Liability: (8/1/2016)
- Workers' Comp./Employers Liability: (8/1/2016)

Thank you,

Insurance Tracking Services, Inc. (ITS)
+1 (888) 435-2955 - P
+1 (562) 435-2999 - F
www.instracking.com - W

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CERTIFICATE OF LIABILITY INSURANCE

ATLAN10

OP ID: VO

DATE (MM/DD/YYYY)

10/13/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
BROWN & BROWN OF FLORIDA INC
14900 NW 79th Court Suite#200
Miami Lakes, FL 33016-5869
Ramon A Rodriguez

CONTACT NAME: Ramon A Rodriguez**PHONE**
(A/C, No, Ext): 305-364-7800**FAX**
(A/C, No): 305-714-4401**E-MAIL**
ADDRESS:**INSURER(S) AFFORDING COVERAGE****NAIC #****INSURER A:** *National Trust Insurance Co.

20141

INSURER B: *FCCI Insurance Company*

10178

INSURER C:**INSURER D:****INSURER E:****INSURER F:**

INSURED **Atlantic Paving Company, Inc.**
8309 NW 70 Street
Miami, FL 33166

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
B	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☒ PRO-JECT ☐ LOC OTHER:			GL00058419	08/01/2015	08/01/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	☒ AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ HIRED AUTOS ☐ SCHEDULED AUTOS ☐ NON-OWNED AUTOS			CA00090419	08/01/2015	08/01/2016	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☐ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☒ DED ☐ RETENTION \$ 10000			UMB 0018552	08/01/2015	08/01/2016	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 P&I Aggre \$ 1,000,000 ☒ PER STATUTE ☐ OTH-ER
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N ☒ N	N/A	001WC153A62258	08/01/2015	08/01/2016	E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Project: ITB 2016-002-KB Painting and Striping of Dedicated Bicycle Lanes

The City of Miami Beach is listed as Additional Insured with respects to General Liability coverage when required by written contract.
30 Days notice of Cancellation applies.

CERTIFICATE HOLDER**CANCELLATION****CIMIAPR**

The City of Miami Beach
Procurement Department
1755 Meridian Ave, 3er Floor
Miami Beach, FL 33139

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Brown and Brown of Florida, Inc.

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GENERAL LIABILITY ADVANTAGE ENDORSEMENT

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY ADVANTAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

NOTE: The following are additions, replacements and amendments to the Commercial General Liability Coverage Form, and will apply unless excluded by separate endorsement(s) to the Commercial General Liability Coverage Form.

The **COMMERCIAL GENERAL LIABILITY COVERAGE FORM** is amended as follows:

SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE is amended as follows:

1. Extended "Property Damage"

Exclusion 2.a., Expected or Intended Injury, is replaced with the following:

- a. "Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

2. Non-owned Watercraft

Exclusion 2.g. (2) (a) is replaced with the following:

- (a) Less than 51 feet long; and

3. Property Damage Liability – Borrowed Equipment

The following is added to Exclusion 2.j. (4):

Paragraph (4) of this exclusion does not apply to "property damage" to borrowed equipment while at a jobsite and not being used to perform operations. The most we will pay for "property damage" to any one borrowed equipment item under this coverage is \$25,000 per "occurrence". The insurance afforded under this provision is excess over any other valid and collectible property insurance (including deductible) available to the insured, whether primary, excess, contingent or on any other basis.

SECTION I – COVERAGES, the following coverages are added:

COVERAGE D. VOLUNTARY PROPERTY DAMAGE

1. Insuring Agreement

We will pay, at your request, for "property damage" caused by an "occurrence", to property of others caused by you, or while in your possession, arising out of your business operations. The amount we will pay for damages is described in SECTION III LIMITS OF INSURANCE.

2. Exclusions

This insurance does not apply to:

"Property Damage" to:

- a. Property at premises owned, rented, leased or occupied by you;
- b. Property while in transit;
- c. Property owned by, rented to, leased to, loaned to, borrowed by, or used by you;
- d. Premises you sell, give away, or abandon, if the "property damage" arises out of any part of those premises;
- e. Property caused by or arising out of the "products-completed operations hazard";
- f. Motor vehicles;
- g. "Your product" arising out of it or any part of it; or
- h. "Your work" arising out of it or any part of it.

3. Deductible

We will not pay for loss in any one "occurrence" until the amount of loss exceeds \$250. We will then pay the amount of loss in excess of \$250 up to the applicable limit of insurance.

4. Cost Factor

In the event of a covered loss, you shall, if requested by us, replace the damaged property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

The insurance afforded under COVERAGE D is excess over any other valid and collectible property or inland marine insurance (including the deductible applicable to the property or inland marine coverage) available to you whether primary, excess, contingent or any other basis.

Coverage D covers unintentional damage or destruction, but does not cover disappearance, theft, or loss of use.

The insurance under COVERAGE D does not apply if a loss is paid under COVERAGE E.

COVERAGE E. CARE, CUSTODY OR CONTROL

1. Insuring Agreement

We will pay those sums that the insured becomes legally obligated to pay as damages because of "property damage" caused by an "occurrence", to property of others while in your care, custody, or control or property of others as to which you are exercising physical control if the "property damage" arises out of your business operations. The amount we will pay for damages is described in SECTION III LIMITS OF INSURANCE.

2. Exclusions

This insurance does not apply to:

"Property Damage" to:

- a. Property at premises owned, rented, leased or occupied by you;
- b. Property while in transit;
- c. Premises you sell, give away, or abandon, if the "property damage" arises out of any part of those premises;

- d. Property caused by or arising out of the "products-completed operations hazard";
- e. Motor vehicles;
- f. "Your product" arising out of it or any part of it; or
- g. "Your work" arising out of it or any part of it.

3. Deductible

We will not pay for loss in any one "occurrence" until the amount of loss exceeds \$250. We will then pay the amount of loss in excess of \$250 up to the applicable limit of insurance.

4. Cost Factor

In the event of a covered loss, you shall, if requested by us, replace the damaged property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

The insurance afforded under COVERAGE E is excess over any other valid and collectible property or inland marine insurance (including the deductible applicable to the property or inland marine coverage) available to you whether primary, excess, contingent or any other basis.

The insurance under COVERAGE E does not apply if a loss is paid under COVERAGE D.

COVERAGE F. LIMITED PRODUCT WITHDRAWAL EXPENSE

1. Insuring Agreement

- a. If you are a "seller", we will reimburse you for "product withdrawal expenses" associated with "your product" incurred because of a "product withdrawal" to which this insurance applies.

The amount of such reimbursement is limited as described in SECTION III - LIMITS OF INSURANCE. No other obligation or liability to pay sums or perform acts or services is covered.

- a. This insurance applies to a "product withdrawal" only if the "product withdrawal" is initiated in the "coverage territory" during the policy period because:
 - (1) You determine that the "product withdrawal" is necessary; or
 - (2) An authorized government entity has ordered you to conduct a "product withdrawal".
- c. We will reimburse only those "product withdrawal expenses" which are incurred and reported to us within one year of the date the "product withdrawal" was initiated.
- d. The initiation of a "product withdrawal" will be deemed to have been made only at the earliest of the following times:
 - (1) When you have announced, in any manner, to the general public, your vendors or to your employees (other than those employees directly involved in making the determination) your decision to conduct a "product withdrawal" This applies regardless of whether the determination to conduct a "product withdrawal" is made by you or is requested by a third party;
 - (2) When you received, either orally or in writing, notification of an order from an authorized government entity to conduct a "product withdrawal"; or

- (3) When a third party has initiated a "product withdrawal" and you communicate agreement with the "product withdrawal", or you announce to the general public, your vendors or to your employees (other than those employees directly involved in making the determination) your decision to participate in the "product withdrawal", whichever comes first.

e. "Product withdrawal expenses" incurred to withdraw "your products" which contain:

- (1) The same "defect" will be deemed to have arisen out of the same "product withdrawal"; or
- (2) A different "defect" will be deemed to have arisen out of a separate "product withdrawal" if newly determined or ordered in accordance with paragraph 1.b of this coverage.

2. Exclusions

This insurance does not apply to "product withdrawal" expenses" arising out of:

a. Any "product withdrawal" initiated due to:

- (1) The failure of "your products" to accomplish their intended purpose, including any breach of warranty of fitness, whether written or implied. This exclusion does not apply if such failure has caused or is reasonably expected to cause "bodily injury" or physical damage to tangible property.
- (2) Copyright, patent, trade secret or trademark infringements;
- (3) Transformation of a chemical nature, deterioration or decomposition of "your product", except if it is caused by:
 - (a) An error in manufacturing, design, processing or transportation of "your product"; or
 - (b) "Product tampering".
- (4) Expiration of the designated shelf life of "your product".

b. A "product withdrawal", initiated because of a "defect" in "your product" known to exist by the Named Insured or the Named Insured's "executive officers", prior to the inception date of this Coverage Part or prior to the time "your product" leaves your control or possession.

c. Recall of any specific products for which "bodily injury" or "property damage" is excluded under Coverage A - Bodily Injury And Property Damage Liability by endorsement.

d. Recall of "your products" which have been banned from the market by an authorized government entity prior to the policy period.

e. The defense of a claim or "suit" against you for "product withdrawal expenses".

3. For the purposes of the insurance afforded under COVERAGE F, the following is added to 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit Condition under SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:

e. Duties In The Event Of A "Defect" Or A "Product Withdrawal"

- (1) You must see to it that we are notified as soon as practicable of any actual, suspected or threatened "defect" in "your products", or any governmental investigation, that may result in a "product withdrawal". To the extent possible, notice should include:

- (a) How, when and where the "defect" was discovered;

- (b) The names and addresses of any injured persons and witnesses; and
- (c) The nature, location and circumstances of any injury or damage arising out of use or consumption of "your product".

(2) If a "product withdrawal" is initiated, you must:

- (a) Immediately record the specifics of the "product withdrawal" and the date it was initiated; and
- (b) Notify us as soon as practicable.

You must see to it that we receive written notice of the "product withdrawal" as soon as practicable.

(3) You and any other involved insured must:

- (a) Immediately send us copies of pertinent correspondence received in connection with the "product withdrawal";
- (b) Authorize us to obtain records and other information; and
- (c) Cooperate with us in our investigation of the "product withdrawal".

4. For the purposes of this Coverage F, the following definitions are added to the Definitions Section:

- a. "Defect" means a defect, deficiency or inadequacy that creates a dangerous condition.
- b. "Product tampering" is an act of intentional alteration of "your product" which may cause or has caused "bodily injury" or physical injury to tangible property.

When "product tampering" is known, suspected or threatened, a "product withdrawal" will not be limited to those batches of "your product" which are known or suspected to have been tampered with.

- c. "Product withdrawal" means the recall or withdrawal of "your products", or products which contain "your products", from the market or from use, by any other person or organization, because of a known or suspected "defect" in "your product", or a known or suspected "product tampering", which has caused or is reasonably expected to cause "bodily injury" or physical injury to tangible property.
- d. "Product withdrawal expenses" means those reasonable and necessary extra expenses, listed below paid and directly related to a "product withdrawal":

- (1) Costs of notification;
- (2) Costs of stationery, envelopes, production of announcements and postage or facsimiles;
- (3) Costs of overtime paid to your regular nonsalaried employees and costs incurred by your employees, including costs of transportation and accommodations;
- (4) Costs of computer time;
- (5) Costs of hiring independent contractors and other temporary employees;
- (6) Costs of transportation, shipping or packaging;
- (7) Costs of warehouse or storage space; or
- (8) Costs of proper disposal of "your products", or products that contain "your products", that cannot be reused, not exceeding your purchase price or your cost to produce the products; but "product

withdrawal expenses" does not include costs of the replacement, repair or redesign of "your product", or the costs of regaining your market share, goodwill, revenue or profit.

- e. "Seller" means a person or organization that manufactures, sells or distributes goods or products. "Seller" does not include a "contractor" as defined elsewhere in this endorsement.

The insurance under COVERAGE F does not apply if a loss is paid under COVERAGE G.

COVERAGE G. CONTRACTORS ERRORS AND OMISSIONS

1. Insuring Agreement

If you are a "contractor", we will pay those sums that you become legally obligated to pay as damages because of "property damage" to "your product", "your work" or "impaired property", due to faulty workmanship, material or design, or products including consequential loss, to which this insurance applies. The damages must have resulted from your negligent act, error or omission while acting in your business capacity as a contractor or subcontractor or from a defect in material or a product sold or installed by you while acting in this capacity. The amount we will pay for damages is described in SECTION III LIMITS OF INSURANCE.

We have no duty to investigate or defend claims or "suits" covered by this Contractors Errors or Omissions coverage.

This coverage applies only if the "property damage" occurs in the "coverage territory" during the policy period.

This coverage does not apply to additional insureds, if any.

Supplementary Payments – Coverage A and B do not apply to Coverage G. Contractors Errors and Omissions.

2. Exclusions

This insurance does not apply to:

- a. "Bodily injury" or "personal and advertising injury".
- b. Liability or penalties arising from a delay or failure to complete a contract or project, or to complete a contract or project on time.
- c. Liability because of an error or omission:
 - (1) In the preparation of estimates or job costs;
 - (2) Where cost estimates are exceeded;
 - (3) In the preparation of estimates of profit or return on capital;
 - (4) In advising or failure to advise on financing of the work or project; or
 - (5) In advising or failing to advise on any legal work, title checks, form of insurance or suretyship.
- d. Any liability which arises out of any actual or alleged infringement of copyright or trademark or trade dress or patent, unfair competition or piracy, or theft or wrongful taking of concepts or intellectual property.
- e. Any liability for damages:

- (1) From the intentional dishonest, fraudulent, malicious or criminal acts of the Named Insured, or by any partner, member of a limited liability company, or executive officer, or at the direction of any of them; or
 - (2) Which is in fact expected or intended by the insured, even if the injury or damage is of a different degree or type than actually expected or intended.
- f. Any liability arising out of manufacturer's warranties or guarantees, whether express or implied.
- g. Any liability arising from "property damage" to property owned by, rented or leased to the insured.
- h. Any liability before you have completed "your work." "Your work" will be deemed completed at the earliest of the following times:
- (1) When all of the work called for in your contract or work order has been completed;
 - (2) When all the work to be done at the job site has been completed if your contract calls for work at more than one job site; or
 - (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service or maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as complete.
- i. Any liability arising from "property damage" to products that are still in your physical possession.
- j. Any liability arising out of the rendering of or failure to render any professional services by you or on your behalf, but only with respect to either or both of the following operations:
- (1) Providing engineering, architectural or surveying services to others; and
 - (2) Providing or hiring independent professionals to provide engineering, architectural or surveying services in connection with construction work you perform.
- Professional services include the preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications. Professional services also include supervisory or inspection activities performed as part of any related architectural or engineering activities.
- But, professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with construction work you perform.
- k. Your loss of profit or expected profit and any liability arising therefrom.
- l. "Property damage" to property other than "your product," "your work" or "impaired property."
- m. Any liability arising from claims or "suits" where the right of action against the insured has been relinquished or waived.
- n. Any liability for "property damage" to "your work" if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.
- o. Any liability arising from the substitution of a material or product for one specified on blueprints, work orders, contracts or engineering specifications unless there has been written authorization, or unless the blueprints, work orders, contracts or engineering specifications were written by you, and you have authorized the changes.

- p. Liability of others assumed by the insured under any contract or agreement, whether oral or in writing. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

3. For the purposes of Coverage G, the following definition is added to the Definitions section:

- a. "Contractor" means a person or organization engaged in activities of building, clearing, filing, excavating or improvement in the size, use or appearance of any structure or land. "Contractor" does not include a "seller as defined elsewhere in this endorsement.

4. Deductible

We will not pay for loss in any one "occurrence" until the amount of loss exceeds \$250. The limits of insurance will not be reduced by the application of the deductible amount.

We may pay any part or all of the deductible amount to effect settlement of any claim or "suit", and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

5. Cost Factor

In the event of a covered loss, you shall, if requested by us, replace the damaged property or furnish the labor and materials necessary for repairs thereto at your actual cost, excluding profit or overhead charges.

The insurance under COVERAGE G does not apply if a loss is paid under COVERAGE F.

SECTION I - COVERAGES, SUPPLEMENTARY PAYMENTS -- COVERAGE A and B is amended as follows:

All references to SUPPLEMENTARY PAYMENTS -- COVERAGES A and B are amended to SUPPLEMENTARY PAYMENTS -- COVERAGES A, B, D, E, and G.

1. Cost of Bail Bonds

Paragraph 1.b. is replaced with the following:

- b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. Loss of Earnings

Paragraph 1.d. is replaced with the following:

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$360 a day because of time off from work.

SECTION II -- WHO IS AN INSURED is amended as follows:

1. Incidental Malpractice

Paragraph 2.a.(1)(d) is replaced with the following:

- (d) Arising out of his or her providing or failing to provide professional health care services. However, this exclusion does not apply to a nurse, emergency medical technician or paramedic employed by you to provide medical services, unless:

- (i) You are engaged in the occupation or business of providing or offering medical, surgical, dental, x-ray or nursing services, treatment, advice or instruction; or

- (ii) The "employee" has another insurance that would also cover claims arising under this provision, whether the other insurance is primary, excess, contingent or on any other basis.

2. Newly Formed or Acquired Organizations

Paragraph 3.a. is replaced with the following:

- a. Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

SECTION III – LIMITS OF INSURANCE is amended as follows:

1. Paragraph 2. is replaced with the following:

- 2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard";
 - c. Damages under Coverage B;
 - d. Voluntary "property damage" payments under Coverage D; and
 - e. Care, Custody or Control damages under Coverage E.

2. Paragraph 5. is replaced with the following:

- 5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A;
 - b. Medical expenses under Coverage C;
 - c. Voluntary "property damage" payments under Coverage D;
 - d. Care, Custody or Control damages under Coverage E;
 - e. Limited Product Withdrawal Expense under Coverage F; and
 - f. Contractors Errors and Omissions under Coverage G.because of all "bodily injury" and "property damage" arising out of any one "occurrence".

3. Paragraph 6. is replaced with the following:

- 6. Subject to Paragraph 5. above, the higher of \$300,000 or the Damage To Premises Rented To You Limit shown in the Declarations is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire or explosion, while rented to you or temporarily occupied by you with permission of the owner, arising out of any one fire or explosion.

4. Paragraph 7. is replaced with the following:

- 7. Subject to Paragraph 5. above, the higher of \$10,000 or the Medical Expense Limit shown in the Declarations is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

5. Paragraph 8. is added as follows:

8. Subject to Paragraph 5. above, the most we will pay under Coverage D. Voluntary Property Damage for loss arising out of any one "occurrence" is \$1,500. The most we will pay in any one-policy period, regardless of the number of claims made or suits brought, is \$3,000.

6. Paragraph 9. is added as follows:

9. Subject to Paragraph 5. above, the most we will pay under Coverage E. Care, Custody or Control for "property damage" arising out of any one "occurrence" is \$1,000. The most we will pay in any one-policy period, regardless of the number of claims made or suits brought, is \$5,000.

7. Paragraph 10. is added as follows:

10. Subject to Paragraph 5. above, the most we will pay under Coverage F. Limited Product Withdrawal Expense for "product withdrawal expenses" in any one-policy period, regardless of the number of insureds, "product withdrawals" initiated or number of "your products" withdrawn is \$10,000.

8. Paragraph 11. is added as follows:

11. Subject to Paragraph 5. above, the most we will pay under Coverage G. Contractors Errors and Omissions for damage in any one-policy period, regardless of the number of insureds, claims or "suits" brought, or persons or organizations making claim or bringing "suits" is \$10,000.

For errors in contract or job specifications or in recommendations of products or materials to be used, this policy will not pay for additional costs of products and materials to be used that would not have been incurred had the correct recommendations or specifications been made.

9. Paragraph 12. is added as follows:

12. The General Aggregate Limit applies separately to:

- a. Each of your projects away from premises owned by or rented to you; or
- b. Each "location" owned by or rented to you.

"Location" as used in this paragraph means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS is amended as follows:

- 1. Subparagraph 2.a. of Duties In The Event Of Occurrence, Offense, Claim, or Suit is replaced with the following:**

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. This requirement applies only when the "occurrence" or offense is known to the following:

- (1) An individual who is the sole owner;
- (2) A partner, if you are a partnership or joint venture;
- (3) An "executive officer" or insurance manager, if you are a corporation;
- (4) A manager, if you are a limited liability company;

- (5) A person or organization having proper temporary custody of your property if you die;
 - (6) The legal representative of you if you die; or
 - (7) A person (other than an "employee") or an organization while acting as your real estate manager.
- To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

2. The following is added to Subparagraph 2. b. of Duties In The Event Of Occurrence, Offense, Claim, or Suit:

The requirement in 2.b. applies only when the "occurrence" or offense is known to the following:

- (1) An individual who is the sole owner;
- (2) A partner or insurance manager, if you are a partnership or joint venture;
- (3) An "executive officer" or insurance manager, if you are a corporation;
- (4) A manager or insurance manager, if you are a limited liability company;
- (5) Your officials, trustees, board members or insurance manager, if you are a not-for-profit organization;
- (6) A person or organization having proper temporary custody of your property if you die;
- (7) The legal representative of you if you die; or
- (8) A person (other than an "employee") or an organization while acting as your real estate manager.

3. Paragraph 6. is replaced with the following:

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

Any error or omission in the description of, or failure to completely describe or disclose any premises, operations or products intended to be covered by the Coverage Form will not invalidate or affect coverage for those premises, operations or products, provided such error or omission or failure to completely describe or disclose premises, operations or products was not intentional.

You must report such error or omission to us as soon as practicable after its discovery. However, this provision does not affect our right to collect additional premium charges or exercise our right of cancellation or nonrenewal.

4. The following is added to paragraph 8. Transfer Of Rights Of Recovery Against Others To Us:

We waive any right of recovery we may have because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a written contract requiring such waiver with that person or organization and included in the "products-completed operations hazard". However, our rights may only be waived prior to the "occurrence" giving rise to the injury or damage for which we make payment under this Coverage Part. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

5. Paragraph 10. is added as follows:

10. Liberalization

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in the applicable state(s).

INVITATION TO BID (ITB)

FOR THE PAINTING AND STRIPING OF DEDICATED BICYCLE LANES

ITB 2016-002-KB

*This is a "Rush Response" project.
Please pay careful attention to the due date for
bids.*

BID ISSUANCE DATE: OCTOBER 2, 2015

BID DUE: OCTOBER 9, 2015 @ 3:00 PM

ISSUED BY: KRISTY BADA



MIAMI BEACH

KRISTY BADA, CONTRACTING OFFICER

PROCUREMENT DEPARTMENT

1755 MERIDIAN AVENUE, 3RD FLOOR, Miami Beach, FL 33139

305.673.7490 | KristyBada@MiamiBeachFL.gov | www.miamibeachfl.gov



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SECTION 0200**INSTRUCTIONS TO BIDDERS****1. GENERAL.**

This Invitation to Bid (ITB) is issued by the City of Miami Beach, Florida (the "City"), as the means for prospective Proposers to submit their qualifications, proposed scopes of work and cost proposals (the "bid") to the City for the City's consideration as an option in achieving the required scope of services and requirements as noted herein. All documents released in connection with this solicitation, including all appendixes and addenda, whether included herein or released under separate cover, comprise the solicitation, and are complementary to one another and together establish the complete terms, conditions and obligations of the Proposers and, subsequently, the successful Bidders(s) (the "contractor[s]") if this ITB results in an award.

The City utilizes **PublicPurchase** (www.publicpurchase.com) for automatic notification of competitive solicitation opportunities and document fulfillment, including the issuance of any addendum to this ITB. Any prospective Bidder who has received this ITB by any means other than through **PublicPurchase** must register immediately with **PublicPurchase** to assure it receives any addendum issued to this ITB. **Failure to receive an addendum may result in disqualification of proposal submitted.**

2. PURPOSE.

The City desires to receive bids from qualified contractors for the installation of bicycle lanes as designated throughout the City. The American Association of State Highway and Transportation Officials (AASHTO), defines a bicycle lane as "a portion of a roadway which has been designated by striping, signage, and pavement markings for the preferential or exclusive use of bicyclists." The work to be procured through any agreement resulting from this ITB shall pertain to the requirements of the following project, as stated herein:

**Flamingo Neighborhood 16th Street Bicycle Lanes from Alton Road to Washington Avenue
(the "Project").**

All work performed pursuant to this ITB shall, at a minimum, be in compliance with stated specifications, as well as Florida Department of Transportation, Plans Preparation Manual, Chapter 8, Sub-Section 8.4, entitled Bicycle Facilities. Work for Group 1 shall also be in compliance with Appendix E, Construction Documents for the Flamingo Neighborhood 16th Street Bicycle Lanes from Bay Road to Washington Avenue Project.

3. SOLICITATION TIMETABLE. The tentative schedule for this solicitation is as follows:

ITB Issued	October 2, 2015
Pre-Bid Meeting	There will not be a Pre-Bid Meeting for this ITB. Any questions are to be submitted pursuant to Section 4 below.
Deadline for Receipt of Questions	October 7, 2015
Responses Due	October 9, 2015
Tentative Commission Approval Authorizing Award	October 14, 2015



4. PROCUREMENT CONTACT. Any questions or clarifications concerning this solicitation shall be submitted to the Procurement Contact noted below:

Procurement Contact:
Kristy Bada

Telephone:
305-673-7490

Email:
kristybada@miamibeachfl.gov

Additionally, the City Clerk is to be copied on all communications via e-mail at: RafaelGranado@miamibeachfl.gov; or via facsimile: 786-394-4188.

The Bid title/number shall be referenced on all correspondence. All questions or requests for clarification must be received no later than seven (7) calendar days prior to the date proposals are due as scheduled in Section 0200-3. All responses to questions/clarifications will be sent to all prospective Proposers in the form of an addendum.

4. PRE-BID MEETING OR SITE VISIT(S). INTENTIONALLY OMITTED.

5. PRE-BID INTERPRETATIONS. Oral information or responses to questions received by prospective Bidders are not binding on the City and will be without legal effect, including any information received at pre-bid meeting or site visit(s). Only questions answered by written addenda will be binding and may supersede terms noted in this solicitation. Addendum will be released through *PublicPurchase*.

6. CONE OF SILENCE. Pursuant to Section 2-486 of the City Code, all procurement solicitations once advertised and until an award recommendation has been forwarded to the City Commission by the City Manager are under the "Cone of Silence." The Cone of Silence ordinance is available at <http://library.municode.com/index.aspx?clientId=13097&stateID=9&statename=Florida>. Any communication or inquiry in reference to this solicitation with any City employee or City official is strictly prohibited with the of exception communications with the Procurement Director, or his/her administrative staff responsible for administering the procurement process for this solicitation providing said communication is limited to matters of process or procedure regarding the solicitation. Communications regarding this solicitation are to be submitted in writing to the Procurement Contact named herein with a copy to the City Clerk at rafaelgranado@miamibeachfl.gov.

7. SPECIAL NOTICES. You are hereby advised that this solicitation is subject to the following ordinances/resolutions, which may be found on the City Of Miami Beach website: <http://web.miamibeachfl.gov/procurement/scroll.aspx?id=23510>

- | | |
|--|--|
| • CONE OF SILENCE..... | CITY CODE SECTION 2-486 |
| • PROTEST PROCEDURES..... | CITY CODE SECTION 2-371 |
| • DEBARMENT PROCEEDINGS..... | CITY CODE SECTIONS 2-397 THROUGH 2-485.3 |
| • LOBBYIST REGISTRATION AND DISCLOSURE OF FEES..... | CITY CODE SECTIONS 2-481 THROUGH 2-406 |
| • CAMPAIGN CONTRIBUTIONS BY VENDORS..... | CITY CODE SECTION 2-487 |
| • CAMPAIGN CONTRIBUTIONS BY LOBBYISTS ON PROCUREMENT ISSUES..... | CITY CODE SECTION 2-488 |
| • REQUIREMENT FOR CITY CONTRACTORS TO PROVIDE EQUAL BENEFITS FOR DOMESTIC PARTNERS..... | CITY CODE SECTION 2-373 |
| • PREFERENCE FOR FLORIDA SMALL BUSINESSES OWNED AND CONTROLLED BY VETERANS AND TO STATE-CERTIFIED SERVICE-DISABLED VETERAN BUSINESS ENTERPRISES..... | CITY CODE SECTION 2-374 |
| • FALSE CLAIMS ORDINANCE..... | CITY CODE SECTION 70-300 |
| • ACCEPTANCE OF GIFTS, FAVORS & SERVICES..... | CITY CODE SECTION 2-449 |

8. EXAMINATION OF SOLICITATION DOCUMENTS AND SITE: It is the responsibility of each Bidder, before submitting a Bid, to:

- Examine the solicitation thoroughly.
- Visit the site or structure, as applicable, to become familiar with conditions that may affect costs, progress, performance or furnishing of the Work.
- Take into account federal, state and local (City and Miami-Dade County) laws, regulations, permits, and ordinances that may affect costs, progress, performance, furnishing of the Work, or award.
- Study and carefully correlate Bidder's observations with the solicitation.
- Notify the Procurement Director of all conflicts, errors or discrepancies in the solicitation of which Bidder knows or reasonably should have known.
- The submission of a Bid shall constitute an incontrovertible representation by Bidder that Bidder has complied with the above requirements and that without exception, the Bid is premised upon performing and furnishing the Work required by the solicitation and that the solicitation documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

9. POSTPONEMENT OF DUE DATE FOR RECEIPT OF BIDS. The City reserves the right to postpone the deadline for submittal of bids and will make a reasonable effort to give at least three (3) calendar days written notice of any such postponement to all prospective Bidders through *PublicPurchase*.

10. PROTESTS. Protests concerning the specifications, requirements, and/or terms; or protests after the bid due date in accordance with City Code Section 2-371, which establishes procedures for protested proposals and proposed awards. **Protests not submitted in a timely manner pursuant to the requirements of City Code Section 2-371 shall be barred.**

11. INTENTIONALLY OMITTED.

12. VETERAN BUSINESS ENTERPRISES PREFERENCE. Pursuant to City of Miami Beach Ordinance No. 2011-3748, the City shall give a preference to a responsive and responsible bidder which is a small business concern owned and controlled by a veteran(s) or which is a service-disabled veteran business enterprise, and which is within five percent (5%) of the lowest and best bidder, by providing such bidder an opportunity of providing said goods or contractual services for the lowest responsive bid amount. Whenever, as a result of the foregoing preference, the adjusted prices of two (2) or more bidders which are a small business concern owned and controlled by a veteran(s) or a service-disabled veteran business enterprise constitute the lowest bid pursuant to an ITB or oral or written request for quotation, and such bids are responsive, responsible and otherwise equal with respect to quality and service, then the award shall be made to the service-disabled veteran business enterprise.

13. CONTRACT PRICE. Bid Price is to include the furnishing of all labor, materials, equipment including tools, services, permit fees, applicable taxes, overhead and profit for the completion of the Work except as may be otherwise expressly provided in the solicitation. The Contractor shall pay for the permit fees, which the City shall reimburse. The cost of additional inspections (if failed) shall be the responsibility of the contractor.

14. METHOD OF AWARD. Following the review of bids and application of vendor preferences, the lowest responsive, responsible bidder(s) meeting all terms, conditions, and specifications of the ITB will be recommended for award by bid item, bid group, or for the entirety of all bid items, as deemed in the best interest of the City, to the City Manager for his consideration. After considering the staff recommendation for award, the City Manager shall exercise his due diligence and recommend to the Mayor and City Commission the bid that the City Manager deems to be in the best interest of the City. The City Commission shall consider the City Manager's recommendation(s) and, may approve or reject the City Manager's recommendation(s). The City Commission may also reject all bids received. In determining the lowest and best bidder, and in addition to price, Section 2-369 of the City Code provides that the City may consider the following:

- **The ability, capacity and skill of the bidder to perform the Contract.**
- **Whether the bidder can perform the Contract within the time specified, without delay or interference.**
- **The character, integrity, reputation, judgment, experience and efficiency of the bidder.**
- **The quality of performance of previous contracts.**
- **The previous and existing compliance by the bidder with laws and ordinances relating to the Contract.**

15. MULTIPLE AWARD. The City may award up to three vendors (primary, secondary, tertiary), as available, by line item, by group or in its entirety. The City will endeavor to utilize vendors in order of award. However, the City may utilize other vendors in the event that: 1) a contract vendor is not or is unable to be in compliance with any contract or delivery requirement; 2) it is in the best interest of the City to do so regardless of reason.

16. BINDING CONTRACT. The signed bid shall be considered an offer on the part of the bidder, which offer shall be deemed accepted upon award of the bid by the City Commission. The City Commission's selection or approval of the City Manager's recommendation shall constitute a binding Contract between the City and the awarded bidder(s). The Contract shall include the solicitation, any and all addenda issued by the City and the Bid Proposal submitted by the bidder. In any discrepancy between the documents, the order of preference shall be as follows: 1) Addendum in reverse order of release; 2) Solicitation; 3) Bid Proposal. In case of default on the part of the successful bidder, the City may procure the items or services from other sources and hold the bidder responsible for any excess cost occasioned or incurred thereby.

17. VOLUME OF WORK TO BE RECEIVED BY CONTRACTOR. It is the intent of the City to purchase the goods and services specifically listed in this solicitation from the contractor. However, the City reserves the right to purchase any goods or services awarded from state or other governmental contract, or on an as-needed basis through the City's spot market purchase provisions.

18. GENERAL TERMS AND CONDITIONS. It is the responsibility of the Bidder to become thoroughly familiar with the Bid requirements, terms and conditions of this solicitation. Ignorance by the Bidder of conditions that exist or that may exist will not be accepted as a basis for varying the requirements of the City, or the compensation to be paid to the Bidder.

19. ACCEPTANCE OR REJECTION OF BIDS. The City reserves the right to reject any or all bids prior to award. Reasonable efforts will be made to either award the Contract or reject all bids within one-hundred twenty (120) calendar days after bid opening date. A Bidder may not withdraw its bid unilaterally nor change the Contract Price before the expiration of one hundred and twenty (120) calendar days from the date of bid opening. A Bidder may withdraw its bid after the expiration of one hundred twenty (120) calendar days from the date of bid opening by delivering written notice of withdrawal to the Department of Procurement Management prior to award of the Bid by the Mayor and City Commission.

20. ALTERNATE RESPONSES MAY BE CONSIDERED. The City may consider one (1) alternate response from the same Bidder for the same formal solicitation; provided, that the alternate response offers a different product that meets or exceeds the formal solicitation requirements. In order for the City to consider an alternate response, the Bidder shall complete a separate Price Sheet form and shall mark "Alternate Response". Alternate response shall be placed in the same response. This provision only applies to formal solicitations for the procurement of goods, services, items, equipment, materials, and/or supplies.

21. AMERICAN WITH DISABILITIES ACT. To request this material in accessible format, sign language interpreters, information on access for persons with disabilities, and/or any accommodation to review any document or participate in any city-sponsored proceeding, please contact 305-604-2489 (voice), 305-673-7524 (fax) or 305-673-7218 (TTY) five days in advance to initiate your request. TTY users may also call 711 (Florida Relay Service).

22. ANTI-DISCRIMINATION. The bidder certifies that he/she is in compliance with the non-discrimination clause contained in Section 202, Executive Order 11246, as amended by Executive Order 11375, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin.

23. ASSIGNMENT. The successful bidder shall not assign, transfer, convey, sublet or otherwise dispose of the contract, including any or all of its right, title or interest therein, or his/her or its power to execute such contract, to any person, company or corporation, without the prior written consent of the City.

24. AUDIT RIGHTS AND RECORDS RETENTION. The Successful Bidder agrees to provide access at all reasonable times to the City, or to any of its duly authorized representatives, to any books, documents, papers and records of Contractor which are directly pertinent to this formal solicitation, for the purpose of audit, examination, excerpts, and transcriptions. The Successful Bidder shall maintain and retain any and all of the books, documents, papers and records pertinent to the Contract for three (3) years after the City makes final payment and all other pending matters are closed. Contractor's failure to or refusal to comply with this condition shall result in the immediate cancellation of this contract by the City.

25. BID BONDS, PERFORMANCE BONDS, CERTIFICATES OF INSURANCE. Bid Bonds, when required, shall be submitted with the bid in the amount specified in the Special Conditions. After acceptance of the bid, the City will notify the successful bidder to submit a performance bond and certificate of insurance in the amount specified in the Special Conditions.

26. BILLING INSTRUCTIONS. Invoices, unless otherwise indicated, must show purchase order numbers and shall be submitted to the ordering City department.

27. CANCELLATION. In the event any of the provisions of this Bid are violated by the bidder, the City shall give written notice to the bidder stating such deficiencies and, unless such deficiencies are corrected within ten (10) calendar days from the date of the City's notice, the City, through its City Manager, may declare the contract in default and terminate same, without further notice required to the bidder. Notwithstanding the preceding, the City, through its City Manager, also reserves the right to terminate the contract at any time and for any reason, without



cause and for convenience, and without any monetary liability to the City, upon the giving of thirty (30) days prior written notice to the bidder.

28. CITY'S RIGHT TO WAIVE OR REJECT BIDS. The City Commission reserves the right to waive any informalities or irregularities in this Bid; or to reject all bids, or any part of any bid, as it deems necessary and in the best interest of the City of Miami Beach.

29. CLARIFICATION AND ADDENDA TO BID SPECIFICATIONS. If a bidder is in doubt as to the true meaning of the Bid specifications, or other Bid documents, or any part thereof, the bidder must submit to the City, at least seven (7) calendar days prior to the scheduled Bid opening date, a request for clarification.

Any interpretation of the Bid, including, without limitation, responses to questions and request for clarification(s) from bidders, will be made only by Addendum duly issued by the City. In the event of conflict with the original specifications, the Addendum shall supersede such specifications, to the extent specified. Subsequent Addendum shall govern over prior Addendum only to the extent specified. The bidder shall be required to acknowledge receipt of any and all Addendum, and filling in and signing in the spaces provided in section 5.0, Acknowledgements/Affidavits. Failure to acknowledge Addendum may deem a bid non-responsive.

The City will not be responsible for explanations, interpretations, or answers to questions made verbally or in writing by any City representative, unless issued by the City via formal written Addendum to this Bid.

Any questions or clarifications concerning the Bid shall be submitted in writing to the Department of Procurement Management (DPM), 1700 Convention Center Drive, Miami Beach, FL 33139 with a copy to the City Clerk.

30. COLLUSION. Where two (2) or more related parties each submit a bid or bids for any contract, such bids or bids shall be presumed to be **collusive**. The foregoing presumption may be rebutted by presentation of evidence as to the extent of ownership, control and management of such related parties in the preparation and submittal of such bid or bids. "Related parties" means bidders or the principals thereof which have a direct or indirect ownership interest in another bidder for the same contract, or in which a parent company or the principals thereof of one (1) bidder have a direct or indirect ownership interest in another bidder for the same contract. Bid or bids found to be collusive shall be rejected.

Bidders who have been found to have engaged in collusion may also be suspended or debarred, and any contract resulting from collusive bidding may be terminated for cause.

31. CONDITION AND PACKAGING. Bidder guarantees items offered and delivered to be the current standard production model at time of bid and shall offer expiration dating of at least one year or later. Bidder also guarantees items offered and delivered to be new, unused, and free from any and all defects in material, packaging and workmanship and agrees to replace defective items promptly at no charge to the City of Miami Beach, for the manufacturer's standard warranty but in no case for a period of less than 12 months from date of acceptance. All containers shall be suitable for storage or shipment, and all prices shall include standard commercial packaging.

32. CONTRACT EXTENSION. The City reserves the right to require the Contractor to extend contract past the stated termination date for a period of up to 120 days in the event that a subsequent contract has not yet been awarded. Additional extensions past the 120 days may occur as needed by the City and as mutually agreed upon by the City and the contractor.

33. DELIVERY. Unless actual date of delivery is specified (or if specified delivery cannot be met), show number of days (in calendar days) required to make delivery after receipt of purchase order, in space provided. Delivery time may become a basis for making an award. Delivery shall be within the normal working hours of the City using



Department, Monday through Friday, excluding holidays. Receiving hours are Monday through Friday, excluding holidays, from 8:30 A.M. to 4:00 P.M.

34. DELIVERY TIME. Bidders shall specify in the attached Bid Form, the guaranteed delivery time (in calendar days) for each item. It must be a firm delivery time; no ranges (For example, 12-14 days) will be accepted.

35. DEMONSTRATION OF COMPETENCY.

- A. Pre-award inspection of the bidder's facility may be made prior to the award of contract.
- B. Bids will only be considered from firms which are regularly engaged in the business of providing the goods and/or services as described in this Bid.
- C. Bidders must be able to demonstrate a good record of performance for a reasonable period of time, and have sufficient financial capacity, equipment, and organization to ensure that they can satisfactorily perform the services if awarded a contract under the terms and conditions of this Bid.
- D. the terms "equipment and organization", as used herein shall, be construed to mean a fully equipped and well established company in line with the best business practices in the industry, and as determined by the City of Miami Beach.
- E. The City may consider any evidence available regarding the financial, technical, and other qualifications and abilities of a bidder, including past performance (experience), in making an award that is in the best interest of the City.
- F. The City may require bidders to show proof that they have been designated as authorized representatives of a manufacturer or supplier, which is the actual source of supply. In these instances, the City may also require material information from the source of supply regarding the quality, packaging, and characteristics of the products to be supply to the City. Any material conflicts between information provided by the source of supply and the information contained in the bidder's bid may render the bid non-responsive.
- G. The City may, during the period that the contract between the City and the successful bidder is in force, review the successful bidder's record of performance to ensure that the bidder is continuing to provide sufficient financial support, equipment, and organization as prescribed in this bid. Irrespective of the bidder's performance on contracts awarded to it by the City, the City may place said contracts on probationary status and implement termination procedures if the City determines that the successful bidder no longer possesses the financial support, equipment, and organization which would have been necessary during the bid evaluation period in order to comply with the demonstration of competency required under this subsection.

36. DISPUTES. In case of any doubt or difference of opinion as to the items and/or services (as the case may be) to be furnished hereunder, the decision of the City shall be final and binding on all parties.

37. DISPUTES. In the event of a conflict between the Bid documents, the order of priority of the documents shall be as follows:

- A. Any contract or agreement resulting from the award of this Bid; then
- B. Addendum issued for this Bid, with the latest Addendum taking precedence; then
- C. The Bid; then
- D. The bidder's bid in response to the Bid.

38. DEFAULT. Failure or refusal of a bidder to execute a contract upon award, or withdrawal of a bid before such award is made, may result in forfeiture of that portion of any bid surety required as liquidated damages incurred by the City thereby; or, where surety is not required, failure to execute a contract as described above may be grounds for removing the bidder from the City's bidders list.

39. EQUIVALENTS. If a bidder offers makes of equipment or brands of supplies other than those specified in the Bid



specifications, he must so indicate in his bid. Specific article(s) of equipment/supplies shall conform in quality, design and construction with all published claims of the manufacturer.

The bidder shall indicate in the Bid Form the manufacturer's name and number if bidding other than the specified brands, and shall indicate ANY deviation from the specifications as listed in the Bid. Other than specified items offered requires complete descriptive technical literature marked to indicate detailed conformance with specifications, and **MUST BE INCLUDED WITH THE BID. NO BIDS WILL BE CONSIDERED WITHOUT THIS INFORMATION. THE CITY SHALL BE THE SOLE JUDGE OF EQUALITY AND ITS DECISION SHALL BE FINAL.**

Note as to Brand Names: Catalog numbers, manufacturers' and brand names, when listed, are informational guides as to a standard of acceptable product quality level only and should not be construed as an endorsement or a product limitation of recognized and legitimate manufacturers. Bidders shall formally substantiate and verify that product(s) offered conform with or exceed quality as listed in the specifications.

40. ELIMINATION FROM CONSIDERATION. This bid shall not be awarded to any person or firm who is in arrears to the City upon any debt, taxes, or contracts which are defaulted as surety or otherwise upon any obligation to the City.

41. EMERGENCY RESPONSE PRIORITY. It is hereby made a part of this solicitation that before, during, and after a public emergency, disaster, hurricane, tornado, flood, or other acts of force majeure that the City of Miami Beach, Florida shall receive a "First Priority" for any goods and services covered under any award resulting from this solicitation, including balance of line items as applicable. It is vital and imperative that the majority of citizens are protected from any emergency situation that threatens public health and safety, as determined by the City. By virtue of submitting a response to this solicitation, vendor agrees to provide all award-related goods and services to the City on a "first priority" under the emergency conditions noted above.

42. ESTIMATED QUANTITIES. Estimated quantities or estimated dollars, if provided, are for City guidance only. No guarantee is expressed or implied as to quantities or dollars that will be used during the contract period. The City is not obligated to place any order for a given amount subsequent to the award of this Bid. Estimates are based upon the City's actual needs and/or usage during a previous contract period. The City may use said estimates for purposes of determining whether the low bidder meets specifications.

43. EXCEPTIONS TO BID. Bidders are strongly encouraged to thoroughly review the specifications and all conditions set forth in this Bid. Bidders who fail to satisfy the requirements in this Bid, may be deemed non-responsive and receive no further consideration. Should your proposed bid not be able to meet one (1) or more of the requirements set forth in this Bid and you are proposing alternatives and/or exceptions to said requirements, you must notify the Procurement Office, in writing, at least five (5) days prior to the deadline for submission of bids. The City reserves the right to revise the scope of services via Addendum prior to the deadline for receipt of bids.

44. FACILITIES. The City, through its City Manager or his/her authorized designee, reserves the right to inspect the bidder's facilities at any time, upon reasonable prior written or verbal notice.

45. FLORIDA PUBLIC RECORDS LAW. Bidders are hereby notified that all Bid including, without limitation, any and all information and documentation submitted therewith, are exempt from public records requirements under Section 119.07(1), Florida Statutes, and s. 24(a), Art. 1 of the State Constitution until such time as the City provides notice of an intended decision or until thirty (30) days after opening of the bids, whichever is earlier. Additionally, Contractor agrees to be in full compliance with Florida Statute 119.0701 including, but not limited to, agreement to (a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the services; (b) provide the public with access to public records on the same terms and conditions



that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law; (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; (d) Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency.

46. F.O.B. DESTINATION. Unless otherwise specified in the Formal Solicitation, all prices quoted/proposed by the bidder must be F.O.B. DESTINATION, inside delivery, with all delivery costs and charges included in the bid price, unless otherwise specified in this Formal Solicitation. Failure to do so may be cause for rejection of bid.

47. GRATUITIES. Bidders shall not offer any gratuities, favors, or anything of monetary value to any official, employee, contractor, or agent of the City, for the purpose of influencing consideration of this Bid.

48. INDEMNIFICATION. The successful Bidder shall indemnify and hold harmless the City and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the City or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of the agreement by the successful Bidder or its employees, agents, servants, partners, principals or subcontractors. The successful Bidder shall pay all claims and losses in connection therewith, and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may be incurred thereon. The successful Bidder expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the successful Bidder shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City or its officers, employees, agents and instrumentalities as herein provided. The above indemnification provisions shall survive the expiration or termination of this Agreement.

49. INSPECTION, ACCEPTANCE & TITLE. Inspection and acceptance will be at destination, unless otherwise provided. Title to (or risk of loss or damage to) all items shall be the responsibility of the successful bidder until acceptance by the City, unless loss or damage results from the gross negligence or willful misconduct of the City.

If any equipment or supplies supplied to the City are found to be defective, or do not conform to the specifications, the City reserves the right to cancel the order upon written notice to the seller, and return the product, at the bidder's expense.

50. LAWS, PERMITS AND REGULATIONS. The bidder shall obtain and pay for all licenses, permits, and inspection fees required under the contract; and shall comply with all Applicable Laws.

51. LEGAL REQUIREMENTS. The bidder shall be required to comply with all federal, State of Florida, Miami-Dade County, and City of Miami Beach codes, laws, ordinances, and/or rules and regulations that in any manner affect the items covered herein (collectively, Applicable Laws). Lack of knowledge or ignorance by the bidder with/of Applicable Laws will in no way be a cause for relief from responsibility.

52. LIABILITY, INSURANCE, LICENSES AND PERMITS. Where bidders are required to enter or go on to City of Miami Beach property to deliver materials or perform work or services as a result of the Bid, the bidder will assume the full duty, obligation and expense of obtaining all necessary licenses, permits, and insurance, and assure all work complies with all Applicable Laws. The bidder shall be liable for any damages or loss to the City occasioned by negligence of the bidder, or his/her officers, employees, contractors, and/or agents, for failure to comply with

Applicable Laws.

53. MANNER OF PERFORMANCE. Bidder agrees to perform its duties and obligations in a professional manner and in accordance with all applicable Local, State, County, and Federal laws, rules, regulations and codes. Bidder agrees that the services provided shall be provided by employees that are educated, trained, experienced, certified, and licensed in all areas encompassed within their designated duties. Bidder agrees to furnish to the City any and all documentation, certification, authorization, license, permit, or registration currently required by applicable laws, rules, and regulations. Bidder further certifies that it and its employees will keep all licenses, permits, registrations, authorizations, or certifications required by applicable laws or regulations in full force and effect during the term of this contract. Failure of bidder to comply with this paragraph shall constitute a material breach of this contract.

54. MISTAKES. Bidders are expected to examine the specifications, delivery schedules, bid prices, and extensions, and all instructions pertaining to supplies and services. Failure to do so will be at the bidder's risk and may result in the bid being non-responsive.

55. MODIFICATION/WITHDRAWALS OF BIDS. A bidder may submit a modified bid to replace all or any portion of a previously submitted bid up until the bid due date and time. Modifications received after the bid due date and time will NOT be considered.

Bids shall be irrevocable until contract award unless withdrawn in writing prior to the bid due date or after expiration of 120 calendar days from the opening of bids without a contract award. Letters of withdrawal received after the bid due date and before said expiration date and letters of withdrawal received after contract award will NOT be considered.

56. NON-CONFORMANCE TO CONTRACT CONDITIONS. Items may be tested for compliance with specifications. Items delivered, not conforming to specifications, may be rejected and returned at the bidder's expense. These items, as well as items not delivered as per delivery date in bid and/or purchase order, may be purchased by the City, at its discretion, on the open market. Any increase in cost may be charged against the bidder. Any violation of these stipulations may also result in the bidder's name being removed from the City's vendor list.

57. OPTIONAL CONTRACT USAGE. When the successful bidder(s) is in agreement, other units of government or non-profit agencies may participate in purchases pursuant to the award of this contract at the option of the unit of government or non-profit agency.

58. OSHA. The bidder warrants to the City that any work, services, supplies, materials or equipment supplied pursuant to this Bid shall conform in all respects to the standards set forth in the Occupational Safety and Health Act of 1970, as amended, and the failure to comply with this condition will be deemed breach of contract. Any fines levied because of inadequacies to comply with this condition shall be borne solely by the bidder.

59. PATENTS & ROYALTIES. The bidder shall indemnify and save harmless the City of Miami Beach, Florida, and its officers, employees, contractors, and/or agents, from liability of any nature or kind, including cost and expenses for, or on account of, any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the contract, including its use by the City of Miami Beach, Florida. If the bidder uses any design, device or materials covered by letters, patent, or copyright, it is mutually understood and agreed, without exception, that the bid prices shall include all royalties or cost arising from the use of such design, device, or materials in any way involved in the work.

60. PAYMENT. Payment will be made by the City after the items have been received, inspected, and found to comply with Bid specifications, free of damage or defect, and properly invoiced.



61. PRICES QUOTED. Prices quoted shall remain firm and fixed during the duration of the contract. In completing the bid form, state both unit price and extended total, when requested. Prices must be stated in units of quantity specified in the bidding specifications. In case of discrepancy in computing the amount of the bid, the UNIT PRICE quoted will govern. All prices must be F.O.B. destination, freight prepaid (unless otherwise stated in Special Conditions). The Bidder may offer cash discounts for prompt payments; however, such discounts will not be considered in determining the lowest price during bid evaluation. Bidders are requested to provide prompt payment terms in the space provided on the Bid submittal signature page of the solicitation. Award, if made, will be in accordance with terms and conditions stated herein. Each item must be bid separately, and no attempt is to be made to tie any item or items in with any other item or items. Cash or quantity discounts offered will not be a consideration in determination of award of bid(s).

62. PRODUCT INFORMATION. Product literature, specifications, and technical information, including Manufacturer's Safety Data Sheets (MSDS) should be provided with this bid as an attachment to the "BID FORM". However, in all cases must be provided within five (5) calendar days upon request from Purchasing Agent.

63. REASONABLE ACCOMMODATION. In accordance with Title II of the Americans with Disabilities Act, any person requiring an accommodation at the Bid opening because of a disability must contact the Procurement Division.

64. SAMPLES. Bids submitted as an "equal" product must be accompanied with detailed specifications. Samples of items, when required, must be furnished free of expense and, if not destroyed, will, upon request, be returned at the bidder's expense. Bidders will be responsible for the removal of all samples furnished within (30) days after bid opening. All samples will be disposed of after thirty (30) days. Each individual sample must be labeled with the bidder's name. Failure of the bidder to either deliver required samples, or to clearly identify samples may be reason for rejection of the bid. Unless otherwise indicated, samples should be delivered to the Procurement Division, 1700 Convention Center Drive, Miami Beach, FL 33139.

65. SPECIAL CONDITIONS. Any and all Special Conditions that may vary from these General Terms and Conditions shall have precedence.

66. SPOT MARKET PURCHASES. It is the intent of the City to purchase the items specifically listed in this Bid from the successful bidder. However, the City reserves the right to purchase the items from state or other governmental contract, or on an as-needed basis through the City's spot market purchase provisions.

67. SUBSTITUTIONS. After award of contract, the City WILL NOT accept substitute shipments of any kind, without previous written approval. The bidder is expected to furnish the brand quoted in its bid. Any substitute shipments will be returned at the bidder's expense.

68. TAXES. The City of Miami Beach is exempt from all Federal Excise and State taxes.

69. TIE BIDS. In accordance with Florida Statutes Section 287.087, regarding identical tie bids, preference will be given to bidders certifying that they have implemented a drug free work place program. A certification form will be required. In the event of a continued tie between two or more bidders after consideration of the drug free workplace program, the City's Local Preference and Veteran Preference ordinances will dictate the manner by which a tie is to be resolved. In the event of a continued tie after the Local and Veteran Preference ordinances have been applied or the tie exists between bidders that are not Local or Veteran, the breaking of the tie shall be at the City Manager's discretion, which will make a recommendation for award to the City Commission.

70. TERMINATION FOR DEFAULT. If the successful bidder shall fail to fulfill in a timely manner, or otherwise



violate, any of the covenants, agreements, or stipulations material to the Bid and/or the contract entered into with the City pursuant thereto, the City shall thereupon have the right to terminate the work and/or services then remaining to be performed by giving written notice to the bidder of such termination, which shall become effective upon receipt by the bidder of the written termination notice.

In that event, the City shall compensate the successful bidder in accordance with the term of the contract for all work and/or services satisfactorily performed by the bidder prior to termination, net of any costs incurred by the City as a consequence of the default.

Notwithstanding the above, the successful bidder shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the contract by the bidder, and the City may reasonably withhold payments to the successful bidder for the purposes of set off until such time as the exact amount of damages due the City from the successful bidder is determined.

The City may, at its discretion, provide reasonable "cure period" for any contractual violation prior to termination of the contract; should the successful bidder fail to take the corrective action specified in the City's notice of default within the allotted cure period, then the City may proceed to terminate the contract for cause in accordance with this subsection 1.57.

71. TERMINATION FOR CONVENIENCE OF CITY. The City may, for its convenience, terminate the work and/or services then remaining to be performed, at any time, by giving written notice to the successful bidder of such termination, which shall become effective thirty (30) days following receipt by bidder of such notice. In that event, all finished or unfinished documents and other materials shall be properly delivered to the City. If the contract is terminated by the City as provided in this subsection, the City shall compensate the successful bidder in accordance with the terms of the contract for all and without cause and/or any resulting liability to the City, work and/or services actually performed by the successful bidder, and shall also compensate the bidder for its reasonable direct costs in assembling and delivering to City all documents. No compensation shall be due to the successful bidder for any profits that the successful bidder expected to earn on the balanced of the contract. Such payments shall be the total extent of the City's liability to the successful bidder upon a termination as provided for in this subsection.

72. UNDERWRITERS' LABORATORIES. Unless otherwise stipulated in the Bid, all manufactured items and fabricated assemblies shall be U.L. listed or re-examination listing where such has been established by U.L. for the item(s) offered and furnished.

73. ADDITIONAL SERVICES. Although this solicitation and resultant contract identifies specific goods, services or facilities ("items"), it is hereby agreed and understood that the City, through the approval of the Department and Procurement Directors (for additional items up to \$50,000) or the City Manager (for additional items greater than \$50,000), may require additional items to be added to the Contract which are required to complete the work. When additional items are required to be added to the Contract, awarded vendor(s), as applicable to the item being requested, under this contract may be invited to submit price quote(s) for these additional requirements. If these quote(s) are determined to be fair and reasonable, then the additional work will be awarded to the current contract vendor(s) that offers the lowest acceptable pricing. The additional items shall be added to this contract by through a Purchase Order (or Change Order if Purchase Order already exists). In some cases, the City may deem it necessary to add additional items through a formal amendment to the Contract, to be approved by the City Manager.

The City may determine to obtain price quotes for the additional items from other vendors in the event that fair and reasonable pricing is not obtained from the current contract vendors, or for other reasons at the City's discretion.



SECTION 0300

PROPOSAL SUBMITTAL INSTRUCTIONS AND FORMAT

1. SEALED BIDS. One original Bid Proposal (preferably in 3-ring binder) must be submitted in an opaque, sealed envelope or container on or before the due date established for the receipt of bids. Additionally, three (3) bound copies and one (1) electronic format (CD or USB format) are to be submitted, with the original submission or within two (2) days of request by the City. The following information should be clearly marked on the face of the envelope or container in which the bid is submitted: Bid Number, Bid Title, Bidders Name, Bidder Return Address. Bids received electronically, either through email or facsimile, are not acceptable and will be rejected.

2. BID PROPOSAL. The Bid Proposal is to include the following:

- **TAB 1 – Cost Proposal Form (Appendix E).** The Cost Proposal Form (Appendix E) shall be completed mechanically or, if manually, in ink. Cost Proposal Forms submitted in pencil shall be deemed non-responsive. All corrections on the Cost Proposal Form shall be initialed.
- **TAB 2 - Bid Certification, Questionnaire and Affidavits (Appendix B).**
- **TAB 3 – Documentation indicating compliance with Minimum Eligibility Requirements.**

2. LATE BIDS. Bid Proposals are to be received on or before the due date established herein for the receipt of Bids. **Any Bid received after the deadline established for receipt of proposals will be considered late and not be accepted or will be returned to Proposer unopened.** The City does not accept responsibility for any delays, natural or otherwise.

APPENDIX "A"



MIAMI BEACH

Proposal Certification, Questionnaire & Requirements Affidavit

ITB 2016-002-KB
PAINTING & STRIPING OF DEDICATED
BICYCLE LANES

DEPARTMENT OF PROCUREMENT MANAGEMENT
1700 Convention Center Drive
Miami Beach, Florida 33139

APPENDIX C



MIAMI BEACH

Minimum Requirements & Specifications

ITB 2016-002-KB PAINTING & STRIPING OF DEDICATED BICYCLE LANES

DEPARTMENT OF PROCUREMENT MANAGEMENT
1700 Convention Center Drive
Miami Beach, Florida 33139

SECTION C.1 – MINIMUM ELIGIBILITY REQUIREMENTS

C1. Minimum Eligibility Requirements. The Minimum Eligibility Requirements for this solicitation are listed below. Bidder shall submit, with its bid, the required submittal(s) documenting compliance with each minimum requirement. Proposers that fail to include the required submittals with its bid or fail to comply with minimum requirements shall be deemed non-responsive and shall not have its bid considered.

1. Bidder (defined as the Firm) shall have completed or in the process of completing at least two projects for lane striping and painting within the last five years.

Required Submittals: With its bid, each bidder shall provide a list of the relevant projects and, for each project, include the following: awarding agency, agency contact, a brief description of the project, project cost(s).

SECTION C.2 – SPECIFICATIONS AND SPECIAL PROVISIONS

1. GENERAL REQUIREMENTS

1.01 SCOPE OF WORK

- A. Work under this Contract includes furnishing of all supervision, labor, materials, tools, equipment and performing all operations required to construct the Work in accordance with the Contract Documents. The improvements for 16th Street from Washington Avenue to Alton Road will consist of painting green the existing bike lanes on the eastbound and westbound directions, striping and pavement markings. This project enhances existing bicycle facilities along 16th Street.
- B. If any changes are required due to conflict of design and or field conditions, the Engineer will make the final determination.
- C. The Contractor and all subcontractors, under this Contract, are prohibited from performing any work, other than specified in the Contract and/or directed by the Engineer, within the limits of the project site, without prior written notification to the Engineer. This includes any work for private or commercial entities.

1.02 LOCATION OF WORK

- A. The location of work to be performed under the terms of this Contract shall be as follows: 1. 16th Street from Washington Avenue to Alton Road.
- B. The exact location and limits of construction are as shown on the Plans accompanying these Contract Documents.

1.03 PLANS

- A. Engineering Drawings titled "Green Bike Lanes at 16th Street from Bay Road to Washington Avenue" are included with these Contract Documents. Additional standard details are available in the City of Miami Beach Public Works Manual and the latest edition of the Florida Department of Transportation's Design Standards for Design, Construction, Maintenance and Utility Operations on The State Highway System.
- B. The City through its Engineer shall have the right to modify the details and/or sketches, to supplement the sketches with additional plans and/or with additional information as work proceeds; all of which shall be considered as plans accompanying these Specifications herein generally referred to as the "Plans." In case of disagreement between the Plans and Specifications, the Engineer shall make a final determination as to which shall govern.

1.04 TIME FOR COMPLETION

- A. The terms of this Contract shall expire 150 calendar days from the effective date of the "Notice to Proceed," or until such time as the Contract amount has been expended, whichever occurs first.

- B. The effective date of the "Notice to Proceed" will be established during the Preconstruction Conference which is held shortly after the Award of Contract and which is attended by members of Public Works Department, the Contractor, representatives of utility companies, and others affected by the Work. The effective date shall be set as a date no later than 30 calendar days after the date of execution of the Contract Documents, unless a later date acceptable to both parties is agreed upon in writing.

2. GENERAL CONSTRUCTION

2.01 FIELD OFFICE

- A. A local field office is not required; however, the Contractor will be required to provide the Engineer with a local (Miami-Dade County) telephone, cellular or beeper number, where the Contractor may be contacted 24 hours a day, 7 days a week during the period for which the Contract is in force.

2.02 MAINTENANCE OF TRAFFIC

A. Description.

1. Maintain traffic in accordance with FDOT Index 600 Series of the FDOT Design Standards, or as directed by Engineer, within the limits of a work zone until all work required is completed. Construct and maintain detours. Provide facilities for access to residences, businesses, etc., along a work zone. Furnish, install and maintain traffic control and safety devices while working. Furnish and install work zone pavement markings for maintenance of traffic in work areas. Provide any other special requirements for safe and expeditious movement of traffic specified in the FDOT Design Standards and the Public Works Manual of Metropolitan Dade County. Maintenance of Traffic (MOT) includes all facilities, devices and operations as required for safety and convenience of the public within the work zone.
2. Do not maintain traffic over those portions of a work zone where no work is to be accomplished or where work operations will not affect existing roads. Do not obstruct or create a hazard to any traffic during the performance of the work, and repair any damage to existing pavement open to traffic.

B. Materials.

1. Meet the following requirements:
 - a. Bituminous Adhesive: FDOT Section 970
 - b. Work Zone Pavement Markings: Articles FDOT 971-1 and 971-3
 - c. Paint: FDOT Section 971
 - d. Glass Spheres: FDOT Section 971
 - e. Temporary Traffic Control Device Materials: FDOT Section 990
 - f. Retroreflective and Nonreflective Sheeting for Traffic Control Devices: FDOT Section 994
2. Temporary Traffic Control Devices: Use only the materials meeting the requirements of FDOT Section 990, Design Standards and the MUTCD.
3. Detour: Provide all materials for the construction and maintenance of all detours. Traffic may be detoured only upon approval of the Director of the Public Works and Waste Management Department. No work shall commence on this Project or any portion thereof without implementation of an approved MOT plan.
4. Commercial Materials for Driveway Maintenance: Provide materials of the type typically used for base, including recycled asphalt pavement material, and having stability and drainage properties that will provide a firm surface under wet conditions.

C. Specific Requirements.

1. Maintain of traffic is Contractor's Responsibility from Notice to Proceed.
2. Worksite Traffic Supervisor: Provide a Worksite Traffic Supervisor in accordance with PWWM Construction Specifications Article 105. Provide the Worksite Traffic Supervisor with all equipment and materials needed to set up, take down, maintain traffic control, and handle traffic-related situations.
3. Ensure that the Worksite Traffic Supervisor performs the following duties:

- a. Performs on site direction of all traffic control in a work zone.
- b. Is on site during all set up and take down, and performs a drive through inspection immediately after set up.
- c. Is on site during all nighttime operations to ensure proper Maintenance of Traffic.
- d. Immediately corrects all safety deficiencies and does not permit minor deficiencies that are not immediate safety hazards to remain uncorrected for more than 1 hour.
- e. Is available on a 24-hour per day basis and present within 45 minutes after notification of an emergency situation and is prepared to positively respond to repair the work zone traffic control or to provide alternate traffic arrangements.
- f. On MOT lasting more than 24 hours:
 - 1) Conduct daily daytime and weekly nighttime inspections of projects with predominately daytime work activities, and daily nighttime and weekly daytime inspections of projects with predominantly nighttime work activities of all traffic control devices, traffic flow, pedestrian, bicyclist, and business accommodations.
 - 2) Advise the project personnel of the schedule of these inspections and give them the opportunity to join in the inspection as is deemed necessary.
 - 3) Accommodate for pedestrians and bicycles with a safe travel path around work sites and safely separated from mainline traffic. Maintain these or existing paths satisfactorily throughout the project limits.
 - 4) Provide existing businesses in work areas with adequate entrances for vehicular and pedestrian traffic during business hours.
 - 5) Take corrective actions when found deficiencies.
 - 6) The Department may disqualify and remove from the project a Worksite Traffic Supervisor who fails to comply with the provisions of this Article.
 - 7) The Department may temporarily suspend all activities, except traffic, erosion control and such other activities that are necessary for project maintenance and safety, for failure to comply with these provisions.

D. Alternative Traffic Control Plan.

1. The Contractor may propose an alternative Traffic Control Plan (TCP) to the plan presented in the FDOT Design Standards. Have the Contractor's Engineer of Record sign and seal the alternative plan. Prepare the TCP in conformance with and in the form outlined in the current version of FDOT Roadway Plans Preparation Manual. Indicate in the plan a TCP for each phase of activities. Take responsibility for identifying and assessing any potential impacts to a utility that may be caused by the alternate TCP proposed by the Contractor, and notify the Department in writing of any such potential impacts to utilities. Engineer's approval of the alternate TCP does not relieve the Contractor of sole responsibility for all utility impacts, costs, delays or damages, whether direct or indirect, resulting from Contractor initiated changes in the work activities from those in the original Contract Specifications, Design Standards (including traffic control plans) or other Contract Documents.
2. The Department reserves the right to reject any Alternative Traffic Control Plan. Obtain Engineer's written approval before beginning work using an alternate TCP. Engineer's written approval is required for all modifications to the TCP. Engineer will only allow changes to the TCP in an emergency without the proper documentation.

E. Traffic Control.

1. Standards

- a. FDOT Design Standards are the minimum standards for the use in the development of all traffic control plans. The MUTCD Part VI is the minimum national standard for traffic control for highway construction, maintenance, and utility operations. Follow the basic principles and minimum standards contained in these documents for the design, application, installation, maintenance, and removal of all traffic control devices, warning devices and barriers which are necessary to protect the public and workers from hazards

within the project limits.

2. Maintenance of Roadway Surfaces

- a. Maintain all lanes that are being used for the maintenance of traffic, including those on detours and temporary facilities, under all weather conditions. Keep the lanes reasonably free of dust, potholes and rutting. Provide the lanes with the drainage facilities necessary to maintain a smooth riding surface under all weather conditions.

3. Number of Traffic Lanes

- a. Maintain one lane of traffic in each direction. Maintain two lanes of traffic in each direction at existing four (or more) lane cross roads, where necessary to avoid undue traffic congestion. Construct each lane used for maintenance of traffic at least as wide as the traffic lanes existing in the area before commencement of work. Do not allow traffic control and warning devices to encroach on lanes used for maintenance of traffic.
- b. Engineer may allow the Contractor to restrict traffic to one-way operation for short periods of time provided that the Contractor employs adequate means of traffic control and does not unreasonably delay traffic. When a work activity requires restricting traffic to one-way operations, locate the flaggers within view of each other when possible. When visual contact between flaggers is not possible, equip them with 2 way radios, official, or pilot vehicle(s), or use traffic signals.

4. Crossings and Intersections

- a. Provide and maintain adequate accommodations for intersecting and crossing traffic. Do not block or unduly restrict any road or street crossing a work zone unless approved by Engineer. Maintain all existing actuated or traffic responsive mode signal operations for main and side street movements for the duration of the Contract. Restore any loss of detection within 12 hours. Use only detection technology listed on the FDOT Approved Products List (APL) and approved by Engineer to restore detection capabilities.
- b. Before beginning any work, provide Engineer with a plan for maintaining detection devices for each intersection and the name(s) and phone numbers of persons that can be contacted when signal operation malfunctions.

5. Access for Residences and Businesses

- a. Provide continuous access to all residences and all places of business.

6. Protection of the Work from Injury by Traffic

- a. Where traffic would be injurious to a base, surface course, or structure constructed as a part of the work, maintain all traffic outside the limits of such areas until the potential for injury no longer exists.

7. Flagger:

- a. Provide trained flaggers in accordance with the Public Works Manual.

8. Conflicting Pavement Markings:

- a. Where the lane use or where normal vehicle paths are altered during work, remove all pavement markings (paint, tape, thermoplastic, raised pavement markers, etc.) that will conflict with the adjusted vehicle paths. Use of paint to cover conflicting pavement markings is prohibited. Remove conflicting pavement markings using a method that will not damage the surface texture of the pavement and which will eliminate the previous marking pattern regardless of weather and light conditions.
 - 1) Remove all pavement markings that will be in conflict with "next phase of operation" vehicle paths as described above, before opening to traffic.
 - 2) Cost for removing conflicting pavement markings (paint, tape, thermoplastic, raised pavement markers, etc.) to be included in the pay items listed in the work document. No separate payment will be made.

9. Vehicle and Equipment Visibility:

- a. Equip all pickups and automobiles used on the project with a minimum of one Class 2 amber or white warning light that meets the Society of Automotive Engineers

Recommended Practice SAE J845 dated March, 1992 or SAE J1318 dated April, 1986 and incorporated herein by reference, that is unobstructed by ancillary vehicle equipment such as ladders, racks or booms. If the light is obstructed, additional lights will be required. The lights shall be operating when a vehicle is in a work area where a potential hazard exists, when operating the vehicle at less than the average speed for the facility while performing work activities, making frequent stops or called for in the plans or Design Standards.

- 1) Equip all other vehicles and equipment with a minimum of 4 square foot of reflective sheeting or flashing lights.
- 2) To avoid distraction to motorists, do not operate the lights on the vehicles or equipment when the vehicles are outside the clear zone or behind a barrier.

10. No Waiver of Liability:

- a. Conduct operations in such a manner that no undue hazard results due to the requirements of this Article. The procedures and policies described herein in no way acts as a waiver of any terms of the liability of the Contractor or his surety.

F. Detours.

1. General: Traffic may be detoured only upon approval of the Director of the Public Works Department. Construct and maintain detour facilities wherever it becomes necessary to divert traffic from any existing roadway or bridge, or wherever work operations block the flow of traffic. Contractor must submit an MOT plan prior to closure of roads for review and approval.
2. Construction: Plan, construct, and maintain detours for the safe passage of traffic in all conditions of weather. Provide the detour with all facilities necessary to meet this requirement.
3. Construction Methods: Select and use construction methods and materials that provide a stable and safe detour facility. Construct the detour facility to have sufficient durability to remain in good condition, supplemented by maintenance, for the entire period that the detour is required.
4. Removal of Detours: Remove detours when they are no longer needed. Take ownership of all materials from the detour and dispose of them.
5. Detours Over Existing Roads and Streets: When the Department specifies that traffic be detoured over roads or streets outside the work area, do not maintain such roads or streets. However, maintain all signs and other devices placed for the purpose of the detour.

G. Traffic Control Officer.

1. Provide uniformed law enforcement officers, including marked law enforcement vehicles, to assist in controlling and directing traffic in the work zone when the following types of work is necessary on projects:
 - a. Traffic control in a signalized intersection when signals are not in use.
 - b. When FDOT Index 619 of the Design Standards is used on Interstate at nighttime.
 - c. When pacing/rolling blockade specification is used.

H. Driveway Maintenance.

1. General: Ensure that each residence and or business has safe, stable, and reasonable access.
2. Construction Methods: Place, level, manipulate, compact, and maintain the material, to the extent appropriate for the intended use.
 - a. As permanent driveway construction is accomplished at a particular location, the Contractor may salvage and reuse previously placed materials that are suitable for reuse on other driveways.

I. Temporary Traffic Control Devices. 1. Installation and Maintenance

- a. Install and maintain temporary traffic control devices as detailed in Index 600 of the FDOT

Design Standards and when applicable, in accordance with the approved vendor drawings, as provided on the FDOT QPL. Erect the required temporary traffic control devices to prevent any hazardous conditions and in conjunction with any necessary traffic re-routing to protect the traveling public, workers, and to safeguard the work area.

Use only those devices that are on the FDOT Qualified Products List (QPL) or the FDOT Approved Products List (APL). Immediately remove or cover any devices that do not apply to existing conditions.

- b. All temporary traffic control devices must meet the requirements of National Cooperative Highway Research Program Report 350 (NCHRP 350) and current FHWA directives.
 - c. Ensure that FDOT QPL number is permanently marked on the device at a readily visible location.
 - d. Notify Engineer of any scheduled operation, which will affect traffic patterns or safety, sufficiently in advance of commencing such operation to permit their review of the plan for the proposed installation of temporary traffic control devices.
 - e. Ensure an employee is assigned the responsibility of maintaining the position and condition of all temporary traffic control devices throughout the duration of the work. Keep Engineer advised at all times of the identification and means of contacting this employee on a 24 hour basis.
 - f. Keep temporary traffic control devices in the correct position, properly directed, clearly visible and clean, at all times. Ensure that all traffic control devices meet acceptable standards as outlined in American Traffic Safety Services Association (ATSSA's) "Quality Standards for Work Zone Traffic Control Devices". Immediately repair, replace or clean damaged, defaced or dirty devices.
2. Work Zone Signs
 - a. Provide signs in accordance with the FDOT Design Standards. Meet the requirements of FDOT Subarticles 700 2.6 and 700 5.5. Provide Federal Highway Administration's (FHWA) accepted sign substrate for use with accepted sign stands on the National Highway System (NHS) under the provisions of the National Cooperative Highway Research Program (NCHRP) Report 350 "Recommended Procedures for the Safety Performance Evaluation of Highway Features."
 3. High Intensity Flashing Lights: Furnish Type B lights in accordance with the FDOT Design Standards.
 4. Warning/Channelizing Devices: Furnish warning/channelizing devices in accordance with the FDOT Design Standards.
 - a. Reflective Collars for Traffic Cones: Use cone collars at night designed to properly fit the taper of the cone when installed. Place the upper 6 inches collar a uniform 3 1/2 inch distance from the top of the cone and the lower 4 inch collar a uniform 2 inch distance below the bottom of the upper 6 inch collar. Ensure that the collars are capable of being removed for temporary use or attached permanently to the cone in accordance with the manufacturer's recommendations. Provide a white sheeting having a smooth outer surface and that has the property of a retroreflector over its entire surface.
 - b. Barrier Wall (Temporary): Furnish, install, maintain, remove and relocate a temporary barrier wall in accordance with the Design Standards. Ensure that temporary concrete barrier wall for use on roadway sections, complies with FDOT Index 415 or 414 of the Design Standards. Ensure that temporary concrete barrier wall for use on bridge and wall sections, complies with FDOT Index 414 of the Design Standards. Ensure that temporary water filled barrier wall used on roadway sections conforms to the requirements of the pre-approved alternatives listed on FDOT QPL, unless otherwise called for by Engineer. Ensure that proprietary barrier walls for use on roadway sections meet NCHRP Report 350 criteria and be identified on FDOT QPL. Barriers meeting the requirements of FDOT Index 415 of the Design Standards or temporary water filled barriers on FDOT QPL will not be accepted as an alternate to barriers meeting the requirements of FDOT Index 414 of the Design Standards.
 5. Temporary Vehicle Impact Attenuator (Crash Cushion) (Redirect/Inertia): Furnish, install, maintain and subsequently remove temporary vehicular impact attenuators in accordance with the Design Standards and requirements of the pre-approved alternatives listed on FDOT QPL. Maintain the attenuators until their authorized removal. Repair all attachment scars to permanent structures and pavements after

attenuator removal. Make necessary repairs due to defective material, work, or Contractor operations at no cost to the Department. Restore attenuators damaged by the traveling public within 24 hours after notification as authorized by Engineer.

6. Guardrail (Temporary): Furnish guardrail (temporary) in accordance with the plans and Design Standards. Meet the requirements of PWWM Construction Specifications, Article 536.
7. Advance Warning Arrow Panel: Furnish advance warning panels that meet the requirements of FDOT Section 990 as required by the FDOT Design Standards to advise approaching traffic of lane closures or shoulder work.
8. Portable Changeable (Variable) Message Sign (PCMS): Furnish changeable (variable) message signs that meet the requirements of FDOT Section 990 as required by the Design Standards to supplement other temporary traffic control devices used in work zones.
9. A truck mounted PCMS may be used as a stand-alone maintenance of traffic device only when used for accident or incident management situations as defined in the MUTCD and is listed on FDOT APL.
10. Portable Regulatory Signs (PRS):
 - a. Furnish portable regulatory signs that meet the requirements of FDOT Section 990 as required by the FDOT Design Standards.
 - b. Activate portable regulatory signs only during active work activities and deactivate when no work is being performed.
11. Radar Speed Display Unit (RSDU):
 - a. Furnish radar speed display units that meet the requirements of FDOT Section 990 as required by the FDOT Design Standards to inform motorists of the posted speed and their actual speed.
 - b. Activate the radar speed display unit only during active work activities and deactivate when no work is being performed.
12. Temporary Traffic Control Signals:
 - a. Furnish, install and operate temporary traffic control signals as indicated in the FDOT Design Standards. Temporary traffic control signals will consist of either portable or fixed traffic signals.
 - b. Provide portable traffic signals that meet the requirements of FDOT Index 603-2 of the Design Standards and are listed on FDOT APL. Engineer may approve used signal equipment if it is in acceptable condition.
13. Trucks and Truck Mounted Impact Attenuators
 - a. Furnish, install and maintain only those attenuators that meet the requirements of NCHRP 350. Include the cost of trucks and truck mounted impact attenuators in the pay items listed in the work document. No separate payment will be made.
 - b. Use Truck Mounted Attenuators (TMA), when called for in the FDOT Design Standards. Limit TMA's to those items listed on the FDOT QPL.
 - c. Use truck mounted attenuator systems designed and installed in accordance with the manufactures recommendations.
 - d. Equip the TMA cartridge with lights and reflectors in compliance with applicable Florida motor vehicle laws, including turn signals, dual tail lights, and brake lights. Ensure that lights are visible in both the raised and lowered positions if the unit is capable of being raised.
 - e. Ensure that the complete unit is painted DOT yellow (Fed. Std. 595 b, No. 13538). Stripe the rear facing of the cartridge in the operating position with the alternating 6 inch white and 6 inch safety orange 45 degree striping to form an inverted "V" at the center of the unit and slope down and toward the outside of the unit, in both directions from the center. Ensure the bottom of the cartridge has the same pattern, covering the entire bottom, with 6 inch white and 6 inch safety orange stripes. Use Type III reflectorized sheeting for striping.
 - f. The trucks and truck mounted impact attenuators will not be paid for separately, but will be included in the items listed in the work document. No separate payment will be made. The Contractor is responsible for all costs, including furnishing, maintaining and removal when no longer required, and all materials, labor, tools, equipment and incidentals required for attenuator maintenance.

J. Work Zone Pavement Marking.

1. Description

- a. Furnish and install Work Zone Pavement Markings for maintenance of traffic in work areas. Meet the requirements of retroreflectivity as stated in FDOT Subarticle 710 4.3.
- b. Use pavement marking materials that contain no lead or chromium compounds. Manufacturers seeking product approval must furnish certified test reports showing the Work Zone Pavement Marking material meets the requirements of this Article.
- c. Centerlines, lane lines, edgelines, stop bars and turn arrows in work zones will be required in accordance with the MUTCD with the following additions:
 - 1) Install edgelines on paved shoulders.
 - 2) Place edgelines on all detours where vehicle paths are altered from normal operations and where a lane is narrowed from its normal width for any reason.
 - 3) Apply Work Zone Pavement Markings, including arrows and messages as determined by Engineer to be required for the safe operation of the facility, before the end of the day if the highway is open to traffic. Channelizing devices may be used to direct traffic during the day before placing the Work Zone Pavement Markings.
 - 4) Work Zone Pavement Markings shall be water borne paint, unless otherwise approved by Engineer.
- d. The most common types of Work Zone Pavement Markings are water borne paint. Other types of Work Zone Pavement Markings need Engineer approval.

2. Removable Tape: Removable tape is not allowed.

3. Work Zone Raised Pavement Markers (WZRP's): Apply all markers in accordance with FDOT Index 600 of the Design Standards.

4. Paint and Glass Beads: Meet the requirements of FDOT Section 710.

K. Method of Measurement.

1. General: Payment shall be full compensation for all work and costs specified under this Section including furnishing, installing, operating, maintaining and removing all required traffic control devices, signs, warning devices, barriers and other MOT devices or requirements not specifically covered for payment under separate MOT items. Such price and payment shall constitute full compensation for furnishing (including hardware, lights and posts if required), installing, relocating, maintaining, and removing of temporary traffic control devices. Night time work may be required on specific work due to anticipated traffic impacts. No additional compensation will be made for night time MOT work.

2. Basis of Payment.

- a. Maintenance of Traffic (General Work All): Work under MOT will be paid for under the pay items listed in the bid price proposal. When the proposal does not include a separate item for MOT, all work and incidental costs specified as being covered under this section will be paid from an appropriate dedicated allowance.
- b. The County will reimburse the Contractor for the services of uniformed law enforcement officers authorized to serve as traffic control officers for the purpose of controlling or directing traffic in the work zone as part of the County approved Traffic Control Plan and Maintenance of Traffic provided by Contractor pursuant to the Contract Documents.
 - 1) Payment will be made at invoice cost from an appropriate dedicated allowance established by the County. The necessary invoices and documentation must be submitted to Engineer along with payment request.
 - 2) Payment will be made only for those Traffic Control Officers specified in the Traffic Control Plan and authorized by the Engineer.
- c. Payment for traffic control devices:
 - 1) Payment will be made under the items listed in the bid price proposal. When the proposal does not include separate pay item for traffic control devices, all devices and incidental costs specified as being covered under this Section will be included for payment under the

several scheduled items of the overall Contract, and no separate payment will be made therefore.

d. Payment will be made under the following item(s), as approved by the Engineer:

Item No.	Description	Unit
102-60A	Work Zone Signs	EA/DAY
102-74-1	Barricades (Temporary – Types I, II, VP & DRUM	EA/DAY
102-75-PH2	Construction Signs	EA/DAY
102-76	Advance Warning Arrow Panel	EA/DAY
102-77	High Intensity Flashing Lights, Temporary Type B	EA/DAY

2.03 LIMITATION OF OPERATIONS

A. Page 80, Subarticle 8-4 – Limitations of Operations: Is expanded to include the following:

1. Night Work.
 - a. The work for this project is to be done during night time. Minor construction activities not impacting the roadway or shared use path may be performed during day time as previous request from the Contractor and written approved by the Engineer. Such approval, however, may be revoked at any time by the Engineer if the Contractor fails to maintain adequate equipment, lighting, and supervision for the proper prosecution and control of the Work at night pursuant to FDOT Subarticle 8-4.1.
 - b. For the purposes of this Section, the term "night" shall mean the period from 8:00 p.m. to 5:00 a.m. weekdays.
2. Prior written approval from the Engineer, as specified in this Article, is not required for the performance of work that is necessary for proper care, maintenance, and protection of Work already done, or in cases when the Work would otherwise be endangered or when hazard to life or property would result, in which case the Contractor must inform the Engineer at the earliest possible opportunity of the same.
3. Work performed without the prior written approval of the Engineer and without an Engineer's duly authorized inspector may be declared defective solely on the grounds that it was not properly inspected.
4. The Contractor shall conform to all applicable laws, regulations, or ordinances with regard to labor employed, hours of work and general operations.

2.04 PATTERNED PAVEMENT (REV. 01-06-2015)

A. Description

1. Install patterned pavement on asphalt or concrete pavement areas at locations and with the color and pattern as specified in the Plans. Use products listed on the FDOT Approved Product List (APL), as approved for use in areas subject to vehicular traffic or non-vehicular traffic, respectively, as specified herein. Install products in accordance with manufacturer's recommendations.
2. For the purpose of this Specification, patterned pavements are defined as a post applied surface marking overlay to either the pavement surface or to an imprinted pavement surface. Vehicular traffic areas are defined as those subject to vehicles within the traveled way, shoulders and auxiliary lanes. Non-vehicular travel areas include medians, islands, curb extensions, sidewalks, borders, plazas and other areas typically subject to foot traffic only.
3. Install overlay products in areas subject to vehicular traffic to a thickness not exceeding 180 mils. Do not use products requiring removal of pavement or requiring blockouts or trenches below the top of pavement.
4. Variations within a pattern shall comply with ADA requirements.

B. Materials

1. General:
 - a. Use only patterned pavement products approved for use in vehicular and non-vehicular areas, as appropriate, and listed on the APL. Meet manufacturer's specifications for all patterns, textures, templates, sealers, coatings and coloring materials.
 - b. Material coatings used to achieve the pattern and color shall produce an adherent, weather resistant, skid resistant, wear resistant surface under service conditions. Color shall be integral and consistent throughout the installation. The composition of materials is intended to be left to the discretion of the manufacturer.
 - c. Materials shall be characterized as non-hazardous as defined by Resource Conservation and Recovery Act (RCRA), Subpart C, Table 1 of 40 CFR 261.24 "Toxicity Characteristic". Materials shall not exude fumes which are hazardous, toxic or detrimental to persons or property.
2. Approved Product List (APL):
 - a. Manufacturers seeking evaluation of their product shall submit an application to FDOT in accordance with FDOT Section 6 along with the following documentation:
 - 1) Manufacturer's recommendations for applicability of use on concrete or asphalt surfaces.
 - 2) Manufacturer's recommendation for applicability of use in vehicular or non-vehicular travel areas.
 - 3) Manufacturer's specifications and procedures for materials and installation for each use above.
 - 4) For products proposed for use in vehicular traffic areas, independent test data verifying the material meets the requirements of this Section including verification that the product, installed in accordance with the manufacturer's specifications and procedures, has been tested in accordance with either:
 - a) ASTM E-274, Skid Resistance of Paved Surfaces using a standard ribbed full scale tire at a speed of 40 mph (FN40R), and has a minimum FN40R value of 35, or
 - b) ASTM E-1911, Measuring Paved Surface Frictional Properties Using the Dynamic Friction Tester (DFT), at a speed of 40 mph (DFT40), and has a minimum DFT40 value of 40.
 - 5) For products proposed for use in non-vehicular traffic areas, independent test data verifying the material meets the requirements of this Section including verification that the product, installed in accordance with the manufacturer's specifications and procedures, has been tested in accordance with ASTM E-303 using the British Pendulum Tester and has a British Pendulum Number (BPN) of at least 40.
 - 6) For products proposed for use as a bike lane application, independent testing verifying that the material can meet the color as identified in the April 15, 2011, Interim Approval for Optional use of Green Colored Pavement for Bike Lanes, Interim Approval (IA-14) Memorandum Valid Under the 2009 MUTCD (http://mutcd.fhwa.dot.gov/resources/interim_approval/ia14/ia14grnpmbiketlanes.pdf).
3. Performance Requirements for Products in Vehicular Travel Areas:
 - a. In addition to the submittal requirements of B.2 above, APL approval will be contingent on a field service test demonstrating that the patterned pavement product meets the following performance measures at the end of three years from opening to traffic:
 - 1) The average thickness shall be a minimum of 50% of the original thickness.
 - 2) Wearing of the material coating shall not expose more than 15% of the underlying surface area as measured within the traveled way.
 - 3) Friction performance of patterned/textured pavement materials shall meet or exceed one of the following test method values:
 - a) FN40R value of 35 in accordance with ASTM E-274; or,
 - b) DFT40 value of 40 in accordance with ASTM E-1911.
 - c) Manufacturers shall provide a field service test installation of each product within



a marked crosswalk on a roadway with an ADT of 6,000 to 12,000 vehicles per day per lane, on a site approved by the Department. The test installation shall be a minimum six feet wide and extend from pavement edge to pavement edge across all traffic lanes and shoulder pavement at the crosswalk location. The test installation shall be tested by the manufacturer in accordance with FM 5-592.

C. Construction

1. Product Submittals: Prior to installation, submit pattern and color samples to the Engineer for confirmation that the product meets the pattern and color specified in the Plans. Do not begin installation until acceptance by the Engineer.
2. Pavement Cuts: Complete all utility, traffic loop detector, and other items requiring a cut and installation under the finished surface, prior to product installation.
3. Surface Protection: Protect treated surfaces from traffic and environmental effects until the product is completely installed, including drying and curing according to the manufacturer's instructions.
4. Installation Acceptance:
 - a. For installation on new asphalt roadways, apply patterned pavement a minimum of 14 days after placement of the adjacent pavement.
 - b. Upon completion of the installation, the Engineer will check the area at random locations for geometric accuracy. If any of the chosen areas are found to be deficient, correct the entire patterned area at no additional cost to the Department.
 - c. Provide certification that the patterned pavement was installed in accordance with the manufacturer's requirements.

D. Method of Measurement.

1. The quantity to be paid will be the installed quantities in square yards of patterned pavement, completed and accepted. No deduction will be made for areas occupied by landscaping, manholes, inlets, drainage structures, or by any public utility appurtenances within the area.

E. Basis of Payment.

1. Price and payment will be full compensation for all work specified in this Article.
2. Payment will be made under:
 - a. Item No. 523- 1- Item No. 523- 2- - per square yard.

Item	Description	Unit
523-1	Patterned Pavement, Vehicular Areas	SY
523-1-3	Patterned Pavement, Vehicular Areas-Green Bike Lane	SY
523-2	Patterned Pavement, Vehicular Areas	Non- SY
523-2-3	Patterned Pavement, Vehicular Areas-Green Bike Lane	Non- SY

AGENDA ITEM REPORT

August 8, 2016

ITEM NUMBER: 20.

ITEM: Discussion and **possible** action requested by Mayor Leonard regarding the purchase of three (3) Soofa Core solar powered stand alone phone charging stations at a total cost of \$7,875. The proposal is attached.

DESCRIPTION:

If approved, one Soofa Core station will be installed in each of our parks (Winters Park, 92nd Street and Tot Lot). These stations will allow our park patrons to charge their phones/tablets which will be located next to our existing park benches. These units utilize solar power only, which is generated from their built in panels. The City of Sunny Isles Beach has purchased and installed 10 of these units in their parks.

RECOMMENDED ACTION:

Council Discretion.

FINANCIAL ANALYSIS:

The total cost of the three (3) units is \$7,875. This item is not budgeted and an appropriation from general fund reserves or park impact fees is required.

BUDGET IMPACT:

Submitted By: Juan Jimenez, Assistant Town Manager
 Jordan Leonard, Mayor

ATTACHMENTS

1.	Soofa Proposal	Soofa-Bay Harbor Islands Quote - 3CORE 051216.pdf
2.	Soofa Core Pictrure	Soofa Core - 1.jpg

Changing Environments Inc.
275 Third St.
Cambridge, MA 02142

Estimate 1054



ADDRESS

J.C. Jimenez
Town of Bay Harbor Islands

DATE
05/12/2016

PLEASE PAY

ACTIVITY	QTY	RATE	AMOUNT
Soofa Core Solar powered stand alone phone charging station - for placing next to and/or between your existing benches or seats	3	2,300.00	6,900.00
Soofa Care Warranty extension from standard 1 year to extended 5 year (\$25/year - after first year)	3	100.00	300.00
Shipping & Handling	1	325.00	325.00
Color Customization OPTIONAL: For consideration. Price is per custom color only, not per unit.	1	350.00	350.00

J.C.,
Thank you for your commitment to making sustainable, social, and smart parks and outdoor spaces. We're thrilled for the opportunity to have Soofa Core stand alone charging stations installed in the Town of Bay Harbor Islands. Upon your review of this quote, please let me know if I can help answer any questions.

TOTAL \$7,875.00

THANK YOU.

Thank you,
Ed
--
Edward Krafcik
SOOFA
908-295-4210
edward@soofa.co

Accepted By

Accepted Date



AGENDA ITEM REPORT

August 8, 2016

ITEM NUMBER: 21.

ITEM: Discussion requested by Council Member Yaffe regarding the adoption of a Town policy on expenditure of Town funds on projects outside of Bay Harbor Islands.

DESCRIPTION:

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Marlene Siegel, Town Clerk

ATTACHMENTS