

NOTE: A request form is available from the Deputy Town Clerk; please fill it in and return it prior to the start of the meeting if you would like to speak during public comment. When you speak, you must come to the podium in the front and clearly state your name and address for the record. Please turn off or mute your cell phone or pager at the start of the meeting. Thank you.

**TOWN OF BAY HARBOR ISLANDS
9665 BAY HARBOR TERRACE
BAY HARBOR ISLANDS, FL 33154**

**SPECIAL COUNCIL MEETING
AGENDA**

November 3, 2022

4:30 P.M.

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: Set for approximately 4:30 P.M.:

PLEDGE OF ALLEGIANCE:

ROLL CALL:

PUBLIC COMMENT:

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.)*

1. **Consideration and Approval** for the issuance of a Request for Qualifications (RFQ) for Engineering and Architectural Continuing Services Contract. The purpose is to select a new pool of consulting firms in accordance with Section 287.055 of the Florida Statutes, Consultants' Competitive Negotiation Act (CCNA). Enclosed is a copy of the RFQ document.
2. **Consideration and Approval** to enter into a Time and Material Agreement with WSP USA, Inc. for the Not-to Exceed amount of \$50,000 to provide engineering support, project management/coordination and permitting related to the Sanitary Sewer Pump Station Emergency caused by Hurricane Ian. Enclosed is a copy of the Agreement.

STAFF RECOMMENDATION: Approval

POLL VOTE

RESOLUTION:

3. **Consideration and Approval** of a Resolution relating to a declaration by the Town Council of zoning-in- progress by adopting a temporary moratorium on the issuance of new building permits, the approval of new Site Development Plan Applications by the Design Review Board and/or the Town Council, and the submittal of new Site Development Plan Applications to the Town by the earlier of 180 days or the final adoption of revisions to the Town's Zoning and Planning Code, in accordance with the provisions set forth in Section 23-16.1 of the Town's Code of Ordinances for the purpose of studies and possible revisions, if deemed necessary, to the Town's Land Development Regulations for both the East and West Islands.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, RELATING TO A DECLARATION BY THE TOWN COUNCIL OF ZONING-IN-PROGRESS BY ADOPTING A TEMPORARY MORATORIUM ON THE ISSUANCE OF NEW BUILDING PERMITS, THE APPROVAL OF NEW SITE DEVELOPMENT PLAN APPLICATIONS BY THE DESIGN REVIEW BOARD (DRB) AND/OR TOWN COUNCIL, AND THE SUBMITTAL OF NEW SITE DEVELOPMENT PLAN APPLICATIONS TO THE TOWN BY THE EARLIER OF ONE HUNDRED EIGHTY (180) DAYS OR THE FINAL ADOPTION OF REVISIONS TO THE TOWN'S ZONING AND PLANNING CODE, IN ACCORDANCE WITH THE PROVISIONS SET FORTH IN SECTION 23-16.1 OF THE TOWN'S CODE OF ORDINANCES; FOR THE PURPOSE OF STUDIES AND POSSIBLE REVISIONS, IF DEEMED NECESSARY, TO THE TOWN'S LAND DEVELOPMENT REGULATIONS FOR BOTH THE EAST AND WEST ISLANDS; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Council's Discretion

POLL VOTE

ADJOURNMENT: Approximately 5:45 p.m.

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

November 3, 2022

ITEM NUMBER: 1.

ITEM: Consideration and Approval for the issuance of a Request for Qualifications (RFQ) for Engineering and Architectural Continuing Services Contract. The purpose is to select a new pool of consulting firms in accordance with Section 287.055 of the Florida Statutes, Consultants' Competitive Negotiation Act (CCNA). Enclosed is a copy of the RFQ document.

DESCRIPTION:

The current pool of approved Engineering Consulting Firms is in place since 2017. The selected firms in 2017 were the following;

- Behar Font and Partners, PA
- Calvin Giordano & Associates, Inc.
- Chen Moore & Associates, Inc.
- Keith & Schnars, PA (KCI Technologies)
- Kimley Horn & Associates, Inc.
- Lakes Engineering, Inc. (BCC Engineering, Inc.)

These Continuing Service Agreements were executed without an Expiration Date, or approved hourly rates, which is common for these types of contracts. Staff is recommending to issue a new RFQ to select a new pool of firms and incorporate these changes to the new Agreements. The selection of the consulting firms shall be in accordance with Section 287.055 of the Florida Statutes, Consultants' Competitive Negotiation Act (CCNA) Enclosed is a copy of the RFQ.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

There is no fiscal impact associated with the issuance of this RFQ.

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk

ATTACHMENTS

1.	RFQ_DRAFT Engineering Firms_10172022-compressed
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TOWN OF BAY HARBOR ISLANDS



Project No. – BHI –

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT

Request for Qualifications

October 24, 2022

**ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT
TOWN OF BAY HARBOR ISLANDS**

BHI-____

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**ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT
TOWN OF BAY HARBOR ISLANDS
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INVITATION TO BID

Issue Date: October 24, 2022

All interested parties are hereby notified that the Town of Bay Harbor Islands (the “Town”) is accepting sealed bids for the Project “**ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT**” Project, No. **BHI-___**.

The Town in compliance with Florida Statute 287.055, Consultants’ Competitive Negotiation Act (CCNA), is actively seeking qualified, experienced, and licensed firm(s) to provide a variety of Professional Services, including but not limited to transportation, highway systems, water and wastewater systems, construction engineering and inspection, civil, structural, electrical, mechanical engineering, etc., architecture, and other professional ancillary services, as further described in the Scope of Services. Those firms who are interested in submitting Statements of Qualification (SOQ) in response to this Request for Qualifications (RFQ) shall comply with Submittal Requirements of the RFQ.

A **Pre-Bid Conference** will be held on **November 17, 2022, at 10:00 A.M.**, in the Town Hall Council Chambers. The address of Town Hall is 9665 Bay Harbor Terrace, Bay Harbor Islands, FL 33154.

Contract Documents may be downloaded and printed as required from the Town’s Website at www.bayharborislands-fl.gov. Enquiries regarding this contract may be e-mailed to the Town Clerk, Yvonne Hamilton, at yhamilton@bayharborislands-fl.gov.

All bids shall be clearly marked:

**TOWN OF BAY HARBOR ISLANDS
CONTRACT NO. BHI-_____
ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT**

All bids must be submitted in sealed envelopes to the Town Clerk on or before December 16, 2022, at 3:00 P.M., local time (the “Bid Submittal Deadline”). Immediately thereafter, Bids will be opened publicly and read aloud. The Town assumes no responsibility for Bids not properly marked. **Any Bids received after the Bid Submittal Deadline will not be accepted.**

The Town reserves the right to reject any or all bids and to waive informalities, except timely submission of bids, in any bids received, to re-advertise for bids or to take any other such actions that may be deemed in the best interests of the Town.

Town of Bay Harbor Islands, Florida
Yvonne P. Hamilton, CMC - Town Clerk

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT

TOWN OF BAY HARBOR ISLANDS

BHI-_____

INSTRUCTIONS TO BIDDERS

1.0 DEFINED TERMS

Terms used in these Instruction to Bidders which are defined in the Standard General Conditions of the Construction Contract, prepared by the Engineer's Joint Contract Documents Committee (EJCDC) and NSPE-ASCE Document 1910-8-A-1, CSI 56465 (1996 Edition) have the meanings assigned to them in the General Conditions. The term "Successful Bidder" means the lowest, qualified, responsible Bidder to whom Town (on the basis of the Town's evaluation as hereinafter provided) makes an award and whose Bid the Town determines is in its best interest.

2.0 EXAMINATION OF DOCUMENTS, SITE AND DRAWINGS AND SPECIFICATIONS

- 2.1 Prior to Bid submission, Bidders shall examine the Site and surrounding area, including but not limited to subsurface, water and soil conditions, utilities, and streets to determine all conditions that will affect the Work and become familiar with the nature and extent of Work to be performed and local conditions that may affect the Work. Bidders should perform a Site visit and inspection to get familiar with the site conditions.
- 2.2 It is the Bidder's responsibility to become fully informed as to the existing conditions at the Site and to factor any and all costs of these conditions and/ or risks associated therewith into the Bid.
- 2.3 Bidders shall thoroughly examine the Bidding Documents, General Conditions, Drawings and Specifications, Technical Specifications and any other documents which may be applicable to the Work or Project. All drawings and specifications prepared for this Project are provided in pdf format with this Bid.

3.0 INTERPRETATION OF BIDDING DOCUMENTS

- 3.1 All inquiries, clarifications or interpretations of the Bidding Documents shall be made in writing to the Town Clerk, Yvonne Hamilton on or before **December 2, 2022**, with a copy to the Town Manager, by mail, fax, or by e-mail to the following addresses:

Yvonne P. Hamilton
Town Clerk Town of Bay Harbor Islands, Project No. BHI-_____
Telephone No. (305) 866-6241
Email: yhamilton@bayharborislands-fl.gov
With a copy to:

Maria Lasday, Town Manager
Town of Bay Harbor Islands 9665 Bay Harbor Terrace
Bay Harbor Islands, 33154 Florida

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT

TOWN OF BAY HARBOR ISLANDS

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Telephone No.: 305-866-6241

Email: mlasday@bayharborislands-fl.gov

- 3.2 Any modification or interpretation of the Bidding Documents will be made by written Addendum to all who are recorded by the Town as having received a complete set of Bidding Documents. **All Addenda will be issued by December 8, 2022.**
- 3.3 Interpretations or modifications of Bidding Documents made in any manner other than by written Addendum will not be binding. No oral interpretations or clarifications shall be binding.
- 3.4 A Bidder, prior to submitting his Bid, shall ascertain that he has received all Addenda issued, and shall acknowledge their receipt by enclosing a signed copy of each Addenda with the Bid Form.

4.0 BID PREPARATION AND SUBMITTAL

- 4.1 The Bidder shall prepare Bids on the forms provided by the Town with all blanks on the Bid Form filled in by typewriter or written in ink.
- 4.2 The Bidder shall **submit three (3) originals and three (3) digital (PDF) copies of the Bid**. The Bid shall indicate whether the Bidder is a sole proprietor, a partnership, a corporation, company, or other legal entity. The Bid shall include:
 - 4.2.1 Consultant's Qualification Statement;
 - 4.2.2 Non-Collusion Affidavit
 - 4.2.3 Any Addenda;
 - 4.2.4 Copy of Licenses
 - 4.2.5 Corporate/Company Resolution, or Partnership Resolution, evidencing authorization to Submit Bid; and
 - 4.2.6 Evidence of Insurability.
- 4.3 If the Bid is made by an individual, the Bidder's name and address of place of business shall be shown. If Bid is made by an entity, the name and address of the individual(s) authorized to bind the firm or partnership shall be shown. If Bid is made by a corporation or company, the individual executing the Bid shall show the name of the state under the laws of which the corporation or company is chartered, also the names and business addresses of its corporate or company officers and members. Anyone signing the Bid as agent shall include in the Bid legal evidence of his/her authority to do so.
- 4.4 Non-Collusion Affidavit. The Bidder shall include the Non-Collusion Affidavit as set forth in the form included in the Bidding Documents. Bidder's failure to include the affidavit shall result in disqualification.

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT

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- 4.5 **The Bid shall be enclosed in a sealed envelope**, addressed to Attn: Town Clerk, Town of Bay Harbor Islands, 9665 Bay Harbor Terrace, Bay Harbor, Florida 33154. **The envelope shall be clearly marked with the Project name “Bid for the Engineering and Architectural Continuing Services Contract” Project No. BHI-____, and the Bidder’s name and address.**
- 4.6 The Bidder shall deposit Bids at the designated location provided on the Invitation to Bid on or before the time and date for submission of Bids (the “Bid Submittal Deadline”). Bids received after the Bid Submittal Deadline indicated for submission of Bids will not be accepted. The Bidder is advised that delivery services may not be timely. It shall be the Bidder’s sole responsibility to ensure delivery prior to the required Bid Submittal Deadline.

5.0 QUALIFICATIONS OF BIDDERS

- 5.1 Each Bidder shall complete the Qualifications Statement provided herewith, along with any other evidence of satisfactory experience, past performance and ability to perform the proposed Work, and shall submit the same with the Bid. Failure to submit the Qualifications Statement and all documents required thereunder together with the Bid Form and all items listed in Section 4.2 will constitute grounds for rejection of the Bid as non-responsive.
- 5.2 The Bidders may be disqualified, and their Bids rejected for any of the following reasons:
- 5.2.1 The bid is not responsive, and/or responded with errors and omissions.
 - 5.2.2 Reason to believe that collusion exists among Bidders.
 - 5.2.3 Determination of lack of responsibility or competency as may be revealed by qualification statements, financial statements, experience records or other questionnaires.
 - 5.2.4 The Bidder’s uncompleted work load which in the judgment of the Town may cause detrimental impact on prompt completion of this Project.
 - 5.2.5 The Bidder is or has been involved in any litigation against the Town.
 - 5.2.6 The Bidder has defaulted on any previous contract or is in arrears on any existing contract on any public or private matters.
 - 5.2.7 The submittal of more than one bid from an individual, firm, partnership, corporation or association under the same or different names.
 - 5.2.8 The Bidder’s previous work with the Town has resulted in claims from third parties and or subconsultants.
- 5.3 The Town reserves the right to make a pre-award inspection of the Bidder's facilities and equipment prior to award.
- 5.4 It shall be a requirement of this Bid that there are no related party transactions between the Bidder and any employee, agent or consultant of the Town. Any Bidder who is a related party, as noted herein, will be considered non-responsive and the bid and the bid bond will be immediately returned. A Bidder will be considered a related party if the Bidder has an ownership interest or is in any way related to an employee, agent, consultant or consultant, and can influence the management or operating policy of the

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT

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other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.

- 5.5 PUBLIC ENTITY CRIMES ACT -In accordance with the Public Entity Crimes Act, (Section 287.133, Florida Statutes) a person or affiliate who is a consultant/contractor, who had been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the Town, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases or real property to the Town, may not be awarded or perform work as a consultant/contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with the Town in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list. Violation of this section by the Consultant/Contractor shall result in rejection of the Bid, termination of the contract, and may cause Consultant/Contractor debarment.

6.0 MODIFICATION AND WITHDRAWAL OF BID

- 6.1 Prior to the date and time of Bid opening, a Bidder may withdraw his Bid at any time.
6.2 After the Bid opening, no Bid may be withdrawn, canceled or modified.

7.0 OPENING OF BIDS

- 7.1 Bids submitted will be opened publicly and read aloud at the time and place stated in the Invitation to Bid.
7.2 The Bidder agrees to maintain all terms of the Bids available for 120 days from the date and time of bid opening.

8.0 CONTRACT TIME AND PERFORMANCE

- 8.1 The Work to be performed under the Contract Documents shall be commenced upon issuance of a Notice to Proceed by the Town. As part of their proposal, Bidder shall submit a preliminary schedule of deliverables.
8.2 By virtue of the submission of its Bid, Bidder agrees and fully understands that the completion time of the Work of the Contract is an essential and material condition of the Contract and that time is of the essence. The Successful Bidder agrees that all Work shall be prosecuted regularly, diligently and uninterrupted at such rate of progress as will ensure full completion thereof within the time specified. The Consultant/Contractor is expected to provide the necessary manpower and management to meet the time schedule as established.

9.0 LIQUIDATED DAMAGES

- 9.1 Provisions for liquidated damages, if any, are set forth in the Agreement.

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10.0 GOVERNING LAWS AND REGULATIONS

- 10.1 Bidders shall be familiar with all federal, state, and local laws, ordinances, rules and regulations that may in any manner affect the Work.

11.0 INSURANCE/EVIDENCE OF INSURABILITY

- 11.1 The Bidder shall be required to provide and maintain insurance coverage of such types and amounts as specified in the General Conditions of the Contract Documents for the life of the Contract. Certificates of Insurance shall be provided by the Bidder upon the Notice of Award, as specified in the General Conditions.
- 11.2 Bidder shall be required to submit with the Bid Form written evidence of insurability from Bidder's insurance company, for the types and amounts of insurance specified in the General Conditions of the Contract Documents.

12.0 SUBCONSULTANT LIST

- 12.1 The Bidder shall submit a list of names and addresses of the subconsultants and major material suppliers proposed for the principal portions of the Work and shall include such information on the Qualifications Statement.
- 12.2 Prior to award of Contract, the Town will notify the Bidder in writing if there is an objection to any person or entity listed. Upon such objection, the Bidder shall propose an acceptable substitute in accordance with the General Conditions.
- 12.3 In Contracts where the Contract Price is on the basis of Cost-of-the-Work Plus a Fee, the apparent Successful Bidder, prior to the Notice of Award, shall identify in writing to Town those portions of the Work that such Bidder proposes to subcontract and after the Notice of Award may only subcontract other portions of the Work with Town's written consent.

13.0 LICENSES, PERMITS AND FEES

- 13.1 In accordance with the Public Bid Disclosure Act, 218.80, Florida Statutes, the Town shall disclose all permit fees associated with the Project. Licenses, permits, and fees which may be required by Miami-Dade County or any State or Federal entities are not included. The Consultant/Contractor shall be responsible for filing and obtaining all permits for the Work. The Consultant/Contractor shall file permit applications with the Town prior to construction. The Town will waive Town permit fees generated by the Town permits. Any delays in obtaining permits must be brought to the attention of the Town without delay. Each license, permit or fee a contractor will have to pay the Town before or during construction as part of the Contract, required by the Town and payable to the Town, is as follows:

Building Permit – Town of Bay Harbor Islands Building Department

- 13.2 The Bidder shall provide a copy of following license:

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***Firm - A State of Florida Professional Engineer License or Architectural License
Contact Person – State of Florida Professional Engineer Licenses or
Architectural License***

- 13.3 The Successful Bidder shall give all notices and comply with all permit requirements, laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. The Town shall not be responsible for monitoring the Successful Bidder's compliance with any laws or regulations.

14.0 CONE OF SILENCE

- 14.1 Pursuant to subsection (t) (1) of Section 2-11.1, Conflict of Interest and Code of Ethics Ordinance of the Miami-Dade County Code, a "Cone of Silence" is imposed upon each Bid after advertisement and terminates at the time the Town Manager makes his written recommendation to the Town Council. The Cone of Silence generally prohibits any communication regarding this Bid between Bidders and their agents and the Town. The details of the Cone of Silence and the permitted exceptions to the Cone of Silence are set forth in subsection (t) (1) of Sec. 2-11.1 of the County Code. A copy of subsection (t)(1) is attached to this Bid as Exhibit "A." In reading that subsection, Bidders are advised that all references to County personnel or boards, as used therein, are construed to mean Town personnel or boards as required by Sec. 2-11.1(a) of the Miami-Dade County Code. Please contact the Town Attorney for any questions concerning the Cone of Silence. The Cone of Silence shall apply to this Bid.
- 14.2 Generally, except for public hearings and scheduled presentations, contact with the Town regarding this Bid or any aspect of a Bid by a Bidder or any representative of a Bidder shall be limited to written communications until such time as a successful bidder is selected by the Council. All questions or requests for additional information must be asked and answered in writing.

15.0 BID PROTEST PROCEDURE

If a vendor feels that they have been treated unfairly concerning the results of a solicitation, or the resulting recommendation for award, they may protest the Town's action as follows:

- 15.1 The vendor must submit a letter to the Procurement Manager detailing the nature of the protest accompanied by two (2) cashier's checks within three (3) working days of the Notice of Intent to Award. The first check will be in the amount of \$500 (hereinafter called "the administrative fee"). The second check will be in the amount of 1% of the bid amount (hereinafter called "the protest bond"). The Town's Notices of Intent to Award are posted on the Town of Bay Harbor Island's website.
- 15.2 If the Procurement Manager receives a bid protest letter, the administrative fee, and the protest bond as described above, the bid award process will be suspended, and the protest will be referred to the Bid Protest Committee. However, if the project is needed to protect the health, safety, and/or welfare of the residents of the Town of Bay Harbor

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Islands, the award of the project will proceed without interruption. The Bid Protest Committee shall consist of three (3) Town staff member selected by the Town Administrator. The Procurement Manager and the employee that wrote the Recommendation for Award may not sit as a member of the Bid Protest Committee. However, the Procurement Manager and the staff member that wrote the Recommendation for Award shall be present at the hearing of the Bid Protest Committee to answer any questions pertaining to the bid process or the evaluation process.

- 15.3 The Bid Protest Committee shall schedule a hearing within ten (10) working days from receipt of the protest letter. All parties having an interest in the outcome will be notified of the date and time of the hearing. If the bid protest is denied, the vendor will forfeit the protest bond. If the protest is upheld, the protest bond will be returned to the vendor. The administrative fee shall be non-refundable in all cases.
- 15.4 If the Bid Protest Committee denies the protest, the aggrieved vendor may appeal his/her case to the Town Council. In order to appeal, the vendor must notify the Town Administrator within three (3) working days of the Bid Protest Committee's ruling. Upon notification, the Town Administrator will schedule the appeal as an agenda item on the next available Town Council agenda. All bidders will be notified of the agenda date.
- 15.5 Once the bid protest is resolved, the Town will proceed with the bid award, except as exempted in 2, above.

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT

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EXHIBIT "A"

CONE OF SILENCE PROVISION

(t) *Cone of Silence.*

1. Contracts for the provision of goods and service other than audit and independent private sector inspector general (IPSIG) contracts.

(a) "Cone of Silence" is hereby defined to mean a prohibition on: (i) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the County's professional staff including, but not limited to, the County Manager and his or her staff; (ii) any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the County's professional staff including, but not limited to, the County Manager and his or her staff; (iii) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and any member of the selection committee therefore; (iv) any communication regarding a particular RFP, RFQ or bid between the Mayor, County Commissioners or their respective staffs and any member of the selection committee therefore; (v) any communication regarding a particular RFP, RFQ or bid between a potential vendor, service provider, bidder, lobbyist, or consultant and the Mayor, County Commissioners and their respective staffs; and (vi) any communication regarding a particular RFP, RFQ or bid between any member the County's professional staff and any member of the selection committee therefore. The County Manager and the Chairperson of the selection committee may communicate about a particular selection committee recommendation, but only after the committee has submitted an award recommendation to the Manager and provided that should any change occur in the committee recommendation, the content of the communication and of the corresponding change shall be described in writing and filed by the Manager with the Clerk of the Board and be included in any recommendation memorandum submitted by the Manager to the Board of County Commissioners. Notwithstanding the foregoing, the Cone of Silence shall not apply to (i) competitive processes for the award of CDBG, HOME, SHIP and Surtax Funds administered by the Miami-Dade County Office of Community and Economic Development and the community-based organization (CBO) competitive grant processes administered by the Park and Recreation, Library, Water and Sewer, and Solid Waste Departments, Cultural Affairs and Tourist Development Councils and the Department of Environmental Resources Management; (ii) communications with the County Attorney and his or her staff; (iii) communications between a potential vendor, service provider, bidder, consultant or lobbyist and employees of the Management and Technical Assistance Unit of the Department of Business Development regarding small business and/or minority business programs, the Community Business Enterprise and Equitable Distribution Programs; (iv) communications between a potential vendor, service provider, bidder, consultant or lobbyist and employees responsible for administering disadvantaged business enterprise programs in County departments receiving federal funds, provided the communications are limited strictly to matters of programmatic process or procedure; (v) duly noticed site visits to determine the competency of bidders regarding a particular bid during the time period between the opening of bids and the time the County Manager makes his or her written recommendation; (vi) any emergency procurement of goods

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or services pursuant to Administrative Order 3-2; (vii) communications regarding a particular RFP, RFQ or bid between any person and the Vendor Information Center staff, the procurement agent or contracting officer responsible for administering the procurement process for such RFP, RFQ or bid, provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document; and (viii) communications regarding a particular RFP, RFQ or bid between the procurement agent or contracting officer, or their designated secretarial/clerical staff responsible for administering the procurement process for such RFP, RFQ or bid and a member of the selection committee therefore provided the communication is limited strictly to matters of process or procedure already contained in the corresponding solicitation document.

(b) Procedure.

(i) A Cone of Silence shall be imposed upon each RFP, RFQ and bid after the advertisement of said RFP, RFQ or bid. At the time of imposition of the Cone of Silence, the County Manager or his or her designee shall provide for public notice of the Cone of Silence. The County Manager shall issue a written notice thereof to the affected departments, file a copy of such notice with the Clerk of the Board, with a copy thereof to each Commissioner, and shall include in any public solicitation for goods and services a statement disclosing the requirements of this ordinance. Notwithstanding any other provision of this Section, the imposition of a Cone of Silence on a particular RFP, RFQ or bid shall not preclude staff from obtaining industry comment or performing market research therefore provided all communications related thereto between a potential vendor, service provider, bidder, lobbyist, or consultant and any member of the County's professional staff including, but not limited to, the County Manager and his or her staff are in writing or are made at a duly noticed public meeting.

(ii) The Cone of Silence shall terminate at the time the Manager makes his or her written recommendation to the County Commission; provided, however, that if the Commission refers the Manager's recommendation back to the Manager or staff for further review, the Cone of Silence shall be reinstated until such time as the Manager makes a subsequent written recommendation. The foregoing notwithstanding, for contracts and purchases which the County Manager has the delegated authority to award under Sec. 2-8.1(b) of this Code, the Cone of Silence shall terminate: (i) at the time the award recommendation letter is issued and filed with the Clerk of the Board for such contracts and purchases involving the expenditure of over one hundred thousand dollars (\$100,000); (ii) at the time the written award recommendation is posted in accordance with Section III of A.O. 3-21 for such contracts or purchases involving the expenditure of over \$25,000 up to \$100,000; or (iii) at the time the award recommendation is issued in accordance with

Section IV of A.O. 3-21 for contracts and purchases involving the expenditure of \$25,000 or less.

(c) Exceptions. The provisions of this ordinance shall not apply to oral communications at pre-bid conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meeting, public presentations made to the Board of County Commissioners during any duly noticed public meeting or communications in writing at any time with any county employee, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP, RFQ or bid documents. The bidder or proposer shall file a copy of any written communication with the Clerk of the Board. The Clerk of the Board shall make copies available to any person upon request.

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT

TOWN OF BAY HARBOR ISLANDS

BHI-____

SCOPE OF WORK

1. PURPOSE

The Town of Bay Harbor Islands, in compliance with Florida Statute 287.055, Consultants' Competitive Negotiation Act (CCNA), is seeking proposals from qualified and experienced engineering firms to perform continuing professional engineering and architectural services for the Town.

All work awarded under this contract will be for projects in which the estimated construction cost of each individual project under the contract does not exceed \$4 million, for study activity if the fee for professional services for each individual study under the contract does not exceed \$500,000.

All work will be performed in accordance with high industry standards and comply with applicable laws, and regulations.

2. GENERAL SCOPE OF SERVICES

The Town of Bay Harbor Islands is seeking to establish a pool of pre-qualified consultants in engineering and architectural disciplines. Generally, services for projects may include full design and construction contract document development; construction specification development; contract and bidding document development; code analysis; jurisdictional review and permitting assistance; bid/award support and concurrence; negotiation support; construction/contract administration services; construction phase field support services; inspections, construction observation and project progress documentation; post-occupancy surveys and related services; surveying; photographic and video-graphic project support; GIS and CADD project support; other data and information system project support, etc.

Multiple firms selected by the Town will provide professional services to the Town on an as-needed basis based upon work orders to be issued by the Town under the terms of their continuing contracts.

3. WORK BREAKDOWN STRUCTURE

In providing professional services, Consultant(s) shall take all reasonable care which are industry standards or as defined in Florida Statutes or Florida Administrative Codes. Consultant(s) shall also provide all work product documentation including but not limited to; data, studies, surveys, drawings, maps, models, photographs, reports, designs, calculations, test results, etc., that shall become the property of the Town and shall be delivered to the Town.

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT

TOWN OF BAY HARBOR ISLANDS

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4. TOWN INFRASTRUCTURE

- a. Bridges – Given the Town’s Island condition located in the Intracoastal Waterway, the Town owns and maintains a total of four (4) bridges.
 - The Broad Causeway Bascule Bridge (Connecting the West Island with the Broad Causeway Island)
 - The West Relief Bridge (Connecting the Town with the City of North Miami)
 - The Waterway Bridge (Connecting the West and East Islands)
 - The Indian Creek Bridge (Connecting the Town with the Town of Surfside and Village of Bal Harbour)
- b. Buildings – The Town owns and maintains two (2) buildings.
 - The Town Hall Administration Offices at 9665 Bay Harbor Terrace. This building houses the Administration offices, the Building Department, Council Chambers, and the Police Department. This building was built in 1970.
 - The Community Center at 1165 95th Street. The Community Center is a recent building that is located on the first floor of the Parking Garage.
- c. Parking Facilities – The Town operates a total of seven (7) parking facilities.
 - 1165 95th Street Parking Garage – This is a five-story parking garage building on 95th Street.
 - 103rd Street Surface Parking Lot
 - 100th Street Surface Parking Lot
 - 97th Street Surface Parking Lot
 - Block 11 Parking Lot
 - 95th Street Surface Parking Lot
 - 92nd Street Surface Parking Lot
- d. Parks – There are four (4) Parks in the Town, in addition of two (2) passive parks.
 - Tot Lot – 96th Street and West Broadview Drive
 - 98th Street Park
 - 95th Street Park
 - 92nd Street Park
- e. Potable Water Infrastructure – The Town is a wholesale customer of the MDWASD. The Town receives its water from a 36-inch transmission main from MDWASD that runs along 96th Street. The distribution lines connected to this transmission line are owned and maintained by the Town. Most of the Town’s water lines are PVC material with a diameter that varies between 6-inch to 10-inch.

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT

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- f. Stormwater Infrastructure – Most of the Town’s stormwater system is a gravity system that drains through outfalls to the Bay. A total of 52 outfalls that range on sizes from 8-inch to 30-inch. There is a stormwater injection well on the south side of the West Island with 9,000 gpm pumps. For reference, an Atlas is included as Appendix of this RFQ.

- g. Sanitary Sewer Infrastructure – The Town’s sanitary sewer system is comprised of gravity mains, manholes, ejector’s stations, pump station, force main and air lines. A total of five (5) ejector’s stations are location on different areas of the Town, that discharge to the Town’ Main Pump Station D at 9665 Bay Harbor Terrace. The gravity line varies from 8-inch to 18-inch. For Reference, an Atlas is included as Appendix of this RFQ.

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT

TOWN OF BAY HARBOR ISLANDS

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EVALUATION COMMITTEE AND PROCEDURE FOR REVIEW OF SUBMITTALS

1. A Committee has been established to review and evaluate all qualifications submitted in response to this Request for Qualifications (RFQ). The Committee shall conduct a preliminary evaluation of all submittals on the basis of the information provided and other evaluation criteria as set forth in this RFQ or as reasonably determined by the Committee pursuant to Section 287.055, Florida Statutes. The factors to be considered by the Town in making this preliminary finding of qualifications of the respondents are the experience of the firm and the staff, qualifications of the project manager, project understanding and approach, and DBE distribution.
2. The Committee will first review each submittal for compliance with the minimum qualifications and mandatory requirements of the RFQ. Failure to comply with any mandatory requirements will disqualify a submittal.
3. The Town reserves the right to reject any and all submittals and to waive irregularities in the procedures. The Town further reserves the right to seek new submittals when such a procedure is reasonably in the best interest of the Town to do so.
4. The Selection process will be conducted in two (2) phases: (1) Competitive Selection – ranking of the most qualified; (2) Competitive Negotiations – Negotiations of Contract with Top ranked firms; as provided by Section 287.055, Florida Statutes. **The Town may request, accept and consider proposal for the compensation to be paid under the proposed contract only during the competitive negotiations phase, NOT during the competitive selection phase.**

A. **Phase I – Competitive Selection Ranking.** The evaluation factors used for determining the Qualifications for rankings include:

Criteria	Points
Qualification and Experience of the Firm and Subconsultants	35
Qualifications of the Project Manager	20
Understanding of Town Needs	25
Previous Experiences	20
TOTAL OF 100 POSSIBLE POINTS	100 Points

The Committee may require public presentations by firms regarding their qualifications, approach to the project or work, and ability to furnish the required services. All final rankings shall be subject to the Town Council Approval.

B. **Phase II – Competitive Negotiations.** Following ranking of the most qualified firms, the Town may negotiate a contract with the most qualified firm for the proposed services with the procedures of Section 287.055 (5), Florida Statutes, including the procedures authorizing negotiations with successively ranked firms if negotiations with the highest ranked firms fails. All Contracts shall be subject to approval by the Town Council.

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT

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5. RFQ TIMETABLE AND EVALUATION/SELECTION PROCESS

Activity	Date
RFQ Available to Public	10/24/2022
Pre-Bid Meeting	11/10/2022
Deadline for Receipt of Questions	11/30/2022
Proposal Submission Deadline	12/09/2022

Copies of this RFQ package are available on Town of Bay Harbor Islands' website: <https://www.bayharborislands-fl.gov/>.

Proposers who obtain copies of this solicitation from sources other than the TOWN risk the potential of not receiving addenda, since their names will not be included on the list of firms participating in the process for this solicitation. Such Proposers are solely responsible for those risks.

6. PROPOSAL FORMAT

IT IS THE RESPONSIBILITY OF THE PROPOSER TO ENSURE THAT THE PROPOSAL BEING SUBMITTED IS TIMELY, COMPLETE, INCLUSIVE OF ADDRESSING ALL OF THE REQUIREMENTS AND EVALUATION CRITERIA HEREIN.

To facilitate review and evaluation, the SOQ Document prepared in response to this RFQ shall provide the following information in the **order shown**.

A. Cover Letter:

1. Cover Letter on company letter head signed by person authorized to submit the proposal. Letter must include contact person with their telephone number, e-mail address and mailing address. The type of organization (i.e., individual, partnership, corporation, joint venture, etc.), year established, and address of the company shall also be included in the Cover Letter.

B. Qualifications and Experience of the Firm and Sub-consultants:

1. The history, ownership, organization, and background of the Applicant Firm shall be provided. Include a general statement describing the types of services offered by the firm, location of main and branch offices, number of years in business and number of employees in each department and the location of the office from which this work will be performed.

The firm should demonstrate how it interacts with municipal clients and provides and exchanges information relative to the requirements.

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT

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The Applicant Firm should provide examples of projects similar to those stated in the scope of work. The firm should include the number of municipal projects completed over the last five (5) years.

Provide an Organizational Chart and Resumes of the Team assigned for this Contract including the subconsultants.

List all completed and active projects that Vendor has managed within the past seven years. In addition, list all projected projects that Vendor will be working on in the near future. Projected projects will be defined as a project(s) that Vendor is awarded a contract but the Notice to Proceed has not been issued. Identify any projects that Vendor worked on concurrently. Describe Vendor's approach in managing these projects. Were there or will there be any challenges for any of the listed projects? If so, describe how Vendor dealt or will deal with the projects' challenges.

Provide a list of at least five (5) client references for which the Applicant firm provides similar services to those outlined in this request for qualifications.

- a. Name and address of client.
- b. The nature of the firm's contract.
- c. The owner's representative's name, addresses, and phone number.
- d. Date contract started and ended.
- e. Scope or nature of contract
- f. Present status of the contract.

C. Project Manager's Qualifications:

1. Respondents shall identify the Project Manager who will be responsible for the quality and timeliness of the projects, coordinate and conduct meetings with the Town (Elected Officials, Staff, and residents), and regulatory agencies, and ensuring that the adequate personnel and other resources are available for the proposed project. The Project Manager shall have experience working with municipal projects.
2. Respondents shall provide a summary of the education, experience and qualifications pertaining to the management of all phases of the proposed project. Project Manager shall be a registered Professional Engineer in the State of Florida. License registration shall be submitted as part of the SOQ document.

D. Understanding the Town Needs:

1. The firm should present their approach to accomplishing the strategies to be implemented in delivering the services outlined in the scope of service for the project. Also include the company's overall workload and show the ability to accommodate this contract and be able to complete project on a timely basis. Your proposal should also address the topics indicated in the scope of services.

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT

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E. Previous Experiences:

1. The firm should include the number of municipal projects completed over the last five (5) years.
2. Provide a list of at least five (5) client references for which the Applicant firm provides similar services to those outlined in this request for qualifications.

F. Bid Forms:

1. Completely Executed Bid Forms.

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT
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ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT

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BID FORM

BID FROM:

Company: _____

Address: _____

City/St/Zip: _____

Phone/ Fax: _____

To furnish all materials, equipment and labor and to perform all work in accordance with the Bid and Contract Documents for Project:

Engineering and Architectural Continuing Services Contract, Project No. BHI-_____, located in the Town of Bay Harbor Islands, Florida.

TO: TOWN OF BAY HARBOR ISLANDS, FLORIDA

ATTN: TOWN MANAGER

- 1.01** The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Contract for Engineering Services, with the Town to perform all Work and any Additional Services as specified or indicated in the Bidding Documents and in accordance with the other terms and conditions of the Bidding Documents.
- 2.01** Bidder accepts all of the terms and conditions of the Invitation to Bid and Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. The Bid will remain subject to acceptance for **120** days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Town.
- 3.01** In submitting this Bid, Bidder represents, as set forth in the Bidding Documents, Contract for Engineering Services, that:
- A. Bidder has examined and carefully studied the Bidding Documents, the other related data identified in the Bidding Documents, and the following Addenda, receipt of all, which is hereby acknowledged.

Addendum No.

Addendum Date

- B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and is satisfied as to all federal, state and local laws and Regulations that may affect cost, progress and performance of the Work, including all requirements applicable to the Project, including the provisions, clauses, terms or conditions set forth in Construction Contract (Contract Requirements).

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT
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- D. Bidder has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents to be employed by Bidder, and safety precautions and programs incident thereto.
 - E. Bidder does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the Total Bid Price and within the Contract Times and in accordance with the other terms and conditions of the Bidding Documents.
 - F. Bidder has correlated the information known to Bidder, information and observations obtained from visits to the Site, reports and drawings identified in the Bidding Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Bidding Documents.
 - G. Bidder has given Town's Representative written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by the Town is acceptable to Bidder.
 - H. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.
 - I. Bidder has reviewed and carefully studied the Contract, together with Contract Requirements and understands the requirements and prerequisites for the Project and agrees to comply with the provisions at all times during the Project.
- 4.01** Bidder further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false Bid; Bidder has not solicited or induced any individual or entity to refrain from bidding; and Bidder has not sought by collusion to obtain for itself any advantage over any other Bidder or over Town.
- 5.01** Bidder's Information:
The Bidder states that he/she is an experienced Engineering Firm and has completed similar projects within the last five years. This information has been provided on the Consultant's Qualifications Statement.
- 6.01** Bidder agrees that the Work will be substantially completed and completed and ready for final payment in accordance with the Bid and Contract Documents on or before the dates or within the number of calendar days indicated in the Contract. If the Bidder does not agree with the construction time allocated in the Bid Documents and the Contract for Construction, attach a statement to this Bid Form to indicate the number of days required.

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT
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7.01 The following documents are attached to and made a condition of this Bid:

- A. Consultant's Qualifications Statement, containing a tabulation of Subcontractors, Suppliers [and other] individuals and entities required to be identified in this Bid;
- B. Non-Collusion Affidavit
- C. Copy of State of Florida's License;
- D. Addenda

8.01 The terms used in this Bid with initial capital letters have the meanings indicated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions, if any.

SUBMITTED on _____, 2022.

State Contractor License No. _____. (If applicable)

If Bidder is:

An Individual

Name (typed or printed): _____

By: _____ (SEAL)
(Individual's signature)

Doing business as: _____

Business address: _____

Phone No.: _____ FAX No.: _____

A Partnership

Partnership Name: _____ (SEAL)

By: _____
(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): _____

Business address: _____

Phone No.: _____ FAX No.: _____

**ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT
TOWN OF BAY HARBOR ISLANDS
BHI-____**

A Corporation

Corporation Name: _____(SEAL)

State of Incorporation: _____

Type (General Business, Professional, Service, Limited Liability):_____

By: _____
(Signature --attach evidence of authority to sign)

Name: (typed or printed): _____

Title: _____

(CORPORATE SEAL)

Attest _____

(Signature of Corporate Secretary)

Business address: _____

Phone No.: _____ FAX No.: _____

Date of Qualification to do business is _____.

CONSULTANT'S QUALIFICATIONS STATEMENT

THIS FORM MUST BE SUBMITTED WITH BID FOR BID TO BE DEEMED RESPONSIVE.
The undersigned guarantees the truth and accuracy of all statements and the answers contained herein.

1. Please describe your entity/company in detail.

2. The address of the principal place of business is:

3. Entity/Company telephone number, fax number and e-mail addresses:

4. Number of employees:

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT
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5. Number of employees assigned to this Project:

6. Entity/Company Identification numbers for the Internal Revenue Service:

7. Provide Firm's License, and expiration date:

8. How many years has your organization been in business as an Engineering Firm? Does your organization have a specialty?

9. What is the last project of this nature or magnitude that you have completed? Has this firm ever completed a "public" project? Please provide project description, reference and cost of work completed.

10. Have you ever failed to complete any work awarded to you? If so, where and why?

11. Give names, addresses and telephone numbers of three municipalities, for which you have performed work:

11.1.

Name

Address

Telephone No.

11.2.

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT

TOWN OF BAY HARBOR ISLANDS

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Name _____
Address _____
Telephone No. _____

11.3.

Name _____
Address _____
Telephone No. _____

12. List the following information concerning all contracts or work **in progress** as of the date of submission of this bid. (In case of co-venture, list the information for all co-ventures.)

Name of Project	Owner	Value	Contracted Completion Date	% of Completion to Date

(Continue list on insert sheet, if necessary.)

13. Has the Bidder or his or her representative inspected the Project site and does the Bidder have a complete plan for its performance?

14. Provide list of subconsultants and subcontractor(s), the work to be performed and also a list of major materials suppliers for this Project?

SubContractor Name	Address	Work to be Performed

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT
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The foregoing list of subconsultants(s) may not be amended after award of the contract without the prior written approval of the Town Manager, whose approval shall not be unreasonably withheld.

15. What equipment do you own that is available for the work?

16. State the name of your proposed Project Manager and give details of his or her qualifications and experience in managing similar work.

17. State the true, exact, correct and complete name of the partnership, corporation, company and/or trade name under which you do business and the address of the place of business. (If a corporation, state the name of the president and secretary. If a limited liability company, state the name of the managing member. If a partnership, state the names of all partners. If a trade name, state the names of the individuals who do business under the trade name.)

17.1 The correct name of the Bidder is:

17.2 The business is a (Sole Proprietorship) (Partnership) (Corporation) (Company).

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT

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17.3. The names of the corporate officers, company members, or partners, or individuals doing business under a trade name, are as follows:

Only those Bidders and Subconsultants (s) who are qualified will be considered as bona fide bidders. As Bidder, we certify to have work on at least five (5) similar projects in the last seven (7) year period as indicated by the following:

- | | |
|---------------------|-------|
| 1) NAME OF PROJECT | _____ |
| YEAR OF PROJECT | _____ |
| OWNER OF PROJECT | _____ |
| CONTACT NAME | _____ |
| CONTACT PHONE NO. | _____ |
| CONTACT E-MAIL | _____ |
| LOCATION OF PROJECT | _____ |
| SCOPE OF WORK | _____ |
| | _____ |
| APPROXIMATE VALUE | _____ |
| | _____ |
| 2) NAME OF PROJECT | _____ |
| YEAR OF PROJECT | _____ |
| OWNER OF PROJECT | _____ |
| CONTACT NAME | _____ |
| CONTACT PHONE NO. | _____ |
| CONTACT E-MAIL | _____ |
| LOCATION OF PROJECT | _____ |
| SCOPE OF WORK | _____ |
| | _____ |
| APPROXIMATE VALUE | _____ |
| | _____ |
| 3) NAME OF PROJECT | _____ |
| YEAR OF PROJECT | _____ |
| OWNER OF PROJECT | _____ |
| CONTACT NAME | _____ |
| CONTACT PHONE NO. | _____ |
| CONTACT E-MAIL | _____ |
| LOCATION OF PROJECT | _____ |
| SCOPE OF WORK | _____ |
| | _____ |

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT

TOWN OF BAY HARBOR ISLANDS

BHI-____

APPROXIMATE VALUE

CONSULTANT:

Print Name: _____

Print Title: _____

Date: _____

STATE OF FLORIDA)
) S.S.
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____ who is personally known to me or who has produced _____ as identification and who did/did not take an oath.

WITNESS my hand and official seal, this _____ day of _____, 2022.

(NOTARY SEAL)

(Signature of person taking acknowledgment)

(Name of officer taking acknowledgment)
typed, printed or stamped

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT
TOWN OF BAY HARBOR ISLANDS
BHI-____

NON-COLLUSION AFFIDAVIT

The undersigned individual, being duly sworn, deposes and says that:

- 1 He/She is _____ of _____,
the Bidder that has submitted the attached Bid;
- 2 He/She is fully informed respecting the preparation and contents of the attached Bid and of all
pertinent circumstances respecting such Bid and Construction Contract;
- 3 Such Bid is genuine and is not a collusive or sham Bid;
- 4 Neither said Bidder nor any of its officers, partners, owners, agents, representatives, employees,
or parties in interest, including this affiant, has in any way colluded, connived, or agreed, directly
or indirectly, with any other Bidder, firm or person to submit a collusive or sham proposal in
connection with the Construction Contract for which the attached Bid has been submitted or to
refrain from proposing in connection with such Construction Contract, or has in any manner,
directly or indirectly, sought by agreement of collusion or communication of conference with any
other bidder, firm, or person to fix the price or prices in the attached Invitation to Bid, or of any
other bidder, or to fix any overhead, profit or cost element of the Bid or the response of any other
bidder, or to secure through any collusion, connivance, or unlawful agreement any advantage
against the Town of Bay Harbor Islands, Florida, or any person interested in the proposed
Construction Contract; and

[THIS SPACE INTENTIONALLY LEFT BLANK]

NON-COLLUSION AFFIDAVIT (CONTINUED)

- Page 2 of 2

ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT

TOWN OF BAY HARBOR ISLANDS

BHI-____

ADDENDUM NO. 1

Issued: _____ (Date)

Project: Engineering and Architectural Continuing Services Contract

Project No. BHI - _____

Notice to All Bidders:

ADDENDA TO BE PLACED HERE

Issued By:

Name

PROOF OF RECEIPT

Bidder/Recipient

Signature:

Print Name:

Firm:

Date:

AGREEMENT

THIS IS AN AGREEMENT made and entered into this ____ day of _____ 20__, by and between:

TOWN OF BAY HARBOR ISLANDS, a Florida municipality, (hereinafter referred to as "TOWN")

and

_____, a
_____, (hereinafter referred to as "CONSULTANT").

WHEREAS, the Town Council of the Town of Bay Harbor Islands, Florida at its Council meeting of _____, 20__ authorized by motion the execution of this Agreement between CONSULTANT and TOWN authorizing the performance of _____, RFQ No. _____ (the "Agreement"); and

WHEREAS, the CONSULTANT is willing and able to render professional services for such project for the compensation and on the terms hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, terms, and conditions contained herein, the parties hereto, do agree as follows:

ARTICLE 1 DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the DEFINITIONS and IDENTIFICATIONS set forth below are assumed to be true and correct and are therefore agreed upon by the parties.

- 1.1 AGREEMENT: Means this document between the TOWN and CONSULTANT dated _____, 20__ and any duly authorized and executed Amendments to Agreement.
- 1.2 CERTIFICATE FOR PAYMENT: A statement by CONSULTANT based on observations at the site and on review of documentation submitted by the Contractor that by its issuance recommends that TOWN pay identified amounts to the Contractor for services performed by the Contractor at the Project.
- 1.3 CHANGE ORDER: A written order to the CONSULTANT approved by the TOWN authorizing a revision of this agreement between the TOWN and the CONSULTANT that is directly related to the original scope of work or an adjustment in the original contract price or the contract time directly related to the original scope of work, issued on or after the effective date of this Agreement.

The CONSULTANT may review and make recommendations to the TOWN on any proposed Change Orders, for approval or other appropriate action by the TOWN.

- 1.4 TOWN: The Town of Bay Harbor Islands, a Florida municipality.
- 1.5 TOWN MANAGER: The Town Manager of the Town of Bay Harbor Islands, Florida.
- 1.6 COUNCIL: The Town Council of the Town of Bay Harbor Islands, Florida, which is the governing body of the TOWN government.
- 1.7 CONSTRUCTION COST: The total construction cost to TOWN of all elements of the Project designed or specified by the CONSULTANT.
- 1.8 CONSTRUCTION COST LIMIT: A maximum construction cost limit established by the TOWN defining the maximum budget amount to which the final construction documents should be designed so as not to exceed.
- 1.9 CONSTRUCTION DOCUMENTS: Those working drawings and specifications and other writings setting forth in detail and prescribing the work to be done, the materials, workmanship and other requirements for construction of the entire Project, including any bidding information.
- 1.10 CONSULTANT: _____, the CONSULTANT selected to perform professional services pursuant to this Agreement.
- 1.11 CONTRACT ADMINISTRATOR: The Public Works Director of the Town of Bay Harbor Islands, or his designee. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrator.
- 1.12 CONTRACTOR: One or more individuals, firms, corporations or other entities identified as such by a written agreement with TOWN ("Contract for Construction") to perform the construction services required to complete the Project.
- 1.13 ERROR: A mistake in design, plans and/or specifications that incorporates into those documents an element that is incorrect and is deficient from the standard of care that a professional engineer in similar circumstances, working on a similar project and location would have exercised. Also includes mistakes in design, plans, specifications and/or shop drawings review that lead to materials and/or equipment being ordered and/or delivered where additional costs are incurred.
- 1.14 FINAL STATEMENT OF PROBABLE CONSTRUCTION COSTS: A final cost estimate prepared by CONSULTANT during the Final Design Phase of the Project, based upon the final detailed Construction Documents of the Project.
- 1.15 NOTICE TO PROCEED: A written Notice to Proceed with the Project issued by the Contract Administrator.
- 1.16 OMISSION: A scope of work missed by the CONSULTANT that is necessary for the Project, including a quantity miscalculation, which was later discovered and added by Change Order and which is deficient from the standard of care that a professional engineer in similar circumstances, working on a similar project and location would have exercised. Also includes design that was wrong, but was corrected after award to the Contractor, but before the construction process was materially affected.

- 1.17 ORIGINAL CONTRACT PRICE: The original bid and/or contract price as awarded to a Contractor based upon the CONSULTANT'S final detailed Construction Documents of the Project.
- 1.18 PLANS AND SPECIFICATIONS: The documents setting forth the final design plans and specifications of the Project, including architectural, civil, structural, mechanical, electrical, communications and security systems, materials, lighting equipment, site and landscape design, and other essentials as may be appropriate, all as approved by TOWN as provided in this Agreement.
- 1.19 PRELIMINARY PLANS: The documents prepared by the CONSULTANT consisting of preliminary design drawings, renderings and other documents to fix and describe the size and character of the entire Project, and the relationship of Project components to one another and existing features.
- 1.20 PROJECT: An agreed scope of work for accomplishing a specific plan or development. This may include, but is not limited to, planning, architectural, engineering, and construction support services. The services to be provided by the CONSULTANT shall be as defined in this Agreement and further detailed in Task Orders for individual projects or combinations of projects. The Project planning, design and construction may occur in separate phases and Task Orders at the TOWN's discretion.
- 1.21 RESIDENT PROJECT REPRESENTATIVE: Individuals or entities selected, employed, compensated by and directed to perform services on behalf of TOWN, in monitoring the Construction Phase of the Project to completion.
- 1.22 TASK ORDER: A document setting forth a negotiated detailed scope of services to be performed by the CONSULTANT at fixed contract prices in accordance with this Agreement between the TOWN and the CONSULTANT.
- 1.23 TIME OF COMPLETION: Time in which the entire work shall be completed for each Task Order.

ARTICLE 2 PREAMBLE

In order to establish the background, context and frame of reference for this Agreement and to generally express the objectives and intentions of the respective parties hereto, the following statements, representations and explanations shall be accepted as predicates for the undertakings and commitments included within the provisions of this Agreement which follow and may be relied upon by the parties as essential elements of the mutual considerations upon which this Agreement is based.

- 2.1 Pursuant to Section 287.055, Florida Statutes, TOWN has formed a Committee to evaluate the CONSULTANT's statement of qualifications and performance data to ensure that the CONSULTANT has met the requirements of the Consultants' Competitive Negotiation Act, as set forth in Section 287.055, Florida Statutes, and has selected CONSULTANT to perform services hereunder.

ARTICLE 3 SCOPE OF SERVICES

- 3.1 Work under this Project includes but is not limited to providing Engineering and Architectural Services according to the RFQ Scope of Services and its Exhibits.
- 3.2 TOWN and CONSULTANT acknowledge that the Scope of Services does not delineate every detail and minor work tasks required to be performed by CONSULTANT to complete the Project. If, during the course of the performance of the services included in this Agreement, CONSULTANT determines that work should be performed to complete the Project which is in the CONSULTANT's opinion, outside the level of effort originally anticipated, whether or not the Scope of Services identifies the work items, CONSULTANT shall notify Contract Administrator and obtain written approval by the TOWN in a timely manner before proceeding with the work. If CONSULTANT proceeds with said work without notifying the Contract Administrator, said work shall be deemed to be within the original level of effort, whether or not specifically addressed in the Scope of Services. Notice to Contract Administrator does not constitute authorization or approval by TOWN to perform the work. Performance of work by CONSULTANT outside the originally anticipated level of effort without prior written TOWN approval is at CONSULTANT's sole risk.

ARTICLE 4 GENERAL PROVISIONS

- 4.1 Negotiations pertaining to the professional design, engineering, architectural and project management services to be performed by the CONSULTANT have been undertaken between CONSULTANT and a committee of TOWN representatives pursuant to Section 287.055, Florida Statutes, and this Agreement incorporates the results of such negotiation.
- 4.2 CONSULTANT shall include TOWN's specific Task Order number as part of the heading on all correspondence, invoices and drawings. All correspondence shall be directed specifically to the Contract Administrator.

ARTICLE 5 TASK ORDERS

- 5.1 The Project will be divided into "Tasks."
- 5.2 Task Orders shall be jointly prepared by the TOWN and CONSULTANT defining the detailed scope of services to be provided for the particular Project. Each Task Order shall be separately numbered and approved in accordance with this Agreement and all applicable TOWN code requirements.
- 5.3 Under all Task Orders and Projects, TOWN may require the CONSULTANT, by specific written authorization, and for mutually agreed upon additional compensation, to provide

or assist in obtaining one or more of the following special services. These services may include, at the discretion of the TOWN, the following items:

- 5.3.1 Providing additional copies of reports, contract drawings and documents; and
- 5.3.2 Assisting TOWN with litigation support services arising from the planning, development, or construction.
- 5.4 Prior to initiating the performance of any services under this Agreement, CONSULTANT must receive a written Notice to Proceed from the TOWN. The CONSULTANT must receive the approval of the Contract Administrator or designee in writing prior to beginning the performance of services in any subsequent Task Order under this Agreement.
- 5.5 If, in the opinion of the TOWN, the CONSULTANT is improperly performing the services under a specific Task Order, or if at any time the TOWN shall be of the opinion that said Task Order is being unnecessarily delayed and will not be completed within the agreed upon time, the TOWN shall notify the CONSULTANT in writing. The CONSULTANT has within ten (10) working days thereafter to take such measures as will, in the judgment of the TOWN, ensure satisfactory performance and completion of the work. If the CONSULTANT fails to cure within the ten (10) working days, the TOWN may notify the CONSULTANT to discontinue all work under the specified Task Order. The CONSULTANT shall immediately respect said notice and stop said work and cease to have any rights in the possession of the work and shall forfeit the Task Order and any remaining monies. The TOWN may then decide, after Town Council approval, to issue a new Task Order for the uncompleted work to another consultant using the remaining funds. Any excess costs arising therefrom over and above the original Task Order price shall be charged against CONSULTANT, as the original CONSULTANT.

ARTICLE 6

TERM OF AGREEMENT; TIME FOR PERFORMANCE

- 6.1 The initial term of this Agreement shall be for three (3) years from the date of this Agreement. The TOWN shall have the option to renew this Agreement for two (2) successive one (1) year terms under the same terms, conditions, and compensation as set forth herein.
- 6.2 CONSULTANT shall perform the services described in Task Orders within the time periods specified in the Task Order. Said time periods shall commence from the date of the Notice to Proceed for such services.
- 6.3 Prior to beginning the performance of any services under this Agreement, CONSULTANT must receive a Notice to Proceed. CONSULTANT must receive written approval from the Contract Administrator prior to beginning the performance of services in any subsequent phases of the Agreement. Prior to granting approval for CONSULTANT to proceed to a subsequent phase, the Contract Administrator may, at his or her sole option, require CONSULTANT to submit itemized deliverables/documents for the Contract Administrator's review.
- 6.4 In the event CONSULTANT is unable to complete any services because of delays resulting from untimely review by TOWN or other governmental authorities having

jurisdiction over the Project, and such delays are not the fault of CONSULTANT, or because of delays which were caused by factors outside the control of CONSULTANT, TOWN shall grant a reasonable extension of time for completion of the services. It shall be the responsibility of the CONSULTANT to notify TOWN promptly in writing whenever a delay in approval by a governmental agency is anticipated or experienced, and to inform TOWN of all facts and details related to the delay.

- 6.5 The time for the performance of services described in assigned Task Orders shall be negotiated by the TOWN and the CONSULTANT as the services are requested and authorized by the TOWN.

ARTICLE 7 COMPENSATION AND METHOD OF PAYMENT

7.1 AMOUNT AND METHOD OF COMPENSATION

The method of compensation for each Task Order shall be not to exceed as agreed upon per Task Order and described in Section 7.1.1 below.

7.1.1 Not To Exceed Amount Compensation

TOWN agrees to pay CONSULTANT as compensation for performance of all services as related to each Task Order under the terms of this Agreement a Not to Exceed Amount as agreed upon per Task Order. This compensation does not include Reimbursables as described in Section 7.2. It is agreed that the method of compensation is that of "Not to Exceed Amount" which means that CONSULTANT shall perform all services set forth in each Task Order for total compensation in the amount of or less than that stated total. The hourly rate-billing schedule to be used in negotiating each Task Order is attached as Exhibit "B" to this Agreement. As described in Section 8.1, no modification, amendment, or alteration to Exhibit "B" shall be effective unless contained in a written document prepared with the same formality as this Agreement and executed by the TOWN and CONSULTANT.

A not to exceed proposal shall be accompanied by the CONSULTANT's estimate. The estimate shall detail the direct labor costs by categories of employees, work hours, and hourly rate; overhead; direct non-salary expenses including reimbursables; and profit, or as required by individual Task Order.

7.2 REIMBURSABLES

- 7.2.1 Direct non-salary expenses, entitled Reimbursables, directly attributable to the Project will be charged at actual cost. Reimbursable expenses are in addition to the compensation for basic services and include actual expenditures made by the CONSULTANT and the CONSULTANT'S employees directly attributable to the Project and will be charged at actual cost, without reference to the professional service fees above. TOWN shall not withhold retainage from payments for Reimbursable Expenses. CONSULTANT shall be compensated for Reimbursables associated with a particular Task Order only up to the amount

allocated for such Task Order. Any reimbursable or portion thereof which, when added to the Reimbursables related to a particular Task Order previously billed, exceeds the amount allocated for such Task Order shall be the responsibility of the CONSULTANT unless otherwise agreed to in writing by the Contract Administrator. Travel and subsistence expenses for the CONSULTANT, his staff and subconsultants and communication expenses, long distance telephone, courier and express mail between CONSULTANT's and subconsultants' various offices are not reimbursable under this Agreement. Reimbursables shall include only the following listed expenses unless authorized in writing by the Contract Administrator:

A. Cost of reproduction, postage and handling of drawings and specifications which are required to deliver services set forth in this Agreement, excluding reproductions for the office use of the CONSULTANT. Reimbursable printing and photocopying expenses shall include only those prints or photocopies of original documents which are (i) exchanged among CONSULTANT, TOWN and other third parties retained or employed by any of them or (ii) submitted to TOWN for review, approval or further distribution. Documents, which are reproduced for CONSULTANT's internal drafts, reviews, or other purposes, are not eligible for reimbursement.

B. Identifiable testing costs approved by Contract Administrator.

C. All permit fees paid to regulatory agencies for approvals directly attributable to the Project. These permit fees do not include those permits required for the construction Contractor.

D. Overnight Delivery/Courier Charges (when TOWN requires/requests this service).

7.2.2 Reimbursable subconsultant expenses are limited to the items described above when the subconsultant agreement provides for reimbursable expenses. A detailed statement of expenses must accompany any request for reimbursement. Local travel to and from the Project site or within the Tri-County Area will not be reimbursed.

7.2.3 It is acknowledged and agreed to by CONSULTANT that the dollar limitation set forth in each Task Order is a limitation upon, and describes the maximum extent of TOWN's obligation to reimburse CONSULTANT for direct, nonsalary expenses, but does not constitute a limitation, of any sort, upon CONSULTANT's obligation to incur such expenses in the performance of services hereunder. If TOWN or Contract Administrator requests CONSULTANT to incur expenses not contemplated in the amount for Reimbursables, CONSULTANT shall notify Contract Administrator in writing before incurring such expenses. Any such expenses shall be reviewed and approved by TOWN prior to incurring such expenses.

7.3 METHOD OF BILLING

7.3.1 Not To Exceed Amount Compensation

CONSULTANT shall submit billings, which are identified by the specific project number on a monthly basis in a timely manner for all salary costs and Reimbursables attributable to the Project. These billings shall identify the nature of the work performed for each phase, subtask, deliverable and item identified in the Exhibit "A" Scope of Services or Task Order, the total hours of work performed and the employee category of the individuals performing same. The statement shall show a summary of salary costs with accrual of the total and credits for portions paid previously. Subconsultant fees must be documented by copies of invoices or receipts, which describe the nature of the expenses and contain a project number or other identifier, which clearly indicates the expense, as identifiable to the Project. Except for meals and travel expenses, it shall be deemed unacceptable for the CONSULTANT to modify the invoice or receipt by adding a project number or other identifier. Internal expenses must be documented by appropriate CONSULTANT's cost accounting forms with a summary of charges by category. When requested, CONSULTANT shall provide backup for past and current invoices that records hours and salary costs by employee category and subconsultant fees on a task basis, so that total hours and costs by task may be determined.

7.4 METHOD OF PAYMENT

7.4.1 TOWN shall pay CONSULTANT in accordance with the Florida Prompt Payment Act. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by Contract Administrator.

7.4.2 TOWN will review CONSULTANT's invoices and, if inaccuracies or errors are discovered in said invoice, TOWN will inform CONSULTANT within ten (10) working days by fax and/or by email of such inaccuracies or errors and request that revised copies of all such documents be re-submitted by CONSULTANT to TOWN.

7.4.3 Payments are made by TOWN to CONSULTANT using a Checks.

ARTICLE 8

AMENDMENTS AND CHANGES IN SCOPE OF SERVICES

8.1 No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written Amendment prepared with the same formality as this Agreement and executed by the TOWN and CONSULTANT.

8.2 TOWN or CONSULTANT may request changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under a Task Order. Such changes must be contained in a written amendment, executed by the parties hereto, with the same formality and of equal dignity herewith, prior to any deviation from the terms of the Task Order including the initiation of any additional services. TOWN shall compensate CONSULTANT for such additional services as provided in Article 7.

- 8.3 In the event a dispute between the Contract Administrator and CONSULTANT arises over whether requested services constitute additional services and such dispute cannot be resolved by the Contract Administrator and CONSULTANT, such dispute shall be promptly presented to the Town Manager for resolution. The Town Manager's decision shall be final and binding on the parties for amounts in the aggregate under \$20,000 per project. In the event of a dispute in an amount over \$20,000, the parties agree to use their best efforts to settle such dispute. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of sixty (60) days, then upon notice to the other, either party may commence litigation to resolve the dispute in Miami Dade County, Florida. Any resolution in favor of CONSULTANT shall be set forth in a written document in accordance with Section 8.2 above. During the pendency of any dispute, CONSULTANT shall promptly perform the disputed services.

ARTICLE 9 CONSULTANT'S RESPONSIBILITIES

- 9.1 The CONSULTANT, following the TOWN's approval of the Construction Documents and of the Final Statement of Probable Construction Costs, shall, when so directed and authorized by the TOWN, assist the TOWN in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction. If requested, the CONSULTANT shall review and analyze the proposals received by the TOWN, and shall make a recommendation for any award based on TOWN's Purchasing Ordinance.
- 9.2 Should the lowest responsible, responsive proposal exceed the Final Statement of Probable Construction Costs by less than 10%, CONSULTANT, at no additional cost to the TOWN, shall meet with the TOWN's representatives and work to reduce costs to bring the Original Contract Price within the Final Statement of Probable Construction Costs. Should the lowest responsible, responsive proposal exceed the Final Statement of Probable Construction Costs by 10% or more, CONSULTANT shall, at the TOWN's direction, redesign each Project and/or work with the TOWN to reduce the costs to within the Final Statement of Probable Construction Costs at no additional expense to the TOWN. If negotiations between the TOWN and the CONSULTANT have not commenced within three months after completion of the final design phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost Limit may be adjusted in accordance with the applicable change in the Construction Cost Index for Twenty Cities from the date of completion of the final design phase and the date on which proposals are sought, as published monthly in "Engineering News Record". If each Project scope and design is expanded by the TOWN after the CONSULTANT renders the estimated Construction Cost of the Plans and Specifications, the CONSULTANT shall not be responsible for any redesign without compensation.
- 9.3 The CONSULTANT shall provide the TOWN with a list of recommended, prospective proposers.
- 9.4 The CONSULTANT shall attend all pre-proposal conferences.
- 9.5 The CONSULTANT shall recommend any addenda, through the Contract Administrator, as appropriate to clarify, correct, or change proposal documents.

- 9.6 If pre-qualification of proposers is required as set forth in the request for proposal, CONSULTANT shall assist the TOWN, if requested, in developing qualification criteria, review qualifications and recommend acceptance or rejection of the proposers. If requested, CONSULTANT shall evaluate proposals and proposers, and make recommendations regarding any award by the TOWN.
- 9.7 The TOWN shall make decisions on all claims regarding interpretation of the Construction Documents, and on all other matters relating to the execution and progress of the work after receiving a recommendation from the CONSULTANT. The CONSULTANT shall check and approve samples, schedules, shop drawings and other submissions for conformance with the concept of each Project, and for compliance with the information given by the Construction Documents. The CONSULTANT may also prepare Change Orders, assemble written guarantees required of the Contractor, and approve progress payments to the Contractor based on each Project Schedule of Values and the percentage of work completed.
- 9.8 The TOWN shall maintain a record of all Change Orders which shall be categorized according to the various types, causes, etc. that it may be determined are useful or necessary for its purpose. Among those shall be Change Orders identified as architectural/engineering Errors or Omissions.
- 9.8.1 Unless otherwise agreed by both parties in writing, it is specifically agreed that any change to the work identified as an Error on the part of the CONSULTANT shall be considered for purposes of this Agreement to be an additional cost to the TOWN which would not be incurred without the Error.
- 9.8.2 Unless otherwise agreed by both parties in writing, it is further specifically agreed for purposes of this Agreement that fifteen percent (15%) of the cost of Change Orders for any item categorized as an Omission shall be considered an additional cost to the TOWN which would not be incurred without the Omission. So long as the total of those two numbers (Change Order costs of Errors plus fifteen percent (15%) of Omissions) remains less than two percent (2%) of the total Construction Cost of the Project, the TOWN shall not look to the CONSULTANT for reimbursement for Errors and Omissions.
- 9.8.3 Should the sum of the two as defined above (cost of Errors plus fifteen percent (15%) of the cost of Omissions) exceed two percent (2%) of the Construction Cost, the TOWN shall recover the full and total additional cost to the TOWN as a result of CONSULTANT's Errors and Omissions from the CONSULTANT, that being defined as the cost of Errors plus fifteen percent (15%) of the cost of Omissions above two percent (2%) of the Construction Cost.
- 9.8.4 To obtain such recovery, the TOWN shall deduct from the CONSULTANT's fee a sufficient amount to recover all such additional cost to the TOWN.
- 9.8.5 In executing this Agreement, the CONSULTANT acknowledges acceptance of these calculations and to the TOWN's right to recover same as stated above. The recovery of additional costs to the TOWN under this paragraph shall not limit or preclude recovery for other separate and/or additional damages which the TOWN may otherwise incur.

9.8.6 The Contract Administrator's decision as to whether a Change Order is caused by an Error or caused by an Omission, taking into consideration industry standards, shall be final and binding on both parties for amounts in the aggregate under \$20,000 per project. In the event of a dispute in an amount over \$20,000, the parties agree to use their best efforts to settle such dispute. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of sixty (60) days, then upon notice to the other, either party may commence litigation to resolve the dispute in Miami Dade County, Florida.

ARTICLE 10 TOWN'S RESPONSIBILITIES

- 10.1 TOWN shall assist CONSULTANT by placing at CONSULTANT's disposal all information TOWN has available pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- 10.2 TOWN shall arrange for access to, and make all provisions for, CONSULTANT to enter upon public and private property as required for CONSULTANT to perform its services.
- 10.3 TOWN shall review the itemized deliverables/documents identified per Task Order.
- 10.4 TOWN shall give prompt written notice to CONSULTANT whenever TOWN observes or otherwise becomes aware of any development that affects the scope or timing of CONSULTANT's services or any defect in the work of the Contractor.

ARTICLE 11 MISCELLANEOUS

11.1 OWNERSHIP OF DOCUMENTS

All documents including, but not limited to, drawings, renderings, plans, studies, models, and specifications prepared or furnished by CONSULTANT, its dependent professional associates and consultants, pursuant to this Agreement shall be owned by the TOWN.

Drawings, specifications, designs, plans, studies, spreadsheets, models, photographs, reports, surveys and other data prepared in connection with this Agreement are and shall remain the property of the TOWN whether the Project for which they are made is executed or not, and are subject to reuse by the TOWN in accordance with Section 287.055(10) of the Florida Statutes. They are not intended or represented to be suitable for reuse by the TOWN or others on extensions of this Project or on any other project without appropriate verification or adaptation. This does not, however, relieve the CONSULTANT of liability or legal exposure for errors, omissions, or negligent acts made on the part of the CONSULTANT in connection with the proper use of documents prepared under this Agreement. Any such verification or adaptation may entitle the CONSULTANT to further compensation at rates to be agreed upon by the TOWN and the CONSULTANT. This shall not limit the TOWN's reuse of preliminary or developmental plans or ideas incorporated therein, should the Project be suspended or terminated prior to completion.

11.2 TERMINATION

11.2.1 Termination for Cause. It is expressly understood and agreed that the TOWN may terminate this Agreement at any time for cause in the event that the CONSULTANT (1) violates any provisions of this Agreement or performs same in bad faith or (2) unreasonably delays the performance of the services or does not perform the services in a timely manner upon written notice to the CONSULTANT. Notice of termination shall be provided in accordance with Section 11.27. In the case of termination by the TOWN for cause, the CONSULTANT shall be first granted a 10 working day cure period after receipt of written notice from the TOWN. In the event that the Agreement is terminated, the CONSULTANT shall be entitled to be compensated for the services rendered from the date of execution of the Agreement up to the time of termination. Such compensation shall be based on the fee as set forth above, wherever possible. For those portions of services rendered to which the applicable fee cannot be applied, payment shall be based upon the appropriate rates for the actual time spent on the project. In the event that the CONSULTANT abandons this Agreement or through violation of any of the terms and conditions of this Agreement, causes it to be terminated, CONSULTANT shall indemnify the TOWN against any loss pertaining to this termination.

All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by CONSULTANT shall become the property of TOWN and shall be delivered by CONSULTANT to the TOWN within five (5) days of TOWN's request. Upon payment of such sum by TOWN to CONSULTANT, TOWN shall have no further duties or obligations pursuant to or arising from this Agreement.

11.2.2 This Agreement may also be terminated by TOWN upon such notice as TOWN deems appropriate in the event TOWN or Contract Administrator determines that termination is necessary to protect the public health, safety, or welfare.

11.2.3 Notice of termination shall be provided in accordance with Section 11.27, NOTICES, except that Contract Administrator may provide a prior verbal stop work order if the Contract Administrator deems a stop work order of this Agreement in whole or in part is necessary to protect the public's health, safety, or welfare. A verbal stop work order shall be promptly confirmed in writing as set forth in Section 11.27, NOTICES.

11.2.4 Termination for Convenience. In the event this Agreement is terminated for convenience, CONSULTANT shall be paid for any services performed to the date the Agreement is terminated. Compensation shall be withheld until all documents specified in Section 11.3 of this Agreement are provided to the TOWN. Upon being notified of TOWN's election to terminate, CONSULTANT shall refrain from performing further services or incurring additional expenses under the terms of this Agreement. Under no circumstances shall TOWN make payment for services which have not been performed.

11.2.5 Termination by Consultant. CONSULTANT shall have the right to terminate this Agreement upon substantial breach by the TOWN of its obligation under this

Agreement as to unreasonable delay in payment or non-payment of undisputed amounts. CONSULTANT shall have no right to terminate this Agreement for convenience of the CONSULTANT

11.3 AUDIT RIGHT AND RETENTION OF RECORDS

TOWN shall have the right to audit the books, records, and accounts of CONSULTANT that are related to this Project. CONSULTANT shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project.

CONSULTANT shall preserve and make available, at reasonable times for examination and audit by TOWN all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by TOWN to be applicable to CONSULTANT's records, CONSULTANT shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONSULTANT. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for TOWN's disallowance and recovery of any payment upon such entry.

CONSULTANT shall:

- a) Keep and maintain public records that ordinarily and necessarily would be required by the TOWN in order to perform the service.
- (b) Provide the public with access to public records on the same terms and conditions that the TOWN would provide the records and at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2013), as may be amended or revised, 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 TOWN, all public records in possession of the CONSULTANT upon termination of this 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 TOWN in a format that is compatible with the information technology systems of the TOWN.

11.4 NON DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

CONSULTANT shall not unlawfully discriminate against any person in its operations and activities in its use or expenditure of the funds or any portion of the funds provided by this

Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by TOWN, including Titles I and II of the ADA (regarding nondiscrimination or the basis of disability), and all applicable regulations, guidelines, and standards.

CONSULTANT's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for service delivery.

CONSULTANT shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, CONSULTANT shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

CONSULTANT shall take affirmative action to ensure that applicants are employed and employees are treated without regard to race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability during employment. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

11.5 MINORITY PARTICIPATION

Historically, the TOWN has been able to achieve great participation levels by MBE/WBE firms in TOWN projects, and in the purchase of goods and services. The CONSULTANT shall make a good faith effort to help the TOWN maintain and encourage MBE/WBE participation levels consistent with such historical levels and market conditions. The CONSULTANT will be required to document all such efforts and supply the TOWN with this documentation at the end of the Project, or in cases where projects are longer than one year, each TOWN fiscal year.

11.6 PUBLIC ENTITY CRIMES ACT

CONSULTANT represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), which essentially provides 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 bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, 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 bids, 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. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from TOWN's competitive procurement activities.

In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONSULTANT has been placed on the convicted vendor list.

11.7 SUBCONSULTANTS

11.7.1 CONSULTANT may subcontract certain items of work to subconsultant. The parties expressly agree that the CONSULTANT shall submit pertinent information regarding the proposed subconsultant, including subconsultant's scope of work and fees, for review and approval by the TOWN prior to sub-consultants proceeding with any work.

11.7.2 CONSULTANT shall utilize the subconsultants identified in the proposal that were a material part of the selection of CONSULTANT to provide the services for this Project. CONSULTANT shall obtain written approval of Contract Administrator prior to changing or modifying the list of subconsultants submitted by CONSULTANT.

The list of subconsultants submitted is as follows:

(or attach as an exhibit if more appropriate)

11.8 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered without the written consent of the other party, and CONSULTANT shall not subcontract any portion of the work required by this Agreement except as authorized pursuant to Section 11.7.

CONSULTANT represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and

services set forth in the Scope of Services and to provide and perform such services to TOWN's satisfaction for the agreed compensation.

CONSULTANT shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONSULTANT's performance and all interim and final product(s) provided to or on behalf of TOWN shall meet or exceed all professional standards of the State of Florida.

11.9 INDEMNIFICATION OF TOWN

11.9.1 CONSULTANT shall defend, counsel being subject to TOWN's approval, and indemnify and hold harmless TOWN, and TOWN's officers and employees from any and all claims, liabilities, damages, losses, penalties, fines, judgments, and costs, including, but not limited to, any award of attorneys' fees and any award of litigation costs, in connection with or arising directly or indirectly out of any act or omission by the CONSULTANT or by any officer, employee, agent, invitee, subcontractor, or subconsultant of the CONSULTANT. The provisions of this Section shall survive the expiration or early termination of this Agreement. To the extent considered necessary by Contract Administrator and TOWN attorney, any sums due the CONSULTANT under this Agreement may be retained by TOWN until all of TOWN's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by TOWN.

11.9.2 It is specifically understood and agreed that the consideration inuring to the CONSULTANT for the execution of this Agreement are the promises, payments, covenants, rights and responsibilities contained herein and the award of this Agreement to the CONSULTANT.

11.9.3 The execution of this Agreement by the CONSULTANT shall obligate the CONSULTANT to comply with the foregoing indemnification provision.

11.10 LIMITATION OF TOWN'S LIABILITY

The TOWN desires to enter into this Agreement only if in so doing the TOWN can place a limit on the TOWN'S liability for any cause of action arising out of this Agreement, so that the TOWN'S liability for any breach never exceeds the sum of \$100.00. For other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the CONSULTANT expresses its willingness to enter into this Agreement with the knowledge that the CONSULTANT'S recovery from the TOWN to any action or claim arising from the Agreement is limited to a maximum amount of \$100.00 less the amount of all funds actually paid by the TOWN to the CONSULTANT pursuant to this Agreement. Accordingly, and notwithstanding any other term or condition of this Agreement that may suggest otherwise, the CONSULTANT agrees that the TOWN shall not be liable to the CONSULTANT for damages in an amount in excess of \$100.00, which amount shall be reduced by the amount actually paid by the TOWN to the CONSULTANT pursuant to this Agreement, for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any manner intended either to be a waiver of the limitation placed upon the TOWN'S liability as set forth in Section 768.28, Florida Statutes, or to extend the TOWN'S liability beyond the limits established in said Section 768.28; and no claim or award against the TOWN shall include

attorney's fees, investigative costs, extended damages, expert fees, suit costs or pre-judgment interest. Notwithstanding the foregoing, the parties agree and understand that the provisions of this Article 11.10 do not apply to monies owed, if any, for services rendered to CONSULTANT by the TOWN under the provisions of this Agreement.

11.11 INSURANCE

11.11.1 CONSULTANT shall provide and shall require all of its sub-consultants and sub-contractors to provide, pay for, and maintain in force at all times during the term of the Agreement, such insurance, including Commercial General Liability Insurance, Business Automobile Liability Insurance, Workers' Compensation Insurance, Employer's Liability Insurance, and Professional Liability Insurance, as stated below. Such policy or policies shall be issued by companies authorized to transact business and issue insurance policies in the State of Florida and having agents upon whom service of process may be made in the State of Florida.

- A. The Commercial General Liability insurance policy shall name the Town of Bay Harbor Islands, a Florida municipality, as additional insured. BINDERS ARE UNACCEPTABLE. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the CONSULTANT. Any exclusions or provisions in the insurance maintained by the CONSULTANT that precludes coverage for the work contemplated in this Agreement shall be deemed unacceptable, and shall be considered a breach of contract.
- B. The CONSULTANT shall provide the TOWN an original Certificate of Insurance for policies required by Article 11. All certificates shall state that the TOWN shall be given thirty (30) days' notice prior to expiration or cancellation of the policy. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the CONSULTANT to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested and addressed to the Finance Department. Such policies shall: (1) name the insurance company or companies affording coverage acceptable to the TOWN, (2) state the effective and expiration dates of the policies, (3) include special endorsements where necessary. Such policies provided under Article 11 shall not be affected by any other policy of insurance, which the TOWN may carry in its own name.
- C. CONSULTANT shall as a condition precedent of this Agreement, furnish to the Town of Bay Harbor Islands, Public Works Director, 9665 Bay Harbor Terrace, Bay Harbor Islands, FL 33154, Certificate(s) of Insurance upon execution of this Agreement, which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

COMMERCIAL GENERAL LIABILITY

- A. Limits of Liability:
 - Bodily Injury and Property Damage Liability
 - Combined Single Limit

Each Occurrence	\$1,000,000
General Aggregate Limit	\$2,000,000
Personal Injury	\$1,000,000
Products/Completed Operations	\$1,000,000

- B. Endorsements Required:
Town of Bay Harbor Islands included as an Additional Insured
Employees included as insured
Broad Form Contractual Liability
Waiver of Subrogation
Premises/Operations
Products/Completed Operations
Independent Contractors

AUTOMOBILE BUSINESS

- A. Limits of Liability:
Bodily Injury and Property Damage Liability
Combined Single Limit \$2,000,000
Any Auto
Including Hired, Borrowed or Non-Owned Autos
- B. Endorsements Required:
Waiver of Subrogation

WORKERS' COMPENSATION

Limits of Liability: Statutory-State of Florida

PROFESSIONAL LIABILITY/ERRORS AND OMISSIONS COVERAGE

Combined Single Limit
Each Occurrence \$1,000,000
General Aggregate Limit \$2,000,000
Deductible not to exceed 10%
Must be in effect for at least five (5) years after Project completion

- 11.11.3 All insurance policies required above shall be issued by companies authorized to transact business and issue insurance policies under the laws of the State of Florida, with the following qualifications:

The Consultant's insurance must be provided by an A.M. Best's "A-" rated or better insurance company authorized to issue insurance policies in the State of Florida, subject to approval by the Town's Risk Manager. Any exclusions or provisions in the insurance maintained by the Consultant that precludes coverage for work contemplated in this project shall be deemed unacceptable, and shall be considered breach of contract.

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

The CONSULTANT shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the Project. If insurance certificates are scheduled to expire during the contractual period, the CONSULTANT shall be responsible for submitting new or renewed insurance certificates to the TOWN at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates that cover the contractual period, the TOWN shall:

- A. Suspend the Agreement until such time as the new or renewed certificates are received by the TOWN.
- B. The TOWN may, at its sole discretion, terminate the Agreement for cause and seek damages from the CONSULTANT in conjunction with the violation of the terms and conditions of the Agreement.

11.12 REPRESENTATIVE OF TOWN AND CONSULTANT

11.12.1 The parties recognize that questions in the day-to-day conduct of the Project will arise. The Contract Administrator, upon CONSULTANT's request, shall advise CONSULTANT in writing of one (1) or more TOWN employees to whom all communications pertaining to the day-to-day conduct of the Project shall be addressed.

11.12.2 CONSULTANT shall inform the Contract Administrator in writing of CONSULTANT's representative to whom matters involving the conduct of the Project shall be addressed.

11.13 ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written.

It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

11.14 CONSULTANT'S STAFF

CONSULTANT will provide the key staff identified in their proposal for the Project as long as said key staff are in CONSULTANT's employment.

CONSULTANT will obtain prior written approval of Contract Administrator to change key staff. CONSULTANT shall provide Contract Administrator with such information as necessary to determine the suitability of any proposed new key staff. Contract Administrator will be reasonable in evaluating key staff qualifications.

If Contract Administrator desires to request removal of any of CONSULTANT's staff, Contract Administrator shall first meet with CONSULTANT and provide reasonable justification for said removal.

11.15 INDEPENDENT CONTRACTOR

CONSULTANT is an independent contractor under this Agreement. Services provided by CONSULTANT shall be subject to the supervision of CONSULTANT. In providing the services, CONSULTANT or its agents shall not be acting and shall not be deemed as acting as officers, employees, or agents of the TOWN. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of CONSULTANT. The parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement.

11.16 THIRD PARTY BENEFICIARIES

Neither CONSULTANT nor TOWN intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

11.17 CONFLICTS

Neither CONSULTANT nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONSULTANT's loyal and conscientious exercise of judgment related to its performance under this Agreement.

CONSULTANT agrees that none of its officers or employees shall, during the term of this Agreement, serve as expert witness against TOWN in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of TOWN or in connection with any such pending or threatened legal or administrative proceeding. The limitations of this Section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

In the event CONSULTANT is permitted to utilize subconsultants to perform any services required by this Agreement, CONSULTANT agrees to prohibit such subconsultants, by written contract, from having any conflicts as within the meaning of this Section.

11.18 CONTINGENCY FEE

CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONSULTANT, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for CONSULTANT, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from

the award or making of this Agreement. For a breach or violation of this provision the TOWN shall have the right to terminate this Agreement without liability at its discretion, or to deduct from the Agreement price or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

11.19 WAIVER OF BREACH AND MATERIALITY

Failure by TOWN to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement.

TOWN and CONSULTANT agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

11.20 COMPLIANCE WITH LAWS

CONSULTANT shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations related to this Agreement.

11.21 SEVERANCE

In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless TOWN or CONSULTANT elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the findings by the court become final.

11.22 JOINT PREPARATION

Preparation of this Agreement has been a joint effort of TOWN and CONSULTANT and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.

11.23 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1-11 of this Agreement shall prevail and be given effect.

11.24 APPLICABLE LAW AND VENUE

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida. Venue for any lawsuit by either party against the other party or otherwise arising out of this Agreement and for any other legal proceeding shall be in Miami Dade County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida. . BY ENTERING INTO THIS AGREEMENT, CONSULTANT AND TOWN EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL

LITIGATION RELATED TO, OR ARISING OUT OF, THIS AGREEMENT.

11.25 EXHIBITS

Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The Exhibits, if not physically attached, should be treated as part of this Agreement, and are incorporated herein by reference.

11.26 TWO ORIGINAL AGREEMENTS

This Agreement shall be executed in two (2), signed Agreements, with each one treated as an original.

11.27 NOTICES

Whenever either party desires to give notice unto the other, it must be given by written notice, sent by certified United States mail, with return receipt requested, addressed to the party for whom it is intended, at the place last specified, and the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice, to-wit:

TOWN: Town Engineer
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154
Telephone: (305) 455-7275

With a copy to: Town Manager
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154
Telephone: (305) 455-7275

Town Attorney
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154
Telephone: (305) 455-7275

CONSULTANT: _____

11.28 ATTORNEY FEES

If TOWN or CONSULTANT incurs any expense in enforcing the terms of this Agreement through litigation, the prevailing party in that litigation shall be reimbursed for all such costs and expenses, including but not limited to court costs, and reasonable attorney fees incurred during litigation.

11.29 PERMITS, LICENSES AND TAXES

CONSULTANT shall, at its own expense, obtain all necessary permits and licenses, pay all applicable fees, and pay all applicable sales, consumer, use and other taxes required to comply with local ordinances, state and federal law. CONSULTANT is responsible for reviewing the pertinent state statutes regarding state taxes and for complying with all requirements therein. Any change in tax laws after the execution of this Agreement will be subject to further negotiation and CONSULTANT shall be responsible for complying with all state tax requirements.

11.30 TRUTH-IN-NEGOTIATION CERTIFICATE

Signature of this Agreement by CONSULTANT shall act as the execution of a Truth-in-Negotiation Certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums, by which the TOWN determines that contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments must be made within 1 year following the end of the contract.

11.31 EVALUATION

The TOWN maintains the right to periodically review the performance of the CONSULTANT. This review will take into account the timely execution of Task Orders, the quality of the work performed, the cost to the TOWN and the good faith efforts made by the CONSULTANT to maintain MBE/WBE participation in TOWN projects. Any deficiencies in performance will be described in writing and an opportunity afforded, where practicable, for the CONSULTANT to address and/or remedy such deficiencies.

11.32 STATUTORY COMPLIANCE

CONSULTANT shall prepare all documents and other materials for the Project in accordance with all applicable rules, laws, ordinances and governmental regulations of the State of Florida, Miami Dade County, the Town of Bay Harbor Islands, Florida and all governmental agencies having jurisdiction over the services to be provided by CONSULTANT under this Agreement or over any aspect or phase of the Project.

11.33 SCRUTINIZED COMPANIES

Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), this Section applies to any contract for goods or services of \$1 million or more:

The CONSULTANT certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List and that it does not have business operations in Cuba or Syria as provided in section 287.135, Florida Statutes (2013), as may be amended or revised. The TOWN

may terminate this Contract at the TOWN's option if the CONSULTANT is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2013), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2013), as may be amended or revised.

DRAFT

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

TOWN

TOWN OF BAY HARBOR ISLANDS, a
municipal corporation of the State of Florida

By _____
MARIA LASDAY, Town Manager

(CORPORATE SEAL)

ATTEST:

YVONNE P. HAMILTON
Town Clerk

CONSULTANT

WITNESSES:

(Witness print name)

By _____
Name: _____
Title: _____

(Witness print name)

ATTEST:

By _____

(CORPORATE SEAL)

STATE OF _____:
COUNTY OF _____:

The foregoing instrument was acknowledged before me this _____ day of _____,
20__, by _____ as _____ of
_____. They are ☐ personally known to me or ☐ have
produced _____ as identification.

(SEAL)

Notary Public, State of
(Signature of Notary taking Acknowledgment)

Name of Notary Typed, Printed or Stamped

My Commission Expires:

Commission Number

DRAFT

EXHIBIT "A"

HOURLY BILLING RATES FOR TASK ORDERS

DRAFT

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Law.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and



AMERICAN CONSULTING
ENGINEERS COUNCIL

Issued and Published Jointly By



**National Society of
Professional Engineers**
Professional Engineers in Private Practice



AMERICAN SOCIETY OF
CIVIL ENGINEERS

PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN CONSULTING ENGINEERS COUNCIL

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by

The Associated General



Contractors of America

Construction Specifications Institute



Advancement
of Construction
Technology

These General Conditions have been prepared for use with the Owner-Contractor Agreements (No. 1910-8-A-1 or 1910-8-A-2) (1996 Editions). Their provisions are interrelated and a change in one may necessitate a change in the other. Comments concerning their usage are contained in the EJCDC User's Guide (No. 1910-50). For guidance in the preparation of Supplementary Conditions, see Guide to the Preparation of Supplementary Conditions (No. 1910-17) (1996 Edition).

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National Society of Professional Engineers
1420 King Street, Alexandria, VA 22314

American Consulting Engineers Council
1015 15th Street N.W., Washington, DC 20005

American Society of Civil Engineers
345 East 47th Street, New York, NY 10017

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GENERAL CONDITIONS

ARTICLE I - DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

A. Wherever used in the Contract Documents and printed with initial or all capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof.

1. *Addenda*--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the Contract Documents.

2. *Agreement*--The written instrument which is evidence of the agreement between OWNER and CONTRACTOR covering the Work.

3. *Application for Payment*--The form acceptable to ENGINEER which is to be used by CONTRACTOR during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

4. *Asbestos*--Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

5. *Bid*--The offer or proposal of a bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

6. *Bidding Documents*--The Bidding Requirements and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).

7. *Bidding Requirements*--The Advertisement or Invitation to Bid, Instructions to Bidders, Bid security form, if any, and the Bid form with any supplements.

8. *Bonds*--Performance and payment bonds and other instruments of security.

9. *Change Order*--A document recommended by ENGINEER which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the

Contract Times, issued on or after the Effective Date of the Agreement.

10. *Claim*--A demand or assertion by OWNER or CONTRACTOR seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

11. *Contract*--The entire and integrated written agreement between the OWNER and CONTRACTOR concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*--The Contract Documents establish the rights and obligations of the parties and include the Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents. Only printed or hard copies of the items listed in this paragraph are Contract Documents. Files in electronic media format of text, data, graphics, and the like that may be furnished by OWNER to CONTRACTOR are not Contract Documents.

13. *Contract Price*--The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.03 in the case of Unit Price Work).

14. *Contract Times*--The number of days or the dates stated in the Agreement to: (i) achieve Substantial Completion; and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.

15. *CONTRACTOR*--The individual or entity with whom OWNER has entered into the Agreement.

16. *Cost of the Work*--See paragraph 11.01.A for definition.

17. *Drawings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by CONTRACTOR. Shop Drawings and other CONTRACTOR submittals are not Drawings as so defined.

18. *Effective Date of the Agreement*--The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.

19. *ENGINEER*--The individual or entity named as such in the Agreement.

20. *ENGINEER's Consultant*--An individual or entity having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.

21. *Field Order*--A written order issued by ENGINEER which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

22. *General Requirements*--Sections of Division 1 of the Specifications. The General Requirements pertain to all sections of the Specifications.

23. *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

24. *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

25. *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

26. *Liens*--Charges, security interests, or encumbrances upon Project funds, real property, or personal property.

27. *Milestone*--A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.

28. *Notice of Award*--The written notice by OWNER to the apparent successful bidder stating that upon timely compliance by the apparent successful bidder with the conditions precedent listed therein, OWNER will sign and deliver the Agreement.

29. *Notice to Proceed*--A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform the Work under the Contract Documents.

30. *OWNER*--The individual, entity, public body, or authority with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be performed.

31. *Partial Utilization*--Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.

32. *PCBs*--Polychlorinated biphenyls.

33. *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

34. *Project*--The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part as may be indicated elsewhere in the Contract Documents.

35. *Project Manual*--The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

36. *Radioactive Material*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

37. *Resident Project Representative*--The authorized representative of ENGINEER who may be assigned to the Site or any part thereof.

38. *Samples*--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

39. *Shop Drawings*--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.

40. *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for the use of CONTRACTOR.

41. *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

42. *Subcontractor*--An individual or entity having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the Site.

43. *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

44. *Supplementary Conditions*--That part of the Contract Documents which amends or supplements these General Conditions.

45. *Supplier*--A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.

46. *Underground Facilities*--All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases,

steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.

47. *Unit Price Work*--Work to be paid for on the basis of unit prices.

48. *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

49. *Work Change Directive*--A written statement to CONTRACTOR issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

50. *Written Amendment*--A written statement modifying the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the nonengineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

1.02 Terminology

A. Intent of Certain Terms or Adjectives

1. Whenever in the Contract Documents the terms "as allowed," "as approved," or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," "satisfactory," or adjectives of like effect or import are used to describe an action or determination of ENGINEER as to the Work, it is intended that such action or determination will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The

use of any such term or adjective shall not be effective to assign to ENGINEER any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.10 or any other provision of the Contract Documents.

B. Day

1. The word "day" shall constitute a calendar day of 24 hours measured from midnight to the next midnight.

C. Defective

1. The word "defective," when modifying the word "Work," refers to Work that is unsatisfactory, faulty, or deficient in that it does not conform to the Contract Documents or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.04 or 14.05).

D. Furnish, Install, Perform, Provide

1. The word "furnish," when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.

2. The word "install," when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.

3. The words "perform" or "provide," when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When "furnish," "install," "perform," or "provide" is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of CONTRACTOR, "provide" is implied.

E. Unless stated otherwise in the Contract Documents, words or phrases which have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 - PRELIMINARY MATTERS

2.01 Delivery of Bonds

A. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish.

2.02 Copies of Documents

A. OWNER shall furnish to CONTRACTOR up to ten copies of the Contract Documents. Additional copies will be furnished upon request at the cost of reproduction.

2.03 Commencement of Contract Times; Notice to Proceed

A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 Starting the Work

A. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 Before Starting Construction

A. **CONTRACTOR's Review of Contract Documents:** Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless CONTRACTOR knew or reasonably should have known thereof.

B. **Preliminary Schedules:** Within ten days after the Effective Date of the Agreement (unless otherwise specified

in the General Requirements), CONTRACTOR shall submit to ENGINEER for its timely review:

1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;

2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing, and processing such submittal; and

3. a preliminary schedule of values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

C. *Evidence of Insurance:* Before any Work at the Site is started, CONTRACTOR and OWNER shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with Article 5.

2.06 Preconstruction Conference

A. Within 20 days after the Contract Times start to run, but before any Work at the Site is started, a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.05.B, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.

2.07 Initial Acceptance of Schedules

A. Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER, and others as appropriate will be held to review for acceptability to ENGINEER as provided below the schedules submitted in accordance with paragraph 2.05.B. CONTRACTOR shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to CONTRACTOR until acceptable schedules are submitted to ENGINEER.

1. The progress schedule will be acceptable to ENGINEER if it provides an orderly progression of the Work to completion within any specified Milestones and the Contract Times. Such acceptance will not impose on ENGINEER responsibility for the progress schedule, for sequencing, scheduling, or progress of the Work nor interfere with or relieve CONTRACTOR from CONTRACTOR's full responsibility therefor.

2. CONTRACTOR's schedule of Shop Drawing and Sample submittals will be acceptable to ENGINEER if it provides a workable arrangement for reviewing and processing the required submittals.

3. CONTRACTOR's schedule of values will be acceptable to ENGINEER as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

A. The Contract Documents are complementary; what is called for by one is as binding as if called for by all.

B. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be provided whether or not specifically called for at no additional cost to OWNER.

C. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in Article 9.

3.02 Reference Standards

A. *Standards, Specifications, Codes, Laws, and Regulations*

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids).

except as may be otherwise specifically stated in the Contract Documents.

2. No provision of any such standard, specification, manual or code, or any instruction of a Supplier shall be effective to change the duties or responsibilities of OWNER, CONTRACTOR, or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall any such provision or instruction be effective to assign to OWNER, ENGINEER, or any of ENGINEER's Consultants, agents, or employees any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 Reporting and Resolving Discrepancies

A. Reporting Discrepancies

1. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any Law or Regulation applicable to the performance of the Work or of any standard, specification, manual or code, or of any instruction of any Supplier, CONTRACTOR shall report it to ENGINEER in writing at once. CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as required by paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.04; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity, or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.

B. Resolving Discrepancies

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:

a. the provisions of any standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or

b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Amending and Supplementing Contract Documents

A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) a Written Amendment; (ii) a Change Order; or (iii) a Work Change Directive.

B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways: (i) a Field Order; (ii) ENGINEER's approval of a Shop Drawing or Sample; or (iii) ENGINEER's written interpretation or clarification.

3.05 Reuse of Documents

A. CONTRACTOR and any Subcontractor or Supplier or other individual or entity performing or furnishing any of the Work under a direct or indirect contract with OWNER: (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, including electronic media editions; and (ii) shall not reuse any of such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaption by ENGINEER. This prohibition will survive final payment, completion, and acceptance of the Work, or termination or completion of the Contract. Nothing herein shall preclude CONTRACTOR from retaining copies of the Contract Documents for record purposes.

ARTICLE 4 - AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

A. OWNER shall furnish the Site. OWNER shall notify CONTRACTOR of any encumbrances or restrictions not of general application but specifically related to use of the Site with which CONTRACTOR must comply in performing the Work. OWNER will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If CONTRACTOR and OWNER are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in OWNER's furnishing the Site, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

B. Upon reasonable written request, OWNER shall furnish CONTRACTOR with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and OWNER's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.

C. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Subsurface and Physical Conditions

A. *Reports and Drawings:* The Supplementary Conditions identify:

1. those reports of explorations and tests of subsurface conditions at or contiguous to the Site that ENGINEER has used in preparing the Contract Documents; and

2. those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) that ENGINEER has used in preparing the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER, or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR, and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or

3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

A. *Notice:* If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the Site that is uncovered or revealed either:

1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraph 4.02 is materially inaccurate; or

2. is of such a nature as to require a change in the Contract Documents; or

3. differs materially from that shown or indicated in the Contract Documents; or

4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents;

then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *ENGINEER's Review:* After receipt of written notice as required by paragraph 4.03.A, ENGINEER will promptly review the pertinent condition, determine the necessity of OWNER's obtaining additional exploration or tests with respect thereto, and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER's findings and conclusions.

C. Possible Price and Times Adjustments

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in CONTRACTOR's cost of, or time required for, performance of the Work; subject, however, to the following:

- a. such condition must meet any one or more of the categories described in paragraph 4.03.A; and

- b. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.08 and 11.03.

2. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Contract Times if:

a. CONTRACTOR knew of the existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or

b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or

c. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.03.A.

3. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in paragraph 10.05. However, OWNER, ENGINEER, and ENGINEER's Consultants shall not be liable to CONTRACTOR for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.04 Underground Facilities

A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities, including OWNER, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

2. the cost of all of the following will be included in the Contract Price, and CONTRACTOR shall have full responsibility for:

a. reviewing and checking all such information and data,

b. locating all Underground Facilities shown or indicated in the Contract Documents,

c. coordination of the Work with the owners of such Underground Facilities, including OWNER, during construction, and

d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility.

2. If ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price of Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in Contract Price or Contract Times, OWNER or CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

4.05 Reference Points

A. OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and property

monuments, and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Hazardous Environmental Condition at Site

A. *Reports and Drawings:* Reference is made to the Supplementary Conditions for the identification of those reports and drawings relating to a Hazardous Environmental Condition identified at the Site, if any, that have been utilized by the ENGINEER in the preparation of the Contract Documents.

B. *Limited Reliance by CONTRACTOR on Technical Data Authorized:* CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any Claim against OWNER, ENGINEER or any of ENGINEER's Consultants with respect to:

1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto; or

2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or

3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.

C. CONTRACTOR shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. CONTRACTOR shall be responsible for a Hazardous Environmental Condition created with any materials brought to the Site by CONTRACTOR, Subcontractors, Suppliers, or anyone else for whom CONTRACTOR is responsible.

D. If CONTRACTOR encounters a Hazardous Environmental Condition or if CONTRACTOR or anyone for whom CONTRACTOR is responsible creates a Hazardous

Environmental Condition, CONTRACTOR shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by paragraph 6.16); and (iii) notify OWNER and ENGINEER (and promptly thereafter confirm such notice in writing). OWNER shall promptly consult with ENGINEER concerning the necessity for OWNER to retain a qualified expert to evaluate such condition or take corrective action, if any.

E. CONTRACTOR shall not be required to resume Work in connection with such condition or in any affected area until after OWNER has obtained any required permits related thereto and delivered to CONTRACTOR written notice: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by CONTRACTOR, either party may make a Claim therefor as provided in paragraph 10.05.

F. If after receipt of such written notice CONTRACTOR does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then OWNER may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If OWNER and CONTRACTOR cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in paragraph 10.05. OWNER may have such deleted portion of the Work performed by OWNER's own forces or others in accordance with Article 7.

G. To the fullest extent permitted by Laws and Regulations, OWNER shall indemnify and hold harmless CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the scope of the Work, and (ii) was not created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing

In this paragraph 4.06.E shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

H. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, other consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by CONTRACTOR or by anyone for whom CONTRACTOR is responsible. Nothing in this paragraph 4.06.F shall obligate CONTRACTOR to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

I. The provisions of paragraphs 4.02, 4.03, and 4.04 are not intended to apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 - BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

A. CONTRACTOR shall furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as provided otherwise by Laws or Regulations or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Contract Documents.

B. All Bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

C. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements

of paragraph 5.01.B, CONTRACTOR shall within 20 days thereafter substitute another Bond and surety, both of which shall comply with the requirements of paragraphs 5.01.B and 5.02.

5.02 *Licensed Sureties and Insurers*

A. All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 *Certificates of Insurance*

A. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain. OWNER shall deliver to CONTRACTOR, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by CONTRACTOR or any other additional insured) which OWNER is required to purchase and maintain.

5.04 *CONTRACTOR's Liability Insurance*

A. CONTRACTOR shall purchase and maintain such liability and other insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed by CONTRACTOR, any Subcontractor or Supplier, or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;

2. claims for damages because of bodily injury, occupational, sickness or disease, or death of CONTRACTOR's employees;

3. claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

4. claims for damages insured by reasonably available personal injury liability coverage which are sustained: (i) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (ii) by any other person for any other reason;

5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and

6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance so required by this paragraph 5.04 to be purchased and maintained shall:

1. with respect to insurance required by paragraphs 5.04.A.3 through 5.04.A.6 inclusive, include as additional insureds (subject to any customary exclusion in respect of professional liability) OWNER, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;

3. include completed operations insurance;

4. include contractual liability insurance covering CONTRACTOR's indemnity obligations under paragraphs 6.07, 6.11, and 6.20;

5. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the CONTRACTOR pursuant to paragraph 5.03 will so provide);

6. remain in effect at least until final payment and at all times thereafter when CONTRACTOR may be

correcting, removing, or replacing defective Work in accordance with paragraph 13.07; and

7. with respect to completed operations insurance and any insurance coverage written on a claims-made basis, remain in effect for at least two years after final payment (and CONTRACTOR shall furnish OWNER and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to OWNER and any such additional insured of continuation of such insurance at final payment and one year thereafter).

5.05 OWNER's Liability Insurance

A. In addition to the insurance required to be provided by CONTRACTOR under paragraph 5.04, OWNER, at OWNER's option, may purchase and maintain at OWNER's expense OWNER's own liability insurance as will protect OWNER against claims which may arise from operation under the Contract Documents.

5.06 Property Insurance

A. Unless otherwise provided in the Supplementary Conditions, OWNER shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amount as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:

1. include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them each of whom is deemed to have an insurable interest and shall be listed as an additional insured;

2. be written on a Builder's Risk "all-risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, false work, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, and such other perils or causes of loss as may be specifically required by the Supplementary Conditions;

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by OWNER prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by ENGINEER;

5. allow for partial utilization of the Work by OWNER;

6. include testing and startup; and

7. be maintained in effect until final payment is made unless otherwise agreed to in writing by OWNER, CONTRACTOR, and ENGINEER with 30 days written notice to each other additional insured to whom a certificate of insurance has been issued.

B. OWNER shall purchase and maintain such boiler and machinery insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and any other individuals or entities identified in the Supplementary Conditions, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured.

C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to OWNER and CONTRACTOR and to each other additional insured to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with paragraph 5.07.

D. OWNER shall not be responsible for purchasing and maintaining any property insurance specified in this paragraph 5.06 to protect the interests of CONTRACTOR, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by CONTRACTOR, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

E. If CONTRACTOR requests in writing that other special insurance be included in the property insurance policies provided under paragraph 5.06, OWNER shall, if possible, include such insurance, and the cost thereof will be charged to CONTRACTOR by appropriate Change Order or Written Amendment. Prior to commencement of the Work

at the Site, OWNER shall in writing advise CONTRACTOR whether or not such other insurance has been procured by OWNER.

5.07 Waiver of Rights

A. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraph 5.06 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

B. OWNER waives all rights against CONTRACTOR, Subcontractors, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them for:

1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to OWNER's property or the Work caused by, arising out of, or resulting from fire or other peril whether or not insured by OWNER; and

2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by OWNER during partial utilization pursuant to paragraph 14.05, after Substantial Completion

pursuant to paragraph 14.04, or after final payment pursuant to paragraph 14.07.

C. Any insurance policy maintained by OWNER covering any loss, damage or consequential loss referred to in paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against CONTRACTOR, Subcontractors, ENGINEER, or ENGINEER's Consultants and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them.

5.08 Receipt and Application of Insurance Proceeds

A. Any insured loss under the policies of insurance required by paragraph 5.06 will be adjusted with OWNER and made payable to OWNER as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.08.B. OWNER shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.

B. OWNER as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, OWNER as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, OWNER as fiduciary shall give bond for the proper performance of such duties.

5.09 Acceptance of Bonds and Insurance; Option to Replace

A. If either OWNER or CONTRACTOR has any objection to the coverage afforded by or other provisions of the Bonds or Insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by paragraph 2.05.C. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required

of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 Partial Utilization, Acknowledgment of Property Insurer

A. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

6.01 Supervision and Superintendence

A. CONTRACTOR shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of OWNER or ENGINEER in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.

B. At all times during the progress of the Work, CONTRACTOR shall assign a competent resident superintendent thereto who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the Site and shall have authority to act on behalf of CONTRACTOR. All communications given to or received from the superintendent shall be binding on CONTRACTOR.

6.02 Labor; Working Hours

A. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out, and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the Site.

B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday, or any legal holiday without OWNER's written consent (which will not be unreasonably withheld) given after prior written notice to ENGINEER.

6.03 Services, Materials, and Equipment

A. Unless otherwise specified in the General Requirements, CONTRACTOR shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 Progress Schedule

A. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.07 as it may be adjusted from time to time as provided below.

1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.07) proposed adjustments in the progress schedule that will not result in changing the Contract Times (or Milestones). Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with

any provisions of the General Requirements applicable thereto.

2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of Article 12. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.05 Substitutes and "Or-Equals"

A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to ENGINEER for review under the circumstances described below.

1. "Or-Equal" Items: If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by ENGINEER as an "or-equal" item, in which case review and approval of the proposed item may, in ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

a. in the exercise of reasonable judgment ENGINEER determines that: (i) it is at least equal in quality, durability, appearance, strength, and design characteristics; (ii) it will reliably perform at least equally well the function imposed by the design concept of the completed Project as a functioning whole, and;

b. CONTRACTOR certifies that: (i) there is no increase in cost to the OWNER; and (ii) it will conform substantially, even with deviations, to the detailed requirements of the item named in the Contract Documents.

2. Substitute Items

a. If in ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under

paragraph 6.05.A.1, it will be considered a proposed substitute item.

b. CONTRACTOR shall submit sufficient information as provided below to allow ENGINEER to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by ENGINEER from anyone other than CONTRACTOR.

c. The procedure for review by ENGINEER will be as set forth in paragraph 6.05.A.2.d, as supplemented in the General Requirements and as ENGINEER may decide is appropriate under the circumstances.

d. CONTRACTOR shall first make written application to ENGINEER for review of a proposed substitute item of material or equipment that CONTRACTOR seeks to furnish or use. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified, and be suited to the same use as that specified. The application will state the extent, if any, to which the use of the proposed substitute item will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute item and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute item from that specified will be identified in the application, and available engineering, sales, maintenance, repair, and replacement services will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change, all of which will be considered by ENGINEER in evaluating the proposed substitute item. ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute item.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is shown or indicated in and expressly

required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by ENGINEER. CONTRACTOR shall submit sufficient information to allow ENGINEER, in ENGINEER's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review by ENGINEER will be similar to that provided in subparagraph 6.05.A.2.

C. *Engineer's Evaluation:* ENGINEER will be allowed a reasonable time within which to evaluate each proposal (submittal made pursuant to paragraphs 6.05.A and 6.05.B). ENGINEER will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized until ENGINEER's review is complete, which will be evidenced by either a Change Order for a substitute or an approved Shop Drawing for an "or equal." ENGINEER will advise CONTRACTOR in writing of any negative determination.

D. *Special Guarantee:* OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any substitute.

E. *ENGINEER's Cost Reimbursement:* ENGINEER will record time required by ENGINEER and ENGINEER's Consultants in evaluating substitute proposed or submitted by CONTRACTOR pursuant to paragraphs 6.05.A.2 and 6.05.B and in making changes in the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) occasioned thereby. Whether or not ENGINEER approves a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER and ENGINEER's Consultants for evaluating each such proposed substitute.

F. *CONTRACTOR's Expense:* CONTRACTOR shall provide all data in support of any proposed substitute or "or-equal" at CONTRACTOR's expense.

6.06 Concerning Subcontractors, Suppliers, and Others

A. CONTRACTOR shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to OWNER as indicated in paragraph 6.06.B), whether initially or as a replacement, against whom OWNER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or

entities to be submitted to OWNER in advance for acceptance by OWNER by a specified date prior to the Effective Date of the Agreement, and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, OWNER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by OWNER of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

C. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other individual or entity, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.

D. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR.

E. CONTRACTOR shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with ENGINEER through CONTRACTOR.

F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

G. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor

or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.06, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, ENGINEER's Consultants, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds (and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

6.07 Patent Fees and Royalties

A. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees or agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 Permits

A. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits

and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto, such as plant investment fees.

6.09 Laws and Regulations

A. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

B. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such Work; however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.03.

C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustments, a Claim may be made therefor as provided in paragraph 10.05.

6.10 Taxes

A. CONTRACTOR shall pay all sales, consumer, use, and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas

1. CONTRACTOR shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not

unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or area resulting from the performance of the Work.

2. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or a law.

3. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultant, and the officers, directors, partners, employees, agents, and other consultants of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER, or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.

B. *Removal of Debris During Performance of the Work:* During the progress of the Work CONTRACTOR shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.

C. *Cleaning:* Prior to Substantial Completion of the Work CONTRACTOR shall clean the Site and make it ready for utilization by OWNER. At the completion of the Work CONTRACTOR shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

D. *Loading Structures:* CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 Record Documents

A. CONTRACTOR shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work

Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to ENGINEER for OWNER.

6.13 Safety and Protection

A. CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

1. all persons on the Site or who may be affected by the Work;
2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

B. CONTRACTOR shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property. All damage, injury, or loss to any property referred to in paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or ENGINEER's Consultant, or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them). CONTRACTOR's duties and

responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 Safety Representative

A. CONTRACTOR shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 Hazard Communication Programs

A. CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 Emergencies

A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, CONTRACTOR is obligated to act to prevent threatened damage, injury, or loss. CONTRACTOR shall give ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If ENGINEER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 Shop Drawings and Samples

A. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample submittals. All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show ENGINEER the services, materials, and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.17.E.

B. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with the acceptable schedule of Shop Drawings and Sample

submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers, and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by paragraph 6.17.E. The numbers of each Sample to be submitted will be as specified in the Specifications.

C. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER as required by paragraph 2.07, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

D. Submittal Procedures

1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:

a. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;

b. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work;

c. all information relative to means, methods, techniques, sequences, and procedures of construction and safety precautions and programs incident thereto; and

d. CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

2. Each submittal shall bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR's review and approval of that submittal.

3. At the time of each submittal, CONTRACTOR shall give ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a specific notation to be made on each Shop

Drawing and Sample submitted to ENGINEER for review and approval of each such variation.

E. ENGINEER's Review

1. ENGINEER will timely review and approve Shop Drawings and Samples in accordance with the schedule of Shop Drawings and Sample submittals acceptable to ENGINEER. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

2. ENGINEER's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER's attention to each such variation at the time of each submittal as required by paragraph 6.17.D.3 and ENGINEER has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.17.D.1.

F. Resubmittal Procedures

1. CONTRACTOR shall make corrections required by ENGINEER and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

6.18 Continuing the Work

A. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except

as permitted by paragraph 15.04 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.19 CONTRACTOR's General Warranty and Guarantee

A. CONTRACTOR warrants and guarantees to OWNER, ENGINEER, and ENGINEER's Consultants that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

1. abuse, modification, or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors, Suppliers, or any other individual or entity for whom CONTRACTOR is responsible; or

2. normal wear and tear under normal usage.

B. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

1. observations by ENGINEER;

2. recommendation by ENGINEER or payment by OWNER of any progress or final payment;

3. the issuance of a certificate of Substantial Completion by ENGINEER or any payment related thereto by OWNER;

4. use or occupancy of the Work or any part thereof by OWNER;

5. any acceptance by OWNER or any failure to do so;

6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER;

7. any inspection, test, or approval by others; or

8. any correction of defective Work by OWNER.

6.20 Indemnification

A. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, ENGINEER's Consultants, and the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them from

and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage:

1. is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom; and

2. is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of an individual or entity indemnified hereunder or whether liability is imposed upon such indemnified party by Laws and Regulations regardless of the negligence of any such individual or entity.

B. In any and all claims against OWNER or ENGINEER or any of their respective consultants, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of CONTRACTOR, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.

C. The indemnification obligations of CONTRACTOR under paragraph 6.20.A shall not extend to the liability of ENGINEER and ENGINEER's Consultants or to the officers, directors, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

1. the preparation or approval of, or the failure to prepare or approve, maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or

2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

ARTICLE 7 - OTHER WORK

7.01 *Related Work at Site*

A. OWNER may perform other work related to the Project at the Site by OWNER's employees, or let other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:

1. written notice thereof will be given to CONTRACTOR prior to starting any such other work; and

2. if OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in paragraph 10.05.

B. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the other work with OWNER's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

C. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of CONTRACTOR's Work. CONTRACTOR's failure to so report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

A. If OWNER intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:

1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and

3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility for such coordination.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

A. Except as otherwise provided in these General Conditions, OWNER shall issue all communications to CONTRACTOR through ENGINEER.

8.02 *Replacement of ENGINEER*

A. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer to whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

8.03 *Furnish Data*

A. OWNER shall promptly furnish the data required of OWNER under the Contract Documents.

8.04 *Pay Promptly When Due*

A. OWNER shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

A. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.01 and 4.05. Paragraph 4.02 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations

and tests of subsurface conditions and drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site that have been utilized by ENGINEER in preparing the Contract Documents.

8.06 Insurance

A. OWNER's responsibilities, if any, in respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 Change Orders

A. OWNER is obligated to execute Change Orders as indicated in paragraph 10.03.

8.08 Inspections, Tests, and Approvals

A. OWNER's responsibility in respect to certain inspections, tests, and approvals is set forth in paragraph 13.03.B.

8.09 Limitations on OWNER's Responsibilities

A. The OWNER shall not supervise, direct, or have control or authority over, nor be responsible for, CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. OWNER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

8.10 Undisclosed Hazardous Environmental Condition

A. OWNER's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in paragraph 4.06.

8.11 Evidence of Financial Arrangements

A. If and to the extent OWNER has agreed to furnish CONTRACTOR reasonable evidence that financial arrangements have been made to satisfy OWNER's obligations under the Contract Documents, OWNER's responsibility in respect thereof will be as set forth in the Supplementary Conditions.

ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

9.01 OWNER'S Representative

A. ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and will not be changed without written consent of OWNER and ENGINEER.

9.02 Visits to Site

A. ENGINEER will make visits to the Site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER, for the benefit of OWNER, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work.

B. ENGINEER's visits and observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.10, and particularly, but without limitation, during or as a result of ENGINEER's visits or observations of CONTRACTOR's Work. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work.

9.03 Project Representative

A. If OWNER and ENGINEER agree, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more extensive observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.10 and in the Supplementary Conditions. If OWNER designates another

representative or agent to represent OWNER at the Site who is not ENGINEER's Consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

9.04 *Clarifications and Interpretations*

A. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents as ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from the Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a written clarification or interpretation, a Claim may be made therefor as provided in paragraph 10.05.

9.05 *Authorized Variations in Work*

A. ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on OWNER and also on CONTRACTOR, who shall perform the Work involved promptly. If OWNER and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefor as provided in paragraph 10.05.

9.06 *Rejecting Defective Work*

A. ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective, or that ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.07 *Shop Drawings, Change Orders and Payments*

A. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraph 6.17.

B. In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12.

C. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

9.08 *Determinations for Unit Price Work*

A. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding (except as modified by ENGINEER to reflect changed factual conditions or more accurate data) upon OWNER and CONTRACTOR, subject to the provisions of paragraph 10.05.

9.09 *Decisions on Requirements of Contract Documents and Acceptability of Work*

A. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work, the quantities and classifications of Unit Price Work, the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, and Claims seeking changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing, in accordance with the provisions of paragraph 10.05, with a request for a formal decision.

B. When functioning as interpreter and judge under this paragraph 9.09, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to this paragraph 9.09 with respect to any such Claim, dispute, or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.07) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such Claim, dispute, or other matter.

9.10 *Limitations on ENGINEER's Authority and Responsibilities*

A. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority

or responsibility or the undertaking, exercise, or performance of any authority or responsibility by ENGINEER shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.

B. ENGINEER will not supervise, direct, control, or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

C. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

D. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.

E. The limitations upon authority and responsibility set forth in this paragraph 9.10 shall also apply to ENGINEER's Consultants, Resident Project Representative, and assistants.

ARTICLE 10 - CHANGES IN THE WORK; CLAIMS

10.01 *Authorized Changes in the Work*

A. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

B. If OWNER and CONTRACTOR are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change

Directive, a Claim may be made therefor as provided in paragraph 10.05.

10.02 *Unauthorized Changes in the Work*

A. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in paragraph 3.04, except in the case of an emergency as provided in paragraph 6.15 or in the case of uncovering Work as provided in paragraph 13.04.B.

10.03 *Execution of Change Orders*

A. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER (or Written Amendments) covering:

1. changes in the Work which are: (i) ordered by OWNER pursuant to paragraph 10.01.A, (ii) required because of acceptance of defective Work under paragraph 13.08.A or OWNER's correction of defective Work under paragraph 13.09, or (iii) agreed to by the parties;

2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and

3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.18.A.

10.04 *Notification to Surety*

A. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility. The amount of each applicable Bond will be adjusted to reflect the effect of any such change.

10.05 Claims and Disputes

A. *Notice:* Written notice stating the general nature of each Claim, dispute, or other matter shall be delivered by the claimant to ENGINEER and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. Notice of the amount or extent of the Claim, dispute, or other matter with supporting data shall be delivered to the ENGINEER and the other party to the Contract within 60 days after the start of such event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of such Claim, dispute, or other matter). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of paragraph 12.01.B. A Claim for an adjustment in Contract Time shall be prepared in accordance with the provisions of paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The opposing party shall submit any response to ENGINEER and the claimant within 30 days after receipt of the claimant's last submittal (unless ENGINEER allows additional time).

B. *ENGINEER's Decision:* ENGINEER will render a formal decision in writing within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any. ENGINEER's written decision on such Claim, dispute, or other matter will be final and binding upon OWNER and CONTRACTOR unless:

1. an appeal from ENGINEER's decision is taken within the time limits and in accordance with the dispute resolution procedures set forth in Article 16; or

2. if no such dispute resolution procedures have been set forth in Article 16, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within 30 days after the date of such decision, and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction within 60 days after the date of such decision or within 60 days after Substantial Completion, whichever is later (unless otherwise agreed in writing by OWNER and CONTRACTOR), to exercise such rights or remedies as the appealing party may have with respect to such Claim, dispute, or other matter in accordance with applicable Laws and Regulations.

C. If ENGINEER does not render a formal decision in writing within the time stated in paragraph 10.05.B, a decision denying the Claim in its entirety shall be deemed to have been issued 31 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any.

D. No Claim for an adjustment in Contract Price or Contract Times (or Milestones) will be valid if not submitted in accordance with this paragraph 10.05.

ARTICLE 11 - COST OF THE WORK; CASH ALLOWANCES; UNIT PRICE WORK

11.01 Cost of the Work

A. *Costs Included:* The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to CONTRACTOR will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in paragraph 11.01.B.

1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen, and other personnel employed full time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by OWNER.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

3. Payments made by CONTRACTOR to Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER, who will then determine, with the advice of ENGINEER, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in this paragraph 11.01.

4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.

5. Supplemental costs including the following:

a. The proportion of necessary transportation, travel, and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.

b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of CONTRACTOR.

c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, assembly, dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

d. Sales, consumer, use, and other similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

e. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable,

and royalty payments and fees for permits and licenses.

f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee.

g. The cost of utilities, fuel, and sanitary facilities at the Site.

h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, expressage, and similar petty cash items in connection with the Work.

i. When the Cost of the Work is used to determine the value of a Change Order or of a Claim, the cost of premiums for additional Bonds and insurance required because of the changes in the Work or caused by the event giving rise to the Claim.

j. When all the Work is performed on the basis of cost-plus, the costs of premiums for all Bonds and insurance CONTRACTOR is required by the Contract Documents to purchase and maintain.

B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:

1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by CONTRACTOR, whether at the Site or in CONTRACTOR's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.01.A.1 or specifically covered by paragraph 11.01.A.4, all of which are to be

considered administrative costs covered by the CONTRACTOR's fee.

2. Expenses of CONTRACTOR's principal and branch offices other than CONTRACTOR's office at the Site.

3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.

4. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraphs 11.01.A and 11.01.B.

C. **CONTRACTOR's Fee:** When all the Work is performed on the basis of cost-plus, CONTRACTOR's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, CONTRACTOR's fee shall be determined as set forth in paragraph 12.01.C.

D. **Documentation:** Whenever the Cost of the Work for any purpose is to be determined pursuant to paragraphs 11.01.A and 11.01.B, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

11.02 Cash Allowances

A. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums as may be acceptable to OWNER and ENGINEER. CONTRACTOR agrees that:

1. the allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and

2. CONTRACTOR's costs for unloading and handling on the Site, labor, installation costs, overhead, profit, and other expenses contemplated for the allow-

ances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.

B. Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER subject to the provisions of paragraph 9.08.

B. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

C. OWNER or CONTRACTOR may make a Claim for an adjustment in the Contract Price in accordance with paragraph 10.05 if:

1. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and

2. there is no corresponding adjustment with respect any other item of Work; and

3. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 - CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 *Change of Contract Price*

A. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:

1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraph 11.03); or

2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 12.01.C.2); or

3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in paragraph 11.01) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 12.01.C).

C. **CONTRACTOR's Fee:** The CONTRACTOR's fee for overhead and profit shall be determined as follows:

1. a mutually acceptable fixed fee; or

2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

a. for costs incurred under paragraphs 11.01.A.1 and 11.01.A.2, the CONTRACTOR's fee shall be 15 percent;

b. for costs incurred under paragraph 11.01.A.3, the CONTRACTOR's fee shall be five percent;

c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no

fixed fee is agreed upon, the intent of paragraph 12.01.C.2.a is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and CONTRACTOR will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

d. no fee shall be payable on the basis of costs itemized under paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;

e. the amount of credit to be allowed by CONTRACTOR to OWNER for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in CONTRACTOR's fee by an amount equal to five percent of such net decrease; and

f. when both additions and credits are involved in any one change, the adjustment in CONTRACTOR's fee shall be computed on the basis of the net change in accordance with paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 *Change of Contract Times*

A. The Contract Times (or Milestones) may only be changed by a Change Order or by a Written Amendment. Any Claim for an adjustment in the Contract Times (or Milestones) shall be based on written notice submitted by the party making the claim to the ENGINEER and the other party to the Contract in accordance with the provisions of paragraph 10.05.

B. Any adjustment of the Contract Times (or Milestones) covered by a Change Order or of any Claim for an adjustment in the Contract Times (or Milestones) will be determined in accordance with the provisions of this Article 12.

12.03 *Delays Beyond CONTRACTOR's Control*

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of CONTRACTOR, the Contract Times (or Milestones) will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in paragraph 12.02.A. Delays beyond the control of CONTRACTOR shall include, but not be limited to, acts or neglect by OWNER, acts or neglect of utility owners or other contractors performing other work as contemplated by

Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.

12.04 Delays Within CONTRACTOR's Control

A. The Contract Times (or Milestones) will not be extended due to delays within the control of CONTRACTOR. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.

12.05 Delays Beyond OWNER's and CONTRACTOR's Control

A. Where CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) due to delay beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for such delay.

12.06 Delay Damages

A. In no event shall OWNER or ENGINEER be liable to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from:

1. delays caused by or within the control of CONTRACTOR; or

2. delays beyond the control of both OWNER and CONTRACTOR including but not limited to fires, floods, epidemics, abnormal weather conditions, acts of God, or acts or neglect by utility owners or other contractors performing other work as contemplated by Article 7.

B. Nothing in this paragraph 12.06 bars a change in Contract Price pursuant to this Article 12 to compensate CONTRACTOR due to delay, interference, or disruption directly attributable to actions or inactions of OWNER or anyone for whom OWNER is responsible.

ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Notice of Defects

A. Prompt notice of all defective Work of which OWNER or ENGINEER has actual knowledge will be given

to CONTRACTOR. All defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

A. OWNER, ENGINEER, ENGINEER's Consultants, other representatives and personnel of OWNER, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspecting, and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's Site safety procedures and programs so that they may comply therewith as applicable.

13.03 Tests and Inspections

A. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.

B. OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:

1. for inspections, tests, or approvals covered by paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.04.B shall be paid as provided in said paragraph 13.04.B; and

3. as otherwise specifically provided in the Contract Documents.

C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection or approval.

D. CONTRACTOR shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to OWNER and ENGINEER.

E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.

F. Uncovering Work as provided in paragraph 13.03.B shall be at CONTRACTOR's expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

13.04 Uncovering Work

A. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.

B. If ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at ENGINEER's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a Claim therefor as provided in paragraph 10.05.

13.05 OWNER May Stop the Work

A. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop

the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 Correction or Removal of Defective Work

A. CONTRACTOR shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by ENGINEER, remove it from the Project and replace it with Work that is not defective. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.07 Correction Period

A. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for CONTRACTOR's use by OWNER or permitted by Laws and Regulations as contemplated in paragraph 6.11.A is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) repair such defective land or areas, or (ii) correct such defective Work or, if the defective Work has been rejected by OWNER, remove it from the Project and replace it with Work that is not defective, and (iii) satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

B. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that

item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.

C. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

D. CONTRACTOR's obligations under this paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this paragraph 13.07 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitation or repose.

13.08 *Acceptance of Defective Work*

A. If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to ENGINEER's recommendation of final payment, ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to OWNER's evaluation of and determination to accept such defective Work (such costs to be approved by ENGINEER as to reasonableness) and the diminished value of the Work to the extent not otherwise paid by CONTRACTOR pursuant to this sentence. If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and OWNER shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, OWNER may make a Claim therefor as provided in paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

13.09 *OWNER May Correct Defective Work*

A. If CONTRACTOR fails within a reasonable time after written notice from ENGINEER to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.06.A, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days written notice to CONTRACTOR, correct and remedy any such deficiency.

B. In exercising the rights and remedies under this paragraph, OWNER shall proceed expeditiously. In

connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the Site, take possession of all or part of the Work and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors, and ENGINEER and ENGINEER's Consultants access to the Site to enable OWNER to exercise the rights and remedies under this paragraph.

C. All Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by OWNER in exercising the rights and remedies under this paragraph 13.09 will be charged against CONTRACTOR, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, OWNER may make a Claim therefor as provided in paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of CONTRACTOR's defective Work.

D. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies under this paragraph 13.09.

ARTICLE 14 - PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 *Schedule of Values*

A. The schedule of values established as provided in paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 Progress Payments

A. Applications for Payments

1. At least 20 days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect OWNER's interest therein, all of which must be satisfactory to OWNER.

2. Beginning with the second Application for Payment, each Application shall include an affidavit of CONTRACTOR stating that all previous progress payments received on account of the Work have been applied on account to discharge CONTRACTOR's legitimate obligations associated with prior Applications for Payment.

3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications

1. ENGINEER will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

2. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's observations on the Site of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

a. the Work has progressed to the point indicated;

b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.08, and to any other qualifications stated in the recommendation); and

c. the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work.

3. By recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents; or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

4. Neither ENGINEER's review of CONTRACTOR's Work for the purposes of recommending payments nor ENGINEER's recommendation of any payment, including final payment, will impose responsibility on ENGINEER to supervise, direct, or control the Work or for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for CONTRACTOR's failure to comply with Laws and Regulations applicable to CONTRACTOR's performance of the Work. Additionally, said review or recommendation will not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes CONTRACTOR has used the moneys paid on account of the Contract Price, or to determine that title to any of the Work, materials, or equipment has passed to OWNER free and clear of any Liens.

5. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.02.B.2. ENGINEER may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests,

revise or revoke any such payment recommendation previously made, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
- b. the Contract Price has been reduced by Written Amendment or Change Orders;
- c. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.09; or
- d. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraph 15.02.A.

C. *Payment Becomes Due*

1. Ten days after presentation of the Application for Payment to OWNER with ENGINEER's recommendation, the amount recommended will (subject to the provisions of paragraph 14.02.D) become due, and when due will be paid by OWNER to CONTRACTOR.

D. *Reduction in Payment*

1. OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

- a. claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work;
- b. Liens have been filed in connection with the Work, except where CONTRACTOR has delivered a specific Bond satisfactory to OWNER to secure the satisfaction and discharge of such Liens;
- c. there are other items entitling OWNER to a set-off against the amount recommended; or
- d. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.02.B.5.a through 14.02.B.5.c or paragraph 15.02.A.

2. If OWNER refuses to make payment of the full amount recommended by ENGINEER, OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR any amount remaining after deduction of the amount so withheld.

OWNER shall promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

3. If it is subsequently determined that OWNER's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by paragraph 14.02.C.1.

14.03 *CONTRACTOR's Warranty of Title*

- A. CONTRACTOR warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

14.04 *Substantial Completion*

- A. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Promptly thereafter, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within 14 days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefor. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said 14 days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibility.

ties pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

B. OWNER shall have the right to exclude CONTRACTOR from the Site after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

14.05 Partial Utilization

A. Use by OWNER at OWNER's option of any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which OWNER, ENGINEER, and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following conditions.

1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR, and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefor. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

2. No occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of paragraph 5.10 regarding property insurance.

14.06 Final Inspection

A. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will promptly make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 Final Payment

A. Application for Payment

1. After CONTRACTOR has, in the opinion of ENGINEER, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance certificates of inspection, marked-up record documents (as provided in paragraph 6.12), and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

2. The final Application for Payment shall be accompanied (except as previously delivered) by: (i) all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by subparagraph 5.04.B.7; (ii) consent of the surety, if any, to final payment; and (iii) complete and legally effective releases or waivers (satisfactory to OWNER) of all Lien rights arising out of or Liens filed in connection with the Work.

3. In lieu of the releases or waivers of Liens specified in paragraph 14.07.A.2 and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full and an affidavit of CONTRACTOR that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER's property might in any way be responsible have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

B. Review of Application and Acceptance

1. If, on the basis of ENGINEER's observation of the Work during construction and final inspection, and ENGINEER's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within ten days after receipt of the final Application for Payment, indicate in writing ENGINEER's recommendation of payment and present the Application for Payment to OWNER for payment. At the same time ENGINEER will also give written notice to OWNER and CONTRACTOR that the Work is acceptable subject to the provisions of paragraph 14.09. Otherwise, ENGINEER will return the Application for Payment to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due

1. Thirty days after the presentation to OWNER of the Application for Payment and accompanying documentation, the amount recommended by ENGINEER will become due and, when due, will be paid by OWNER to CONTRACTOR.

14.08 Final Completion Delayed

A. If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, and if ENGINEER so confirms, OWNER shall, upon receipt of CONTRACTOR's final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by OWNER against CONTRACTOR, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

2. a waiver of all Claims by CONTRACTOR against OWNER other than those previously made in writing which are still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

15.01 OWNER May Suspend Work

A. At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes a Claim therefor as provided in paragraph 10.05.

15.02 OWNER May Terminate for Cause

A. The occurrence of any one or more of the following events will justify termination for cause:

1. CONTRACTOR's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.07 as adjusted from time to time pursuant to paragraph 6.04);

2. CONTRACTOR's disregard of Laws or Regulations of any public body having jurisdiction;

3. CONTRACTOR's disregard of the authority of ENGINEER; or

4. CONTRACTOR's violation in any substantial way of any provisions of the Contract Documents.

B. If one or more of the events identified in paragraph 15.02.A occur, OWNER may, after giving CONTRACTOR (and the surety, if any) seven days written notice, terminate

the services of CONTRACTOR, exclude CONTRACTOR from the Site, and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case, CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by OWNER arising out of or relating to completing the Work, such excess will be paid to CONTRACTOR. If such claims, costs, losses, and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses, and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and, when so approved by ENGINEER, incorporated in a Change Order. When exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

C. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.03 OWNER May Terminate For Convenience

A. Upon seven days written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. for all claims, costs, losses, and damages (including but not limited to all fees and charges of

engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and

4. for reasonable expenses directly attributable to termination.

B. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 CONTRACTOR May Stop Work or Terminate

A. If, through no act or fault of CONTRACTOR, the Work is suspended for more than 90 consecutive days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within 30 days after it is submitted, or OWNER fails for 30 days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Contract and recover from OWNER payment on the same terms as provided in paragraph 15.03. In lieu of terminating the Contract and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within 30 days after it is submitted, or OWNER has failed for 30 days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may, seven days after written notice to OWNER and ENGINEER, stop the Work until payment is made of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.04 are not intended to preclude CONTRACTOR from making a Claim under paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping the Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.01 Methods and Procedures

A. Dispute resolution methods and procedures, if any, shall be as set forth in the Supplementary Conditions. If no method and procedure has been set forth, and subject to the provisions of paragraphs 9.09 and 10.05, OWNER and CONTRACTOR may exercise such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any dispute.

ARTICLE 17 - MISCELLANEOUS

17.01 *Giving Notice*

A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 *Computation of Times*

A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 *Cumulative Remedies*

A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 *Survival of Obligations*

A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Agreement.

17.05 *Controlling Law*

A. This Contract is to be governed by the law of the state in which the Project is located.

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SUPPLEMENTARY CONDITIONS

1.01 GENERAL

These Supplementary Conditions amend or supplement the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 edit.) and other provisions of the Contract Documents as indicated below. All provisions which are not so amended or supplemented remain in full force and effect. If there is a conflict between the Contract, General Conditions (No. 1910-8, 1996 edit.) and these Supplementary Conditions, the terms of the Supplementary Conditions shall control.

The Contractor shall note physically by cross out or cross reference notations all changes in the General Conditions called for in the Supplementary Conditions before submitting his Bid.

Unless otherwise indicated in these Supplementary Conditions, replace the term "ENGINEER" wherever used in the Standard General Conditions of Contract and in these Supplementary Conditions, with "TOWN". The words "TOWN" and "OWNER" may be used interchangeably throughout these documents.

ARTICLE 1 – DEFINITIONS – Page 6

SC-1.01.A

The terms used in these Supplementary Conditions which are defined in the Standard General Conditions of the Construction Contract (No. 1910-8, 1996 edit.) have the meanings assigned to them in the General Conditions, unless otherwise indicated.

Amend paragraph SC-1.01.A.42 by replacing it with the following paragraph:

Subcontractor – An individual or entity having a direct contract with CONTRACTOR. Sub-Subcontractor is an individual or entity having a direct contract with any Subcontractor for the performance of a part of Work at the Project.

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ARTICLE 5 – BONDS AND INSURANCE – Page 15

SC-5.01

Amend paragraph 5.01.C by adding the following language at the end of the paragraph:

Any additional costs shall be borne by the Contractor.

SC-5.04

Add the new paragraphs immediately after paragraph 5.04 of the General Conditions.

The limits of liability for the insurance required by paragraph 5.04 of the General Conditions shall provide coverage for not less than the following amounts or greater where required by law:

5.04.A.1 and 5.04.A.2 Worker's Compensation, etc. under paragraphs 5.04.A.1 and 5.04.A.2 of the General Conditions:

1. Comprehensive General Liability:
 - (a) Coverage to include Premise/Operations, Broad Form Property Damage, Contractual and Personal Injury, and XCU (where applicable).
2. Limits:

(a) General Aggregate	\$1,000,000
(b) Each Occurrence	\$1,000,000
(c) Personal Injury	\$1,000,000
3. Coverage is to be written on an "occurrence" basis.
4. Owners and Contractors Protection:

(a) Bodily Injury:	
Annual Aggregate	\$2,000,000
Each Occurrence	\$1,000,000
(b) Property Damage:	
Annual Aggregate	\$2,000,000
Each Occurrence	\$1,000,000

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5. Worker's Compensation shall be in accordance with the provisions of the laws of the State of Florida.

5.04.A.6 Comprehensive Automobile Liability:

(a) Coverage to include all owned, hired, non-owned vehicles, and/or trailers and other equipment required to be licensed.

(b) Limits:

Combined Single Limit \$2,000,000

5.04.B.1 Umbrella:

(a) Limits:

Aggregate \$1,000,000

(b) Cover all claims arising out of the contractor's operations or premises, anyone directly or indirectly employed by the Contractor or Subcontractor, and the Contractor's obligations under indemnification under this Contract.

5.04.B.8 The Town of Bay Harbor Islands, shall be included as a named insured party under the Contractor's Liability Insurance. The following paragraph is required to appear unaltered on the Certificate of Insurance.

"The Town of Bay Harbor Islands, Florida is hereby named Additional Insured under the terms of this policy."

5.04.B.9 A thirty (30) day Notice of Cancellation is required and must be stated on the Certificate of Insurance.

5.04.B.10 The Certificate of Insurance shall be issued to the Town of Bay Harbor Islands, Florida at the following address:

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

ARTICLE 6 – CONTRACTOR'S RESPONSIBILITIES – INDEMNIFICATION – Page 18

SC-6.01

Add the new paragraphs immediately after paragraph 6.01.B of the General Conditions.

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The Contractor shall perform all work in compliance with all applicable safety codes. A competent English-speaking superintendent will be on the job at all times during working hours and will be subject to call during off-duty hours for emergency situations. The superintendent shall overall charge of the work with complete authority regarding the Contractor's workmen, equipment and material purchases. The superintendent shall have complete authority to act on behalf of the Contractor. This person must be sufficiently qualified and have read and understood the Drawings, Specifications and all Contract Documents.

SC-6.02

Add the new paragraphs immediately after paragraph 6.02.B of the General Conditions.

The Project sites being located in a single and multifamily residential area, there shall be no undue noise created, whether by workers arriving at the sites or by actual construction work, before 9:00 a.m. or after 5:00 p.m. Monday through Friday. No work shall be performed on Saturdays or Sundays or legal holidays as defined by the Town. There are no public sanitary facilities nearby the work sites, and the Contractor must therefore make arrangements for portable sanitary facilities as authorized by the Town.

SC-6.06

Amend paragraph 6.06.A by replacing the last sentence of the paragraph with the following sentence:

CONTRACTOR shall not be required to employ any Subcontractor, supplier, or other individual or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection, except as required by 6.06.B and the Instruction to Bidders.

Amend paragraph 6.06.B by adding the words "Instructions to Bidders" before Supplementary Conditions wherever it appears.

Amend paragraph 6.06.B by deleting the following sentence from the paragraph:

CONTRACTOR shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued or Written Amendment signed.

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Amend paragraph 6.06.B by adding the following language at the end of the last sentence of the paragraph:

Nor does such acceptable create a contractual relationship between the OWNER and any subcontractor, supplier, individual or entity.

SC-6.09

Amend paragraph 6.09.C by replacing the first sentence of the paragraph with the following sentence:

Changes in Laws or Regulations which become effective after the time of opening of Bids (or, on the Effective Date of the Contract if there were no Bids) having an effect on the cost or time of performance of the Work may be the subject of an adjustment in Contract Price or Contract Times.

Add the new paragraphs immediately after paragraphs 6.09.C. of the General Conditions:

All vehicles used in connection with the Contractor's operations will be required to pay regular tolls to use the Broad Causeway, and to have identification signs.

SC-6.11

Add the new paragraphs immediately after paragraph 6.11.B of the General Conditions:

Adjacent residents must have access to their driveways at all times. All barricades and warning signs for any traffic lane closures will be provided and maintained by the Contractor. Cost of all barricades and signs shall be the responsibility of the Contractor. Any off-duty officers as may be required in the maintenance of traffic shall be provided by the Contractor at the Contractor's Expense.

SC-6.12

Amend paragraph 6.12.A by replacing the first sentence of the paragraph with the following sentence:

CONTRACTOR shall maintain in a safe place at the Project one record copy of all drawings, specifications, addenda, written amendments, change orders, work change directives, field orders, as-builts and written interpretations and clarifications in good order and annotated to show changes made during construction.

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SC-6.13

Amend paragraph 6.13.A.3 by replacing it with the following paragraph:

Other property at the Project or adjacent thereto, including, but not limited, to trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and underground facilities not designated for removal, relocation, or replacement in course of construction.

SC-6.20

Amend the paragraphs 6.20.A.1 and 6.20.A.2 by replacing them with the following paragraph:

To the fullest extent permitted by Laws and Regulations, the Parties agree that in consideration of the first \$10.00 dollars to be paid by TOWN to Contractor hereunder- and other specific consideration, the receipt and sufficiency of which is hereby acknowledged, the Contractor shall indemnify, defend and hold harmless the TOWN and their consultants, agents, officers and employees, and the elected officials of the Owner, from and against all claims, damages, losses and expenses, direct, indirect or consequential (including but not limited to fees and charges of engineers, architects, attorneys and other professional and court and arbitration costs) arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is implied by Law and Regulations regardless of the negligence of any such party.

Amend paragraphs 6.20.B by replacing it with the following paragraph:

In any and all claims against TOWN or any of their consultants, agents or employees by any CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.20 shall not be limited in any way, by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor or other person or organization under

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worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 8 – OWNER'S RESPONSIBILITIES - Page 26

Throughout this Article, OWNER is interchangeably with TOWN.

SC-8.01

Amend paragraph 8.01 A by replacing it with the following paragraph:

Except as otherwise provided in these General Conditions, TOWN shall issue all communications to CONTRACTOR through the TOWN MANAGER, STAFF ENGINEER or PROJECT MANAGER.

SC-8.02

Delete paragraph 8.02 A.

ARTICLE 9 – ENGINEER'S STATUS DURING CONSTRUCTION - Page 27

The use of "Engineer" throughout this Article shall mean the Town's "Staff Engineer or Project Manager".

SC-9.03

Delete paragraph 9.03A.

SC-9.05

Amend paragraph 9.05.A by deleting the following sentence from the end of the paragraph:

If TOWN and CONTRACTOR are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of a Field Order, a Claim may be made therefore as provided in paragraph 10.05.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS - Page 29

SC-10.01

Amend paragraph 10.01.A by replacing the first sentence of the paragraph with the following sentence:

Without invalidating the Contract and without notice to any Surety, TOWN may, at any time or from time to time, order additions, deletions, or revisions in the

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Work by a Written Amendment, a Change Order, a Work Change Directive, or a Field Directive.

Amend paragraph 10.05.D by adding the following sentence at the end of the paragraph:

Adherence to the terms of paragraph 10.05 is a condition precedent to bringing any further action in litigation, arbitration or any other dispute resolution forum.

ARTICLE 11 – COST OF THE WORK; CASH ALLOWANCE; UNIT PRICE WORK - Page 30

SC-11.01

Amend paragraph 11.01.A.1 by deleting the word Saturday from the last sentence of the paragraph.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

SC-12.06.B

Amend paragraph 12.06.B by replacing the entire paragraph with the following paragraph:

Contractor will not be entitled to any adjustment in the Contract Price for delays extended general conditions, extended overhead, loss of productivity, acceleration or any damages or other compensation whatsoever in the event of any delays in the progress of the Work on account of hindrances or delays from any cause whatsoever. Such causes of delay include but are not limited to differing site conditions, difficulty in acquiring building permits, limited access to the Project, failure to approve plans and shop drawings on time, delays caused by governmental action, inaction or regulation, subsurface conditions, material shortage or delay in delivery of materials. It is the specific intent hereunder that an extension of time will be the sole and exclusive remedy for delay or any type, description of category. However, if occasioned by an act of God, or by any act or omission on the part of the TOWN such act, hindrance or delay may entitle the CONTRACTOR to an extension of time in which to complete the Work which shall be determined by the STAFF ENGINEER, employed by the TOWN, provided that the CONTRACTOR will give notice as provided herein. The foregoing limitations on adjustments to Contract Price also apply to any causes of delay which affect any subcontractor, material-man, supplier or laborer on the Project. In no event, if any such events of delay occur, shall any subcontractor, material-man, supplier or laborer be entitled to additional compensation for delays including claims for extended general conditions, extended overhead and the like against the TOWN.

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ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK – Page 34

SC-13.04

Amend paragraph 13.04.A by replacing it with the following paragraph:

If any Work is covered contrary to the Technical Specifications, Drawings or Contract Documents, it must, if requested by the TOWN, be uncovered for his observation and replaced at CONTRACTOR’S expense.

Amend paragraph 13.04.B by adding the following language at the end of the second sentence:

, or direct payment if remaining Contract funds are not sufficient.

SC-13.09

Amend paragraph 13.09.C by adding the following language at the end of the first sentence:

,or direct payment if remaining Contract funds are not sufficient.

ARTICLE 14 – PAYMENTS TO CONTRACTORS AND COMPLETION – Page 36

SC-14.02.A.2

Amend paragraph 14.02.A.2 by deleting the existing paragraph and replacing it with the following paragraph:

With each Application for Payment, the CONTRACTOR shall include a Partial Waiver Upon Progress Payment or Statutory Waiver and Final Release, as appropriate from each and every material-man, supplier and or laborer (“Potential Lienor”) who has provided labor, services or materials for the Project. Contractor shall submit its own Statutory Waiver and Partial Release of Lien or Statutory Waiver and Final Release of Lien, as appropriate, with each Application for Payment. Moreover, CONTRACTOR shall ensure that no construction liens, or any encumbrances in the nature thereof or any other encumbrances whatsoever (including equitable lien claims), shall be filed or maintained by the CONTRACTOR or by any Potential Lienor in connection with any Work for which OWNER has made payment or for which payment is not yet due. As a condition precedent to the receipt of each progress payment from the TOWN, CONTRACTOR must furnish the Partial Waiver upon Progress Payment Statutory Waiver and Final Release

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TOWN OF BAY HARBOR ISLANDS
BHI-___**

from each Potential Lienor, in the form prescribed by TOWN, together with a Contractor's Affidavit and Partial Release, in the form prescribed by the TOWN. Further as a condition precedent to the receipt of the final payment, the CONTRACTOR shall provide TOWN with a Statutory Waiver and Final Release from each Potential Lienor in the form prescribed by TOWN, together with a Contractor's Affidavit and Final Release. Each Release given to the TOWN shall waive and release any lien rights of the Potential Lienor to the extent payment is made with respect to any Work performed through the date of the Release. For any Potential Lienor who has served a Notice to Owner and/or Notice to Contractor, but who has not provided labor, services or materials during the period of time covered by an Application for Payment, the CONTRACTOR shall provide a Zero Dollar Release in the form prescribed by TOWN. CONTRACTOR shall comply with all requirements of Florida Statutes, Chapter 713. CONTRACTOR agrees to indemnify, defend and hold the OWNER harmless from and against any and all liens or other claims whatsoever filed against the TOWN or the TOWN's property by any Potential Lienor for worked performed or materials or services furnished in connection with the Work for which CONTRACTOR has been paid or for which payment is not yet due at the time the Lien is recorded. In the event a Claim of Lien is recorded against the OWNER'S property, the CONTRACTOR shall cause the same to be satisfied within ten (10-) days following the date of recordation of the Claim_of Lien, or in the alternative, shall cause the Claim of Lien to be transferred to a Bond. In the event any Liens are not cleared of record within ten (10) days of recordation, TOWN shall have the right to settle, satisfy, or transfer such Lien to a Bond at CONTRACTOR'S sole cost and expense and TOWN may offset any such cost against the next payment due to CONTRACTOR, or CONTRACTOR shall make a direct payment if remaining Contract funds are not sufficient.

TOWN shall not be limited to an is entitled to all other remedies available at law or in equity. The provisions of this paragraph shall be deemed an independent covenant of the CONTRACTOR and shall be effective with respect to all Work performed and materials and services furnished under the Contract Documents, Change Orders or any other agreement for work with respect to the Project.

SC-14.02.D.1.b

Amend paragraph 14.02.D.1.b by deleting the existing paragraph and replacing it with the following:

Liens have been recorded in connection with the Work or the Project.

**ENGINEERING AND ARCHITECTURAL CONTINUING SERVICES CONTRACT
TOWN OF BAY HARBOR ISLANDS
BHI-___**

SC-14.07

Amend paragraph 14.07.A.1 by replacing it with the following paragraph:

After CONTRACTOR has, in the opinion of TOWN, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operation instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in paragraph 6.12), final releases, final affidavits, Asbuilts, and other documents, CONTRACTOR may make application for final payment following the procedure for progress payments.

Amend paragraph 14.07.A.2 by adding the following language at the end of the first sentence:

Or claims made against the Bonds provided by CONTRACTOR under the Contract Documents.

Delete paragraph 14.07.A.3 in its entirety.

SC-14.09

Amend paragraph 14.09.A.1 by replacing it with the following paragraph:

A waiver of all Claims by TOWN against CONTRACTOR, except Claims arising from unsettled Liens or Claims against the Bonds, from defective Work appearing after final inspection pursuant to paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from CONTRACTOR's continuing obligations under the Contract Documents; and

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION – Page 40

SC-15.03

Delete paragraph 15.03.A.3 in its entirety.

Delete paragraph 15.03.A.4 in its entirety.

SC-15.04

Amend paragraph 15.04.A by deleting the last sentence of the paragraph.

STORM WATER LINES

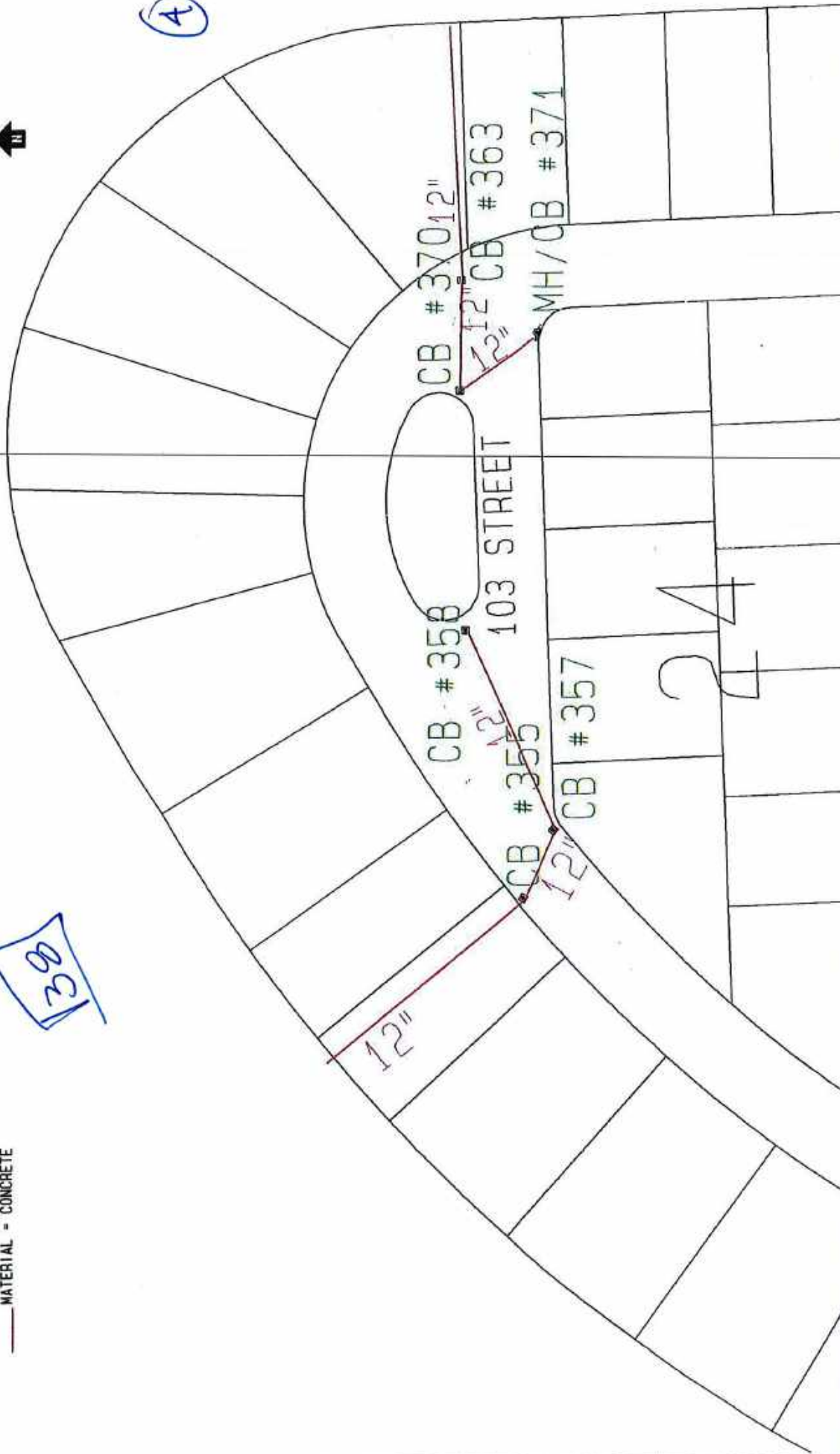
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— MATERIAL = CONCRETE

30



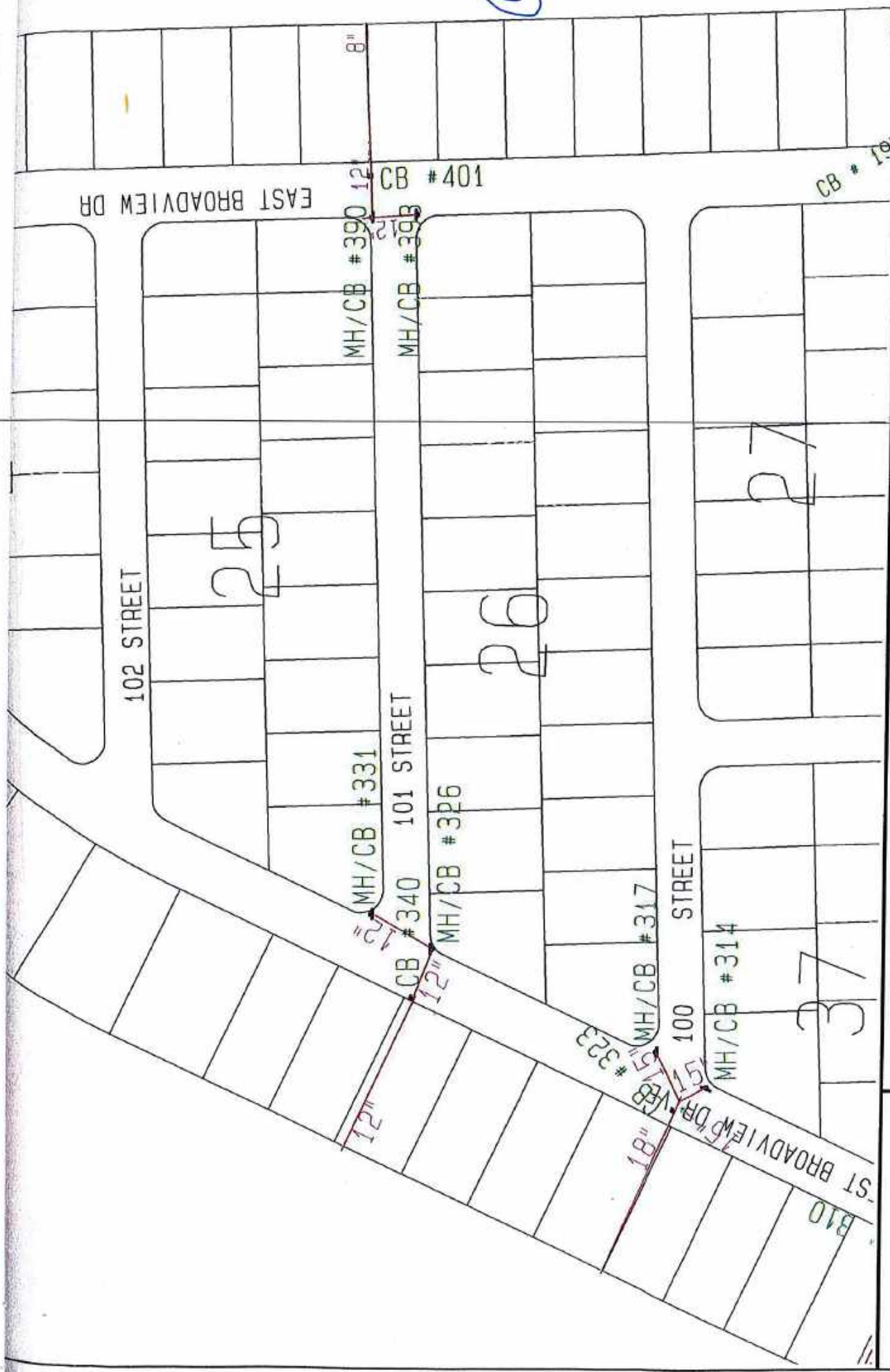
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TOWN OF BAY HARBOR ISLANDS
STORMWATER COLLECTION SYSTEM

INFOCAD

Drawing no:	swdet03
Date:	02/02/96
Drawn by:	
Scale:	



infocap	TOWN OF BAY HARBOR ISLANDS STORMWATER COLLECTION SYSTEM	Date: 02/02/96 Drawing no: swdet04
ALMEIDA	Drawn by:	Scale: 1" = 140'

STORM WATER LINES

— MATERIAL = CAST IRON

— MATERIAL = CONCRETE



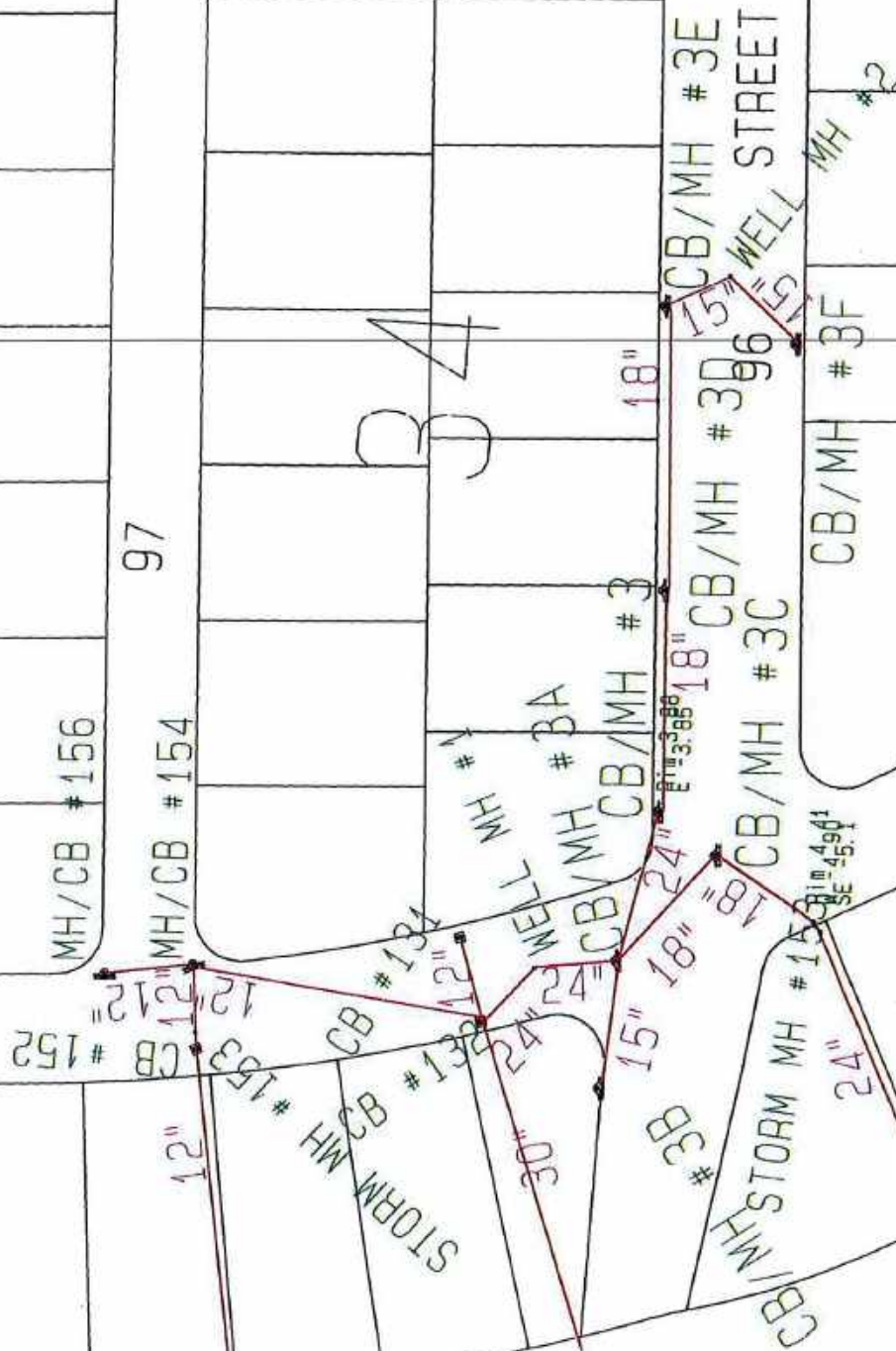
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STORM WATER LINES

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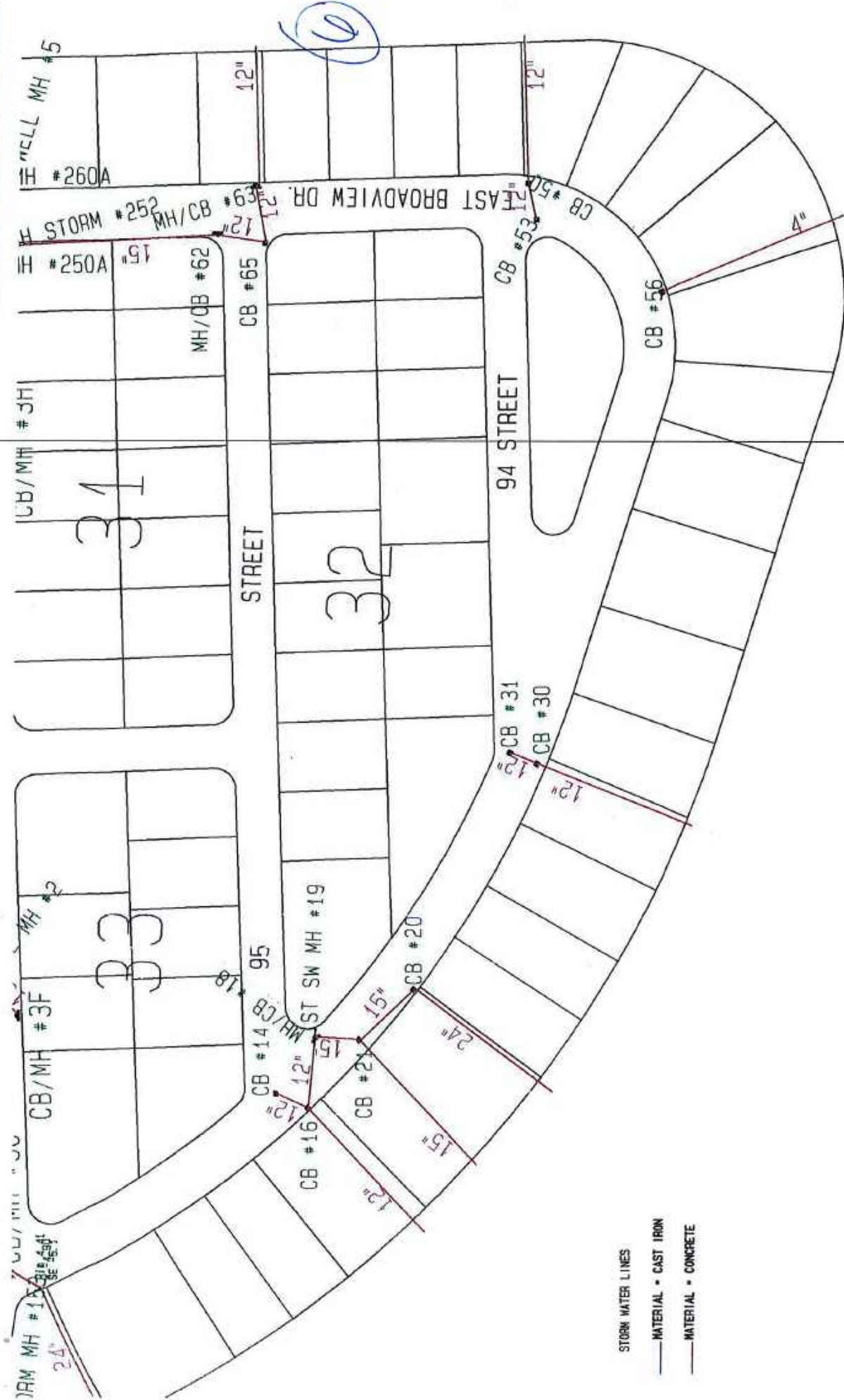
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INFOCAD

TOWN OF BAY HARBOR ISLANDS STORMWATER COLLECTION SYSTEM

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Drawn by:	ALMEIDA	Scale:	1" = 100'



TOWN OF BAY HARBOR ISLANDS STORMWATER COLLECTION SYSTEM

Date:	Drawing no:
02/02/96	swdet08
Drawn by:	Scale:
ALMEIDA	1" = 150'

INFOCAD



TOWN OF BAY HARBOR ISLANDS STORMWATER COLLECTION SYSTEM

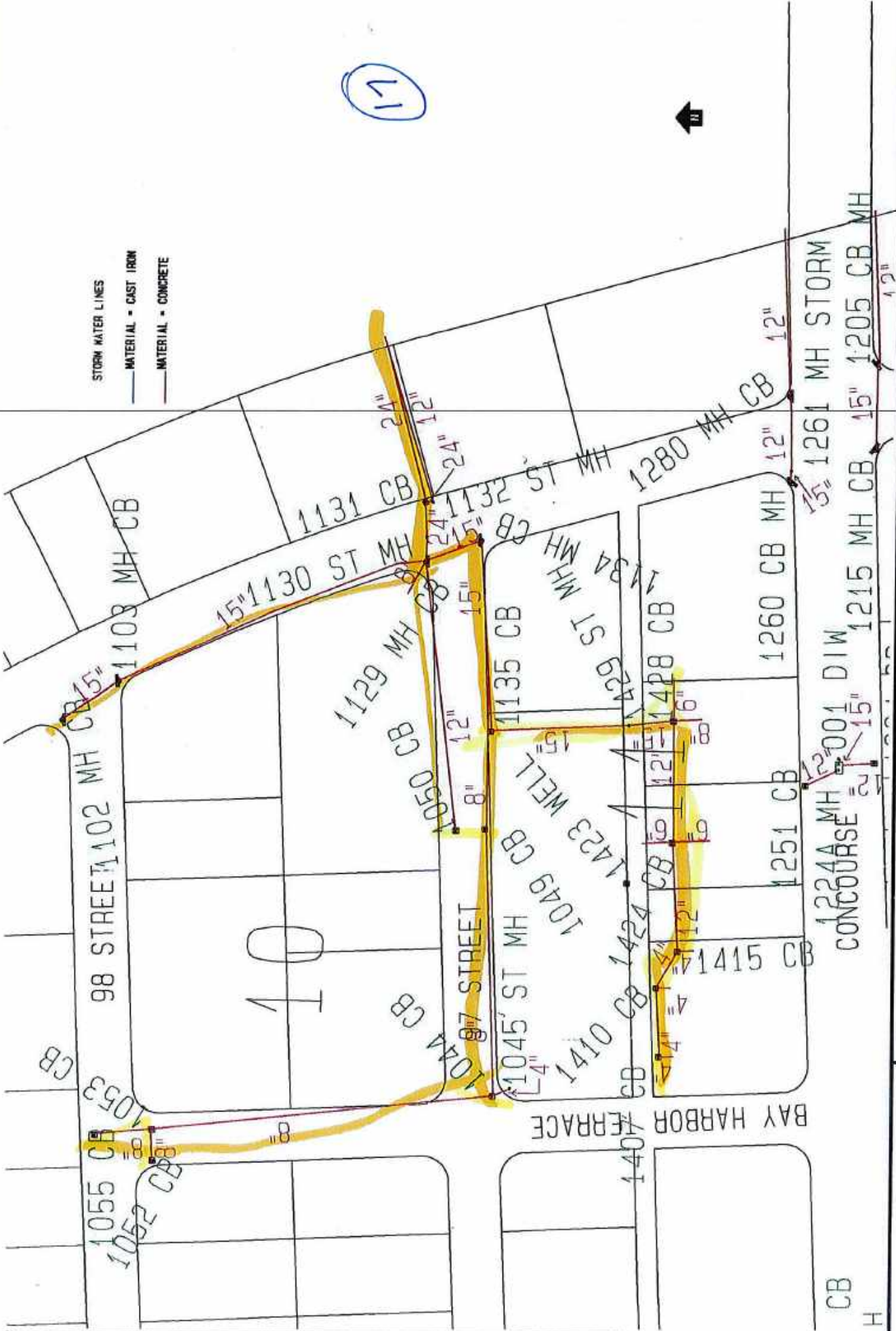
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INFOCAD

17



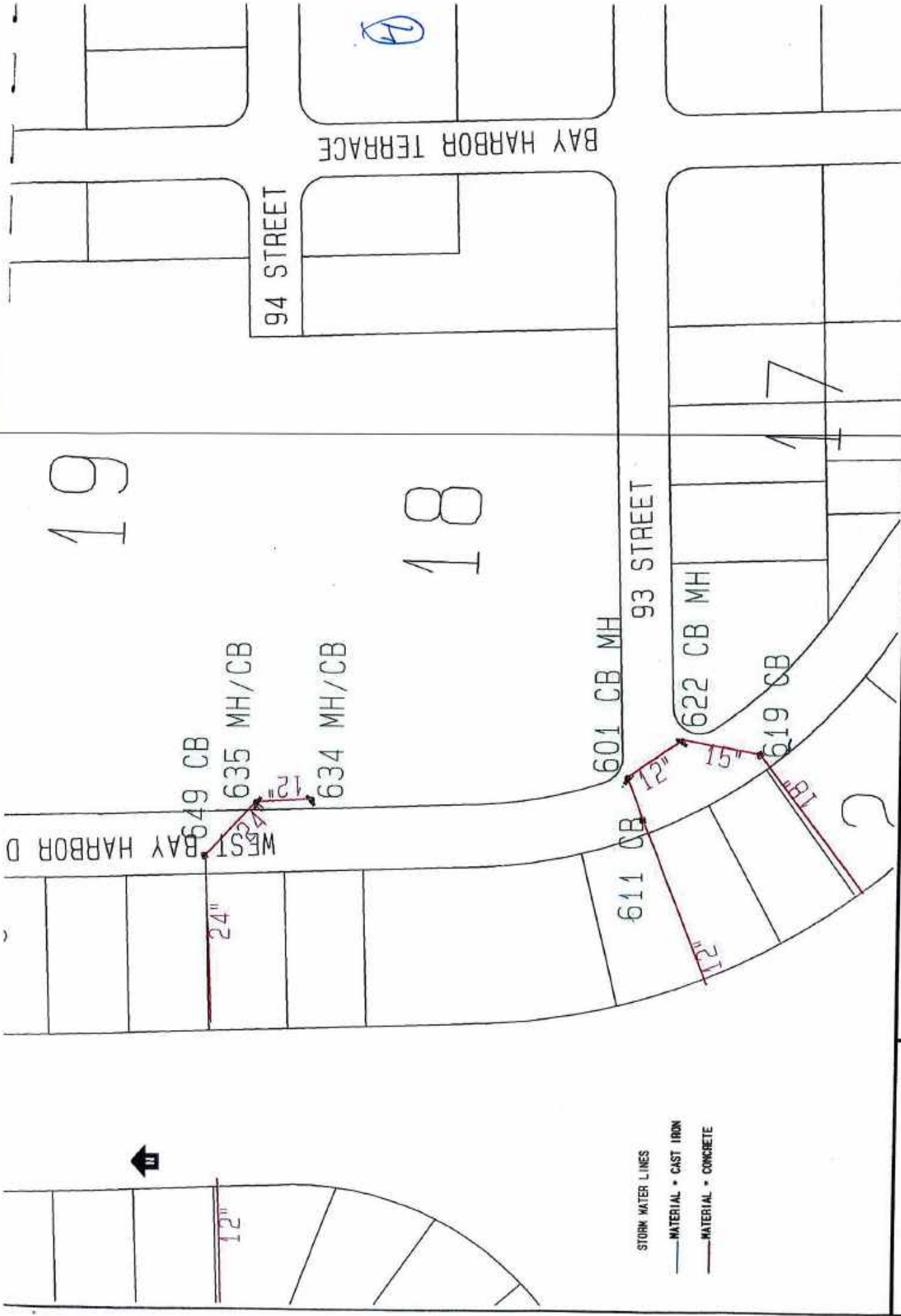
STORM WATER LINES
 — MATERIAL - CAST IRON
 — MATERIAL - CONCRETE



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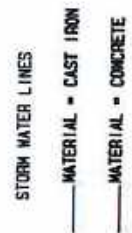
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TOWN OF BAY HARBOR ISLANDS STORMWATER COLLECTION SYSTEM	Drawn by:	
	ALMEIDA	



TOWN OF BAY HARBOR ISLANDS STORMWATER COLLECTION SYSTEM	ITFCAD	Date: 02/02/96 Drawing: smdet15 Drawn by: ALMEIDA Scale: 1" = 120'
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infocAD	TOWN OF BAY HARBOR ISLANDS		Drawing no:
	STORMWATER COLLECTION SYSTEM		Date:
			02/02/96
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TOWN OF BAY HARBOR ISLANDS
STORMWATER COLLECTION SYSTEM

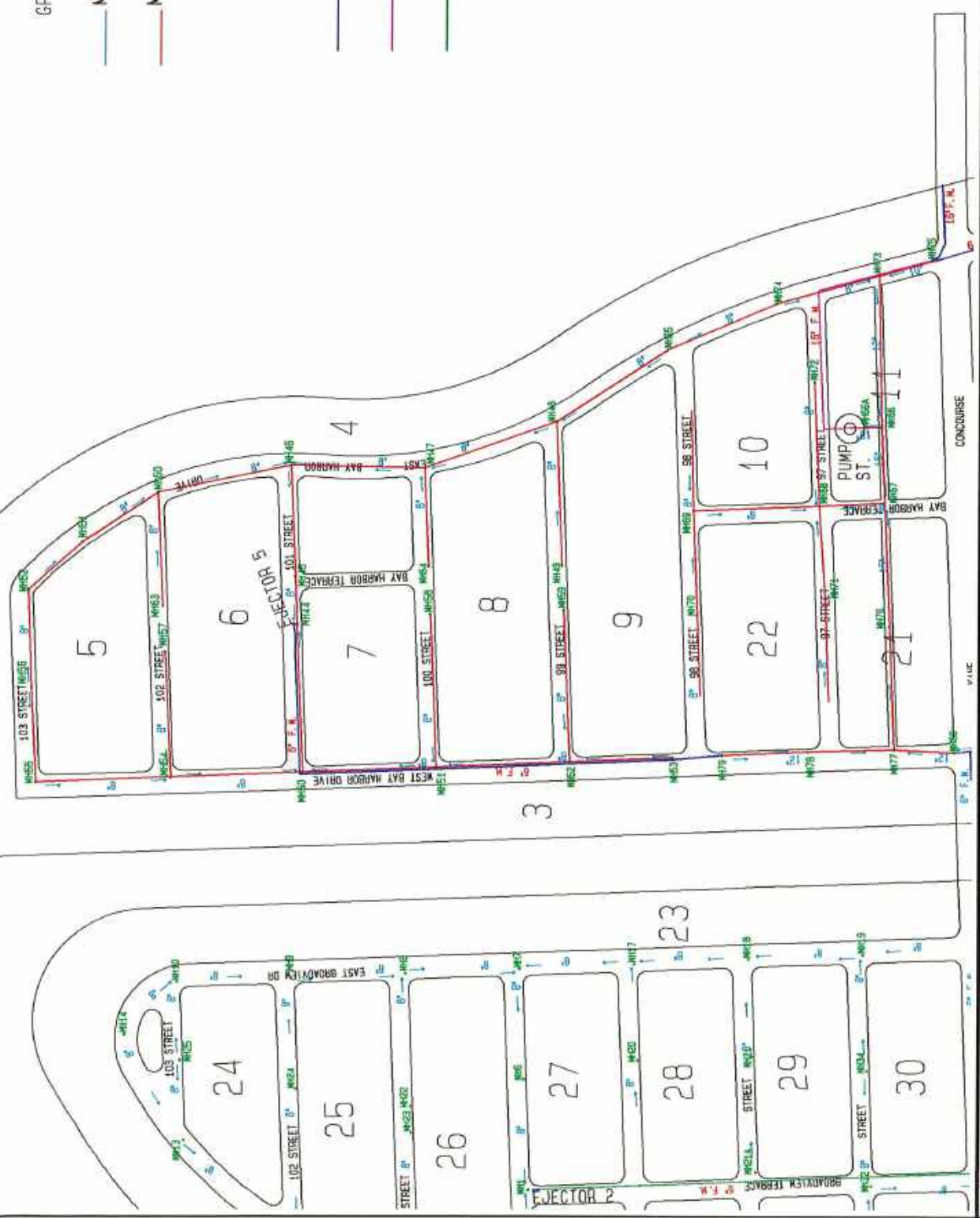
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GRAVITY MAIN LINES

- MATERIAL = DUCTILE IRON
- MATERIAL = VCP

FORCE MAIN LINES

- MATERIAL = CAST IRON
- MATERIAL = DUCTILE IRON
- MATERIAL = PVC C-900 GREEN



TOWN OF BAY HARBOR ISLANDS
SANITARY SEWER DISTRIBUTION
EAST ISLAND NORTH

INFOCAD

Date:	Drawing no:
02/01/96	E INSEWER
Drawn by:	Scale:
WAGNER ALMEIDA	1" = 400'



TOWN OF BAY HARBOR ISLANDS
SANITARY SEWER DISTRIBUTION
EAST ISLAND SOUTH

INFOCAD

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02/01/96	EISSENER
Drawn by:	Scale:
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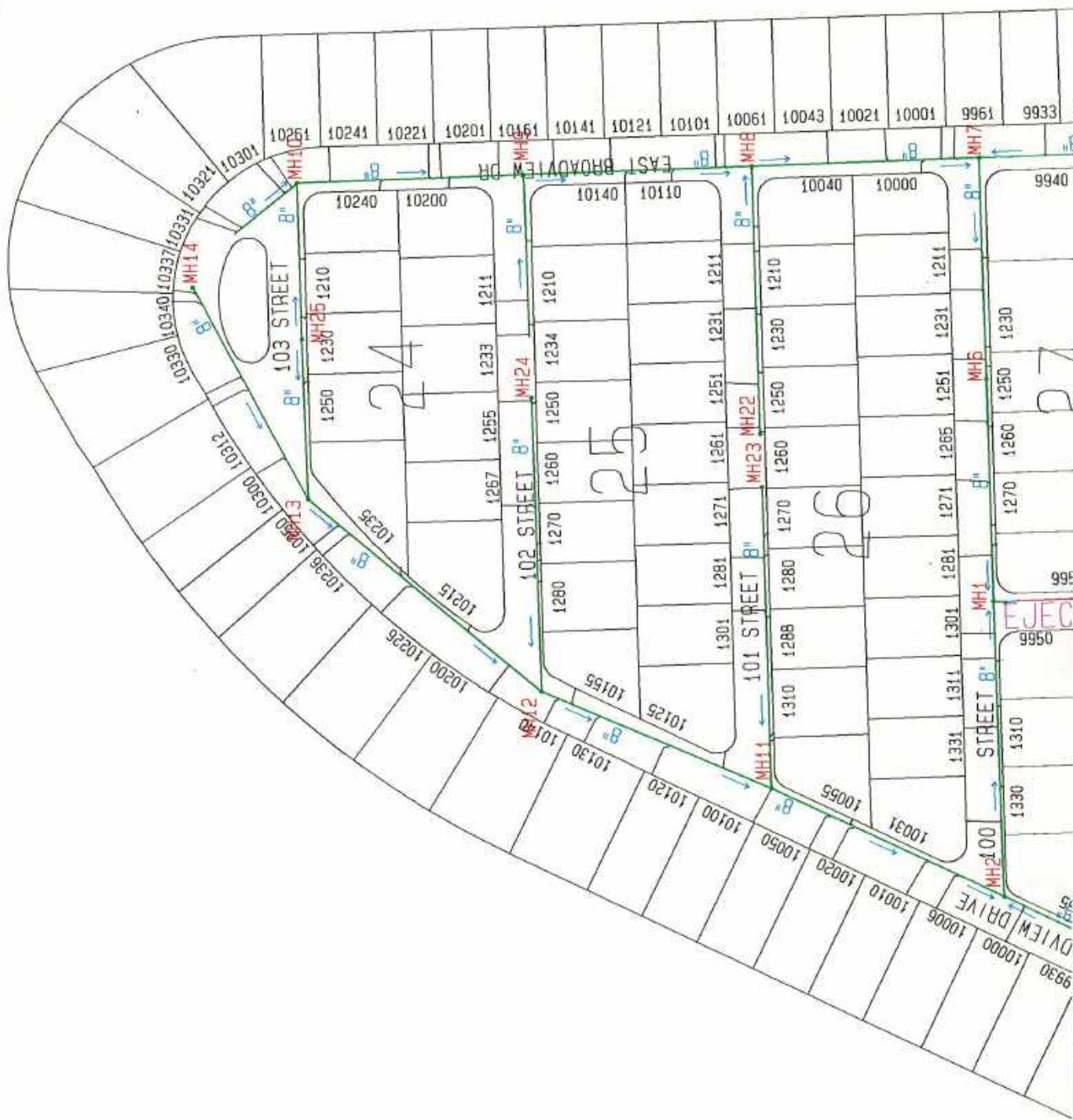
FORCE MAIN LINES

— MATERIAL = CAST IRON

— MATERIAL = PVC C-900 GREEN

GRAVITY MAIN LINES

— MATERIAL = VCP



TOWN OF BAY HARBOR ISLANDS
SANITARY SEWER DISTRIBUTION
DETAIL 01

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Date:	01/31/96
Drawn by:	WAGNER ALMEIDA
Scale:	1" = 200'

INFOCAD



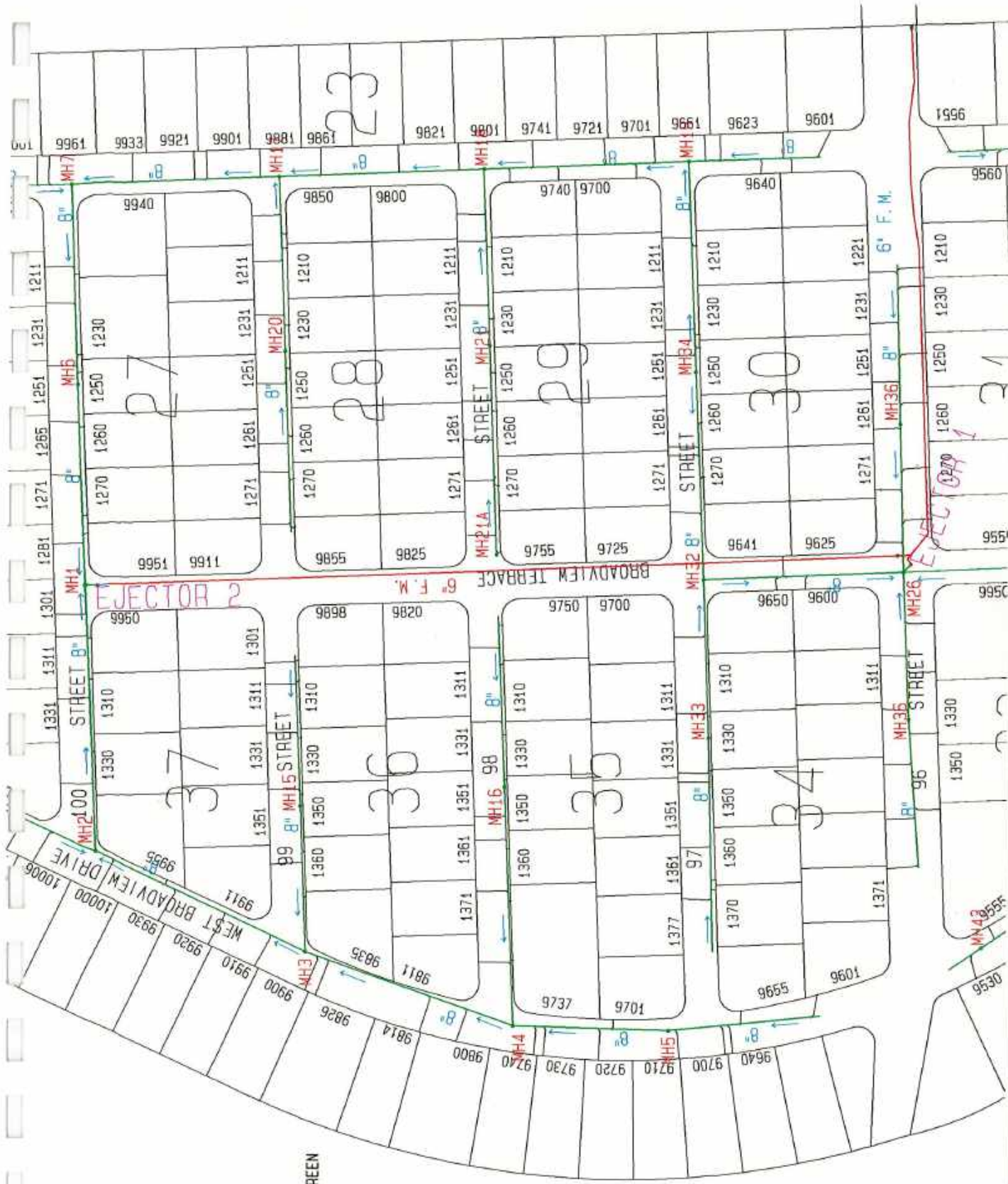
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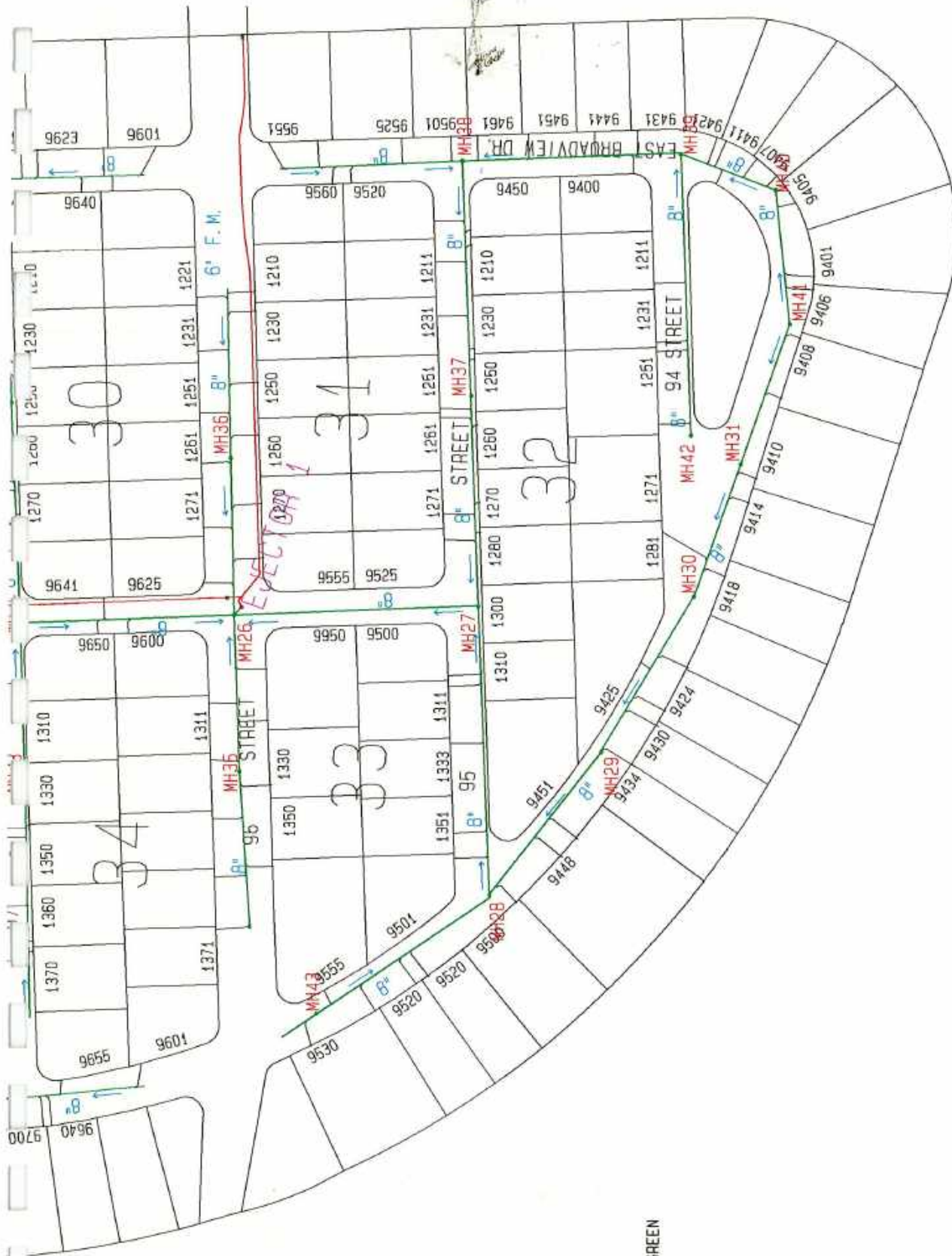
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— MATERIAL = PVC C-900 GREEN

GRAVITY MAIN LINES

— MATERIAL = VCP





FORCE MAIN LINES

— MATERIAL = CAST IRON

— MATERIAL = PVC C-900 GREEN

GRAVITY MAIN LINES

— MATERIAL = VCP

TOWN OF BAY HARBOR ISLANDS
SANITARY SEWER DISTRIBUTION
DETAIL 03

INFOCAD

Drawing no:	SSDET03
Date:	01/31/96
Drawn by:	WAGNER ALMEIDA
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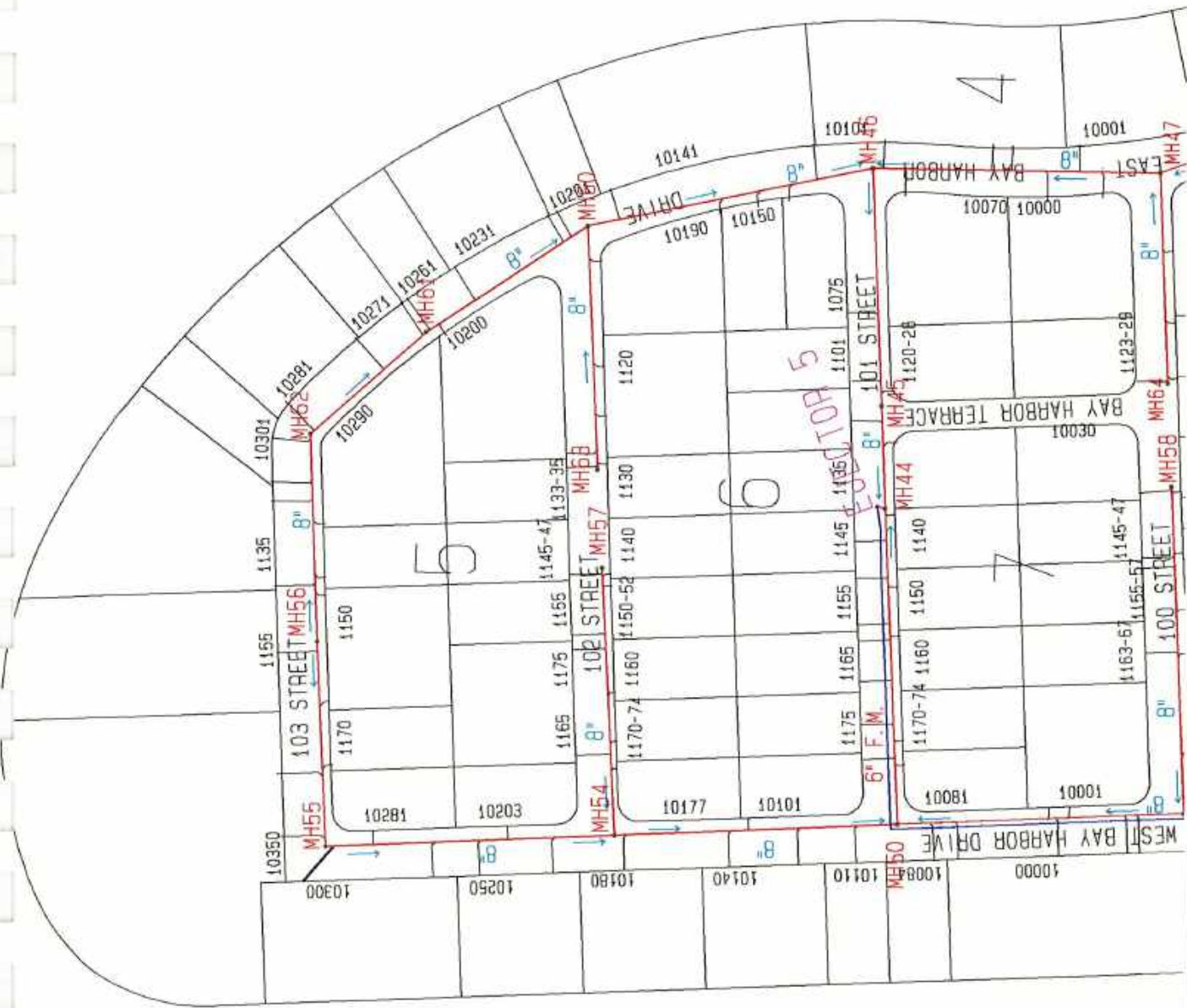
— MATERIAL = VCP

FORCE MAIN LINES

— MATERIAL = CAST IRON

— MATERIAL = DUCTILE IRON

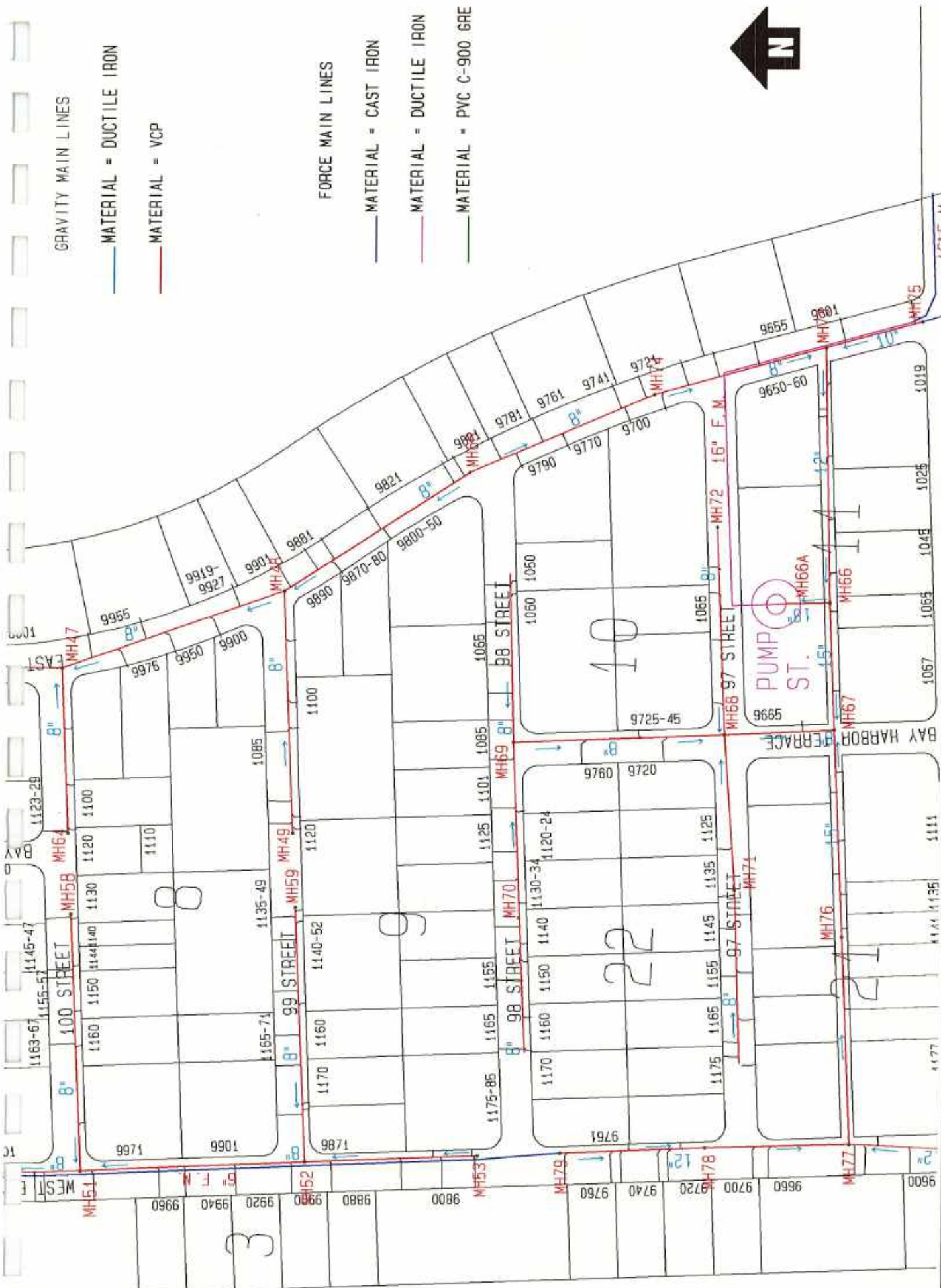
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TOWN OF BAY HARBOR ISLANDS
SANITARY SEWER DISTRIBUTION
DETAIL 04

INFOCAD

Date:	Drawing no:
02/01/96	SSDET04
Drawn by:	Scale:
WAGNER ALMEIDA	1" = 200'



GRAVITY MAIN LINES

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— MATERIAL = VCP

FORCE MAIN LINES

— MATERIAL = CAST IRON

— MATERIAL = DUCTILE IRON

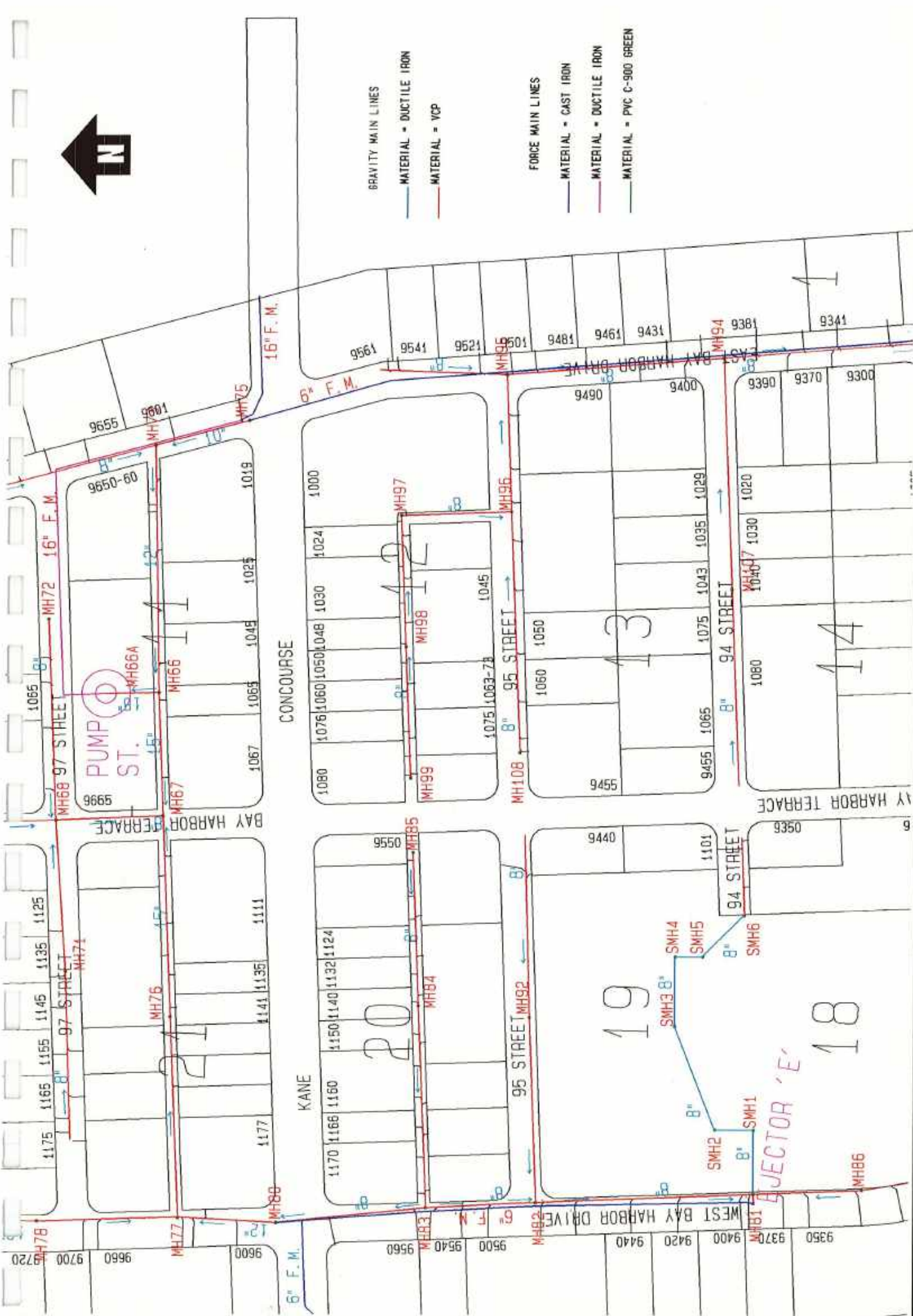
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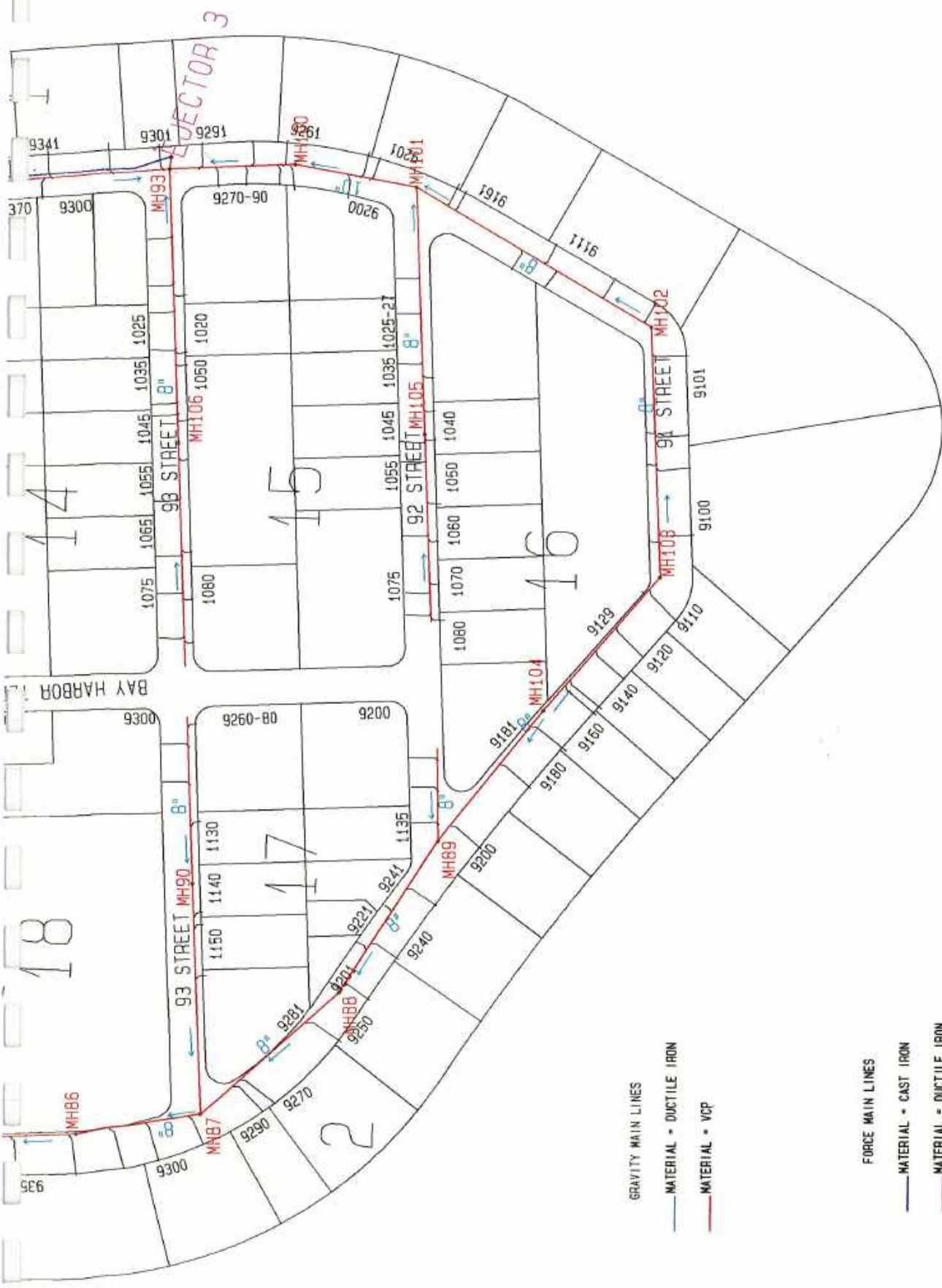
Date:	Drawing no:
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Drawn by:	Scale:
WAGNER ALMEIDA	1" = 200'

TOWN OF BAY HARBOR ISLANDS
SANITARY SEWER DISTRIBUTION
DETAIL 05

INFOCAD



	TOWN OF BAY HARBOR ISLANDS SANITARY SEWER DISTRIBUTION DETAIL 06	
	Date:	Drawing no:
	02/01/96	SSDET06
	Drawn by:	Scale:
	WAGNER ALMEIDA	1" = 200'



- GRAVITY MAIN LINES**
- MATERIAL - DUCTILE IRON
 - MATERIAL - VCP
- FORCE MAIN LINES**
- MATERIAL - CAST IRON
 - MATERIAL - DUCTILE IRON
 - MATERIAL - PVC C-900 GREEN

TOWN OF BAY HARBOR ISLANDS SANITARY SEWER DISTRIBUTION DETAIL 07	Drawing no: SSDET07 Date: 02/01/96 Scale: 1" = 200'	
	Drawn by: WAGNER ALMEIDA	
	INFOCAD	



AIR LINES

MATERIAL = CAST IRON

MATERIAL = GWT

MATERIAL = POLYETHYLENE

MATERIAL = PVC C-900



	TOWN OF BAY HARBOR ISLANDS		Date:	Drawing no:
	SANITARY SEWER DISTRIBUTION		02/02/96	AIRMAIT
	EJECTORS AIR LINES		Drawn by:	Scale:
			WAGNER ALMEIDA	1" = 700'



AIR LINES

- DIAMETER = 1 1/2
- DIAMETER = 1 1/4
- DIAMETER = 2
- DIAMETER = 2 1/2
- DIAMETER = 3



TOWN OF BAY HARBOR ISLANDS
SANITARY SEWER DISTRIBUTION
EJECTORS AIRLINES

INFOCAD

Date:	Drawing no:
02/01/96	AIR01
Drawn by:	Scale:
WAGNER ALMEIDA	1" = 700'



AIRLINES

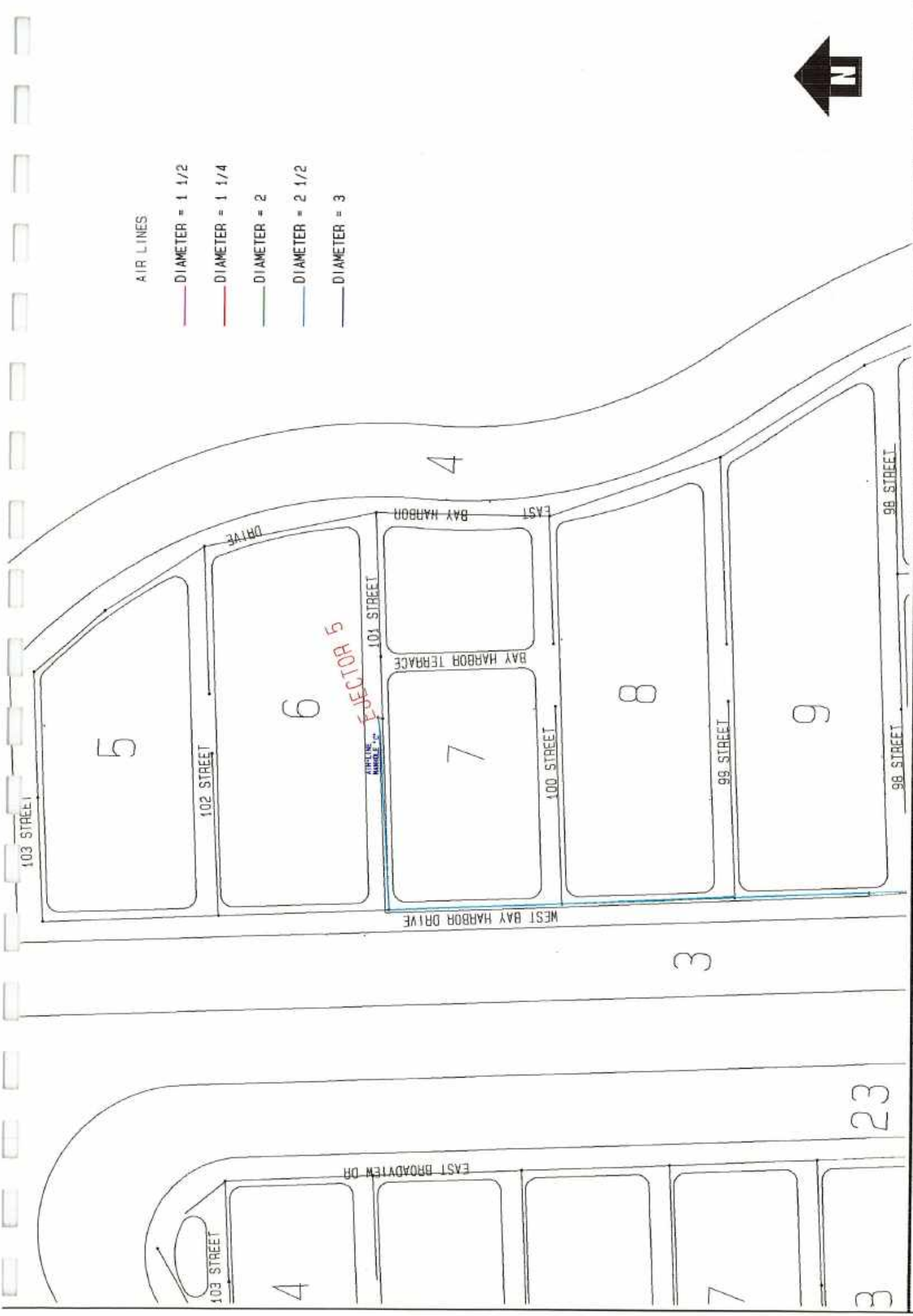
- DIAMETER = 1 1/2 "
- DIAMETER = 1 1/4 "
- DIAMETER = 2 "
- DIAMETER = 2 1/2 "
- DIAMETER = 3 "



	TOWN OF BAY HARBOR ISLANDS		Date:	Drawing no:
	SANITARY SEWER DISTRIBUTION		02/01/96	AIR02
	EJECTORS AIRLINES - WEST ISLAND		Drawn by:	Scale:
			WAGNER ALMEIDA	1" = 250'

AIR LINES

- DIAMETER = 1 1/2
- DIAMETER = 1 1/4
- DIAMETER = 2
- DIAMETER = 2 1/2
- DIAMETER = 3



TOWN OF BAY HARBOR ISLANDS SANITARY SEWER DISTRIBUTION EJECTORS AIRLINES - EAST ISLAND	Date:		Drawing no:
	02/01/96		AIR03
	Drawn by:		Scale:
	WAGNER ALMEIDA		1" = 250'

INFOCAD



AIR LINES

— DIAMETER = 1 1/2

— DIAMETER = 1 1/4

— DIAMETER = 2

— DIAMETER = 2 1/2

— DIAMETER = 3

Date:	02/01/96	Drawing no:	AIR04
Drawn by:	WAGNER ALMEIDA	Scale:	1" = 250'

TOWN OF BAY HARBOR ISLANDS
SANITARY SEWER DISTRIBUTION
EJECTORS AIRLINES - EAST ISLAND

INFOCAD



AIR LINES

- DIAMETER = 1 1/2
- DIAMETER = 1 1/4
- DIAMETER = 2
- DIAMETER = 2 1/2
- DIAMETER = 3

	TOWN OF BAY HARBOR ISLANDS SANITARY SEWER DISTRIBUTION EJECTORS AIRLINES - EAST ISLAND	Date:	Drawing no:
		02/01/96	AIR05
		Drawn by:	Scale:
		WAGNER ALMEIDA	1" = 250'

AGENDA ITEM REPORT

November 3, 2022

ITEM NUMBER: 2.

ITEM: Consideration and Approval to enter into a Time and Material Agreement with WSP USA, Inc. for the Not-to Exceed amount of \$50,000 to provide engineering support, project management/coordination and permitting related to the Sanitary Sewer Pump Station Emergency caused by Hurricane Ian. Enclosed is a copy of the Agreement.

DESCRIPTION:

Staff from WSP USA, Inc. will provide support to the Town in terms of engineering services, project management, coordination, and permitting related to the Town's Sanitary Sewer Emergency Project caused by Hurricane Ian. In addition, staff will provide support in the transition of some ongoing projects. Enclosed is a copy of the Agreement.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

The sewer emergency as a result of Hurricane Ian, was not included in the Town's approved FY Budget 2022-2023. The Town is applying for reimbursement under FEMA.

BUDGET IMPACT:

Submitted By: Jose Custodio, Town Engineer

ATTACHMENTS

1.	Agreement Emergency_On Call
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AGREEMENT FOR

ON CALL PROFESSIONAL ENGINEERING SERVICES

This Agreement ("Agreement") made and entered into this ____ day of November, 20__ by and between Town of Bay Harbor Islands, whose address is 9665 Bay Harbor Terrace, Bay Harbor Islands, Florida, 33154, hereinafter referred to as "TOWN"

AND

WSP USA, Inc. a foreign corporation of the State of New York, authorized to do business in the State of Florida, whose address is 7650 Corporate Center Drive, Suite 300, Miami, FL 33126 its successors and assigns, hereinafter referred to as "CONSULTANT",

WITNESSETH:

WHEREAS, TOWN desires to employ the professional engineering services of CONSULTANT for various Town Projects related to the Town's Sanitary Sewer Emergency at the Main Pump Station D Project and transition of projects located in Bay Harbor Islands, Florida; and

WHEREAS, CONSULTANT has agreed to enter into a continuing contract to provide Professional services at a time and material, not to exceed amount of \$50,000 and;

WHEREAS, The professional services required by this Contract will be for services in the form of a contract, commencing on November 14, 2022 (the "effective date" of this agreement) and ending once the emergency project is completed; and

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, TOWN and CONSULTANT agree as follows:

ARTICLE 1

1.1 REPRESENTATIONS AND WARRANTIES

By executing this Agreement, CONSULTANT makes the following express representations and warranties to the TOWN:

- 1.1.1 The CONSULTANT shall maintain all necessary licenses, permits or other authorizations necessary to act as CONSULTANT for the Project (and individual Task Order) until the CONSULTANT'S duties hereunder have been fully satisfied;
- 1.1.2 The CONSULTANT has become or will become familiar with the Project site and the local conditions under which the Work is to be completed.
- 1.1.3 The CONSULTANT shall prepare all documents required by this Agreement including, but not limited to, all contract plans and specifications, in such a manner that they shall be in conformity and comply with all applicable law, codes and regulations. The CONSULTANT warrants that the documents prepared as a part of

this Contract will be adequate and sufficient to accomplish the purposes of the Project, therefore, eliminating any additional construction cost due to missing or incorrect design elements in the contract documents;

- 1.1.4 The CONSULTANT assumes full responsibility to the extent allowed by law with regards to his performance and those directly under his employ.
- 1.1.5 The CONSULTANT'S services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. In providing all services pursuant to this agreement, the CONSULTANT shall abide by all statutes, ordinances, rules and regulations pertaining to, or regulating the provisions of such services, including those now in effect and hereinafter adopted. Any violation of said statutes, ordinances, rules and regulations shall constitute a material breach of this agreement and shall entitle the Board to terminate this contract immediately upon delivery of written notice of termination to the CONSULTANT.
- 1.1.6 At all times and for all purposes under this agreement the CONSULTANT is an independent contractor and not an employee of the Town of Bay Harbor Islands. No statement contained in this agreement shall be construed so as to find the CONSULTANT or any of his/her employees, contractors, servants, or agents to be employees of the Town of Bay Harbor Islands.
- 1.1.7 The CONSULTANT shall not discriminate against any person on the basis of race, creed, color, national origin, sex, age, or any other characteristic or aspect which is not job related, in its recruiting, hiring, promoting, terminating, or any other area affecting employment under this agreement or with the provision of services or goods under this agreement.

ARTICLE II

SCOPE OF BASIC SERVICES

2.1 SCOPE OF WORK

The CONSULTANT will perform for the TOWN services in accordance with the requirements outlined in this Agreement. The work performed under this Agreement will be in accordance with the provisions of F.S. 287.055 for Continuing Contracts.

The terms and conditions of this Agreement shall apply to each Task Order, except to the extent expressly modified. When a Task Order is to modify a provision of this Agreement, the Article of this Agreement to be modified will be specifically referenced in the Task Order and the modification shall be precisely described.

2.2 CORRECTION OF ERRORS, OMISSIONS, DEFICIENCIES

The CONSULTANT shall, without additional compensation, promptly correct any errors, omissions, deficiencies, or conflicts in the work product of the CONSULTANT or its subconsultants, or both.

2.3 NOTICE REQUIREMENT

All written correspondence to the TOWN shall be dated and signed by an authorized representative of the CONSULTANT. Any notice required or permitted under this

agreement shall be in writing and hand delivered or mailed, postage pre-paid, to the TOWN by certified mail, return receipt requested, to the following:

Yvonne Hamilton
Town Clerk
Town of Bay Harbor Islands
9665 Bay Harbor Terrace,
Bay Harbor Islands, Florida
33154
yhamilton@bayharborislands-fl.gov

And: Joseph S. Geller
200 East Broward Boulevard, Suite 1800
Fort Lauderdale, Florida
3301
Joseph.geller@gmlaw.com
www.gmlaw.com

For the Consultant:

ARTICLE III

ADDITIONAL SERVICES

- 3.1 Additional services are services not included in the Scope of Basic Services. Should the TOWN require additional services they shall be paid for by the TOWN at rates or fees negotiated at the time when services are required, but only if approved by the TOWN before commencement.
- 3.2 If Additional Services are required the TOWN shall issue a letter requesting and describing the requested services to the CONSULTANT. The CONSULTANT shall respond with a fee proposal to perform the requested services. Only after receiving an amendment to the Agreement and a notice to proceed from the TOWN, shall the CONSULTANT proceed with the Additional Services.

ARTICLE IV

TOWN'S RESPONSIBILITIES

- 4.1 The TOWN shall provide full information regarding requirements for the Project (and individual Task Order) including physical location of work, Town maintained roads, maps.
- 4.2 The TOWN shall designate a representative to act on the TOWN's behalf with respect to the Project (and individual Task Order). The TOWN or its representative shall render decisions in a timely manner pertaining to documents submitted by the CONSULTANT in order to avoid unreasonable delay in the orderly

and sequential progress of the CONSULTANT'S services.

- 4.3 Prompt written notice shall be given by the TOWN and its representative to the CONSULTANT if they become aware of any fault or defect in the Project (and individual Task Order) or non-conformance with the Agreement Documents. Written notice shall be deemed to have been duly served if sent pursuant to paragraph 2.3.
- 4.4 The TOWN shall furnish the required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the CONSULTANT'S services and work of the contractors.
- 4.5 The TOWN's review of any documents prepared by the CONSULTANT or its subconsultants shall be solely for the purpose of determining whether such documents are generally consistent with the TOWN's criteria, as, and if, modified. No review of such documents shall relieve the CONSULTANT of responsibility for the accuracy, adequacy, fitness, suitability or coordination of its work product.
- 4.6 The TOWN shall provide copies of necessary documents required to complete the work.
- 4.7 Any information that may be of assistance to the CONSULTANT that the TOWN has immediate access to will be provided as requested.

ARTICLE V

INDEMNIFICATION AND HOLD HARMLESS

- 5.1 The CONSULTANT covenants and agrees to indemnify and hold harmless the Town of Bay Harbor Islands, its officers and employees from liabilities, damages, losses and costs, including but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the CONSULTANT, subcontractor(s) and other persons employed or utilized by the CONSULTANT in the performance of the contract.
- 5.2 In the event that the completion of the project (to include the work of others) is delayed or suspended as a result of the CONSULTANT's failure to purchase or maintain the required insurance, the CONSULTANT shall indemnify the Town from any and all increased expenses resulting from such delay. Should any claims be asserted against the Town by virtue of any deficiency or ambiguity caused by the CONSULTANT'S negligence, recklessness or intentional wrongful conduct the CONSULTANT agrees and warrants that the CONSULTANT shall hold the Town harmless and shall indemnify it from all losses occurring thereby and shall further defend any claim or action on the Town's behalf.
- 5.3 The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement.
- 5.4 This indemnification shall survive the expiration or earlier termination of the contract.

ARTICLE VI

PERSONNEL

6.1 PERSONNEL

The CONSULTANT shall assign only qualified personnel to perform any service concerning the project. At the time of execution of this Agreement, the parties anticipate that the following named individuals will perform those functions as indicated:

NAME	FUNCTION
<u>JOSE CUSTODIO</u>	<u>PROJECT MANAGER / PERMITTING/ INSPECTION</u>
<u>ALAN STERENTAL</u>	<u>MUNICIPAL ENGINEER / PERMITTING</u>
<u>WERNER REINEFELD</u>	<u>LEAD MANAGER / QA/QC</u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>
<u> </u>	<u> </u>

So long as the individuals named above remain actively employed or retained by the CONSULTANT, they shall perform the functions indicated next to their names. If they are replaced the CONSULTANT shall notify the TOWN of the change immediately, but this does not require a formal amendment to the Agreement.

ARTICLE VII

COMPENSATION AND TERM

7.1 PAYMENT SUM

7.1.1 The TOWN shall pay the CONSULTANT in current funds for the CONSULTANT'S performance of this Agreement based on rates negotiated and agreed upon and shown in Attachment A.

7.2 PAYMENTS

7.2.1 For its assumption and performances of the duties, obligations and responsibilities set forth herein, the CONSULTANT shall be paid monthly. Payment will be made pursuant to the Local Government Prompt Payment Act 218.70, Florida Statutes.

(A) If the CONSULTANT'S duties, obligations and responsibilities are materially changed by amendment to this Agreement after execution of this Agreement, compensation due to the CONSULTANT shall be equitably adjusted, either upward or downward;

(B) As a condition precedent for any payment due under this Agreement, the CONSULTANT shall submit monthly, unless otherwise agreed in writing by the TOWN, a proper invoice to TOWN requesting payment for services properly rendered and reimbursable expenses due hereunder. The CONSULTANT'S invoice shall describe with reasonable particularity the service rendered. The CONSULTANT'S invoice shall be accompanied by such documentation or data

in support of expenses for which payment is sought at the TOWN may require.

7.3 REIMBURSABLE EXPENSES

7.3.1 Reimbursable expenses include expenses incurred by the CONSULTANT in the interest of the project:

- a. Expenses of transportation submitted by CONSULTANT, in writing, and living expenses in connection with travel authorized by the TOWN, in writing, but only to the extent and in the amounts authorized by Section 112.061, Florida Statutes;
- b. Cost of reproducing maps or drawings or other materials used in performing the scope of services;
- c. Postage and handling of reports;

7.4 TERM OF AGREEMENT

7.4.1 This contract shall commence on November 14, 2022 (the “effective date” of this agreement) and end with the completion of the Emergency Project.

ARTICLE VIII

INSURANCE

8.1 The CONSULTANT shall obtain insurance as specified and maintain the required insurance at all times that this Agreement is in effect. In the event the completion of the project (to include the work of others) is delayed or suspended as a result of the CONSULTANT’S failure to purchase or maintain the required insurance, the CONSULTANT shall indemnify the TOWN from any and all increased expenses resulting from such delay.

8.2 The coverage provided herein shall be provided by an insurer with an A.M. Best rating of VI or better, that is licensed to business in the State of Florida and that has an agent for service of process within the State of Florida. The coverage shall contain an endorsement providing thirty (30) days notice to the TOWN prior to any cancellation of said coverage. Said coverage shall be written by an insurer acceptable to the TOWN and shall be in a form acceptable to the TOWN.

8.3 CONSULTANT shall obtain and maintain the following policies:

- A. Workers’ Compensation insurance as required by the State of Florida, sufficient to respond to Florida Statute 440.
- B. Employers Liability Insurance with limits of \$1,000,000 per Accident, \$1,000,000 Disease, policy limits, \$1,000,000 Disease each employee.
- C. Comprehensive business automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, hired or non-owned vehicles, with One Million Dollars (\$1,000,000.00) combined single limit and One Million Dollars (\$1,000,000.00) annual aggregate.

- D. Commercial general liability, including Personal Injury Liability, covering claims for injuries to members of the public or damage to property of others arising out of any covered act or omission of the CONSULTANT or any of its employees, agents or subcontractors or subconsultants, including Premises and/or Operations, Products and Completed Operations, Independent Contractors;

Broad Form Property Damage and with One Million Dollars (\$1,000,000) per occurrence and annual aggregate.

An Occurrence Form policy is preferred. If coverage is changed to or provided on a Claims Made policy, its provisions should include coverage for claims filed on or after the effective date of this contract. In addition, the period for which claims may be reported must extend for a minimum of 48 months following the termination or expiration of this contract.

- E. Professional Liability insurance of \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If coverage is provided on a claims made basis, an extended claims reporting period of four (4) years will be required. Recognizing that the work governed by this contract involves the furnishing of advice or services of a professional nature, the CONSULTANT shall purchase and maintain, throughout the life of the contract, Professional Liability Insurance which will respond to damages resulting from any claim arising out of the performance of professional services or any error or omission of the CONSULTANT arising out of work governed by this contract.
- F. TOWN shall be named as an additional insured with respect to CONSULTANT'S liabilities hereunder in insurance coverages identified in Paragraphs C and D.
- G. CONSULTANT shall require its subconsultants to be adequately insured at least to the limits prescribed above, and to any increased limits of CONSULTANT if so required by TOWN during the term of this Agreement. TOWN will not pay for increased limits of insurance for subconsultants.
- H. CONSULTANT shall provide to the TOWN certificates of insurance or a copy of all insurance policies including those naming the TOWN as an additional insured. The TOWN reserves the right to require a certified copy of such policies upon request.
- I. If the CONSULTANT participates in a self-insurance fund, a Certificate of Insurance will be required. In addition, the CONSULTANT may be required to submit updated financial statements from the fund upon request from the TOWN.

ARTICLE IX

MISCELLANEOUS

9.1 SECTION HEADINGS

Section headings have been inserted in this Agreement as a matter of convenience

of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

9.2 OWNERSHIP OF THE PROJECT DOCUMENTS

The documents prepared by the CONSULTANT for this Project belong to the TOWN and may be reproduced and copied without acknowledgement or permission of the CONSULTANT.

9.3 SUCCESSORS AND ASSIGNS

The CONSULTANT shall not assign or subcontract its obligations under this agreement, except in writing and with the prior written approval of the TOWN and the CONSULTANT, which approval shall be subject to such conditions and provisions as the Board may deem necessary. This paragraph shall be incorporated by reference into any assignment or subcontract and any assignee or subcontractor shall comply with all of the provisions of this agreement. Subject to the provisions of the immediately preceding sentence, each party hereto binds itself, its successors, assigns and legal representatives to the other and to the successors, assigns and legal representatives of such other party.

9.4 NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall create any relationship, contractual or otherwise, with or any rights in favor of, any third party.

9.5 TERMINATION

- A. In the event that the CONSULTANT shall be found to be negligent in any aspect of service, the TOWN shall have the right to terminate this agreement after five days written notification to the CONSULTANT.
- B. Either of the parties hereto may cancel this Agreement without cause by giving the other party thirty (30) days written notice of its intention to do so.
- C. Termination for Cause and Remedies: In the event of breach of any contract terms, the TOWN retains the right to terminate this Agreement. The TOWN may also terminate this agreement for cause with CONSULTANT should CONSULTANT fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination, prior to termination, the TOWN shall provide CONSULTANT with five (5) calendar days' notice and provide the CONSULTANT with an opportunity to cure the breach that has occurred. If the breach is not cured, the Agreement will be terminated for cause. If the TOWN terminates this agreement with the CONSULTANT, TOWN shall pay CONSULTANT the sum due the CONSULTANT under this agreement prior to termination, unless the cost of completion to the TOWN exceeds the funds remaining in the contract; however, the TOWN reserves the right to assert and seek an offset for damages caused by the breach. The maximum amount due to CONSULTANT shall not in any event exceed the spending cap in this Agreement. In addition, the TOWN reserves all rights available to recoup monies paid under this Agreement.

- D. Termination for Convenience: The TOWN may terminate this Agreement for convenience, at any time, upon 30 days' notice to CONSULTANT. If the TOWN terminates this agreement with the CONSULTANT, TOWN shall pay CONSULTANT the sum due the CONSULTANT under this agreement prior to termination, unless the cost of completion to the TOWN exceeds the funds remaining in the contract. The maximum amount due to CONSULTANT shall not exceed the spending cap in this Agreement.
- E. For Contracts of any amount, if the TOWN determines that the Consultant has submitted a false certification under Section 287.135(5), Florida Statutes or has been placed on the Scrutinized Companies that Boycott Israel List, or is engaged in a boycott of Israel, the County shall have the option of (1) terminating the Agreement after it has given the Consultant written notice and an opportunity to demonstrate the agency's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or (2) maintaining the Agreement if the conditions of Section 287.135(4), Florida Statutes, are met.
- F. For Contracts of \$1,000,000 or more, if the TOWN determines that the Consultant submitted a false certification under Section 287.135(5), Florida Statutes, or if the Consultant has been placed on the Scrutinized Companies with Activities in the Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or been engaged in business operations in Cuba or Syria, the County shall have the option of (1) terminating the Agreement after it has given the Consultant written notice and an opportunity to demonstrate the agency's determination of false certification was in error pursuant to Section 287.135(5)(a), Florida Statutes, or (2) maintaining the Agreement if the conditions of Section 287.135(4), Florida Statutes, are met.

9.6 CONTRACT DOCUMENTS

This contract consists of the Request for Proposals, any addenda, the Form of Agreement (Articles I-IX), the CONSULTANT'S response to the RFQ, the documents referred to in the Form of Agreement as a part of this Agreement, and attachment A, and modifications made after execution by written amendment. In the event of any conflict between any of the Contract documents, the one imposing the greater burden on the CONSULTANT will control.

9.7 PUBLIC ENTITIES CRIMES

A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on contracts to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to 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 Section 287.017 of the Florida Statutes, for CATEGORY TWO for a period of 36 months from the date of being placed on the convicted vendor list.

By signing this Agreement, CONSULTANT represents that the execution of this Agreement will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes). Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from TOWN's

competitive procurement activities.

In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it or any subconsultant has committed an act defined by Section 287.133, Florida Statutes, as a “public entity crime” and that it has not been formally charged with committing an act defined as a “public entity crime” regardless of the amount of money involved or whether CONSULTANT has been placed on the convicted vendor list.

CONSULTANT will promptly notify the TOWN if it or any subcontractor or subconsultant is formally charged with an act defined as a “public entity crime” or has been placed on the convicted vendor list.

9.8 MAINTENANCE OF RECORDS AND RIGHT TO AUDIT RECORDS

CONSULTANT shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Records shall be retained for a period of five years from the termination of this agreement and if applicable in accordance with 2 C.F.R. § 200.333. Each party to this Agreement or its authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for five years following the termination of this Agreement. If an auditor employed by the TOWN or Clerk determines that monies paid to CONSULTANT pursuant to this Agreement were spent for purposes not authorized by this Agreement, or were wrongfully retained by the CONSULTANT, the CONSULTANT shall repay the monies together with interest calculated pursuant to Sec. 55.03, of the Florida Statutes, running from the date the monies were paid by the TOWN.

9.9 GOVERNING LAW, VENUE, INTERPRETATION, COSTS, AND FEES

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, TOWN and CONSULTANT agree that venue shall lie in Miami Dade County, Florida, in the appropriate court or before the appropriate administrative body. This agreement shall not be subject to arbitration. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Miami Dade County.

9.10 SEVERABILITY

If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The TOWN and CONSULTANT agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible

to the intent of the stricken provision.

9.11 ATTORNEY'S FEES AND COSTS

The TOWN and CONSULTANT agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, courts costs, investigative, and out-of-pocket expenses in appellate proceedings.

9.12 BINDING EFFECT

The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the TOWN and CONSULTANT and their respective legal representatives, successors, and assigns.

9.13 AUTHORITY

Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary TOWN and corporate action, as required by law.

9.14 CLAIMS FOR FEDERAL OR STATE AID

CONSULTANT and TOWN agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement. Any conditions imposed as a result of funding that effect the scope of work or individual project will be provided to each party.

9.15 ADJUDICATION OF DISPUTES OR DISAGREEMENTS

TOWN and CONSULTANT agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law. This Agreement is not subject to arbitration. This provision does not negate or waive the provisions of paragraph 9.5 concerning termination or cancellation.

9.16 COOPERATION

In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, TOWN and CONSULTANT agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. TOWN and CONSULTANT specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

9.17 NONDISCRIMINATION

The parties agree that there will be no discrimination against any person, and it is

expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. The parties agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination.

During the performance of this Agreement, the CONSULTANT, in accordance with *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, *Amending Executive Order 11246 Relating to Equal Employment Opportunity*, and implementing regulations at 41C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II C, agrees as follows:

1) The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

2) The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

3) The CONSULTANT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

4) The CONSULTANT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5) The CONSULTANT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

6) The CONSULTANT will furnish all information and reports required by

Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7) In the event of the CONSULTANT'S non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

9.18 COVENANT OF NO INTEREST

CONSULTANT and TOWN covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

9.19 CODE OF ETHICS

TOWN agrees that officers and employees of the TOWN recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

9.20 NO SOLICITATION/PAYMENT

The CONSULTANT and TOWN warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, the CONSULTANT agrees that the TOWN shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration. If federally funded by FHWA, FAR 52.203-5 Covenant Against Contingent Fees applies to this Agreement.

9.21 PUBLIC ACCESS.

Public Records Compliance. Consultant must comply with Florida public records laws, including but not limited to Chapter 119, Florida Statutes and Section 24 of article I of the Constitution of Florida. The TOWN and Consultant shall allow and permit reasonable access to, and inspection of, all documents, records, papers, letters or other "public record" materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the TOWN and Consultant in conjunction with this contract and related to contract performance. The TOWN shall have the right to unilaterally cancel this contract upon violation of this provision by the Consultant. Failure of the Consultant to abide

by the terms of this provision shall be deemed a material breach of this contract and the TOWN may enforce the terms of this provision in the form of a court proceeding and shall, as a prevailing party, be entitled to reimbursement of all attorney's fees and costs associated with that proceeding. This provision shall survive any termination or expiration of the contract.

The Consultant is encouraged to consult with its advisors about Florida Public Records Law in order to comply with this provision.

Pursuant to F.S. 119.0701 and the terms and conditions of this contract, the Consultant is required to:

- (1) Keep and maintain public records that would be required by the Town to perform the service.
- (2) Upon receipt from the Town's custodian of records, provide the Town with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the Town.
- (4) Upon completion of the contract, transfer, at no cost, to the Town all public records in possession of the Consultant or keep and maintain public records that would be required by the town to perform the service. If the Consultant transfers all public records to the Town upon completion of the contract, the Consultant shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Consultant keeps and maintains public records upon completion of the contract, the Consultant shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Town, upon request from the Town's custodian of records, in a format that is compatible with the information technology systems of the Town.
- (5) A request to inspect or copy public records relating to a Town contract must be made directly to the Town, but if the Town does not possess the requested records, the Town shall immediately notify the Consultant of the request, and the Consultant must provide the records to the Town or allow the records to be inspected or copied within a reasonable time.

If the Consultant does not comply with the Town's request for records, the Town shall enforce the public records contract provisions in accordance with the contract, notwithstanding the Town's option and right to unilaterally cancel this contract upon violation of this provision by the Consultant. A Consultant who fails to provide the public records to the Town or pursuant to a valid public records request within a reasonable time may be subject to penalties under section 119.10, Florida Statutes.

The Consultant shall not transfer custody, release, alter, destroy or otherwise dispose of any public records unless or otherwise provided in this provision or as otherwise provided by law.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, YVONNE HAMILTON AT

PHONE# 305-866-6241 YHAMILTON@BAYHARBORISLANDS-FL.GOV, TOWN HALL 9665 BAY HARBOR TERRACE, BAY HARBOR ISLANDS, FL 33154.

9.22 NON-WAIVER OF IMMUNITY

Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the CONSULTANT and the TOWN in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the TOWN be required to contain any provision for waiver.

9.23 PRIVILEGES AND IMMUNITIES

All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the TOWN, when performing their respective functions under this Agreement within the territorial limits of the TOWN shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the TOWN.

9.24 LEGAL OBLIGATIONS AND RESPONSIBILITIES

Non-Delegation of Constitutional or Statutory Duties. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the TOWN, except to the extent permitted by the Florida constitution, state statute, and case law.

9.25 NON-RELIANCE BY NON-PARTIES

No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the CONSULTANT and the TOWN agree that neither the CONSULTANT nor the TOWN or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

9.26 ATTESTATIONS AND TRUTH IN NEGOTIATION

CONSULTANT agrees to execute such documents as TOWN may reasonably require, including a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement. Signature of this Agreement by CONSULTANT shall act as the execution of a truth in negotiation certificate stating that wage rates and other factual unit costs supporting the compensation pursuant to the Agreement are

accurate, complete, and current at the time of contracting. The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the agency determines the contract price was increased due to inaccurate, incomplete, or concurrent wage rates and other factual unit costs. All such adjustments must be made within one year following the end of the Agreement.

9.27 NO PERSONAL LIABILITY

No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of Town of Bay Harbor Islands in his or her individual capacity, and no member, officer, agent or employee of Town of Bay Harbor Islands shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

9.28 EXECUTION IN COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

9.29 E-VERIFY SYSTEM

Beginning January 1, 2021, in accordance with F.S. 448.095, the Contractor and any subcontractor shall register with and shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees hired by the Contractor during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the work authorization status of all new employees hired by the subcontractor during the Contract term. Any subcontractor shall provide an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor shall comply with and be subject to the provisions of F.S. 448.095.

9.30 FEDERAL CONTRACT REQUIREMENTS.

The Consultant and its subconsultants must follow the provisions as set forth in 2 C.F.R. §200.326-Contract provisions and Appendix II to Part 200, as amended, including but not limited to:

9.30.1 Davis-Bacon Act, as amended (40 U.S.C. §§3141-3148). When required by Federal program legislation, which includes emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program and Transit Security Grant Program, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must comply with the Davis-Bacon Act (40 U.S.C. §§3141-3144, and §§3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. If applicable, the TOWN must

place a current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The TOWN must report all suspected or reported violations to the Federal awarding agency.

When required by Federal program legislation, which includes emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program and Transit Security Grant Program (it does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program), the contractors, in contracts for construction or repair work above \$2,000 in situations where the Davis-Bacon also applies, must also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). As required by the Act, each contractor or subrecipient is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The TOWN must report all suspected or reported violations to the Federal awarding agency.

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

Additionally, in accordance with the regulation, each contractor and subcontractor must furnish each week a statement with respect to the wages paid each of its employees engaged in work covered by the Copeland Anti-Kickback Act and the Davis Bacon Act during the preceding weekly payroll period. The report shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work.

9.30.2 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, which includes all FEMA grant and cooperative agreement programs, all contracts awarded by the TOWN in excess of \$100,000 that involve the employment of mechanics or laborers must comply with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible

provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

Compliance with the Contract Work Hours and Safety Standards Act.

- (1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph 29 C.F.R. § 5.5(b)(1) the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 29 C.F.R. § 5.5 (b)(1), in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 29 C.F.R. § 5.5 (b)(1).
- (3) *Withholding for unpaid wages and liquidated damages.* The Federal agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 29 C.F.R. § 5.5 (b)(2).
- (4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph 29 C.F.R. § 5.5 (b)(1) through (4) and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 29 C.F.R. § 5.5 (1) through (4).

9.30.3 Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

- 9.30.4 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387). Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended (42 U.S.C. §§7401-7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. §§1251-1387) and will report violations to FEMA/Federal Agency and the appropriate Regional Office of the Environmental Protection Agency (EPA). The Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—applies to Contracts and subgrants of amounts in excess of \$150,000. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA/Federal agency. The contractor agrees to report each violation to the TOWN and understands and agrees that the TOWN will, in turn, report each violation as required to assure notification to FEMA/Federal Agency and the appropriate EPA Regional Office.
- 9.30.5 Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award under a “covered transaction” (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR Part 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension” and the Department of Homeland Security’s regulations at 2 C.F.R. Part 3000 (Nonprocurement Debarment and suspension) SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. SAM exclusions can be accessed at www.sam.gov. Contractor is required to verify that none of the contractor’s principals (defined at 2 C.F.R. §180.935) or its affiliates (defined at 2 C.F.R. §180.905) are excluded (defined at 2 C.F.R. §180.940) or disqualified (defined at 2 C.F.R. §180.935). the contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by the COUNTY. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the TOWN, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. Bidders or Proposers agree to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder or Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.
- 9.30.6 Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the

recipient who in turn will forward the certification(s) to the awarding agency. If award exceeds \$100,00, the attached certification must be signed and submitted by the contractor to the TOWN.)

- 9.30.7 Compliance with Procurement of recovered materials as set forth in 2 CFR § 200.323. CONTRACTOR must comply with section 6002 of the Solid Waste Disposal Act, as amended, by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R part 247 that contain highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price.

Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

- 9.30.8 Prohibition on certain telecommunications and video surveillance services or equipment as set forth in 2 CFR § 200.216. Recipients and subrecipients and their contractors and subcontractors may not obligate or expend any federal funds to (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

- 9.30.9 Domestic preference for procurements as set forth in 2 CFR §200.322 The TOWN

and CONTRACTOR should, to the great extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). These requirements of this section must be included in all subawards including contracts and purchase orders for work or products under federal award. For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Other Federal Requirements:

9.30.10 Americans with Disabilities Act of 1990, as amended (ADA) — The CONSULTANT will comply with all the requirements as imposed by the ADA, the regulations of the Federal government issued thereunder, and the assurance by the CONSULTANT pursuant thereto.

9.30.11 Disadvantaged Business Enterprise (DBE) Policy and Obligation - It is the policy of the TOWN that DBE's, as defined in 49 C.F.R. Part 26, as amended, shall have the opportunity to participate in the performance of contracts financed in whole or in part with TOWN funds under this Agreement. The DBE requirements of applicable federal and state laws and regulations apply to this Agreement. The TOWN and its CONTRACTOR agree to ensure that DBE's have the opportunity to participate in the performance of this Agreement. In this regard, all recipients and contractors shall take all necessary and reasonable steps in accordance with 2 C.F.R. § 200.321(as set forth in detail below), applicable federal and state laws and regulations to ensure that the DBE's have the opportunity to compete for and perform contracts. The TOWN and the CONTRACTOR and subcontractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of contracts, entered pursuant to this Agreement.

2 C.F.R. § 200.321 CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS

a. If the CONTRACTOR, with the funds authorized by this Agreement, seeks to subcontract goods or services, then, in accordance with 2 C.F.R. §200.321, the CONTRACTOR shall take the following affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used whenever possible.

b. Affirmative steps must include:

- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which

encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

(6) Requiring the Prime contractor, if subcontractor are to be let, to take the affirmative steps listed in paragraph (1) through (5) of this section.

9.30.12 The Contractor shall utilize the U.S. Department of Homeland Security's E-**Verify system** to verify the employment eligibility of all new employees hired by the CONSULTANT during the term of the Contract and shall expressly require any subcontractors performing work or providing services pursuant to the Contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the Contract term.

9.30.13 Energy Efficiency- CONTRACTOR will comply with the Energy Policy and Conservation Act (P.L. 94-163; 42 U.S.C. 6201-6422) and with all mandatory standards and policies relating to energy efficiency and the provisions of the state Energy Conservation Plan adopted pursuant

FEMA Requirements:

9.30.14 Access to Records: Contractor/Consultant and their successors, transferees, assignees, and subcontractors acknowledge and agree to comply with applicable provisions governing the Department of Homeland Security (DHS) and the Federal Emergency Management Agency's (FEMA) access to records, accounts, documents, information, facilities, and staff. Contractors/Consultants must 1. cooperate with any compliance review or complaint investigation conducted by DHS 2. Give DHS access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance. 3. Submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.

9.30.15 DHS Seal, Logo and Flags: Contractor shall not use the Department of Homeland Security seal(s), logos, crests, or reproduction of flags or likeness of DHS agency officials without specific FEMA pre-approval. The Contractor shall include this provision in any subcontracts.

9.30.16 Changes to Contract: The Contractor understands and agrees that any cost resulting from a change or modification, change order, or constructive change of the agreement must be within the scope of any Federal grant or cooperative agreement that may fund this Project and be reasonable for the completion of the Project. Any contract change or modification, change order or constructive change must be approved in writing by both the TOWN and Contractor.

9.30.17 Compliance with Federal Law, Regulations, and Executive Orders. This is an acknowledgement that FEMA financial assistance may be used to fund all or a portion of the contract. The contractor will comply will all applicable Federal Law, regulations, executive orders, FEMA policies, procedures, and directives

9.30.18 No Obligation by Federal Government. The Federal Government is not a party to

this contract and is not subject to any obligations or liabilities to the TOWN/non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

9.30.19 Program Fraud and False or Fraudulent Statements or Related Acts. If applicable, the contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract.

9.30.20 Florida Department of Emergency Management (FDEM or Division) Requirements.

If funded by FDEM, the CONSULTANT is bound by any terms and conditions of the Federally-funded subaward and Grant Agreement between County and the Florida Division of Emergency Management (Division).

The CONSULTANT shall hold the Division and TOWN harmless against all claims of whatever nature arising out of the CONSULTANT's performance of work under this Agreement, to the extent allowed and required by law.

(The remainder of this page intentionally left blank.)

IN WITNESS WHEREOF, each party has caused this Agreement to be executed by its duly authorized representative on the day and year first above written.

(SEAL)
Attest: _____, Clerk

TOWN OF BAY HARBOR ISLANDS,
FLORIDA, USA

By: _____
TOWN CLERK

By: _____
TOWN MANAGER

(Seal)
Attest: _____

WSP USA, INC.

BY: _____

By:

Title: _____

END OF AGREEMENT

ATTACHMENT A
CONSULTANT
RATES

Contract Rates

Multiplier 2.81488

2022

Bill Rate	Certified Rates	Employee BR	
Principal In Charge	\$ 103.03	\$ 290.02	>>>>>>
Project Manager	\$ 79.33	\$ 223.30	>>>>>>
Senior Civil Engineer	\$ 51.01	\$ 143.59	>>>>>>
Senior Civil Engineer	\$ 52.01	\$ 146.40	>>>>>>
Senior Civil Engineer	\$ 52.89	\$ 148.88	>>>>>>
Structural Engineer	\$ 64.91	\$ 182.71	>>>>>>
			>>>>>>
Labor Multiplier Calculation - Less 5% Expenses (Expenses billed separately)			>>>>>>
OH	131%	1.31000	>>>>>>
OM		0.50000	>>>>>>
FCCM	0.4880%	0.00488	>>>>>>
Direct Expenses	5.000%	0.00000	>>>>>>
Plus "1"		1.00000	>>>>>>
			2.81488

Employees Approved to charge

Werner Reinefeld

Jose Custodio

Alan Sterental

Freddy Mena

Jonathan Portalatin

Javier Diaz



PAYROLL CERTIFICATION

New Contract - Monroe County

FULLNAME	RATE	GRADE	JOB TITLE
COOPER, JASON W.	\$43.03	T-07	SR. COORDINATOR, DESIGN SUPPORT
DIAZ VARELA, JAVIER (JAVIER DIAZ)	\$64.91	X-11	LEAD CONSULTANT, STRUCTURAL ENGINEER
DOMINGUEZ GONZALEZ, Ms. CAMILLE	\$110.58	X-14	SR. DIRECTOR, DISTRICT BUSINESS LINE
GILLIAM-SPRINGER, TAISHA G	\$48.75	X-11	MANAGER, CONTRACTS
KHOURI, Mr. ROGER G	\$113.73	X-14	SR. DIRECTOR, STRUCTURAL ENGINEER
MENA, FREDDY J	\$52.01	X-11	LEAD CONSULTANT, WATER RESOURCES ENGINEER
PORTALATIN-QUILES, JONATHAN	\$52.89	X-11	LEAD CONSULTANT, WATER RESOURCES ENGINEER
PULIDO, BERTHA	\$48.54	X-11	MANAGER, PROJECT ACCOUNTING
RAMSDEN, Mr. JERALD D (JERRY)	\$69.46	P-12	SR. LEAD CONSULTANT, PORTS AND MARINE ENGINEER
REINE FELD, WERNER J	\$103.03	X-13	DIRECTOR, WATER RESOURCES ENGINEER
SCHOTANUS, STACIE	\$44.81	P-10	SR. CONSULTANT, WATER RESOURCES ENGINEER
STERENTAL, ALAN I	\$64.38	X-12	SR. LEAD CONSULTANT, WATER RESOURCES ENGINEER

AGENDA ITEM REPORT

November 3, 2022

ITEM NUMBER: 3.

ITEM: Consideration and Approval of a Resolution relating to a declaration by the Town Council of zoning-in-progress by adopting a temporary moratorium on the issuance of new building permits, the approval of new Site Development Plan Applications by the Design Review Board and/or the Town Council, and the submittal of new Site Development Plan Applications to the Town by the earlier of 180 days or the final adoption of revisions to the Town's Zoning and Planning Code, in accordance with the provisions set forth in Section 23-16.1 of the Town's Code of Ordinances for the purpose of studies and possible revisions, if deemed necessary, to the Town's Land Development Regulations for both the East and West Islands.

DESCRIPTION:

The proposed resolution seeks to impose a zoning-in-progress moratorium on the east and west islands, pending the preparation of a detailed comprehensive analysis of the town's applicable Comprehensive Plan and Land Development Regulations.

Notice of the November 3, 2022 Special Council Meeting was published in the *Miami Herald*, on the Town Hall Bulletin Boards, and on the website.

RECOMMENDED ACTION:

Council's Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk

ATTACHMENTS

1.	BHI Draft Reso Moratorium Zoning In Progress Nov 2022 (006)
2.	Sec. 23 16.1. Moratoriums
3.	BHI TC Workshop Mtg Backup Docs #1 Oct 2022
4.	BHI TC Workshop Mtg Backup Docs #2 Oct 2022

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, RELATING TO A DECLARATION BY THE TOWN COUNCIL OF ZONING-IN-PROGRESS BY ADOPTING A TEMPORARY MORATORIUM ON THE ISSUANCE OF NEW BUILDING PERMITS, THE APPROVAL OF NEW SITE DEVELOPMENT PLAN APPLICATIONS BY THE DESIGN REVIEW BOARD (DRB) AND/OR TOWN COUNCIL, AND THE SUBMITTAL OF NEW SITE DEVELOPMENT PLAN APPLICATIONS TO THE TOWN BY THE EARLIER OF ONE HUNDRED EIGHTY (180) DAYS OR THE FINAL ADOPTION OF REVISIONS TO THE TOWN'S ZONING AND PLANNING CODE, IN ACCORDANCE WITH THE PROVISIONS SET FORTH IN SECTION 23-16.1 OF THE TOWN'S CODE OF ORDINANCES; FOR THE PURPOSE OF STUDIES AND POSSIBLE REVISIONS, IF DEEMED NECESSARY, TO THE TOWN'S LAND DEVELOPMENT REGULATIONS FOR BOTH THE EAST AND WEST ISLANDS; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Mayor and Town Council are designated the Local Planning Agency (LPA) by Section 23-41 of the Town's Code of Ordinances, and have previously undertaken a number of studies over the years, adopted a Comprehensive Plan, and adopted numerous land development regulations to guide and control growth and development in the Town; and

WHEREAS, The Town of Bay Harbor Islands adopted its first Zoning and Planning Code for the community in June 1957; and

WHEREAS, The Town of Bay Harbor Islands adopted its first Comprehensive Plan in 1980 pursuant to the 1975 Florida Growth Management Act, with revisions in 1988 pursuant to the 1985 Florida Growth Management Act, with additional partial revisions in 2004 to include recommended EAR-Based amendments related to residential density, and several other plan amendments over the years, and continues to periodically review and update its Comprehensive Plan pursuant to Ch. 163 F.S.; and

WHEREAS, the Town Council periodically studies various land development trends and issues, and considers strategies and design guidelines to encourage the proper re-development of lands within the Town, and amends the Zoning and Planning Code accordingly; and

WHEREAS, the Town retains the services of urban planning professionals to help study land development activities, land development regulations and to recommend strategies and/or Code modifications to address identified problems; and

WHEREAS, a majority of the Town Council, on its own initiative during a Local Planning Agency (LPA) meeting held on November 3rd, 2022, indicated a desire to review its Land Development Regulations to ensure that the Town's guidelines provide development standards for all development to ensure neighborhood compatibility; and

WHEREAS, despite numerous studies and Code modifications made to the Town's Land Development Regulations over the years, some land development issues recently discussed by the Town Council that relate to the scale of new redevelopment has created some concern, and the Town desires to temporarily pause the approval of new development applications to further study and possibly update its Land Development Regulations; and

WHEREAS, those Site Development Plan applications that have obtained a valid building permit for a principal structure and related site improvements from the Town, or received a formal Site Development Plan approval from the Town (Design Review Board and/or Town Council) shall be exempt from this zoning-in-progress Resolution and moratorium; and

WHEREAS, the Town has several sections within its Land Development Regulations that may need to be revised, after study, in order to implement the Town's desired Zoning and Planning Code revisions, and

WHEREAS, the Mayor and Town Council desire to preserve the status quo, except as provided below, regarding existing zoning regulations during the moratorium to impose new and/or amended Land Development Regulations and the Town's Comprehensive Plan; and

WHEREAS, to fully preserve the status quo it is necessary to implement the pending legislation doctrine set forth in *Smith v. City of Clearwater*, 383 So.2d 681 (Fla. 2nd DCA 1980), and

WHEREAS, a duly noticed public meeting was held before the Local Planning Agency (LPA) of the Town which is charged with reviewing proposed modifications to the Town's Comprehensive Plan, and Zoning and Planning Code; and

WHEREAS, the Town Council held duly noticed public meeting to consider this proposed zoning-in-progress / moratorium in accordance with Sec. 23-16.1 of 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: Recitals. That the above and foregoing recitals are true and correct and are hereby incorporated by reference.

Section 2: Upon the date of approval of this Resolution, Town staff shall comply with the applicable provisions of Town Code Sec. 23-16.1 and the Florida Statutes relative to notice and advertisement to the public of this action, and as such, in the interim, no building permits, certificates of use, development orders, including but not limited to new Site Development Plans, shall be submitted to or issued for development.

Section 3: Those Site Development Plan applications that have obtained a valid Building Permit for a principal structure and related site improvements from the Town or received a formal Site Development Plan approval from the Town (Design Review Board

and/or Town Council) shall be exempt from this zoning-in-progress Resolution and moratorium.

Section 4: This shall not include building permits issued for emergency repairs, including life safety repairs, or the normal maintenance, or repair of existing land development (single-family homes, multifamily complexes, commercial complexes, other).

Section 5: The Town Council hereby approves this proposed zoning-in-progress moratorium Resolution. The Town Council has determined that a moratorium, pending the preparation of a detailed and comprehensive analysis of its applicable Comprehensive Plan and Land Development Regulations, is reasonably necessary and desirable, and as such, the Town Council approves this zoning-in-progress moratorium Resolution; and orders a fixed time, not to exceed 180 calendar days, unless an extension is necessary and approved per Section 23-16.1, within which the Town staff / consultants shall report to the Town Council with its report, a proposed Ordinance amending the regulations, and related recommendations to the moratorium.

Section 6: The Town has published a Notice of Intent for the November 3rd, 2022 LPA meeting. Upon adoption of this zoning-in-progress Resolution, the Town Clerk shall publish the adopted Resolution in a newspaper of general circulation published in the Town, or in Miami-Dade County, Florida within ten (10) days of adoption.

Section 7: During the period of time the Town is considering modifications to its Comprehensive Plan and Land Development Regulations, no permit(s), certificate of use(s), or development order of any kind, shall be issued if issuance would result in the nonconforming, or unlawful use of the subject property should the moratorium, Comprehensive Plan, text amendment, or zoning district change be finally enacted by the Town Council. The period of time this zoning-in-progress moratorium on building permits, certificates of use, and development orders shall begin on the earlier of: (A)

Town Council adoption of this zoning-in-progress moratorium Resolution or (B) Notice has been given as required by law of the initial public hearing before the Town Council on the amendments to the regulations

Section 8: Nothing in this Resolution should be construed or applied to abrogate the vested rights of a property owner to develop or utilize his/her property in any other way commensurate with zoning and other regulations, including any required renewal of permits for existing legally erected premises.

Section 9: Notwithstanding the adoption of this zoning-in-progress moratorium, the building official may authorize the issuance of building permits for non-deleterious items including but not limited to: fences, interior repairs or remodeling, general repairs and similar matters, where he/she determines that such permit(s) will not affect the outcome of the planning study; provided, however, that with regard to any particular moratorium, the Town Council may increase or decrease allowable exemptions and may provide either a supplemental or exclusive procedure for acting upon requests for exemptions. Such procedure may vest jurisdiction and responsibility for acting upon requests for exemptions with other Town officials, with the input of the Town Manager, Building Official, or other designee.

Section 10: That this Resolution shall be in full force and take effect immediately upon its passage and adoption.

PASSED AND RESOLVED this ____ day of _____, 2022.

JOSHUA D. FULLER
Mayor

ATTEST:

YVONNE P. HAMILTON
Town Clerk

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

GREENSPOON MARDER LLP
TOWN ATTORNEY
By: Joseph S. Geller, Esq.

FINAL VOTE AT ADOPTION

Mayor Joshua D. Fuller	_____
Vice Mayor Elizabeth Tricoche	_____
Council Member Stephanie Bruder	_____
Council Member Teri D'Amico	_____
Council Member Molly Diallo	_____
Council Member Isaac Salver	_____
Council Member Robert Yaffe	_____

Sec. 23-16.1. Moratoriums.

- (1) Notwithstanding any other provisions contained in the ordinances of the town, the town council may impose building and zoning moratoriums in accordance with the procedures herein established.
- (2) Whenever it shall be made to appear to the town manager or the town council acting through the mayor or assistant mayor that it is in the public interest to make a comprehensive determination as to whether existing zoning ordinances applying to a portion of the area of the Town of Bay Harbor Islands are appropriate, and it is further made to appear to the town manager or town council that the said existing zoning ordinances may be detrimental to the said area should they continue to remain applicable and building permits be issued predicated thereon, notwithstanding any other provision to the contrary, the town mayor or vice mayor acting for the town council or the town manager shall immediately instruct the town clerk to call a meeting of the town council to consider the imposition of a moratorium, and the town manager shall further instruct the town clerk to post public notice of such meeting in an appropriate place in the town hall, and in such other locations as the council may direct, and to give notice in accordance with the notice provisions of the applicable state statutes. If a majority of the council members present at such meeting concurs in the aforesaid determination, then they shall by resolution delineate the area in question and prohibit the issuance of building permits thereon. The town council's determination shall be predicated on a consideration of the comprehensive plan and shall be designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; and with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the town.
- (3) Any resolution issued pursuant to subsection (2) shall be complied with by all town personnel and shall be effective until reversed, modified or superseded by order of the town council.
- (4) Immediately upon issuance of any resolution issued pursuant to subsection (2), the town manager shall notify the town clerk, whose duty it shall be to place the matter before the town council for consideration and review following a public hearing as soon as is reasonably practicable.
- (5) The town clerk shall give reasonable notice by publication in a newspaper of general circulation in the town of the public hearing which she has scheduled before the town council.
- (6) At the public hearing the town council shall inquire into the propriety of a building moratorium and may reverse, modify or supersede any moratorium order previously issued. The council's determination shall be predicated upon the reasonable necessity for a detailed comprehensive analysis of the area in question and the probability of detriment to the character of the area by the continued application of the existing zoning ordinances.
- (7) Should the town council determine that a building moratorium is reasonably necessary, it shall order the same and direct that no building permits be issued within the affected area. The council's order shall fix a time within which the town manager shall report back to the council with his recommendations relating to appropriate zoning ordinance for the affected area. The said time limitation shall be a reasonable one, predicated upon the time needed for a comprehensive analysis of the area. The initial council moratorium shall be for a period not to exceed 180 days. The council on its own motion or otherwise may continue any moratorium for a longer period of time, if reasonably necessary. This provision is supplemental to subsection (8) hereof.
- (8) Should the town manager be unable to report back to the council within the time prescribed by its moratorium order, upon timely request by the town manager and after public hearing on the need therefor,

the council may reasonably extend the time limitation. The town manager shall submit his report simultaneously to the council and the zoning and planning board. The zoning and planning board shall make its findings and recommendations after public hearing to the council.

- (9) Upon the submission of the zoning and planning board findings and recommendations to the council, the clerk shall call a public hearing thereon before the council at the earliest practicable time, ten days after publication, once in a newspaper of general circulation in the town. After said public hearing the council shall make its determination as to whether the zoning ordinances shall remain the same or shall be changed. Should the council determine that the zoning ordinances shall remain the same, it shall immediately issue its order terminating the building moratorium. Should the council determine that the applicable zoning ordinances should be changed, or new ordinances created, or special exceptions, variances, conditional use permits and the like, altered or revoked, it shall issue its order continuing the building moratorium and shall immediately take the actions required to accomplish the same.
- (10) Upon the completion of all zoning changes relating to the affected area, the council shall issue its order terminating the building moratorium.
- (11) If any planning study performed by town officials or employees or a specially hired or appointed town agency, indicated the necessity for zoning changes, the provisions hereof may be utilized to restrict the issuance of building permits until such changes have been finally considered by the council.
- (12) Any person may make written application to the town council for the issuance of a building moratorium by the council. Such application to the council shall be filed with the town clerk, whose duty it shall be to place the matter before the town council as soon as is reasonably practicable for the council's determination as to whether a public hearing shall be called thereon. The town manager shall be notified by the clerk of the date that the matter is to be considered by the council. The word "person" as used in this subsection includes, but is not limited to, any individual, firm, corporation and governmental entity.
- (13) Should the council determine that a public hearing should be held as to whether a building moratorium is appropriate, it shall call the same for the earliest practicable date and give ten days notice thereof by publication once in a newspaper of general circulation in the town. Pending the public hearing, the council may issue an order prohibiting the issuance of building permits in the affected area.
- (14) After the completion of the steps provided in subsections (12) and (13) above, the procedure is that set forth in subsections (6) through (10) hereof.
- (15) Notwithstanding the issuance of any moratorium order, the town manager may authorize the issuance of building permits for nondeleterious items including, but not limited to, fences, repairs, and the like matters, if he determines that such permit will not affect the outcome of the planning study, and such items are not subject to the approval of any other board or agency of the town.
- (16) During the existence of any building moratorium, no applications for variances, special exceptions or zoning district changes, minimum square footage requirement changes, unusual and new uses, modifications or elimination of conditions, restrictions or limitations with the affected area shall be acted upon by any town agency except as provided herein.

(Ord. No. 108, § 16A, 6-10-57; Ord. No. 301, § 1, 6-14-76; Ord. No. 700, § 1, 4-8-02)

No. 102

RESTRICTIONS

Filed April 19, 1947

Recorded under Clerk's
File No. W. 33513

DECLARATION OF RESTRICTIONS COVERING BAY HARBOR
ISLAND, A SUBDIVISION OF DADE COUNTY, FLORIDA
ACCORDING TO THE PLAT THEREOF AS RECORDED IN
PLAT BOOK 46, AT PAGE 5, OF THE PUBLIC RECORDS
OF DADE COUNTY, FLORIDA:

DEFINITIONS:

1. SUBDIVIDER and GRANTOR mean Bay Harbor Island, Inc., a Florida corporation, its successors and assigns.

2. GRANTEE means the person, firm or corporation (one or more) to whom the subdivider first conveys the land herein described, or any part thereof, and the grantee's heirs, executors, administrators, successors and assigns, and all persons, firms or corporations claiming by, through or under such grantee; wherever in this document the masculine is used, it shall include the feminine or neuter, as the context may require.

3. SUBDIVISION means the twin islands as shown on the Plat of Bay Harbor Island, recorded in Plat Book 46 at page 5 of the Public Records of Dade County, Florida.

THE EAST ISLAND means the island shown on said Plat of Bay Harbor Island situated west of Indian Creek and east of Bay Harbor Waterway.

THE WEST ISLAND means the island shown on said Plat of Bay Harbor Island situated west of Bay Harbor Waterway and east of Biscayne Bay.

4. LOT means the parcels of land into which Bay Harbor Island was subdivided, as shown from the Plat thereof, recorded in Plat Book 46 at page 5 of the Public Records of Dade County, Florida; but the lots in Blocks 11, 12, 20, and 21, and Lots 1 and 2 in Block 1, Lots 36 and 37 in Block 4 and Tracts A, B, C, D, E and F are not covered by or subject to the use and setback restrictions hereinafter set forth.

RESTRICTIONS THAT APPLY TO THE EAST ISLAND:

A. Use restrictions:

Except for Lots 1 and 2 in Block 1; Lots 36 and 37 in Block 4; all of Blocks 11, 12, 20 and 21; and Tracts A, B, C, D, E and F of the East Island, no building shall

No. 102 (Continued)

be erected or constructed or maintained on any lot in the East Island other than residences, duplexes, apartments, apartment hotels, hotels or club hotels; no business building may be erected on said lands or any part of said lands, and no business may be conducted thereon except such business as is directly concerned with and incidental to each individual apartment house, apartment hotel, hotel or club hotel, as the case may be. If any such incidental business is conducted in any building on said land, then no shop or store or concession for any such business shall have any outside entrance or outside store-front or outside signs or displays, lighting or advertising; access thereto being exclusively limited to and through the inside of the building.

B. Set-back lines:

On water-front lots, no buildings or any part thereof may be erected nearer to the sea wall or bulkhead than twenty (20) feet, measured from the outside face thereof, or nearer to the rear line which is the line abutting the street, than twenty (20) feet, or nearer to the side lines than ten (10) feet.

On all other lots, other than water-front lots, no building or any part thereof, may be erected nearer to the line abutting the street than twenty (20) feet, (except as to triangular or otherwise odd-shaped lots, in which instances the subdivider may adjust the street or front setback restrictions in the interest of proper, useful and equitable planning), or nearer to the rear line than ten (10) feet, or nearer to the side lines than ten (10) feet.

C. Minimum size and cost of building:

No single family residence may be erected with floor area, exclusive of garages, porte-cocheres, porches and terraces, of less than fifteen hundred (1500) square feet; nor shall any duplex or two-family residence be erected with floor area, exclusive of garages, porte-cocheres, porches and terraces, of less than two thousand (2000) square feet; nor shall any apartment house, apartment hotel or hotel be erected with total floor area, exclusive of garages, porte-cocheres, porches and terraces, of less than twenty-five hundred (2500) square feet, nor shall any dwelling unit, apartment unit or hotel room in any of said apartment houses, apartment hotels or hotels contain less square footage than is presently required by the Miami Beach Building Code.

No. 102 (Continued)

RESTRICTIONS THAT APPLY TO THE WEST ISLAND:A. Use restrictions:

No building shall be erected or constructed on any lot in the West Island other than one single family dwelling house (with the usual out-buildings for use in connection therewith) for the use of one family only, and no lot shall be used except for residential purposes exclusively for one family only. No out-building shall be allowed that is susceptible of being occupied for residential purposes (except by domestic servants), and no out-building shall be used except in connection with the main-house.

B. Set-back lines:

On water-front lots, other than water-front lots fronting due east on Bay Harbor Waterway, no building or any part thereof may be erected nearer to the sea wall or bulkhead than forty (40) feet measured from the outside face thereof; and on water-front lots fronting due east on Bay Harbor Waterway, no building or any part thereof may be erected nearer to the sea wall or bulkhead than twenty-five (25) feet measured from the outside face thereof; and on all water-front lots, no buildings or any part thereof may be erected nearer to the rear line, which is the line abutting the street, than twenty-five (25) feet, or nearer to the side lines than ten (10) feet. On all other lots, except water-front lots, no building or any part thereof may be erected nearer to the line abutting the street than twenty-five (25) feet, (except as to triangular or otherwise odd-shaped lots, in which instances the subdivider may adjust the street or front set-back restrictions in the interest of proper, useful and equitable planning), or nearer to the rear line than fifteen (15) feet, or nearer to the side lines than ten (10) feet.

C. Minimum size of residence:

On water-front lots, no residence may be erected with floor area, exclusive of garages, porte-cocheres, porches and terraces of less than two thousand (2000) square feet. On all other lots in the West Island, no residence may be erected with floor area, exclusive of garages, porte-cocheres, porches, and terraces, of less than fifteen hundred (1500) square feet.

RESTRICTIONS THAT APPLY TO THE ENTIRE SUBDIVISION OF BAY HARBOR ISLAND:1. Ownership

No. 102 (Continued)

None of the land situate in this subdivision shall be occupied by or sold, leased, rented, devised or conveyed in any form or manner by any title, either legal or equitable, to any person or persons other than of the Caucasian Race; nor to any firm, partnership, organization, association or corporation of which any person or persons not of the Caucasian Race shall be directly or indirectly a member, participant, associate or stockholder.

2. Nuisances:

Nothing shall be done or suffered to be done or permitted to exist on any lot which may be or become an annoyance, blight, eye-sore or nuisance to the neighborhood. No horses, cattle, swine, goats, poultry, fowl or any other live stock shall be kept on any lot. No sign of any character, including but not limited to "for sale" or "for rent" signs, shall be erected, displayed or maintained on any of the land or on any of the structures in this subdivision, unless the erection and maintenance of such sign be first approved in writing by the subdivider. No derrick, boom or drilling apparatus, billboard, poster or other advertising sign or device, factory, boat slips, ship yard or marine railway slips, machine shop, manufacturing establishment, trailer park, nursing home, sanitarium, hospital or like institution, shall be constructed or operated on any of the lots or land in this subdivision.

No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon the lands of this subdivision, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon; and in the event that the owner shall fail or refuse to keep the lands free of weeds, underbrush or refuse piles or other unsightly growths or objects, then the subdivider may enter upon said lands and remove the same at the expense of the owner, and such entry shall not be deemed a trespass.

3. Plans and specifications:

For the purpose of insuring the development of this subdivision as an area of high standards, the subdivider reserves the right and power to control the type, kind and character of the buildings, structures and other improvements to be placed on each of the lots in this subdivision. The owner or occupant of each and every lot, by acceptance of title thereto or by taking possession thereof, covenants and agrees that no building or structure of any kind shall be placed, erected or altered upon any of the land

No. 102 (Continued)

in this subdivision unless and until the plans and specifications therefor, and the plot plans have been submitted to and approved in writing by the subdivider before any construction is begun; the plans and specifications and all construction thereunder, and every alteration of any building or structure, shall be in accordance and compliance with the Building, Plumbing, Electrical Codes of the City of Miami Beach, Florida, in effect at the time construction or alteration of any such building or structure is begun, except as relaxed or modified by the subdivider in writing.

Each such building or structure shall be placed on the premises only in accordance with the plans and specifications, and plot plans, so approved by the subdivider. Refusal of approval of plans and specifications by the subdivider may be based on any legitimate ground, including but not limited to aesthetic grounds. No alterations in the exterior appearance of the buildings or structures shall be made without like written approval of the subdivider first had and obtained. Should the subdivider fail to approve or disapprove the plans and specifications, and plot plans, submitted to it by the owner of any lot or lots in Bay Harbor Island Subdivision within thirty (30) days after written request therefor, then such approval of the subdivider shall not be required, provided, however, that no building or other structure shall be erected or shall be allowed to remain on any land in Bay Harbor Island Subdivision which violates any of the covenants or restrictions contained in this Declaration of Restrictions.

4. No temporary buildings:

No tents and no temporary or accessory building or structure shall be erected on any of the lots in Bay Harbor Island Subdivision without the written consent of the subdivider.

5. Building sites:

A residential or apartment site may consist of one or more lots. All of one lot and part of another or contiguous parts of more than one lot, or any other combination of contiguous parts of lots, will form an integral unit of land suitable for use as a site for a residence or an apartment, provided it extends from the street serving it to the rear boundary or to the water-front boundary; but no site shall have a frontage of less width than is contained in the largest adjoining lot shown on the plat. For all purposes of

No. 102 (Continued)

this instrument and all the restrictions herein contained, the unit of land so formed for use as a residential site, or for an apartment site where apartments are allowed to be built, shall be considered to be a lot to the same extent as though it had been laid out and platted as one.

6. Boats, boathouses and anchorage:

No boathouse or dock building shall be erected on or adjoining any of the lots in this subdivision, but a dock extending such a distance from the line of the bulkhead of the water-front lots as may be approved by the subdivider may be permitted, provided no dock shall be higher than three and one-half ($3\frac{1}{2}$) feet above the mean high tide, or shall extend more than eight (8) feet beyond the sea wall, and no cover shall be permitted to be erected in connection with any dock, except temporary boat swings, which may not extend over eight (8) feet above the mean high tide; provided further, that no boat landing, dock or pier shall be constructed until the plans and specifications therefor shall have been approved in writing by the subdivider. 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 subdivider. The subdivider shall have the right to regulate the size and type of boats, yachts or vessels which may be moored to any dock or mooring along the waters adjacent to the subdivision, regardless of the location.

No mooring pile shall be placed more than twenty-five (25) feet beyond the outside face of the sea wall of any lot, and no mooring pile shall be placed nearer than seven and one-half ($7\frac{1}{2}$) feet to a line formed by the projection of the sidelines of the lot.

7. Filling-in:

No lot or parcel shall be increased in size by filling in the waters on which it abuts.

8. Sea Walls:

No sea wall shall be erected or constructed in this subdivision or adjacent thereto unless and until its location, design, materials, structures, strength, etc., shall have been approved in writing by the subdivider.

9. Walls and fences:

Heights of any walls and fences built outside of the buildings set-back lines shall not be greater than as follows:

No. 102 (Continued)

No wall or fence may be erected on any lot in the subdivision higher than five (5) feet above finished grade, or more than six (6) feet above the elevation of the center of the adjoining street.

The subdivider may, in its discretion, approve minor projections above the restricted heights for architectural features. No wall or fence of any kind whatsoever shall be constructed on any lot until after the height, type, design and location thereof shall have been approved in writing by the subdivider.

10. Easements:

An easement is reserved over the rear five (5) feet of each lot in the subdivision for the installation and maintenance of all utilities, including but not limited to electricity, water, gas, sewers, telephone and for any similar facility deemed by the subdivider necessary for the service of said land. The rear line of all water-front lots shall be deemed the line abutting the street. The subdivider further reserves the right to assign the use of said easements or rights of way to any person, firm, corporation or municipality furnishing any of the utilities or facilities aforementioned. A similar easement is reserved over the side lines of the lots where such easements are shown on the plat on file in the office of the subdivider in connection with the installation and maintenance of all such utilities aforementioned.

No trees may be planted or other matters and things placed within the easements hereby reserved.

11. Additional restrictions:

The said subdivider may include in any contract, agreement for deed or deed hereafter made, any additional conditions, restrictions and covenants not inconsistent with those herein contained.

12. Restrictions uniform:

The foregoing restrictions are hereby incorporated by reference in all deeds or other instruments of conveyance which the subdivider may execute and deliver, conveying land in this subdivision, whether or not specific mention of the restrictions is made in any such deeds or other instruments of conveyance. The owner or occupant of each and every lot or parcel of land in this subdivision by acceptance of title thereto or by taking possession thereof, covenants

No. 102. (Continued)

and agrees, for himself, his heirs, executors, administrators, successors and assigns, that he will comply with and abide by each of the restrictions contained in this Declaration of Restrictions, and that he will exert his best efforts to keep and maintain the land in this subdivision as an area of high standards.

13. Remedies for violations:

In the event of a violation or breach of any of these restrictions by any person or concern claiming by, through or under the subdivider, or by virtue of any judicial proceedings, the subdivider and the lot owners, or any of them jointly or severally, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach of any of them. In addition to the foregoing right, the subdivider shall have the right whenever there shall have been built on any lot in the subdivision, any structure which is in violation of these restrictions, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner, and such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation, restriction or condition contained in this Declaration of Restrictions, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. The invalidation by any court of any one of the restrictions in this Declaration of Restrictions contained, shall in no way affect any of the other restrictions, but they shall remain in full force and effect.

IN WITNESS WHEREOF, BAY HARBOR ISLAND, INC., a Florida corporation, has, by its duly authorized officers, executed this Declaration of Restrictions covering Bay Harbor Island, a subdivision of Dade County, Florida, according to the Plat thereof as recorded in Plat Book 46 at page 5 of the Public Records of Dade County, Florida, this 15th day of February, A. D. 1947, at Dade County, Florida.

BAY HARBOR ISLAND, INC.

(CORP.
SEAL)

By /s/ Howard Kane
President

ATTEST: /s/ Ruth S. Broad
Secretary

(Duly acknowledged)

This Instrument Was Prepared By:
GENE ESSNER, ATTY.
BROAD AND CASSEL
1108 Kane Concourse
Bay Harbor Islands, Florida 33154

NOTICE TO EXTEND

KNOW ALL MEN BY THESE PRESENTS:.

AMERICAN MORTGAGE AND SAFE DEPOSIT COMPANY as assignee of all right, title, interest, powers and privileges of Subdivider under Declaration of Restrictions recorded 19 April 1947 under Clerk's File No. W33513 (Deed Book 2848 at Page 69) in the office of the Clerk of the Circuit Court in and for Dade County, Florida does hereby extend said Declaration of Restrictions for an additional term of thirty (30) years from the date of filing hereof pursuant to Florida Statutes Section 712.05.

For purposes of this notice, the undersigned declares:

1. NAME AND ADDRESS OF CLAIMANT

American Mortgage and Safe Deposit Company
1108 Kane Concourse
Bay Harbor Islands, Florida 33154

2. DESCRIPTION OF LAND AFFECTED

All lots and parcels within:

Bay Harbor Island, according to the plat thereof recorded in Plat Book 46 at Page 5 of the Public Records of Dade County, Florida.

3. NAMES AND ADDRESSES OF OWNERS

The names and addresses of the owners of all lots and parcels contained within the subdivision described in 2 above are appended hereto and by reference made a part hereof as determined from the last completed tax assessment roll of Dade County, Florida on the date hereof.

4. DESCRIPTION OF THE CLAIM

Claimant claims the right to proceed at law or in equity to compel a compliance with the terms of that certain Declaration of Restrictions recorded 19 April 1947 under Clerk's File No. W33513 (Deed Book 2848 at Page 69) in the office of the Clerk of the Circuit Court in and for Dade County, Florida, or to prevent the violation or breach of any of them. In addition, the claimant claims the right whenever there shall have been built on any lot in the subdivision, any structure which is in violation of said restrictions, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner, and such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation, restriction or condition contained in said Declaration of Restrictions, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. The invalidation by any court of any one of the restrictions in said Declaration of Restrictions, shall in no way affect any of the other restrictions, but they shall remain in full force and effect.

5. INSTRUMENT ON WHICH CLAIM IS BASED

This claim is based upon that certain Declaration of Restrictions recorded 19 April 1947 under Clerk's File No. W33513 (Deed Book 2848 at Page 69) in the office of the Clerk of the Circuit Court in and for Dade County, Florida.

IN WITNESS WHEREOF claimant executed these presents the 23 day of March, 1977.

AMERICAN MORTGAGE AND SAFE DEPOSIT COMPANY

Attest:

By: *Shepard Broad*

Ruth K. Broad

(Corporate Seal)

STATE OF FLORIDA
COUNTY OF DADE

The foregoing instrument was acknowledged before me this 23rd day of March, 1977 by SHEPARD BROAD and RUTH K. BROAD as President and Secretary, respectively, of AMERICAN MORTGAGE AND SAFE DEPOSIT COMPANY, a Florida corporation, on behalf of the corporation.

M. H. Langschultz
Notary Public,
State of Florida at Large

My Commission Expires:

Notary Public State of Florida at Large:
My Commission Expires Sept. 9, 1980:

STATE OF FLORIDA)
COUNTY OF DADE)

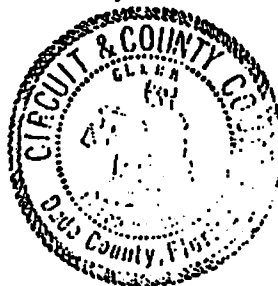
I HEREBY CERTIFY that this is a true copy of Pages 1 and 2 of the original Notice filed in this office on the 14 day of April, A.D. 1977 and appended to the original Notice is a portion of the 1976 Metropolitan Dade County Ad Valorem Assessment Roll showing names and addresses of lot owners in the subject subdivision.

I FURTHER CERTIFY that I did, on this 14 day of April, A.D. 1977, mail by Certified Mail a copy of the foregoing Notice to each individual named in that portion of the said Assessment Roll.

WITNESS my hand and Official Seal.

RICHARD P. DRINKER
Clerk Circuit Court

By: M. Doyle D.C.



BILZIN SUMBERG DUNN BAENA PRICE & AXELROD LLP
A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS
2500 FIRST UNION FINANCIAL CENTER
300 SOUTH BISCAYNE BOULEVARD • MIAMI, FLORIDA 33131-2336
TELEPHONE: (305) 374-7550 • WWW.BILZIN.COM
FAX: (305) 374-7553 • CROWARD: (305) 338-0000

STANLEY B. PRICE, P.A.
DIRECTOR OF LAW (305) 330-2374
E-MAIL: SBPRICE@BILZIN.COM

October 7, 2002

Ms. Linda Karlsson
Town Manager
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, Florida 33154

BY FAX

RE: 75 Foot Limit on Building Height

Dear Linda:

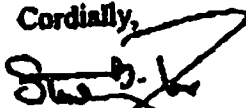
This will acknowledge receipt of your letter dated September 20, 2002 in conjunction with the above-styled matter.

In response to the two questions you posed in the letter, please be advised that the 75 foot limit should begin at the Base Floor Elevation (BFE), as presently utilized in the Code.

With regard to your second question, please be advised that the 75 foot elevation limitation should be construed consistent with past practices and policies of the Town. It is my understanding that such structures as elevator shafts, generators, air-conditioning rooms and other mechanical rooms were not considered as limitations on building heights.

I trust this answers your inquiry.

Cordially,


Stanley B. Price

SBP:cm

cc: Craig B. Sherman, Esq.

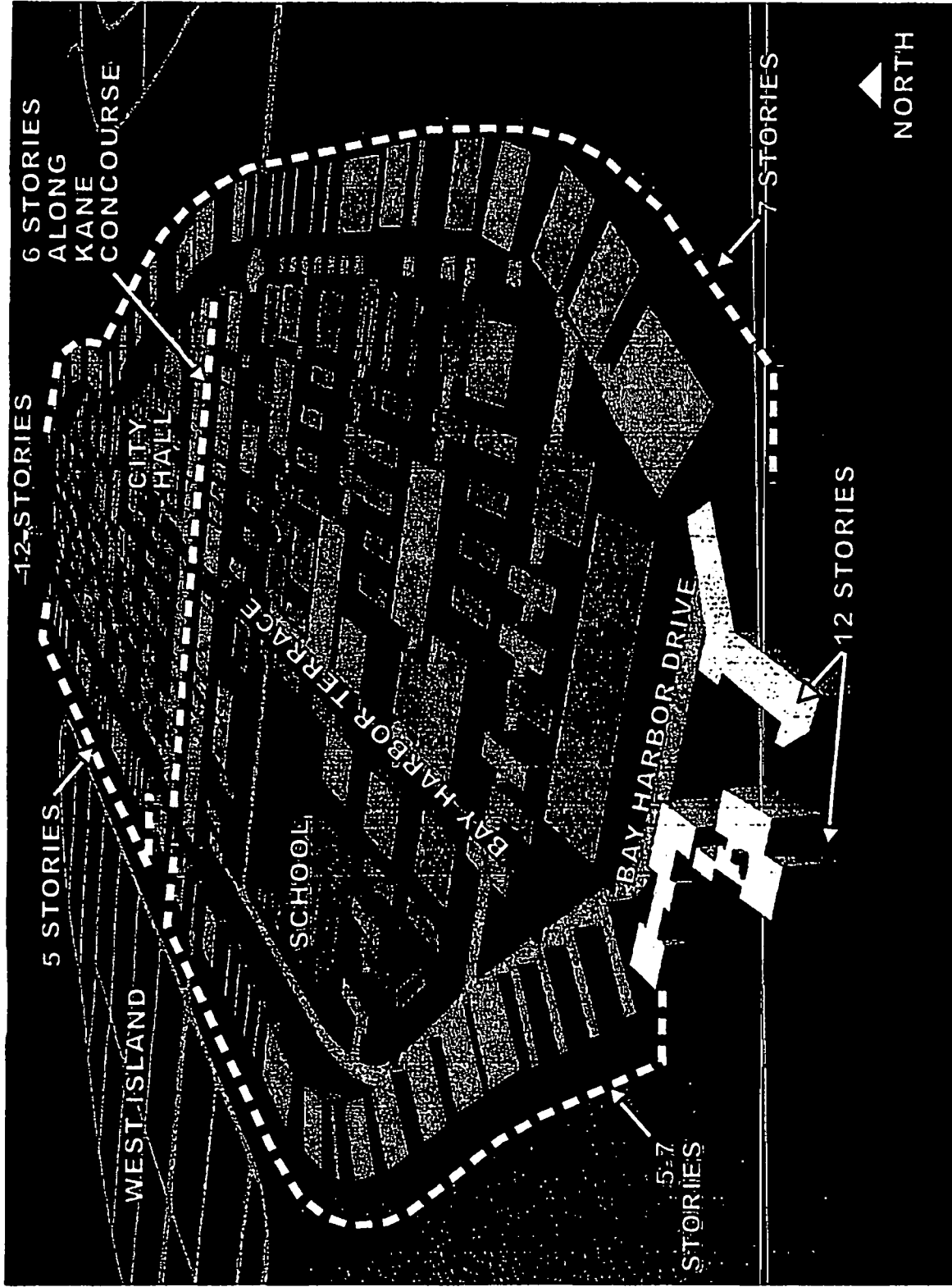


EXHIBIT 10 - PREFERRED MASSING MODEL

BAY HARBOR ISLANDS COMMUNITY VISION STUDY

GLATTING JACKSON KERCHEUR ANGLIN LOPEZ RINBHART



BROAD CAUSEWAY CORRIDOR IMPROVEMENTS AND TOWN CENTER MASTERPLAN

TOWN OF BAY HARBOR ISLANDS

TECHNICAL MEMORANDA
FUNDING & GRANTS
ORDER OF MAGNITUDE COST ESTIMATES
PLANT PALETTE
MEETING MINUTES

PUBLIC WORKSHOP THREE
JANUARY 7, 2004



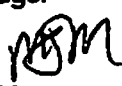
BERMELO AJAMIL & PARTNERS, INC

MICHAEL MILLER PLANNING ASSOCIATES, INC.
Land Design Municipal Planning Services Transportation Planning

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

To: Mayor and Town Council
Town of Bay Harbor Islands

CC: Greg Tindle, Town Manager

From: Michael J. Miller, AICP 
Consultant Town Planner

Date: January 28th, 2004

Subject: Proposed Zoning Code Amendments
Town of Bay Harbor Islands
MMPA Acct. No. 00-1102-1024

Recommended Action:

MMPA recommends the Mayor and Town Commission review the attached draft Zoning Code amendments including (1) revising the RE Zoning District to change the name of the district, (2) to create two multi-family zoning districts (one for the waterfront lots and one for the interior lots) to be called RM-1 Multiple Family Residential District and RM-2 Multiple Family Residential District, (3) revise parking lot criteria for multi-family developments, (4) create Density Monitoring System (DMS) provisions, (5) create Transfer of Development Right (TDR) provisions, and (6) to create "Gateway" property provisions.

Background

For the implementation of the Comprehensive Plan policies, the Community Visioning recommendations and to address the "Gateway" properties, MMPA has completed draft revisions to the Town Code. The Town Council authorized this work effort several months ago and is being brought forward for initial discussions.

The proposed Code Amendments reflect Comprehensive Plan implementation issues, analysis of the current code provisions, analysis of existing development conditions based on field inspections and recommendations in the Glatting Jackson Community Visioning Plan.

The current Zoning Code includes only one residential zoning category (RE) that covers the entire eastern island residential area of the Town except the RBA Tracts and the Kane Concourse properties. The original RE Zoning District appears to have been created in 1964. Some provisions have been amended over the years. Our research has revealed that almost

none of the existing development meets the current zoning code provisions. For example, the code permits a maximum of 35% lot coverage. Most developments are between 40% and 50%. The PRD projects are considerably higher (Carroll Walk is 72%). The Community Visioning study recommended, among other items, that development on the interior lots have different development characteristics than the waterfront lots, primarily building height. Therefore, MMPA is of the opinion that the RE Zoning District should be split into two different zoning categories to differentiate between the waterfront and non-waterfront. In addition, setback requirements are recommended to be amended to reflect common practices, to better address the development criteria for the small lot sizes and to improve consistency. The names of the districts should be more modern and reflect what they mean. What does RE mean? In modern times this usually means Residential Estate housing areas. MMPA suggests RM for Residential Multiple Family, common in today's world.

The off-street parking section of the Zoning Code is recommended to be amended to include specific requirements for parking in setback area as well as where parking may be permitted for existing structures and for future construction. The proposed amendments include a provision for allowing parking in single story multifamily buildings with required setbacks for multifamily buildings with more than one story.

An addition to the Zoning Code is being proposed that includes both a Density Monitoring System (DMS) as well as an allowance for the Transfer of Development Rights (TDR). The new development regulations are intended to provide the Town with an accurate accounting of the level of residential development existing, permitted and available within the limits of the Town's Comprehensive Plan as well as specific guidelines governing transferring of additional density if deemed acceptable by the Town. The purpose of creating a Transfer of Development Rights program is to establish a TDR "Dwelling Unit Reserve Unit Bank" of available dwelling units that can be allocated to individual development projects to promote the types and location of desired development and re-development within the Town.

Town of Bay Harbor Islands Analysis of Land Development Feasibility

Introduction

In conjunction with work authorized by the BHI Town Commission, MMPA / MEAI has been asked to perform an analysis of the impacts of the existing zoning code in relation to the allowable density in the Comprehensive Plan. The analysis was to test if developers could actually develop / redevelop parcels on the east island of the Town. The proposed base density for the east island of the Town is 34 units per acres. The draft EAR-Based Amendments contains provisions to allow for the Transfer of Development Rights (TDR) to allow more units per project. The average density of a multi-family residential development is 40 DUA. As-built densities range from 8 DUA for a duplex to 70 DUA for an apartment building. One of the new PRD projects is 81 DUA. Most of the development on the eastern island occurred many years prior to the current Complan density limits. MMPA has discovered that the 34 DUA limit was incorrectly derived in 1989, however, DCA refuses to allow for a correction, as any increase would violate state and regional policy concerning population concentrations in the Coastal High Hazard Area. Almost one-third of the existing development exceeds the 34 DUA limit. One of the initial tasks is to analyze the Town's existing development criteria and various density increase scenarios (TDR) and perform an economic analysis to determine if baseline conditions make it economically infeasible to re-build. Future economic analysis will analyze different development scenarios.

Strategy

MMPA took the smallest developable lot permitted within the Town and utilized those lot dimensions as the basis for the study. The smallest platted lot is 75 feet in width by 150 feet in depth. At 34 units to the acre, this allows for a development of 8 units. If the smallest parcel could be developed at the maximum density permitted, then it could be assumed larger parcels should be able to reach the proposed density by repeating that design/density. The question is if 8 units can be constructed economically given the density limits and land development criteria.

Analysis

The following regulations were reviewed and applied to the study:

Setbacks

Setbacks for RE zoned property are found in Section 23-11(B). Essentially setbacks are increased as the height of the structure is increased. In the RE Zoning District, for **non-waterfront lots**, there is a minimum front setback (street) of 20 feet and rear and side setbacks of 10 feet for 1 & 2 story buildings. The setbacks are increased to 30 feet in the front yard and 20 feet in the rear and side yard for 3 & 4 story buildings. Finally, a 35-foot front yard setback is required and a 25-foot rear and side yard setback is required for 5 & 6 story buildings. For **waterfront lots**, there is a minimum front setback (front being the seawall) of 20 feet and rear and side setbacks of 10 feet for 1 & 2 story buildings. The setbacks are increased to 30 feet in the front yard and 20 feet in the rear and side yard for 3 & 4 story buildings. Finally, a 35-foot front yard setback is required and a 25-foot rear and side yard setback is required for 5 & 6 story buildings.

Setbacks for RBA zoned property are found in Section 23-11(D). Essentially setbacks are increased as the height of the structure is increased. All of the RBA Tracts are large waterfront lots. There is a minimum front setback (seawall) of 20 feet and minimum rear setback (street) of 20 feet. For side yard setbacks, the minimum side setback is 10 feet for 1 & 2 story buildings. The side setback is increased to 15 feet for 3 & 4 story buildings. The side setback is increased to 20 feet for 5 & 6 story buildings. The side setback is increased to 25 feet for 7 & 8 story buildings. Finally, the side setback is increased to 30 feet for 9 & 10 story buildings.

Maximum Building Coverage

The maximum allowable building coverage in the RE Zoning District is 35%. The maximum allowable building coverage in the RBA Zoning District is 37.5%.

Maximum Height

The maximum building height in the RE Zoning District is 6 stories, however, the code allows the building to be raised for covered / garage parking (maximum 7 stories). The maximum building height in the RBA Zoning District is 10 stories, however, the code allows the building to be raised for covered / garage parking (maximum 11 stories). Despite the Zoning Code allowances, the maximum height has been recently regulated in all zoning categories by referendum to 75 feet. This was in reaction to the new PRD projects that were allowed up to 150 feet in height.

Minimum Size of Living Unit

Minimum floor areas are found in Section 23-9. Minimum unit sizes for multifamily units is 750 feet for an efficiency unit, 900 square feet for a one bedroom unit, 1,150 square feet for a two bedroom unit and an additional 200 square feet for each additional bedroom.

Storage Requirements

A minimum of 25 square feet of storage space per unit must be provided outside the interior space of the dwelling unit.

Parking Requirements

Parking requirements are found in Section 23-24. Each dwelling unit must have two (2) parking spaces within the building lot. If the building is more than one story, the parking must be located within the zoning setbacks required for that district. Most of the existing developments were built prior to the current parking code requirements. Most developments are non-conforming. In lieu of an on-site parking lot, virtually every development has direct back out parking from the adjoining roadway blacktop into the swale with a portion of the parking space extending into the front yard.

After applying the required setbacks, maximum building coverage, maximum height, minimum floor areas, storage and parking requirements, it was determined that unless an underground / under building parking area was constructed, maximum density could not be achieved. Maximum allowable density could easily be achieved if the building was raised over a garage. In fact it appears feasible to add units to perhaps 10-12 on a single site (RE) and meet the Town's minimum parking standards.

The Town's building setback standards and maximum building lot coverage standards seem to unnecessarily restrict the building envelope. For example, a one and two story building has a 10-foot side and rear setback but as soon as a 3 story (or 4 story) a 20-foot setback is required.

Also, the maximum lot coverage percentage appears to be too low. An analysis of existing older developments shows, as an example, that numerous buildings have 45-60% lot coverage. I believe these types of land development restrictions, in addition to the density issue, need to be revisited and modified to encourage re-development.

Options

If the Town desires to have the maximum density constructed on minimum lot sized parcels, the Town should consider relaxing the setback requirements and increasing the allowable building lot coverage. Also, possibly exempting 2 levels of parking may assist in achieving the density limit and any TDR increases.

Section 23-11 (B)(11) already allows the Town Council to adjust setback restrictions within the RE zoning district in the interest of proper use and equitable planning on a lot.

TOWN OF BAY HARBOR ISLANDS PROPOSED ZONING CODE AMENDMENTS RM-1 ZONING DISTRICT

Sec. 23-11. Building setback, coverage, density and height requirements.

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

Comments: The Town's Zoning Code fails to include any definitive development intensity standards. A maximum density clause is proposed and the title should be amended.

(B1) RE RM-1 Multiple Family area Residential District. (Waterfront Lots)

Comments: Other than the Kane Concourse BAA Zoning District and the RBA Zoning Districts located at the north and south tips of the eastern island, the entire area is zoned RE at present. What does RE stand for? There is no definition in the Code. No "Intent or Purpose" statement is made. The 2003 Community Visioning Plan recommended different development standards for interior lots and waterfront lots. It is recommended that the two (2) separate Zoning Districts be created for the eastern island, one for waterfront lots and one for interior lots. Development issues are different as interior lots back to other lots while the waterfront lots are separated by wide water bodies from single-family uses both within the Town and outside the Town. Finally, modern nomenclature for multiple-family zoning districts is RM (Residential Multi-family).

- (1) Front Yard Setback - Waterfront lots in RE-Multiple-Family-area the RM-1 Zoning District shall have a front yard setback of not less than twenty (20) feet, measured from the outside bulkhead wall, the front yard being on the waterfront side. ~~There shall be a rear yard setback of not less than twenty (20) feet for one and two-story buildings, thirty (30) feet for buildings three (3) through four (4) stories, and thirty-five (35) feet for buildings five (5) through six (6) stories, the rear yard being on the street side. The minimum side yard setback requirements on each side of the building shall be as follows:~~

~~(a) — One (1) through two (2) story building ten (10) feet.~~

~~(b) — Three (3) through four (4) story building twenty (20) feet.~~

~~(c) — Five (5) through six (6) story building twenty-five (25) feet.~~

Comments: This section is amended to address only waterfront lots and front (waterfront) yards only. MMPA would prefer to modify the language to make the waterfront the rear of the lot, as a street frontage is universally the front of a lot. However, at present a simple amendment is proposed. This waterfront yard setback is not unusual today except that field inspections revealed that few buildings appear to have these setbacks. It is quite common that many buildings have a 15' setback to the seawall. The Glatting Jackson Community Visioning Plan did not address waterfront setbacks, only "Preferred Street Cross Sections". The lots are generally small for multi-family developments (75 feet wide by 150 feet deep). It appears the Town created the

current setback regulations in 1964. A large majority of the Town's buildings were constructed prior to that date. The larger the building envelope the more ability to raise a building and place parking underneath, removing the on-street back-out parking. The current 20-foot setback is proper in our opinion. No increased "stepped" setback is required for taller buildings. This is because of the distance between the multi-family areas and single-family areas across waterways both in the Town and outside the Town. MMPA recommends the Town maintain the 20' front (waterfront) setback with no step back.

(2) ~~All lots in RE Multiple Family areas, not waterfront lots, shall have a minimum front yard setback as follows, the front yard being the yard abutting on the street:~~

~~(a) One (1) through two (2) story building twenty (20) feet.~~

~~(b) Three (3) through four (4) story building thirty (30) feet.~~

~~(c) Five (5) through six (6) story building thirty five (35) feet.~~

Comments: This section is to be removed and placed in a new RM-2 Zoning District for interior lots.

(2) Rear Yard (Street) Setback - All lots in the RM-1 Multiple Family Zoning District shall have a minimum rear yard (street) setback as follows:

(a) One (1) through two (2) story building - twenty (20) feet.

(b) Three (3) through four (4) story building - thirty (30) feet.

(c) Five (5) through six (6) story building - thirty-five (35) feet.

Comments: This section is separated from the inclusive provision above for ease of reference. These front yard setbacks are not unusual today. Waterfront lots in general appear to be set back further from the street than the interior lots. A few appear to be closer than the current allows. The Glatting Jackson Community Visioning Plan contained a "Preferred Street Cross Section" with a common 20-foot front setback requirement for waterfront lots. The Glatting Jackson study also recommended taller buildings (at least the old 7 story limit) be permitted on these lots. The new EAR-Based Comprehensive Plan amendments envision the ability to transfer additional density to the waterfront lots from the interior lots. The lots are generally small for multi-family developments (75 feet wide by 150 feet deep). It appears the Town created the current setback regulations in 1964. A large majority of the Town's buildings were constructed prior to that date. The larger the building envelope the more ability to raise a building and place parking underneath, removing the on-street back-out parking. The Town needs to weigh the street building scale to incentives to re-develop the properties. MMPA recommends the Town maintain the current setback standards. However, the Glatting Jackson recommended 20' street yard setback with no step back would allow more buildable area.

(3) Side Yard Setbacks - All lots in the RM-1 Multiple Family Zoning District shall have minimum side yard setbacks as follows:

(a) One (1) through two (2) story building - ten (10) feet.

(b) For each additional three (3) feet of building height above 20 feet, there shall be one (1) additional foot of building setback for that portion of the structure over 20 feet in height.

Comments: This section is broken out separately from the front and rear yard criteria. The existing side yard setbacks are not unusual today except that field inspections revealed that very few buildings have these setbacks. It is quite common that all buildings, even 6-story buildings have narrow side setbacks. The Town's former PRD allowed as little as a 5-foot wide side setback for a 3-story Pedestal and a flex side setback of 10 feet for a 15-story building! The Glatting Jackson Community Visioning Plan did not address side setback issues, only front yards. Again, it appears the Town created the current setback regulations in 1964. A large majority of the Town's buildings were constructed prior to that date. The larger the building envelope the more ability to raise a building and place parking underneath, removing the on-street back-out parking. The current standard seems to require that the entire building to move in on a lot if the building gets taller, rather than a "stepped or Wedding Cake" design. On a single 75-foot wide lot a 5 or 6-story building would be only 25 feet wide, not encouraging a quality product. Perhaps the intent was to discourage tall buildings on single lots – they would need 2 or more lots. The scale is already established with buildings quite close to side property lines. MMPA recommends a base side setback of ten (10) feet and a sliding scale increase for building over 2 stories (20'). Only the taller portions of the building needs to move in on the lot, that is, shorter portions of the structures can be closer to a side lot line. Also, see the Flex setback provisions below for architectural design flexibility.

(3a) Flex setbacks - A project designer has the option to offer creative design solutions to the building configurations and the Town Council may allow the building structure to encroach into the additional rear and side setback requirements above. The total amount of encroachment shall not exceed one-third of the length of the building. This provision shall serve to create an architectural opportunity for creative design approaches while promoting the beneficial purposes of building setbacks in the district.

Comments: This section is recommended to provide a mechanism to allow architectural creativity to avoid a "box" design. Bal Harbour Village's Community Appearance Board is comprised of only high-profile Architects, many from the academic world. That community recently updated their codes and included that criteria. It would allow a portion of the side and rear yards to encroach into the additional setback area to break up the box. MMPA recommends the Town consider this provision.

(4) The maximum over-all length of any single building shall not exceed one hundred and thirty (130) feet, except as hereinafter provided.

Comments: MMPA does not observe a need to amend this section.

- (5) A building may exceed one hundred and twenty (120) feet in length if breezeways, divide such building, except for common floors and roofs, into parts not exceeding one hundred and twenty (120) feet in length. Such breezeways shall have a minimum unobstructed width, completely through the building, of twenty (20) feet.

Comments: MMPA does not observe a need to amend this section.

- (6) The minimum distance, unobstructed, between buildings on a lot, plot or parcel of land shall be twenty (20) feet; however, such buildings may be connected by a covered ground level walkway which must be open to the sides.

Comments: MMPA does not observe a need to amend this section.

- (7) In the case of corner lots and waterfront lots, side setbacks shall be regarded as those setbacks other than ones abutting streets and water.

Comments: MMPA does not observe a need to amend this section.

- (8) The maximum building coverage of any lot shall not exceed ~~thirty-five (35)~~ fifty (50) per cent of the lot area.

Comments: If there is a building complex with as low as 35% building coverage, MMPA could not locate one. The average building lot coverage appears to be between about 45 - 50%. Carroll Walk has a 72% lot building coverage and La Natiqne has a 57% lot building coverage. Again, this criteria was adopted in 1964. Most of the Town's buildings were built prior to that date. MMPA feels this criteria is an impediment to re-development. Why would one demolish a building covering 50% of a lot and only build 35%? A survey of adjacent communities revealed that most allow at least 40% lot coverage. MMPA recommends the Town increase this critiera to 50%.

- (9) No building in the ~~RE-~~ RM-1 Multiple Family area shall exceed six (6) stories. Notwithstanding the above, for developments on two (2) or more lots, buildings shall be permitted to be up to ten (10) stories or 100 feet. Specified accessory roof mounted structures may exceed the height limits specified herein as provided for in the applicable code section. A story is defined as a maximum of ten (10) feet in height from floor to ceiling, inside measurement.

Comments: The Glatting Jackson Community Visioning Plan recommended waterfront lots be allowed to build to at least 7 stories (it was inferred the RBA Tracts should be allowed to remain at 11 stories). Market demand and economics will result in varying building designs – just like exists at present. Much discussion has occurred on allowable building heights. The recent BA economic analysis found that more height and intensity along the Kane Concourse was necessary to justify re-development. MEAI has also found that to be true given land costs, demolition costs, building costs, etc. MMPA recommends that the maximum building height be limited to the existing height (6-stories) for single lot developments but increased to 10 stories or 100 feet on the waterfront lots. The maximum floor to ceiling height limit may discourage lofts or designs with interior clear-story ceilings common today.

- (10) If a building is raised to the minimum height necessary to provide one (1) or more levels of vehicular parking, utilities, and other services under the building area, one (1) level of the parking, utility and service area shall not be counted as a story. For example, if there are two (2) levels of vehicular parking, utilities and other services, then (1) such level would not be counted a story and a maximum of five (5) stories of living space are permitted over the other two (2) levels. All levels referred to are above ground. There is no limitation to number of levels under ground level.

Comments: MMPA does not observe a need to amend this section.

- ~~(11) The town council shall have the power to adjust the setback restrictions in the interest of proper, useful and equitable planning on all lots when the resulting building coverage would be under the maximum provided for in paragraphs (1) through (10) above if the setback requirements as set forth in such section are applied.~~

Comments: A variance should be required for setback reductions. The proposed Flex setback criteria would address this issue as well.

- (10) Landscape requirements – Each plot shall provide for a minimum of fifteen (15) percent landscaped open space. An applicant shall be required to submit a detailed landscape plan to the Town for consideration at the time of site plan approval. Trees shall be provided to provide shade and accentuate the building design. Shrubs shall be provided as foundation plantings, to screen mechanical equipment and as buffering to adjacent properties. The plan shall be sensitive to surrounding properties and shall be utilized to enhance the subject property.

Comments: There does not appear to be a minimum amount of pervious area required on any development plot. Stormwater runoff is required to be kept on-site by the Florida Building Code. The Town has a great deal of impervious surfaces (buildings and pavement) that adds to localized flooding problems. People, especially children, need open areas for recreation, not in the streets. MMPA could not locate a Landscape Code with minimum tree, shrub and grass standards. At a minimum, the Town's development must meet the minimum Miami-Dade County Landscape Code criteria adopted in 1996. If a local government does not have its own Landscape Code, it must use the County's. MMPA recommends the Town adopt a minimum open space standard as well as language to require a Landscape Plan.

- (11) Maximum Allowable Density - The maximum allowable base density is 34 dwelling units per acre. Partial units are rounded down to the nearest whole number. Individual project density may be increased on a case-by-case basis only through the process described in Sec. 23-22 entitled Transfer of Development Rights.

Comments: The Town's Zoning Code fails to include a definitive development intensity standard. It was common in older Zoning Codes to let "performance criteria" such as building height and bulk regulations (setbacks / lot coverage / minimum dwelling unit square footage) govern the intensity of a project. However, state law now requires that some intensity standard be provided, be it a density limit or Floor Area Ratio (FAR) limit. The recommendation follows the current Comprehensive Plan base density limit and refers to the proposed TDR program.

- (12) Maximum Number of Hotel Rooms - The maximum number of hotel rooms shall not exceed 70 rooms per acre.

Comment: The Town's Zoning Code fails to include a definitive development intensity standard for hotels. The Bay Harbor Inn has two (2) locations, one on the waterfront (Lots 35-37, Block 4) and one on an interior lot (Lot 1, Block 11). The current interior lot has 21 rooms while the waterfront lots have 24 rooms. This equates to 70 rooms per acre on the interior lot and 31 rooms per acre on the waterfront site. The proposed re-development plans recently reviewed by the Town have 36-40 large suites. This would result in a density of 52+/- rooms per acre. MMPA recommends a standard of 70 rooms per acre. As a comparison, Bal Harbour Village allows 100 rooms per acre on the beach.

TOWN OF BAY HARBOR ISLANDS PROPOSED ZONING CODE AMENDMENTS RM-2 ZONING DISTRICT

Sec. 23-11. Building setback, coverage, density and height requirements.

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

Comments: The Town's Zoning Code fails to include any definitive development intensity standards. A maximum density clause is proposed and the title should be amended.

(B2) RE RM-2 Multiple Family area Residential District. (Non-Waterfront)

Comments: Other than the Kane Concourse BAA Zoning District and the RBA Zoning Districts located at the north and south tips of the eastern island, the entire area is zoned RE at present. What does RE stand for? There is no definition in the Code. No "Intent or Purpose" statement is made. The 2003 Community Visioning Plan recommended different development standards for interior lots and waterfront lots. It is recommended that the two (2) separate Zoning Districts be created for the eastern island, one for waterfront lots and one for interior lots. Development issues are different as interior lots back to other lots while the waterfront lots are separated by wide water bodies from single-family uses both within the Town and outside the Town. Finally, modern nomenclature for multiple-family zoning districts is RM (Residential Multi-family).

~~(1) Waterfront lots in RE Multiple Family area shall have a front yard setback of not less than twenty (20) feet, measured from the outside bulkhead wall, the front yard being on the waterfront side. There shall be a rear yard setback of not less than twenty (20) feet for one and two story buildings, thirty (30) feet for buildings three (3) through four (4) stories, and thirty five (35) feet for buildings five (5) through six (6) stories, the rear yard being on the street side. The minimum side yard setback requirements on each side of the building shall be as follows:~~

~~(a) One (1) through two (2) story building ten (10) feet.~~

~~(b) Three (3) through four (4) story building twenty (20) feet.~~

~~(c) Five (5) through six (6) story building twenty five (25) feet.~~

Comments: This section should be deleted as it pertains to only waterfront lots.

(2)(1) Front Yard Setback - All lots in ~~RE Multiple Family areas, not waterfront lots,~~ the RM-2 Zoning District shall have a minimum front yard setback as follows, the front yard being the yard abutting on any the street:

(a) One (1) through two (2) story building - twenty (20) feet.

(b) Three (3) through four (4) story building - thirty (30) feet.

- (c) Five (5) through six (6) story building - thirty-five (35) feet.

Comments: This section is amended to address only interior (non-waterfront lots). These front yard setbacks are not unusual today except that field inspections revealed that very few buildings have these setbacks. It is quite common that all buildings, even 6-story buildings have a 15'-20' front setback (for example all of the multi-family developments north of 97th Street across from Town Hall complex including the Summit). The Glatting Jackson Community Visioning Plan contained a "Preferred Street Cross Section" with a common 20-foot front setback requirement for interior lots. The lots are generally small for multi-family developments (75 feet wide by 150 feet deep). It appears the Town created the current setback regulations in 1964. A large majority of the Town's buildings were constructed prior to that date. The larger the building envelope the more ability to raise a building and place parking underneath, removing the on-street back-out parking. The Town needs to weigh the street building scale to incentives to re-develop the properties. The street scale is already established with building quite close to the roadways. MMPA recommends a 20'-25' front yard setback with no step back.

(3)(2) Rear Yard Setback - All lots in RE- ~~the~~ RM-2 Multiple Family area, ~~not waterfront lots,~~ shall have a minimum rear yard setback and ~~a minimum side yard setback~~ as follows:

- (a) One (1) through two (2) story building - ten (10) feet.

- ~~(b) Three (3) through four (4) story building twenty (20) feet.~~

- ~~(c) Five (5) through six (6) story building twenty five (25) feet.~~

- (b) For each additional three (3) feet of building height above 20 feet, there shall be one (1) additional foot of building setback for that portion of the structure over 20 feet in height.

Comments: This section is amended to address only interior (non-waterfront lots). These rear yard setbacks are not unusual today except that field inspections revealed that very few buildings have these setbacks. It is quite common that all buildings, even 6-story buildings have shallow rear setbacks. The Town's former PRD allowed as little as a 5-foot wide rear setback for a Pedestal and a flex rear setback of 15 feet for a 15-story building! The Glatting Jackson Community Visioning Plan did not address rear setback issues, only front yards. Again, it appears the Town created the current setback regulations in 1964. A large majority of the Town's buildings were constructed prior to that date. The larger the building envelope the more ability to raise a building and place parking underneath, removing the on-street back-out parking. The current standard seems to require that the entire building to move in on a lot if the building gets taller, rather than a "stepped or Wedding Cake" design. Perhaps the intent was to discourage tall buildings on single lots – they would need 2 or more lots. The scale is already established with building quite close to rear property lines. MMPA recommends a base rear setback of ten (10) feet and a sliding scale increase for building over 2 stories (20'). Only the taller portions of the building needs to move in on the lot, that is, shorter portions of the structures can be closer to a rear lot line. Also, see the Flex setback provisions below for architectural design flexibility.

(3) Side Yard Setbacks - All lots in the RM-2 Multiple Family area shall have minimum side yard setbacks as follows:

(a) One (1) through two (2) story building - ten (10) feet.

(b) For each additional three (3) feet of building height above 20 feet, there shall be one (1) additional foot of building setback for that portion of the structure over 20 feet in height.

Comments: This section is broken out separately from the rear yard criteria. The existing side yard setbacks are not unusual today except that field inspections revealed that very few buildings have these setbacks. It is quite common that all buildings, even 6-story buildings have narrow side setbacks. The Town's former PRD allowed as little as a 5-foot wide side setback for a 3-story Pedestal and a flex side setback of 10 feet for a 15-story building! The Glatting Jackson Community Visioning Plan did not address side setback issues, only front yards. Again, it appears the Town created the current setback regulations in 1964. A large majority of the Town's buildings were constructed prior to that date. The larger the building envelope the more ability to raise a building and place parking underneath, removing the on-street back-out parking. The current standard seems to require that the entire building to move in on a lot if the building gets taller, rather than a "stepped or Wedding Cake" design. On a single 75-foot wide lot a 5 or 6-story building would be only 25 feet wide, not encouraging a quality product. Perhaps the intent was to discourage tall buildings on single lots – they would need 2 or more lots. The scale is already established with building quite close to side property lines. MMPA recommends a base side setback of ten (10) feet and a sliding scale increase for building over 2 stories (20'). Only the taller portions of the building needs to move in on the lot, that is, shorter portions of the structures can be closer to a side lot line. Also, see the Flex setback provisions below for architectural design flexibility.

(3a) Flex setbacks - A project designer has the option to offer creative design solutions to the building configurations and the Town Council may allow the building structure to encroach into the additional rear and side setback requirements above. The total amount of encroachment shall not exceed one-third of the length of the building. This provision shall serve to create an architectural opportunity for creative design approaches while promoting the beneficial purposes of building setbacks in the district.

Comments: This section is recommended to provide a mechanism to allow architectural creativity to avoid a "box" design. Bal Harbour Village's Community Appearance Board is comprised of only high-profile Architects, many from the academic world. That community recently updated their codes and included that criteria. It would allow a portion of the side and rear yards to encroach into the additional setback area to break up the box. MMPA recommends the Town consider this provision.

(4) The maximum over-all length of any single building shall not exceed one hundred and thirty (130) feet, except as hereinafter provided.

Comments: MMPA does not observe a need to amend this section.

- (5) A building may exceed one hundred and twenty (120) feet in length if breezeways, divide such building, except for common floors and roofs, into parts not exceeding one hundred and twenty (120) feet in length. Such breezeways shall have a minimum unobstructed width, completely through the building, of twenty (20) feet.

Comments: MMPA does not observe a need to amend this section.

- (6) The minimum distance, unobstructed, between buildings on a lot, plot or parcel of land shall be twenty (20) feet; however, such buildings may be connected by a covered ground level walkway which must be open to the sides.

Comments: MMPA does not observe a need to amend this section.

- (7) In the case of corner lots and waterfront lots, side setbacks shall be regarded as those setbacks other than ones abutting streets and water.

Comments: MMPA does not observe a need to amend this section.

- (8) The maximum building coverage of any lot shall not exceed ~~thirty-five (35)~~ fifty (50) per cent of the lot area.

Comments: If there is a building complex with as low as 35% building coverage, MMPA could not locate one. The average building lot coverage appears to be between about 45 - 50%. Carroll Walk has a 72% lot building coverage and La Natiqne has a 57% lot building coverage. Again, this criteria was adopted in 1964. Most of the Town's buildings were built prior to that date. MMPA feels this criteria is an impediment to re-development. Why would one demolish a building covering 50% of a lot and only build 35%? A survey of adjacent communities revealed that most allow at least 40% lot coverage. MMPA recommends the Town increase this critiera to 50%.

- (9) No building in the RE- RM-2 Multiple Family area shall exceed ~~six (6)~~ five (5) -stories. A story is defined as a maximum of ten (10) feet in height from floor to ceiling, inside measurement.

Comments: The Glatting Jackson Community Visioning Plan recommended interior lots be allowed to build between 3 and 5 stories. The study also recommended that building heights be varied to avoid a monolithic appearance. A Zoning Code must provide a common set of development regulations applicable to all properties uniformly in the same Zoning District. It would be impossible to demand that two adjoining properties zoned the same be different in height. Market demand and economics will result in varying building designs - just like exists at present. MMPA recommends that the maximum building height be reduced to the Glatting Jackson limit at this time pending economic analysis. The maximum floor to ceiling height limit may discourage lofts or designs with interior clear-story ceilings common today.

- (10) If a building is raised to the minimum height necessary to provide one (1) or more levels of vehicular parking, utilities, and other services under the building area, one (1) level of the parking, utility and service area shall not be counted as a story. For example, if there are ~~two (2) levels~~ is one (1) level of vehicular parking, utilities and other services, then (1) such level would not be counted a story and a maximum of ~~five (5)~~ four (4) stories of living space are permitted over the ~~other two (2) levels~~ one (1) parking level. All levels referred to are above ground. There is no limitation to number of levels under ground level.

Comments: This section is modified to illustrate a somewhat shorter building scenario.

- ~~(11) The town council shall have the power to adjust the setback restrictions in the interest of proper, useful and equitable planning on all lots when the resulting building coverage would be under the maximum provided for in paragraphs (1) through (10) above if the setback requirements as set forth in such section are applied.~~

Comments: A variance should be required for setback reductions. The proposed Flex setback criteria would address this issue as well.

- (10) Landscape requirements – Each plot shall provide for a minimum of fifteen (15) percent landscaped open space. An applicant shall be required to submit a detailed landscape plan to the Town for consideration at the time of site plan approval. Trees shall be provided to provided shade and accentuate the building design. Shrubs shall be provided as foundation plantings, to screen mechanical equipment and as buffering to adjacent properties. The plan shall be sensitive to surrounding properties and shall be utilized to enhance the subject property.

Comments: There does not appear to be a minimum amount of pervious area required on any development plot. Stormwater runoff is required to be kept on-site by the Florida Building Code. The Town has a great deal of impervious surfaces (buildings and pavement) that adds to localized flooding problems. People, especially children, need open areas for recreation, not in the streets. MMPA could not locate a Landscape Code with minimum tree, shrub and grass standards. At a minimum, the Town's development must meet the minimum Miami-Dade County Landscape Code criteria adopted in 1996. If a local government does not have its own Landscape Code, it must use the County's. MMPA recommends the Town adopt a minimum open space standard as well as language to require a Landscape Plan.

- (11) Maximum Allowable Density - The maximum allowable base density is 34 dwelling units per acre. Partial units are rounded down to the nearest whole number. Individual project density may be increased on a case-by-case basis only through the process described in Sec. 23-22 entitled Transfer of Development Rights.

Comments: The Town's Zoning Code fails to include a definitive development intensity standard. It was common in older Zoning Codes to let "performance criteria" such as building height and bulk regulations (setbacks / lot coverage / minimum dwelling unit square footage) govern the intensity of a project. However, state law now requires that some intensity standard be provided, be it a density limit or Floor Area Ratio (FAR) limit. The recommendation follows the current Comprehensive Plan base density limit and refers to the proposed TDR program.

- (12) Maximum Number of Hotel Rooms - The maximum number of hotel rooms shall not exceed 70 rooms per acre.

Comment: The Town's Zoning Code fails to include a definitive development intensity standard for hotels. The Bay Harbor Inn has two (2) locations, one on the waterfront (Lots 35-37, Block 4) and one on an interior lot (Lot 1, Block 11). The current interior lot has 21 rooms while the waterfront lots have 24 rooms. This equates to 70 rooms per acre on the interior lot and 31 rooms per acre on the waterfront site. The proposed redevelopment plans recently reviewed by the Town have 36-40 large suites. This would result in a density of 52+/- rooms per acre. MMPA recommends a standard of 70 rooms per acre. As a comparison, Bal Harbour Village allows 100 rooms per acre on the beach.

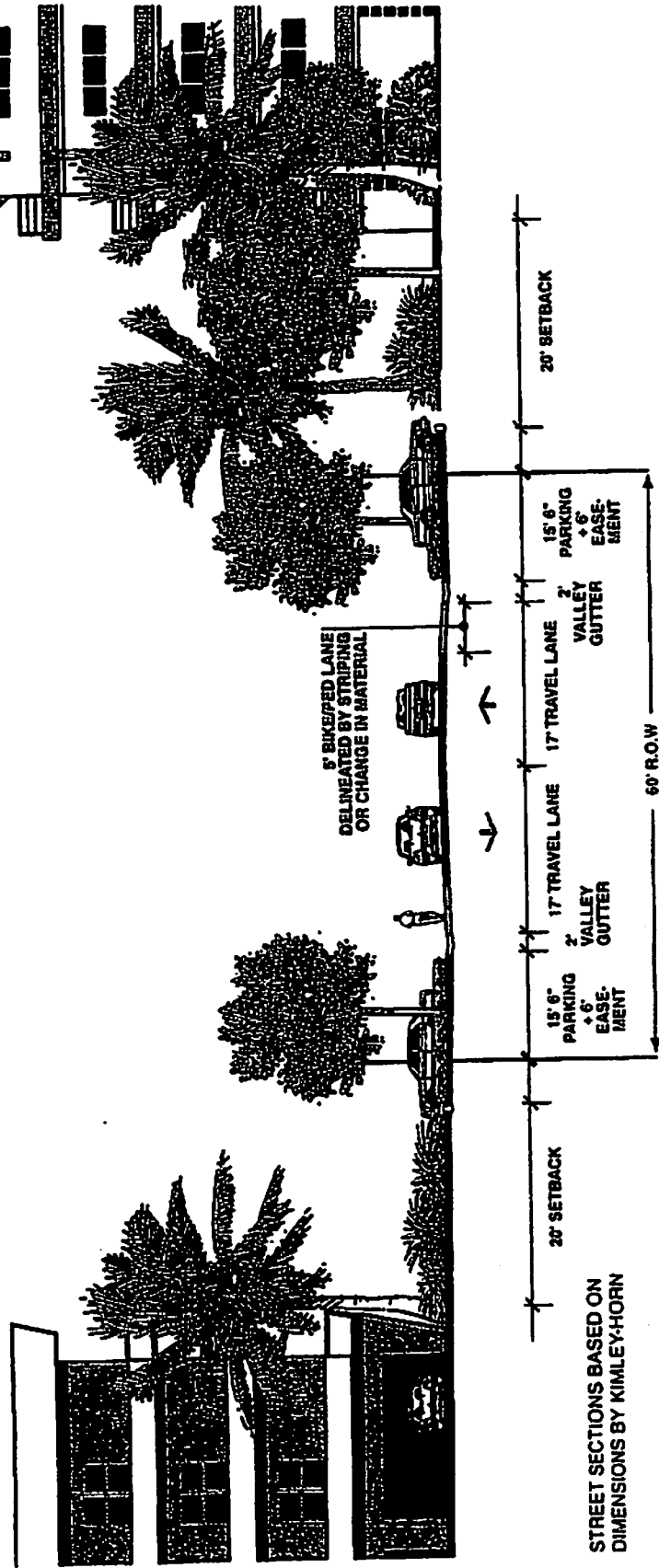
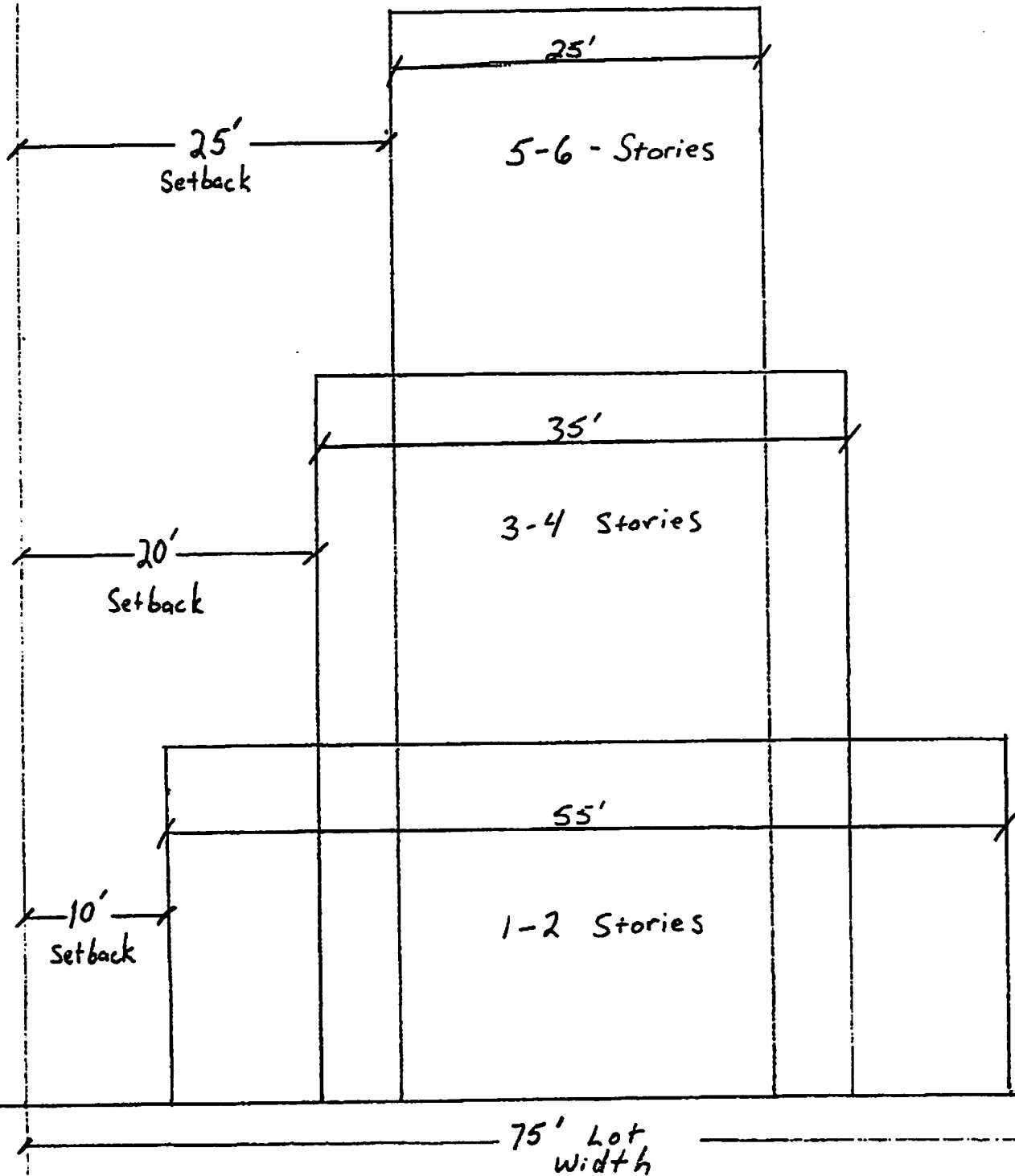


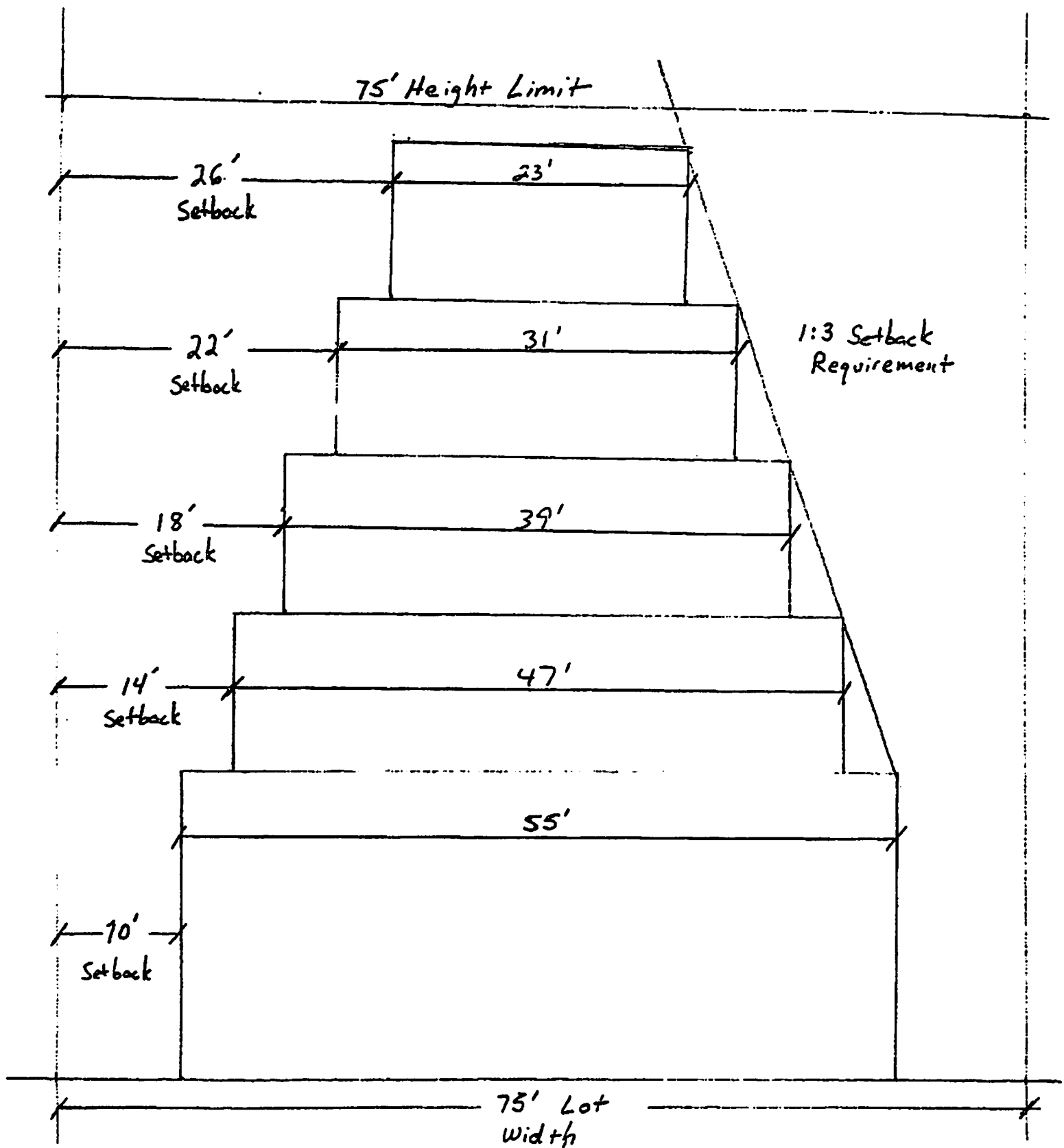
EXHIBIT 11 - PREFERRED SECTION, INTERIOR ROAD, 3-5 STORY BUILDINGS, CURRENT SETBACK

BAY HARBOR ISLANDS COMMUNITY VISION STUDY

75' Height Limit

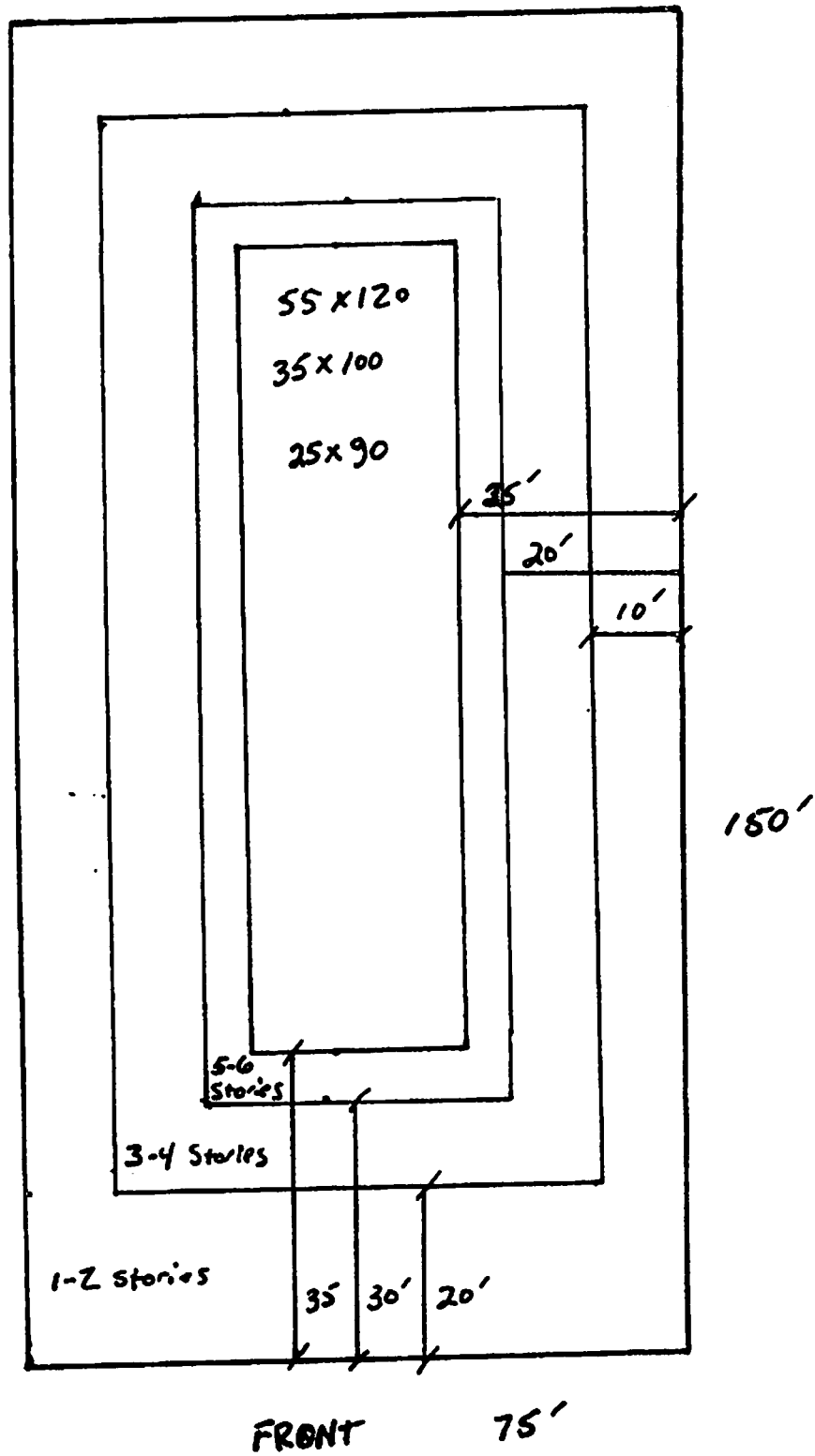


Proposed Zoning



Max 8 Units Permitted

6600 ϕ @ 20'
3500 ϕ @ 30'
2250 ϕ @ 35'



at 25' Front Setback

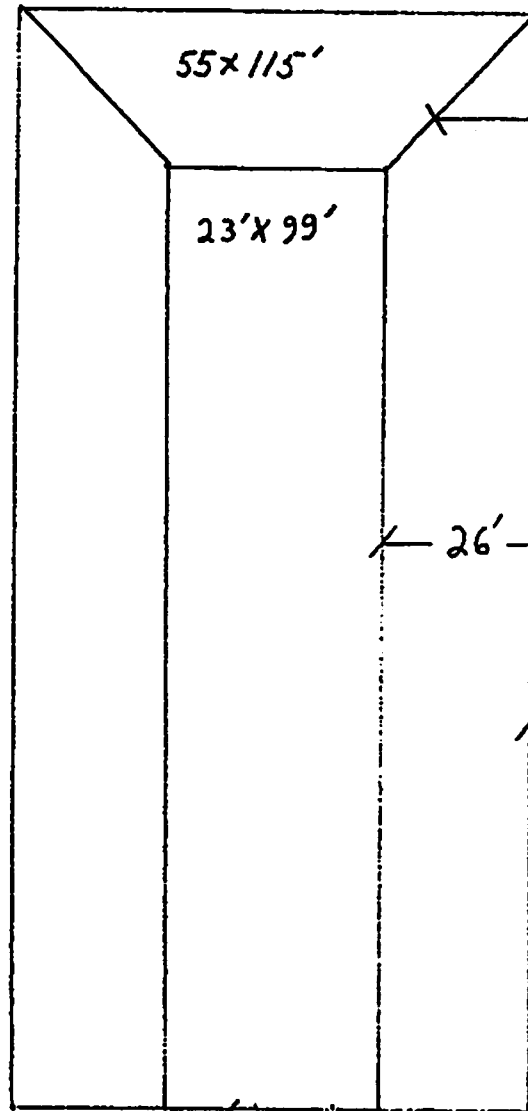
6325 #

2277 #

at 20' Front Setback

6600 #

2392 #



1:3 setback
side & rear

26'

10'

20'-25' setback

Front or Waterside

No. 102

RESTRICTIONS

Filed April 19, 1947

Recorded under Clerk's
File No. W. 33513

DECLARATION OF RESTRICTIONS COVERING BAY HARBOR
ISLAND, A SUBDIVISION OF DADE COUNTY, FLORIDA
ACCORDING TO THE PLAT THEREOF AS RECORDED IN
PLAT BOOK 46, AT PAGE 5, OF THE PUBLIC RECORDS
OF DADE COUNTY, FLORIDA:

DEFINITIONS:

1. SUBDIVIDER and GRANTOR mean Bay Harbor Island,
Inc., a Florida corporation, its successors and assigns.

2. GRANTEE means the person, firm or corporation
(one or more) to whom the subdivider first conveys the land
herein described, or any part thereof, and the grantee's
heirs, executors, administrators, successors and assigns,
and all persons, firms or corporations claiming by, through
or under such grantee; wherever in this document the mascu-
line is used, it shall include the feminine or neuter, as
the context may require.

3. SUBDIVISION means the twin islands as shown on
the Plat of Bay Harbor Island, recorded in Plat Book 46 at
page 5 of the Public Records of Dade County, Florida.

THE EAST ISLAND means the island shown on
said Plat of Bay Harbor Island situated west of Indian Creek
and east of Bay Harbor Waterway.

THE WEST ISLAND means the island shown on said
Plat of Bay Harbor Island situated west of Bay Harbor Water-
way and east of Biscayne Bay.

4. LOT means the parcels of land into which Bay
Harbor Island was subdivided, as shown from the Plat thereof,
recorded in Plat Book 46 at page 5 of the Public Records of
Dade County, Florida; but the lots in Blocks 11, 12, 20, and 21,
and Lots 1 and 2 in Block 1, Lots 36 and 37 in Block 4 and
Tracts A, B, C, D, E and F are not covered by or subject to
the use and setback restrictions hereinafter set forth.

RESTRICTIONS THAT APPLY TO THE EAST ISLAND:

A. Use restrictions:

Except for Lots 1 and 2 in Block 1; Lots 36 and 37 in
Block 4; all of Blocks 11, 12, 20 and 21; and Tracts
A, B, C, D, E and F of the East Island, no building shall

No. 102 (Continued)

be erected or constructed or maintained on any lot in the East Island other than residences, duplexes, apartments, apartment hotels, hotels or club hotels; no business building may be erected on said lands or any part of said lands, and no business may be conducted thereon except such business as is directly concerned with and incidental to each individual apartment house, apartment hotel, hotel or club hotel, as the case may be. If any such incidental business is conducted in any building on said land, then no shop or store or concession for any such business shall have any outside entrance or outside store-front or outside signs or displays, lighting or advertising; access thereto being exclusively limited to and through the inside of the building.

B. Set-back lines:

On water-front lots, no buildings or any part thereof may be erected nearer to the sea wall or bulkhead than twenty (20) feet, measured from the outside face thereof, or nearer to the rear line which is the line abutting the street, than twenty (20) feet, or nearer to the side lines than ten (10) feet.

On all other lots, other than water-front lots, no building or any part thereof, may be erected nearer to the line abutting the street than twenty (20) feet, (except as to triangular or otherwise odd-shaped lots, in which instances the subdivider may adjust the street or front setback restrictions in the interest of proper, useful and equitable planning), or nearer to the rear line than ten (10) feet, or nearer to the side lines than ten (10) feet.

C. Minimum size and cost of building:

No single family residence may be erected with floor area, exclusive of garages, porte-cocheres, porches and terraces, of less than fifteen hundred (1500) square feet; nor shall any duplex or two-family residence be erected with floor area, exclusive of garages, porte-cocheres, porches and terraces, of less than two thousand (2000) square feet; nor shall any apartment house, apartment hotel or hotel be erected with total floor area, exclusive of garages, porte-cocheres, porches and terraces, of less than twenty-five hundred (2500) square feet, nor shall any dwelling unit, apartment unit or hotel room in any of said apartment houses, apartment hotels or hotels contain less square footage than is presently required by the Miami Beach Building Code.

No. 102 (Continued)

RESTRICTIONS THAT APPLY TO THE WEST ISLAND:A. Use restrictions:

No building shall be erected or constructed on any lot in the West Island other than one single family dwelling house (with the usual out-buildings for use in connection therewith) for the use of one family only, and no lot shall be used except for residential purposes exclusively for one family only. No out-building shall be allowed that is susceptible of being occupied for residential purposes (except by domestic servants), and no out-building shall be used except in connection with the main-house.

B. Set-back lines:

On water-front lots, other than water-front lots fronting due east on Bay Harbor Waterway, no building or any part thereof may be erected nearer to the sea wall or bulkhead than forty (40) feet measured from the outside face thereof; and on water-front lots fronting due east on Bay Harbor Waterway, no building or any part thereof may be erected nearer to the sea wall or bulkhead than twenty-five (25) feet measured from the outside face thereof; and on all water-front lots, no buildings or any part thereof may be erected nearer to the rear line, which is the line abutting the street, than twenty-five (25) feet, or nearer to the side lines than ten (10) feet. On all other lots, except water-front lots, no building or any part thereof may be erected nearer to the line abutting the street than twenty-five (25) feet, (except as to triangular or otherwise odd-shaped lots, in which instances the subdivider may adjust the street or front set-back restrictions in the interest of proper, useful and equitable planning), or nearer to the rear line than fifteen (15) feet, or nearer to the side lines than ten (10) feet.

C. Minimum size of residence:

On water-front lots, no residence may be erected with floor area, exclusive of garages, porte-cocheres, porches and terraces of less than two thousand (2000) square feet. On all other lots in the West Island, no residence may be erected with floor area, exclusive of garages, porte-cocheres, porches, and terraces, of less than fifteen hundred (1500) square feet.

RESTRICTIONS THAT APPLY TO THE ENTIRE SUBDIVISION OF BAY HARBOR ISLAND:1. Ownership

No. 102 (Continued)

None of the land situate in this subdivision shall be occupied by or sold, leased, rented, devised or conveyed in any form or manner by any title, either legal or equitable, to any person or persons other than of the Caucasian Race; nor to any firm, partnership, organization, association or corporation of which any person or persons not of the Caucasian Race shall be directly or indirectly a member, participant, associate or stockholder.

2. Nuisances:

Nothing shall be done or suffered to be done or permitted to exist on any lot which may be or become an annoyance, blight, eye-sore or nuisance to the neighborhood. No horses, cattle, swine, goats, poultry, fowl or any other live stock shall be kept on any lot. No sign of any character, including but not limited to "for sale" or "for rent" signs, shall be erected, displayed or maintained on any of the land or on any of the structures in this subdivision, unless the erection and maintenance of such sign be first approved in writing by the subdivider. No derrick, boom or drilling apparatus, billboard, poster or other advertising sign or device, factory, boat slips, ship yard or marine railway slips, machine shop, manufacturing establishment, trailer park, nursing home, sanitarium, hospital or like institution, shall be constructed or operated on any of the lots or land in this subdivision.

No weeds, underbrush or other unsightly growths shall be permitted to grow or remain upon the lands of this subdivision, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon; and in the event that the owner shall fail or refuse to keep the lands free of weeds, underbrush or refuse piles or other unsightly growths or objects, then the subdivider may enter upon said lands and remove the same at the expense of the owner, and such entry shall not be deemed a trespass.

3. Plans and specifications:

For the purpose of insuring the development of this subdivision as an area of high standards, the subdivider reserves the right and power to control the type, kind and character of the buildings, structures and other improvements to be placed on each of the lots in this subdivision. The owner or occupant of each and every lot, by acceptance of title thereto or by taking possession thereof, covenants and agrees that no building or structure of any kind shall be placed, erected or altered upon any of the land

No. 102 (Continued)

in this subdivision unless and until the plans and specifications therefor, and the plot plans have been submitted to and approved in writing by the subdivider before any construction is begun; the plans and specifications and all construction thereunder, and every alteration of any building or structure, shall be in accordance and compliance with the Building, Plumbing, Electrical Codes of the City of Miami Beach, Florida, in effect at the time construction or alteration of any such building or structure is begun, except as relaxed or modified by the subdivider in writing.

Each such building or structure shall be placed on the premises only in accordance with the plans and specifications, and plot plans, so approved by the subdivider. Refusal of approval of plans and specifications by the subdivider may be based on any legitimate ground, including but not limited to aesthetic grounds. No alterations in the exterior appearance of the buildings or structures shall be made without like written approval of the subdivider first had and obtained. Should the subdivider fail to approve or disapprove the plans and specifications, and plot plans, submitted to it by the owner of any lot or lots in Bay Harbor Island Subdivision within thirty (30) days after written request therefor, then such approval of the subdivider shall not be required, provided, however, that no building or other structure shall be erected or shall be allowed to remain on any land in Bay Harbor Island Subdivision which violates any of the covenants or restrictions contained in this Declaration of Restrictions.

4. No temporary buildings:

No tents and no temporary or accessory building or structure shall be erected on any of the lots in Bay Harbor Island Subdivision without the written consent of the subdivider.

5. Building sites:

A residential or apartment site may consist of one or more lots. All of one lot and part of another or contiguous parts of more than one lot, or any other combination of contiguous parts of lots, will form an integral unit of land suitable for use as a site for a residence or an apartment, provided it extends from the street serving it to the rear boundary or to the water-front boundary; but no site shall have a frontage of less width than is contained in the largest adjoining lot shown on the plat. For all purposes of

No. 102 (Continued)

this instrument and all the restrictions herein contained, the unit of land so formed for use as a residential site, or for an apartment site where apartments are allowed to be built, shall be considered to be a lot to the same extent as though it had been laid out and platted as one.

6. Boats, boathouses and anchorage:

No boathouse or dock building shall be erected on or adjoining any of the lots in this subdivision, but a dock extending such a distance from the line of the bulkhead of the water-front lots as may be approved by the subdivider may be permitted, provided no dock shall be higher than three and one-half ($3\frac{1}{2}$) feet above the mean high tide, or shall extend more than eight (8) feet beyond the sea wall, and no cover shall be permitted to be erected in connection with any dock, except temporary boat swings, which may not extend over eight (8) feet above the mean high tide; provided further, that no boat landing, dock or pier shall be constructed until the plans and specifications therefor shall have been approved in writing by the subdivider. 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 subdivider. The subdivider shall have the right to regulate the size and type of boats, yachts or vessels which may be moored to any dock or mooring along the waters adjacent to the subdivision, regardless of the location.

No mooring pile shall be placed more than twenty-five (25) feet beyond the outside face of the sea wall of any lot, and no mooring pile shall be placed nearer than seven and one-half ($7\frac{1}{2}$) feet to a line formed by the projection of the sidelines of the lot.

7. Filling-in:

No lot or parcel shall be increased in size by filling in the waters on which it abuts.

8. Sea Walls:

No sea wall shall be erected or constructed in this subdivision or adjacent thereto unless and until its location, design, materials, structures, strength, etc., shall have been approved in writing by the subdivider.

9. Walls and fences:

Heights of any walls and fences built outside of the buildings set-back lines shall not be greater than as follows:

No. 102 (Continued)

No wall or fence may be erected on any lot in the subdivision higher than five (5) feet above finished grade, or more than six (6) feet above the elevation of the center of the adjoining street.

The subdivider may, in its discretion, approve minor projections above the restricted heights for architectural features. No wall or fence of any kind whatsoever shall be constructed on any lot until after the height, type, design and location thereof shall have been approved in writing by the subdivider.

10. Easements:

An easement is reserved over the rear five (5) feet of each lot in the subdivision for the installation and maintenance of all utilities, including but not limited to electricity, water, gas, sewers, telephone and for any similar facility deemed by the subdivider necessary for the service of said land. The rear line of all water-front lots shall be deemed the line abutting the street. The subdivider further reserves the right to assign the use of said easements or rights of way to any person, firm, corporation or municipality furnishing any of the utilities or facilities aforementioned. A similar easement is reserved over the side lines of the lots where such easements are shown on the plat on file in the office of the subdivider in connection with the installation and maintenance of all such utilities aforementioned.

No trees may be planted or other matters and things placed within the easements hereby reserved.

11. Additional restrictions:

The said subdivider may include in any contract, agreement for deed or deed hereafter made, any additional conditions, restrictions and covenants not inconsistent with those herein contained.

12. Restrictions uniform:

The foregoing restrictions are hereby incorporated by reference in all deeds or other instruments of conveyance which the subdivider may execute and deliver, conveying land in this subdivision, whether or not specific mention of the restrictions is made in any such deeds or other instruments of conveyance. The owner or occupant of each and every lot or parcel of land in this subdivision by acceptance of title thereto or by taking possession thereof, covenants

No. 102. (Continued)

and agrees, for himself, his heirs, executors, administrators, successors and assigns, that he will comply with and abide by each of the restrictions contained in this Declaration of Restrictions, and that he will exert his best efforts to keep and maintain the land in this subdivision as an area of high standards.

13. Remedies for violations:

In the event of a violation or breach of any of these restrictions by any person or concern claiming by, through or under the subdivider, or by virtue of any judicial proceedings, the subdivider and the lot owners, or any of them jointly or severally, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach of any of them. In addition to the foregoing right, the subdivider shall have the right whenever there shall have been built on any lot in the subdivision, any structure which is in violation of these restrictions, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner, and such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation, restriction or condition contained in this Declaration of Restrictions, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. The invalidation by any court of any one of the restrictions in this Declaration of Restrictions contained, shall in no way affect any of the other restrictions, but they shall remain in full force and effect.

IN WITNESS WHEREOF, BAY HARBOR ISLAND, INC., a Florida corporation, has, by its duly authorized officers, executed this Declaration of Restrictions covering Bay Harbor Island, a subdivision of Dade County, Florida, according to the Plat thereof as recorded in Plat Book 46 at page 5 of the Public Records of Dade County, Florida, this 15th day of February, A. D. 1947, at Dade County, Florida.

BAY HARBOR ISLAND, INC.

(CORP.
SEAL)

By /s/ Howard Kane
President

ATTEST: /s/ Ruth S. Broad
Secretary

(Duly acknowledged)

This Instrument Was Prepared By:
GENE ESSNER, ATTY.
BROAD AND CASSEL
1108 Kane Concourse
Bay Harbor Islands, Florida 33154

NOTICE TO EXTEND

KNOW ALL MEN BY THESE PRESENTS:.

AMERICAN MORTGAGE AND SAFE DEPOSIT COMPANY as assignee of all right, title, interest, powers and privileges of Subdivider under Declaration of Restrictions recorded 19 April 1947 under Clerk's File No. W33513 (Deed Book 2848 at Page 69) in the office of the Clerk of the Circuit Court in and for Dade County, Florida does hereby extend said Declaration of Restrictions for an additional term of thirty (30) years from the date of filing hereof pursuant to Florida Statutes Section 712.05.

For purposes of this notice, the undersigned declares:

1. NAME AND ADDRESS OF CLAIMANT

American Mortgage and Safe Deposit Company
1108 Kane Concourse
Bay Harbor Islands, Florida 33154

2. DESCRIPTION OF LAND AFFECTED

All lots and parcels within:

Bay Harbor Island, according to the plat thereof recorded in Plat Book 46 at Page 5 of the Public Records of Dade County, Florida.

3. NAMES AND ADDRESSES OF OWNERS

The names and addresses of the owners of all lots and parcels contained within the subdivision described in 2 above are appended hereto and by reference made a part hereof as determined from the last completed tax assessment roll of Dade County, Florida on the date hereof.

4. DESCRIPTION OF THE CLAIM

Claimant claims the right to proceed at law or in equity to compel a compliance with the terms of that certain Declaration of Restrictions recorded 19 April 1947 under Clerk's File No. W33513 (Deed Book 2848 at Page 69) in the office of the Clerk of the Circuit Court in and for Dade County, Florida, or to prevent the violation or breach of any of them. In addition, the claimant claims the right whenever there shall have been built on any lot in the subdivision, any structure which is in violation of said restrictions, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the owner, and such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation, restriction or condition contained in said Declaration of Restrictions, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. The invalidation by any court of any one of the restrictions in said Declaration of Restrictions, shall in no way affect any of the other restrictions, but they shall remain in full force and effect.

5. INSTRUMENT ON WHICH CLAIM IS BASED

This claim is based upon that certain Declaration of Restrictions recorded 19 April 1947 under Clerk's File No. W33513 (Deed Book 2848 at Page 69) in the office of the Clerk of the Circuit Court in and for Dade County, Florida.

IN WITNESS WHEREOF claimant executed these presents the 23 day of March, 1977.

AMERICAN MORTGAGE AND SAFE DEPOSIT COMPANY

Attest:

By: *Shepard Broad*

Ruth K. Broad

(Corporate Seal)

STATE OF FLORIDA
COUNTY OF DADE

The foregoing instrument was acknowledged before me this 23rd day of March, 1977 by SHEPARD BROAD and RUTH K. BROAD as President and Secretary, respectively, of AMERICAN MORTGAGE AND SAFE DEPOSIT COMPANY, a Florida corporation, on behalf of the corporation.

[Signature]
Notary Public,
State of Florida at Large

My Commission Expires:

Notary Public State of Florida at Large
My Commission Expires Sept. 9, 1980

STATE OF FLORIDA)
COUNTY OF DADE)

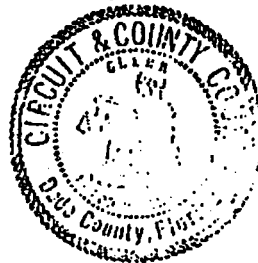
I HEREBY CERTIFY that this is a true copy of Pages 1 and 2 of the original Notice filed in this office on the 14 day of April, A.D. 1977 and appended to the original Notice is a portion of the 1976 Metropolitan Dade County Ad Valorem Assessment Roll showing names and addresses of lot owners in the subject subdivision.

I FURTHER CERTIFY that I did, on this 14 day of April, A.D. 1977, mail by Certified Mail a copy of the foregoing Notice to each individual named in that portion of the said Assessment Roll.

WITNESS my hand and Official Seal.

RICHARD P. BRINKER
Clerk Circuit Court

By: M. Doyle D.C.



BILZIN SUMBERG DUNN BAENA PRICE & AXELROD LLP

A PARTNERSHIP OF PROFESSIONAL ASSOCIATIONS

2500 FIRST UNION FINANCIAL CENTER

300 SOUTH BISCAYNE BOULEVARD • MIAMI, FLORIDA 33131-0936

TELEPHONE: (305) 374-7550 • WWW.BILZIN.COM

FAX: (305) 374-7553 • BROWARD: (954) 556-0000

STANLEY B. PRICE, P.A.
DIRECT DIAL (305) 390-2374
E-MAIL: SBPRICE@BILZIN.COM

October 7, 2002

Ms. Linda Karlsson
Town Manager
Town of Bay Harbor Islands
9665 Bay Harbor Terrace
Bay Harbor Islands, Florida 33154

BY FAX**RE: 75 Foot Limit on Building Height**

Dear Linda:

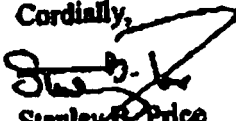
This will acknowledge receipt of your letter dated September 20, 2002 in conjunction with the above-styled matter.

In response to the two questions you posed in the letter, please be advised that the 75 foot limit should begin at the Base Floor Elevation (BFE), as presently utilized in the Code.

With regard to your second question, please be advised that the 75 foot elevation limitation should be construed consistent with past practices and policies of the Town. It is my understanding that such structures as elevator shafts, generators, air-conditioning rooms and other mechanical rooms were not considered as limitations on building heights.

I trust this answers your inquiry.

Cordially,


Stanley B. Price

SBP:cm

cc: Craig B. Sherman, Esq.

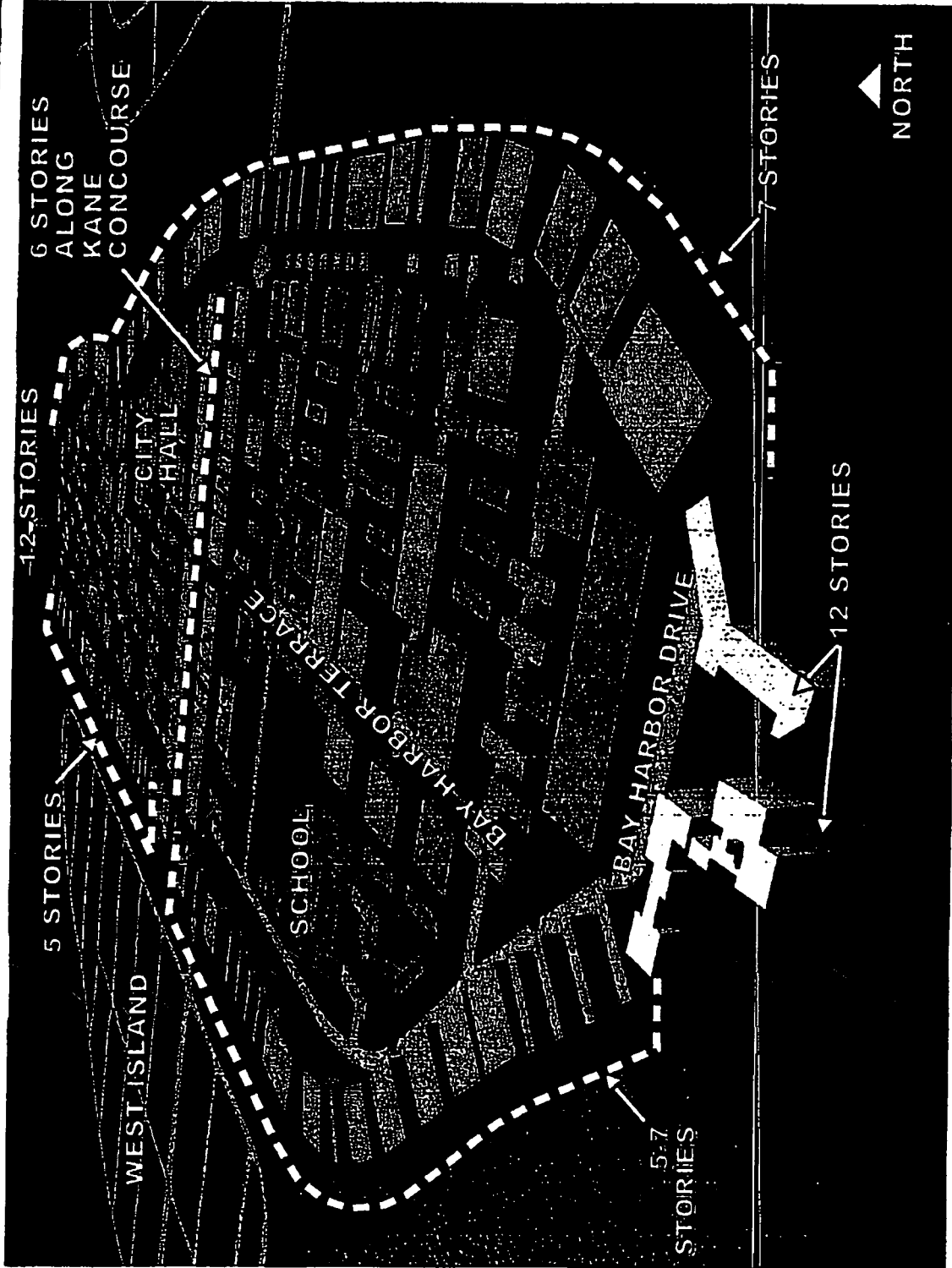
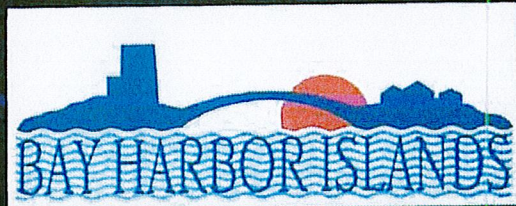


EXHIBIT 10 - PREFERRED MASSING MODEL

BAY HARBOR ISLANDS COMMUNITY VISION STUDY

GLATTING JACSON KERCHER ANGLIN LOPEZ RINBIART



BROAD CAUSEWAY CORRIDOR IMPROVEMENTS AND TOWN CENTER MASTERPLAN

TOWN OF BAY HARBOR ISLANDS

TECHNICAL MEMORANDA
FUNDING & GRANTS
ORDER OF MAGNITUDE COST ESTIMATES
PLANT PALETTE
MEETING MINUTES

PUBLIC WORKSHOP THREE
JANUARY 7, 2004



BERMELLO AJAMIL & PARTNERS, INC.

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

To: Mayor and Town Council
Town of Bay Harbor Islands

CC: Greg Tindle, Town Manager

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

Date: January 28th, 2004

Subject: Proposed Zoning Code Amendments
Town of Bay Harbor Islands
MMPA Acct. No. 00-1102-1024

Recommended Action:

MMPA recommends the Mayor and Town Commission review the attached draft Zoning Code amendments including (1) revising the RE Zoning District to change the name of the district, (2) to create two multi-family zoning districts (one for the waterfront lots and one for the interior lots) to be called RM-1 Multiple Family Residential District and RM-2 Multiple Family Residential District, (3) revise parking lot criteria for multi-family developments, (4) create Density Monitoring System (DMS) provisions, (5) create Transfer of Development Right (TDR) provisions, and (6) to create "Gateway" property provisions.

Background

For the implementation of the Comprehensive Plan policies, the Community Visioning recommendations and to address the "Gateway" properties, MMPA has completed draft revisions to the Town Code. The Town Council authorized this work effort several months ago and is being brought forward for initial discussions.

The proposed Code Amendments reflect Comprehensive Plan implementation issues, analysis of the current code provisions, analysis of existing development conditions based on field inspections and recommendations in the Glatting Jackson Community Visioning Plan.

The current Zoning Code includes only one residential zoning category (RE) that covers the entire eastern island residential area of the Town except the RBA Tracts and the Kane Concourse properties. The original RE Zoning District appears to have been created in 1964. Some provisions have been amended over the years. Our research has revealed that almost

none of the existing development meets the current zoning code provisions. For example, the code permits a maximum of 35% lot coverage. Most developments are between 40% and 50%. The PRD projects are considerably higher (Carroll Walk is 72%). The Community Visioning study recommended, among other items, that development on the interior lots have different development characteristics than the waterfront lots, primarily building height. Therefore, MMPA is of the opinion that the RE Zoning District should be split into two different zoning categories to differentiate between the waterfront and non-waterfront. In addition, setback requirements are recommended to be amended to reflect common practices, to better address the development criteria for the small lot sizes and to improve consistency. The names of the districts should be more modern and reflect what they mean. What does RE mean? In modern times this usually means Residential Estate housing areas. MMPA suggests RM for Residential Multiple Family, common in today's world.

The off-street parking section of the Zoning Code is recommended to be amended to include specific requirements for parking in setback area as well as where parking may be permitted for existing structures and for future construction. The proposed amendments include a provision for allowing parking in single story multifamily buildings with required setbacks for multifamily buildings with more than one story.

An addition to the Zoning Code is being proposed that includes both a Density Monitoring System (DMS) as well as an allowance for the Transfer of Development Rights (TDR). The new development regulations are intended to provide the Town with an accurate accounting of the level of residential development existing, permitted and available within the limits of the Town's Comprehensive Plan as well as specific guidelines governing transferring of additional density if deemed acceptable by the Town. The purpose of creating a Transfer of Development Rights program is to establish a TDR "Dwelling Unit Reserve Unit Bank" of available dwelling units that can be allocated to individual development projects to promote the types and location of desired development and re-development within the Town.

Town of Bay Harbor Islands Analysis of Land Development Feasibility

Introduction

In conjunction with work authorized by the BHI Town Commission, MMPA / MEAI has been asked to perform an analysis of the impacts of the existing zoning code in relation to the allowable density in the Comprehensive Plan. The analysis was to test if developers could actually develop / redevelop parcels on the east island of the Town. The proposed base density for the east island of the Town is 34 units per acres. The draft EAR-Based Amendments contains provisions to allow for the Transfer of Development Rights (TDR) to allow more units per project. The average density of a multi-family residential development is 40 DUA. As-built densities range from 8 DUA for a duplex to 70 DUA for an apartment building. One of the new PRD projects is 81 DUA. Most of the development on the eastern island occurred many years prior to the current Complan density limits. MMPA has discovered that the 34 DUA limit was incorrectly derived in 1989, however, DCA refuses to allow for a correction, as any increase would violate state and regional policy concerning population concentrations in the Coastal High Hazard Area. Almost one-third of the existing development exceeds the 34 DUA limit. One of the initial tasks is to analyze the Town's existing development criteria and various density increase scenarios (TDR) and perform an economic analysis to determine if baseline conditions make it economically infeasible to re-build. Future economic analysis will analyze different development scenarios.

Strategy

MMPA took the smallest developable lot permitted within the Town and utilized those lot dimensions as the basis for the study. The smallest platted lot is 75 feet in width by 150 feet in depth. At 34 units to the acre, this allows for a development of 8 units. If the smallest parcel could be developed at the maximum density permitted, then it could be assumed larger parcels should be able to reach the proposed density by repeating that design/density. The question is if 8 units can be constructed economically given the density limits and land development criteria.

Analysis

The following regulations were reviewed and applied to the study:

Setbacks

Setbacks for RE zoned property are found in Section 23-11(B). Essentially setbacks are increased as the height of the structure is increased. In the RE Zoning District, for non-waterfront lots, there is a minimum front setback (street) of 20 feet and rear and side setbacks of 10 feet for 1 & 2 story buildings. The setbacks are increased to 30 feet in the front yard and 20 feet in the rear and side yard for 3 & 4 story buildings. Finally, a 35-foot front yard setback is required and a 25-foot rear and side yard setback is required for 5 & 6 story buildings. For waterfront lots, there is a minimum front setback (front being the seawall) of 20 feet and rear and side setbacks of 10 feet for 1 & 2 story buildings. The setbacks are increased to 30 feet in the front yard and 20 feet in the rear and side yard for 3 & 4 story buildings. Finally, a 35-foot front yard setback is required and a 25-foot rear and side yard setback is required for 5 & 6 story buildings

Setbacks for RBA zoned property are found in Section 23-11(D). Essentially setbacks are increased as the height of the structure is increased. All of the RBA Tracts are large waterfront lots. There is a minimum front setback (seawall) of 20 feet and minimum rear setback (street) of 20 feet. For side yard setbacks, the minimum side setback is 10 feet for 1 & 2 story buildings. The side setback is increased to 15 feet for 3 & 4 story buildings. The side setback is increased to 20 feet for 5 & 6 story buildings. The side setback is increased to 25 feet for 7 & 8 story buildings. Finally, the side setback is increased to 30 feet for 9 & 10 story buildings.

Maximum Building Coverage

The maximum allowable building coverage in the RE Zoning District is 35%. The maximum allowable building coverage in the RBA Zoning District is 37.5%.

Maximum Height

The maximum building height in the RE Zoning District is 6 stories, however, the code allows the building to be raised for covered / garage parking (maximum 7 stories). The maximum building height in the RBA Zoning District is 10 stories, however, the code allows the building to be raised for covered / garage parking (maximum 11 stories). Despite the Zoning Code allowances, the maximum height has been recently regulated in all zoning categories by referendum to 75 feet. This was in reaction to the new PRD projects that were allowed up to 150 feet in height.

Minimum Size of Living Unit

Minimum floor areas are found in Section 23-9. Minimum unit sizes for multifamily units is 750 feet for an efficiency unit, 900 square feet for a one bedroom unit, 1,150 square feet for a two bedroom unit and an additional 200 square feet for each additional bedroom.

Storage Requirements

A minimum of 25 square feet of storage space per unit must be provided outside the interior space of the dwelling unit.

Parking Requirements

Parking requirements are found in Section 23-24. Each dwelling unit must have two (2) parking spaces within the building lot. If the building is more than one story, the parking must be located within the zoning setbacks required for that district. Most of the existing developments were built prior to the current parking code requirements. Most developments are non-conforming. In lieu of an on-site parking lot, virtually every development has direct back out parking from the adjoining roadway blacktop into the swale with a portion of the parking space extending into the front yard.

After applying the required setbacks, maximum building coverage, maximum height, minimum floor areas, storage and parking requirements, it was determined that unless an underground / under building parking area was constructed, maximum density could not be achieved. Maximum allowable density could easily be achieved if the building was raised over a garage. In fact it appears feasible to add units to perhaps 10-12 on a single site (RE) and meet the Town's minimum parking standards.

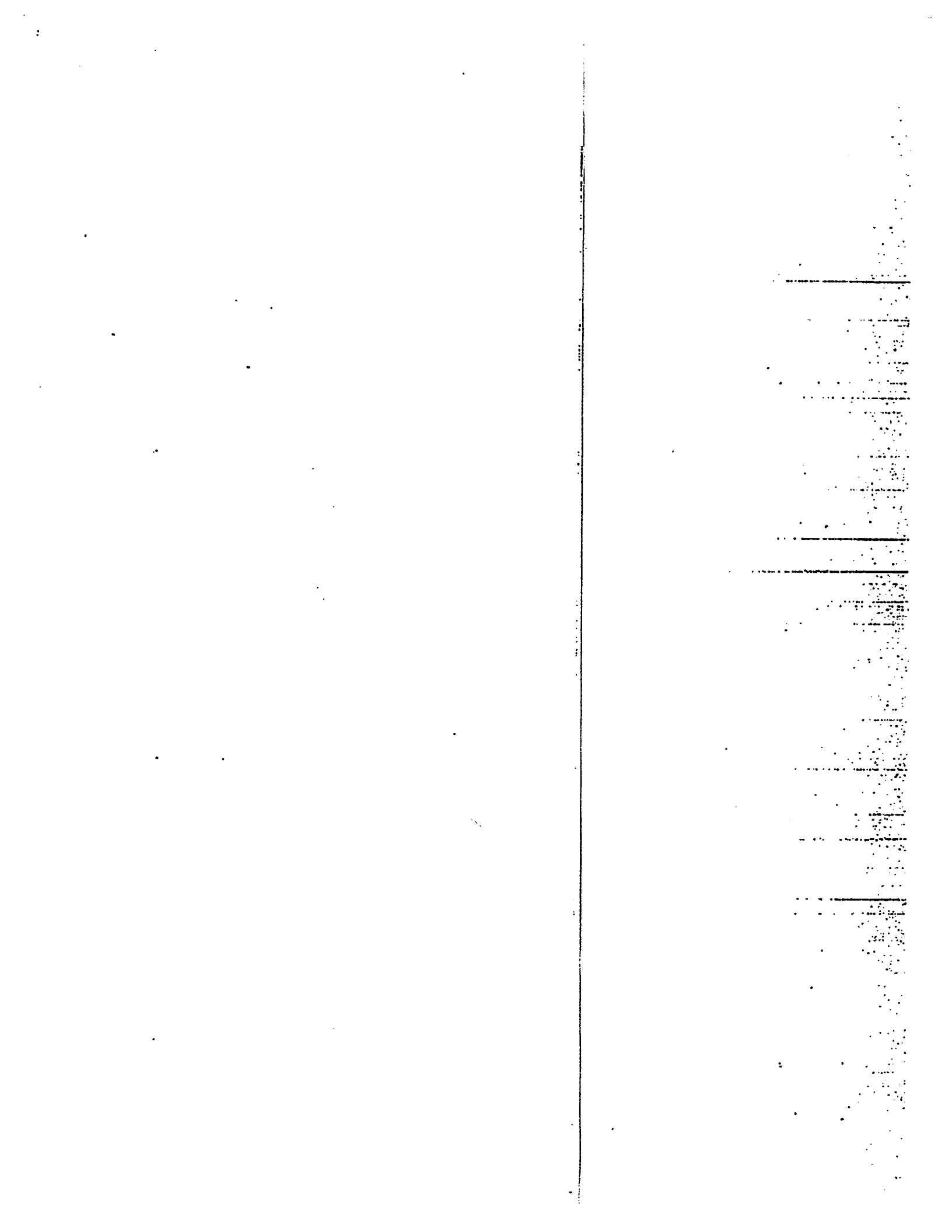
The Town's building setback standards and maximum building lot coverage standards seem to unnecessarily restrict the building envelope. For example, a one and two story building has a 10-foot side and rear setback but as soon as a 3 story (or 4 story) a 20-foot setback is required.

Also, the maximum lot coverage percentage appears to be too low. An analysis of existing older developments shows, as an example, that numerous buildings have 45-60% lot coverage. I believe these types of land development restrictions, in addition to the density issue, need to be revisited and modified to encourage re-development.

Options

If the Town desires to have the maximum density constructed on minimum lot sized parcels, the Town should consider relaxing the setback requirements and increasing the allowable building lot coverage. Also, possibly exempting 2 levels of parking may assist in achieving the density limit and any TDR increases.

Section 23-11 (B)(11) already allows the Town Council to adjust setback restrictions within the RE zoning district in the interest of proper use and equitable planning on a lot.



TOWN OF BAY HARBOR ISLANDS PROPOSED ZONING CODE AMENDMENTS RM-1 ZONING DISTRICT

Sec. 23-11. Building setback, coverage, density and height requirements.

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

Comments: The Town's Zoning Code fails to include any definitive development intensity standards. A maximum density clause is proposed and the title should be amended.

(B1) RE RM-1 Multiple Family area Residential District. (Waterfront Lots)

Comments: Other than the Kane Concourse BAA Zoning District and the RBA Zoning Districts located at the north and south tips of the eastern island, the entire area is zoned RE at present. What does RE stand for? There is no definition in the Code. No "Intent or Purpose" statement is made. The 2003 Community Visioning Plan recommended different development standards for interior lots and waterfront lots. It is recommended that the two (2) separate Zoning Districts be created for the eastern island, one for waterfront lots and one for interior lots. Development issues are different as interior lots back to other lots while the waterfront lots are separated by wide water bodies from single-family uses both within the Town and outside the Town. Finally, modern nomenclature for multiple-family zoning districts is RM (Residential Multi-family).

- (1) Front Yard Setback - Waterfront lots in RE-Multiple-Family-area the RM-1 Zoning District shall have a front yard setback of not less than twenty (20) feet, measured from the outside bulkhead wall, the front yard being on the waterfront side. ~~There shall be a rear yard setback of not less than twenty (20) feet for one and two story buildings, thirty (30) feet for buildings three (3) through four (4) stories, and thirty five (35) feet for buildings five (5) through six (6) stories, the rear yard being on the street side. The minimum side yard setback requirements on each side of the building shall be as follows:~~

~~(a) — One (1) through two (2) story building ten (10) feet.~~

~~(b) — Three (3) through four (4) story building twenty (20) feet.~~

~~(c) — Five (5) through six (6) story building twenty five (25) feet.~~

Comments: This section is amended to address only waterfront lots and front (waterfront) yards only. MMPA would prefer to modify the language to make the waterfront the rear of the lot, as a street frontage is universally the front of a lot. However, at present a simple amendment is proposed. This waterfront yard setback is not unusual today except that field inspections revealed that few buildings appear to have these setbacks. It is quite common that many buildings have a 15' setback to the seawall. The Glatting Jackson Community Visioning Plan did not address waterfront setbacks, only "Preferred Street Cross Sections". The lots are generally small for multi-family developments (75 feet wide by 150 feet deep). It appears the Town created the

current setback regulations in 1964. A large majority of the Town's buildings were constructed prior to that date. The larger the building envelope the more ability to raise a building and place parking underneath, removing the on-street back-out parking. The current 20-foot setback is proper in our opinion. No increased "stepped" setback is required for taller buildings. This is because of the distance between the multi-family areas and single-family areas across waterways both in the Town and outside the Town. MMPA recommends the Town maintain the 20' front (waterfront) setback with no step back.

- (2) ~~All lots in RE Multiple Family areas, not waterfront lots, shall have a minimum front yard setback as follows, the front yard being the yard abutting on the street:~~
- ~~(a) One (1) through two (2) story building twenty (20) feet.~~
 - ~~(b) Three (3) through four (4) story building thirty (30) feet.~~
 - ~~(c) Five (5) through six (6) story building thirty-five (35) feet.~~

Comments: This section is to be removed and placed in a new RM-2 Zoning District for interior lots.

(2) Rear Yard (Street) Setback - All lots in the RM-1 Multiple Family Zoning District shall have a minimum rear yard (street) setback as follows:

- (a) One (1) through two (2) story building - twenty (20) feet.
- (b) Three (3) through four (4) story building - thirty (30) feet.
- (c) Five (5) through six (6) story building - thirty-five (35) feet.

Comments: This section is separated from the inclusive provision above for ease of reference. These front yard setbacks are not unusual today. Waterfront lots in general appear to be set back further from the street than the interior lots. A few appear to be closer than the current allows. The Glatting Jackson Community Visioning Plan contained a "Preferred Street Cross Section" with a common 20-foot front setback requirement for waterfront lots. The Glatting Jackson study also recommended taller buildings (at least the old 7 story limit) be permitted on these lots. The new EAR-Based Comprehensive Plan amendments envision the ability to transfer additional density to the waterfront lots from the interior lots. The lots are generally small for multi-family developments (75 feet wide by 150 feet deep). It appears the Town created the current setback regulations in 1964. A large majority of the Town's buildings were constructed prior to that date. The larger the building envelope the more ability to raise a building and place parking underneath, removing the on-street back-out parking. The Town needs to weigh the street building scale to incentives to re-develop the properties. MMPA recommends the Town maintain the current setback standards. However, the Glatting Jackson recommended 20' street yard setback with no step back would allow more buildable area.

- (3) Side Yard Setbacks - All lots in the RM-1 Multiple Family Zoning District shall have minimum side yard setbacks as follows:

(a) One (1) through two (2) story building - ten (10) feet.

(b) For each additional three (3) feet of building height above 20 feet, there shall be one (1) additional foot of building setback for that portion of the structure over 20 feet in height.

Comments: This section is broken out separately from the front and rear yard criteria. The existing side yard setbacks are not unusual today except that field inspections revealed that very few buildings have these setbacks. It is quite common that all buildings, even 6-story buildings have narrow side setbacks. The Town's former PRD allowed as little as a 5-foot wide side setback for a 3-story Pedestal and a flex side setback of 10 feet for a 15-story building! The Glatting Jackson Community Visioning Plan did not address side setback issues, only front yards. Again, it appears the Town created the current setback regulations in 1964. A large majority of the Town's buildings were constructed prior to that date. The larger the building envelope the more ability to raise a building and place parking underneath, removing the on-street back-out parking. The current standard seems to require that the entire building to move in on a lot if the building gets taller, rather than a "stepped or Wedding Cake" design. On a single 75-foot wide lot a 5 or 6-story building would be only 25 feet wide, not encouraging a quality product. Perhaps the intent was to discourage tall buildings on single lots – they would need 2 or more lots. The scale is already established with buildings quite close to side property lines. MMPA recommends a base side setback of ten (10) feet and a sliding scale increase for building over 2 stories (20'). Only the taller portions of the building needs to move in on the lot, that is, shorter portions of the structures can be closer to a side lot line. Also, see the Flex setback provisions below for architectural design flexibility.

- (3a) Flex setbacks - A project designer has the option to offer creative design solutions to the building configurations and the Town Council may allow the building structure to encroach into the additional rear and side setback requirements above. The total amount of encroachment shall not exceed one-third of the length of the building. This provision shall serve to create an architectural opportunity for creative design approaches while promoting the beneficial purposes of building setbacks in the district.

Comments: This section is recommended to provide a mechanism to allow architectural creativity to avoid a "box" design. Bal Harbour Village's Community Appearance Board is comprised of only high-profile Architects, many from the academic world. That community recently updated their codes and included that criteria. It would allow a portion of the side and rear yards to encroach into the additional setback area to break up the box. MMPA recommends the Town consider this provision.

- (4) The maximum over-all length of any single building shall not exceed one hundred and thirty (130) feet, except as hereinafter provided.

Comments: MMPA does not observe a need to amend this section.

- (5) A building may exceed one hundred and twenty (120) feet in length if breezeways, divide such building, except for common floors and roofs, into parts not exceeding one hundred and twenty (120) feet in length. Such breezeways shall have a minimum unobstructed width, completely through the building, of twenty (20) feet.

Comments: MMPA does not observe a need to amend this section.

- (6) The minimum distance, unobstructed, between buildings on a lot, plot or parcel of land shall be twenty (20) feet; however, such buildings may be connected by a covered ground level walkway which must be open to the sides.

Comments: MMPA does not observe a need to amend this section.

- (7) In the case of corner lots and waterfront lots, side setbacks shall be regarded as those setbacks other than ones abutting streets and water.

Comments: MMPA does not observe a need to amend this section.

- (8) The maximum building coverage of any lot shall not exceed ~~thirty-five (35)~~ fifty (50) per cent of the lot area.

Comments: If there is a building complex with as low as 35% building coverage, MMPA could not locate one. The average building lot coverage appears to be between about 45 - 50%. Carroll Walk has a 72% lot building coverage and La Natiqne has a 57% lot building coverage. Again, this criteria was adopted in 1964. Most of the Town's buildings were built prior to that date. MMPA feels this criteria is an impediment to re-development. Why would one demolish a building covering 50% of a lot and only build 35%? A survey of adjacent communities revealed that most allow at least 40% lot coverage. MMPA recommends the Town increase this criteria to 50%.

- (9) No building in the RE- RM-1 Multiple Family area shall exceed six (6) stories. Notwithstanding the above, for developments on two (2) or more lots, buildings shall be permitted to be up to ten (10) stories or 100 feet. Specified accessory roof mounted structures may exceed the height limits specified herein as provided for in the applicable code section. A story is defined as a maximum of ten (10) feet in height from floor to ceiling, inside measurement.

Comments: The Glatting Jackson Community Visioning Plan recommended waterfront lots be allowed to build to at least 7 stories (it was inferred the RBA Tracts should be allowed to remain at 11 stories). Market demand and economics will result in varying building designs – just like exists at present. Much discussion has occurred on allowable building heights. The recent BA economic analysis found that more height and intensity along the Kane Concourse was necessary to justify re-development. MEAI has also found that to be true given land costs, demolition costs, building costs, etc. MMPA recommends that the maximum building height be limited to the existing height (6-stories) for single lot developments but increased to 10 stories or 100 feet on the waterfront lots. The maximum floor to ceiling height limit may discourage lofts or designs with interior clear-story ceilings common today.

- (10) If a building is raised to the minimum height necessary to provide one (1) or more levels of vehicular parking, utilities, and other services under the building area, one (1) level of the parking, utility and service area shall not be counted as a story. For example, if there are two (2) levels of vehicular parking, utilities and other services, then (1) such level would not be counted a story and a maximum of five (5) stories of living space are permitted over the other two (2) levels. All levels referred to are above ground. There is no limitation to number of levels under ground level.

Comments: MMPA does not observe a need to amend this section.

- ~~(11) The town council shall have the power to adjust the setback restrictions in the interest of proper, useful and equitable planning on all lots when the resulting building coverage would be under the maximum provided for in paragraphs (1) through (10) above if the setback requirements as set forth in such section are applied.~~

Comments: A variance should be required for setback reductions. The proposed Flex setback criteria would address this issue as well.

- (10) Landscape requirements – Each plot shall provide for a minimum of fifteen (15) percent landscaped open space. An applicant shall be required to submit a detailed landscape plan to the Town for consideration at the time of site plan approval. Trees shall be provided to provide shade and accentuate the building design. Shrubs shall be provided as foundation plantings, to screen mechanical equipment and as buffering to adjacent properties. The plan shall be sensitive to surrounding properties and shall be utilized to enhance the subject property.

Comments: There does not appear to be a minimum amount of pervious area required on any development plot. Stormwater runoff is required to be kept on-site by the Florida Building Code. The Town has a great deal of impervious surfaces (buildings and pavement) that adds to localized flooding problems. People, especially children, need open areas for recreation, not in the streets. MMPA could not locate a Landscape Code with minimum tree, shrub and grass standards. At a minimum, the Town's development must meet the minimum Miami-Dade County Landscape Code criteria adopted in 1996. If a local government does not have its own Landscape Code, it must use the County's. MMPA recommends the Town adopt a minimum open space standard as well as language to require a Landscape Plan.

- (11) Maximum Allowable Density - The maximum allowable base density is 34 dwelling units per acre. Partial units are rounded down to the nearest whole number. Individual project density may be increased on a case-by-case basis only through the process described in Sec. 23-22 entitled Transfer of Development Rights.

Comments: The Town's Zoning Code fails to include a definitive development intensity standard. It was common in older Zoning Codes to let "performance criteria" such as building height and bulk regulations (setbacks / lot coverage / minimum dwelling unit square footage) govern the intensity of a project. However, state law now requires that some intensity standard be provided, be it a density limit or Floor Area Ratio (FAR) limit. The recommendation follows the current Comprehensive Plan base density limit and refers to the proposed TDR program.

- (12) Maximum Number of Hotel Rooms - The maximum number of hotel rooms shall not exceed 70 rooms per acre.

Comment: The Town's Zoning Code fails to include a definitive development intensity standard for hotels. The Bay Harbor Inn has two (2) locations, one on the waterfront (Lots 35-37, Block 4) and one on an interior lot (Lot 1, Block 11). The current interior lot has 21 rooms while the waterfront lots have 24 rooms. This equates to 70 rooms per acre on the interior lot and 31 rooms per acre on the waterfront site. The proposed re-development plans recently reviewed by the Town have 36-40 large suites. This would result in a density of 52+/- rooms per acre. MMPA recommends a standard of 70 rooms per acre. As a comparison, Bal Harbour Village allows 100 rooms per acre on the beach.

TOWN OF BAY HARBOR ISLANDS PROPOSED ZONING CODE AMENDMENTS RM-2 ZONING DISTRICT

Sec. 23-11. Building setback, coverage, density and height requirements.

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

Comments: The Town's Zoning Code fails to include any definitive development intensity standards. A maximum density clause is proposed and the title should be amended.

(B2) RE RM-2 Multiple Family area Residential District, (Non-Waterfront)

Comments: Other than the Kane Concourse BAA Zoning District and the RBA Zoning Districts located at the north and south tips of the eastern island, the entire area is zoned RE at present. What does RE stand for? There is no definition in the Code. No "Intent or Purpose" statement is made. The 2003 Community Visioning Plan recommended different development standards for interior lots and waterfront lots. It is recommended that the two (2) separate Zoning Districts be created for the eastern island, one for waterfront lots and one for interior lots. Development issues are different as interior lots back to other lots while the waterfront lots are separated by wide water bodies from single-family uses both within the Town and outside the Town. Finally, modern nomenclature for multiple-family zoning districts is RM (Residential Multi-family).

~~(1) Waterfront lots in RE Multiple Family area shall have a front yard setback of not less than twenty (20) feet, measured from the outside bulkhead wall, the front yard being on the waterfront side. There shall be a rear yard setback of not less than twenty (20) feet for one and two story buildings, thirty (30) feet for buildings three (3) through four (4) stories, and thirty five (35) feet for buildings five (5) through six (6) stories, the rear yard being on the street side. The minimum side yard setback requirements on each side of the building shall be as follows:~~

~~(a) One (1) through two (2) story building ten (10) feet.~~

~~(b) Three (3) through four (4) story building twenty (20) feet.~~

~~(c) Five (5) through six (6) story building twenty five (25) feet.~~

Comments: This section should be deleted as it pertains to only waterfront lots.

~~(2)(1) Front Yard Setback - All lots in RE Multiple Family areas, not waterfront lots, the RM-2 Zoning District shall have a minimum front yard setback as follows, the front yard being the yard abutting on any the street:~~

~~(a) One (1) through two (2) story building - twenty (20) feet.~~

~~(b) Three (3) through four (4) story building - thirty (30) feet.~~

- (c) Five (5) through six (6) story building - thirty-five (35) feet.

Comments: This section is amended to address only interior (non-waterfront lots). These front yard setbacks are not unusual today except that field inspections revealed that very few buildings have these setbacks. It is quite common that all buildings, even 6-story buildings have a 15'-20' front setback (for example all of the multi-family developments north of 97th Street across from Town Hall complex including the Summit). The Glatting Jackson Community Visioning Plan contained a "Preferred Street Cross Section" with a common 20-foot front setback requirement for interior lots. The lots are generally small for multi-family developments (75 feet wide by 150 feet deep). It appears the Town created the current setback regulations in 1964. A large majority of the Town's buildings were constructed prior to that date. The larger the building envelope the more ability to raise a building and place parking underneath, removing the on-street back-out parking. The Town needs to weigh the street building scale to incentives to re-develop the properties. The street scale is already established with building quite close to the roadways. MMPA recommends a 20'-25' front yard setback with no step back.

(3)(2) Rear Yard Setback - All lots in RE- ~~the RM-2 Multiple Family area, not waterfront lots,~~ shall have a minimum rear yard setback ~~and a minimum side yard setback~~ as follows:

- (a) One (1) through two (2) story building - ten (10) feet.

~~(b) Three (3) through four (4) story building twenty (20) feet.~~

~~(c) Five (5) through six (6) story building twenty five (25) feet.~~

- (b) For each additional three (3) feet of building height above 20 feet, there shall be one (1) additional foot of building setback for that portion of the structure over 20 feet in height.

Comments: This section is amended to address only interior (non-waterfront lots). These rear yard setbacks are not unusual today except that field inspections revealed that very few buildings have these setbacks. It is quite common that all buildings, even 6-story buildings have shallow rear setbacks. The Town's former PRD allowed as little as a 5-foot wide rear setback for a Pedestal and a flex rear setback of 15 feet for a 15-story building! The Glatting Jackson Community Visioning Plan did not address rear setback issues, only front yards. Again, it appears the Town created the current setback regulations in 1964. A large majority of the Town's buildings were constructed prior to that date. The larger the building envelope the more ability to raise a building and place parking underneath, removing the on-street back-out parking. The current standard seems to require that the entire building to move in on a lot if the building gets taller, rather than a "stepped or Wedding Cake" design. Perhaps the intent was to discourage tall buildings on single lots – they would need 2 or more lots. The scale is already established with building quite close to rear property lines. MMPA recommends a base rear setback of ten (10) feet and a sliding scale increase for building over 2 stories (20'). Only the taller portions of the building needs to move in on the lot, that is, shorter portions of the structures can be closer to a rear lot line. Also, see the Flex setback provisions below for architectural design flexibility.

(3) Side Yard Setbacks - All lots in the RM-2 Multiple Family area shall have minimum side yard setbacks as follows:

(a) One (1) through two (2) story building - ten (10) feet.

(b) For each additional three (3) feet of building height above 20 feet, there shall be one (1) additional foot of building setback for that portion of the structure over 20 feet in height.

Comments: This section is broken out separately from the rear yard criteria. The existing side yard setbacks are not unusual today except that field inspections revealed that very few buildings have these setbacks. It is quite common that all buildings, even 6-story buildings have narrow side setbacks. The Town's former PRD allowed as little as a 5-foot wide side setback for a 3-story Pedestal and a flex side setback of 10 feet for a 15-story building! The Glatting Jackson Community Visioning Plan did not address side setback issues, only front yards. Again, it appears the Town created the current setback regulations in 1964. A large majority of the Town's buildings were constructed prior to that date. The larger the building envelope the more ability to raise a building and place parking underneath, removing the on-street back-out parking. The current standard seems to require that the entire building to move in on a lot if the building gets taller, rather than a "stepped or Wedding Cake" design. On a single 75-foot wide lot a 5 or 6-story building would be only 25 feet wide, not encouraging a quality product. Perhaps the intent was to discourage tall buildings on single lots – they would need 2 or more lots. The scale is already established with building quite close to side property lines. MMPA recommends a base side setback of ten (10) feet and a sliding scale increase for building over 2 stories (20'). Only the taller portions of the building needs to move in on the lot, that is, shorter portions of the structures can be closer to a side lot line. Also, see the Flex setback provisions below for architectural design flexibility.

(3a) Flex setbacks - A project designer has the option to offer creative design solutions to the building configurations and the Town Council may allow the building structure to encroach into the additional rear and side setback requirements above. The total amount of encroachment shall not exceed one-third of the length of the building. This provision shall serve to create an architectural opportunity for creative design approaches while promoting the beneficial purposes of building setbacks in the district.

Comments: This section is recommended to provide a mechanism to allow architectural creativity to avoid a "box" design. Bal Harbour Village's Community Appearance Board is comprised of only high-profile Architects, many from the academic world. That community recently updated their codes and included that criteria. It would allow a portion of the side and rear yards to encroach into the additional setback area to break up the box. MMPA recommends the Town consider this provision.

(4) The maximum over-all length of any single building shall not exceed one hundred and thirty (130) feet, except as hereinafter provided.

Comments: MMPA does not observe a need to amend this section.

- (5) A building may exceed one hundred and twenty (120) feet in length if breezeways, divide such building, except for common floors and roofs, into parts not exceeding one hundred and twenty (120) feet in length. Such breezeways shall have a minimum unobstructed width, completely through the building, of twenty (20) feet.

Comments: MMPA does not observe a need to amend this section.

- (6) The minimum distance, unobstructed, between buildings on a lot, plot or parcel of land shall be twenty (20) feet; however, such buildings may be connected by a covered ground level walkway which must be open to the sides.

Comments: MMPA does not observe a need to amend this section.

- (7) In the case of corner lots and waterfront lots, side setbacks shall be regarded as those setbacks other than ones abutting streets and water.

Comments: MMPA does not observe a need to amend this section.

- (8) The maximum building coverage of any lot shall not exceed ~~thirty-five (35)~~ fifty (50) per cent of the lot area.

Comments: If there is a building complex with as low as 35% building coverage, MMPA could not locate one. The average building lot coverage appears to be between about 45 - 50%. Carroll Walk has a 72% lot building coverage and La Natique has a 57% lot building coverage. Again, this criteria was adopted in 1964. Most of the Town's buildings were built prior to that date. MMPA feels this criteria is an impediment to re-development. Why would one demolish a building covering 50% of a lot and only build 35%? A survey of adjacent communities revealed that most allow at least 40% lot coverage. MMPA recommends the Town increase this criteria to 50%.

- (9) No building in the RE- RM-2 Multiple Family area shall exceed ~~six (6)~~ five (5) -stories. A story is defined as a maximum of ten (10) feet in height from floor to ceiling, inside measurement.

Comments: The Glatting Jackson Community Visioning Plan recommended interior lots be allowed to build between 3 and 5 stories. The study also recommended that building heights be varied to avoid a monolithic appearance. A Zoning Code must provide a common set of development regulations applicable to all properties uniformly in the same Zoning District. It would be impossible to demand that two adjoining properties zoned the same be different in height. Market demand and economics will result in varying building designs - just like exists at present. MMPA recommends that the maximum building height be reduced to the Glatting Jackson limit at this time pending economic analysis. The maximum floor to ceiling height limit may discourage lofts or designs with interior clear-story ceilings common today.

- (10) If a building is raised to the minimum height necessary to provide one (1) or more levels of vehicular parking, utilities, and other services under the building area, one (1) level of the parking, utility and service area shall not be counted as a story. For example, if there are ~~two (2) levels~~ is one (1) level of vehicular parking, utilities and other services, then (1) such level would not be counted a story and a maximum of ~~five (5)~~ four (4) stories of living space are permitted over the ~~other two (2) levels~~ one (1) parking level. All levels referred to are above ground. There is no limitation to number of levels under ground level.

Comments: This section is modified to illustrate a somewhat shorter building scenario.

- ~~(11) The town council shall have the power to adjust the setback restrictions in the interest of proper, useful and equitable planning on all lots when the resulting building coverage would be under the maximum provided for in paragraphs (1) through (10) above if the setback requirements as set forth in such section are applied.~~

Comments: A variance should be required for setback reductions. The proposed Flex setback criteria would address this issue as well.

- (10) Landscape requirements - Each plot shall provide for a minimum of fifteen (15) percent landscaped open space. An applicant shall be required to submit a detailed landscape plan to the Town for consideration at the time of site plan approval. Trees shall be provided to provided shade and accentuate the building design. Shrubs shall be provided as foundation plantings, to screen mechanical equipment and as buffering to adjacent properties. The plan shall be sensitive to surrounding properties and shall be utilized to enhance the subject property.

Comments: There does not appear to be a minimum amount of pervious area required on any development plot. Stormwater runoff is required to be kept on-site by the Florida Building Code. The Town has a great deal of impervious surfaces (buildings and pavement) that adds to localized flooding problems. People, especially children, need open areas for recreation, not in the streets. MMPA could not locate a Landscape Code with minimum tree, shrub and grass standards. At a minimum, the Town's development must meet the minimum Miami-Dade County Landscape Code criteria adopted in 1996. If a local government does not have its own Landscape Code, it must use the County's. MMPA recommends the Town adopt a minimum open space standard as well as language to require a Landscape Plan.

- (11) Maximum Allowable Density - The maximum allowable base density is 34 dwelling units per acre. Partial units are rounded down to the nearest whole number. Individual project density may be increased on a case-by-case basis only through the process described in Sec. 23-22 entitled Transfer of Development Rights.

Comments: The Town's Zoning Code fails to include a definitive development intensity standard. It was common in older Zoning Codes to let "performance criteria" such as building height and bulk regulations (setbacks / lot coverage / minimum dwelling unit square footage) govern the intensity of a project. However, state law now requires that some intensity standard be provided, be it a density limit or Floor Area Ratio (FAR) limit. The recommendation follows the current Comprehensive Plan base density limit and refers to the proposed TDR program.

- (12) Maximum Number of Hotel Rooms - The maximum number of hotel rooms shall not exceed 70 rooms per acre.

Comment: The Town's Zoning Code fails to include a definitive development intensity standard for hotels. The Bay Harbor Inn has two (2) locations, one on the waterfront (Lots 35-37, Block 4) and one on an interior lot (Lot 1, Block 11). The current interior lot has 21 rooms while the waterfront lots have 24 rooms. This equates to 70 rooms per acre on the interior lot and 31 rooms per acre on the waterfront site. The proposed re-development plans recently reviewed by the Town have 36-40 large suites. This would result in a density of 52+/- rooms per acre. MMPA recommends a standard of 70 rooms per acre. As a comparison, Bal Harbour Village allows 100 rooms per acre on the beach.

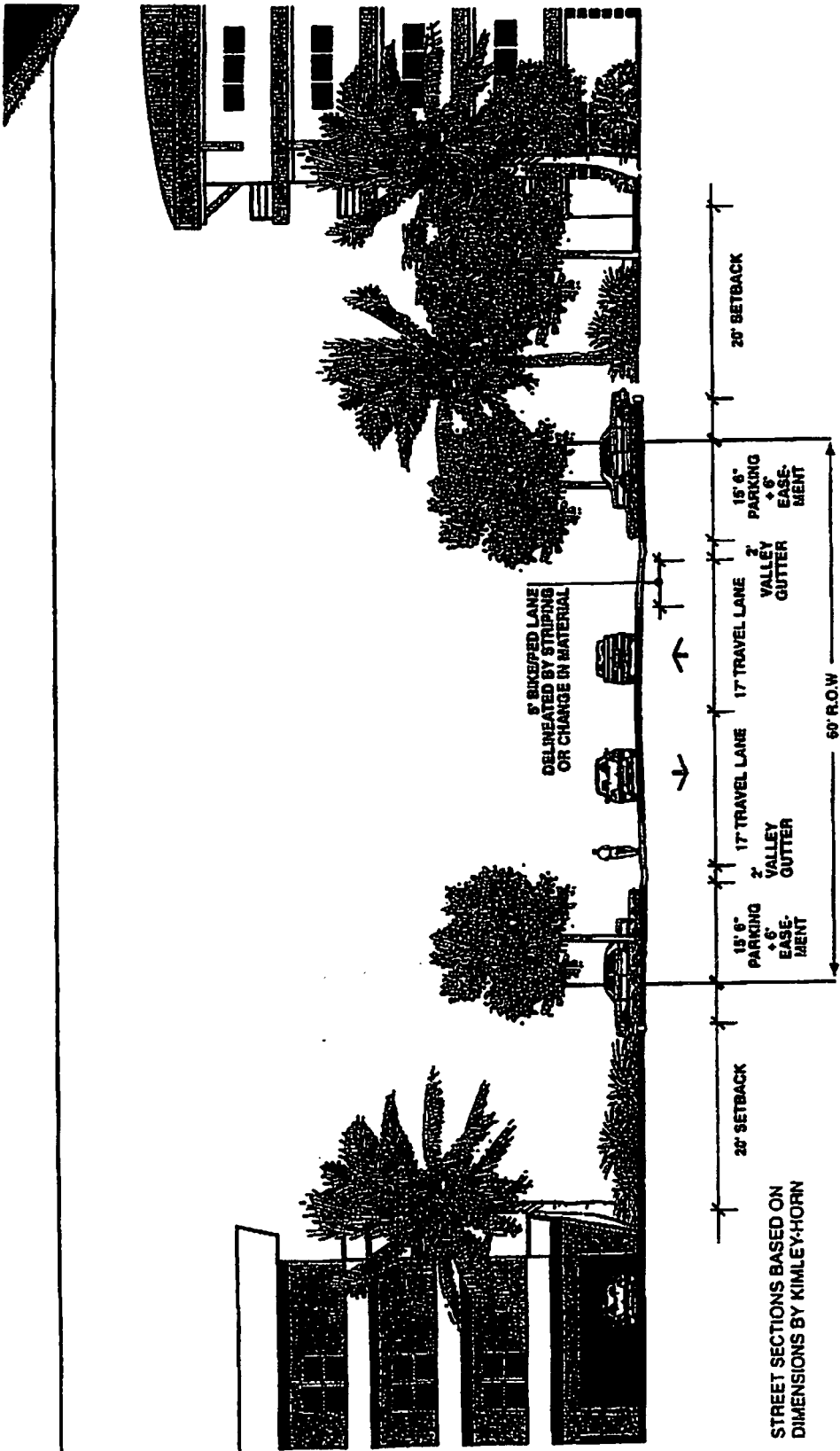


EXHIBIT 11 - PREFERRED SECTION, INTERIOR ROAD, 3-5 STORY BUILDINGS, CURRENT SETBACK

BAY HARBOR ISLANDS **COMMUNITY VISION STUDY**

75' Height Limit

25' Setback

25'

5-6 - Stories

20' Setback

35'

3-4 Stories

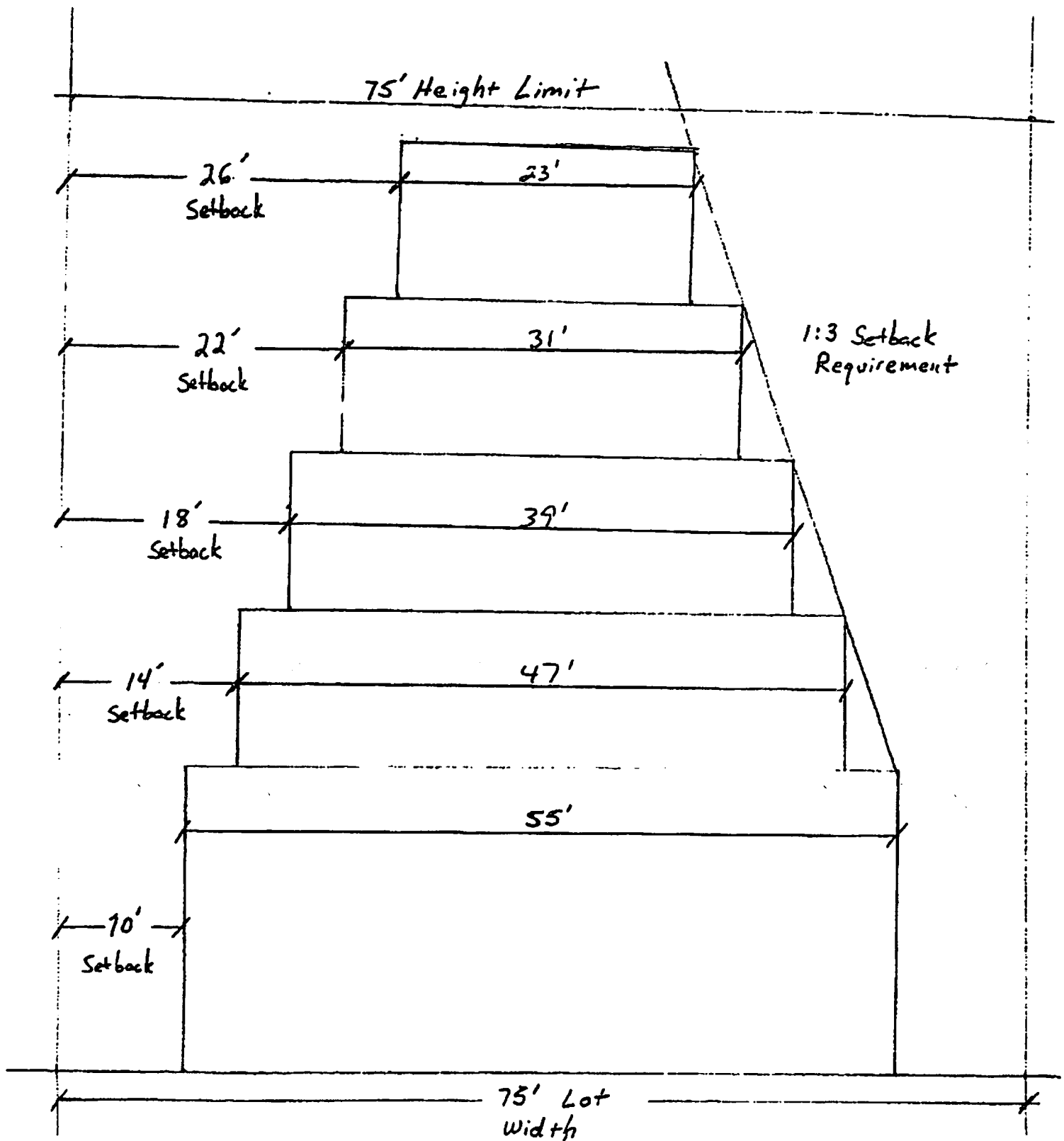
10' Setback

55'

1-2 Stories

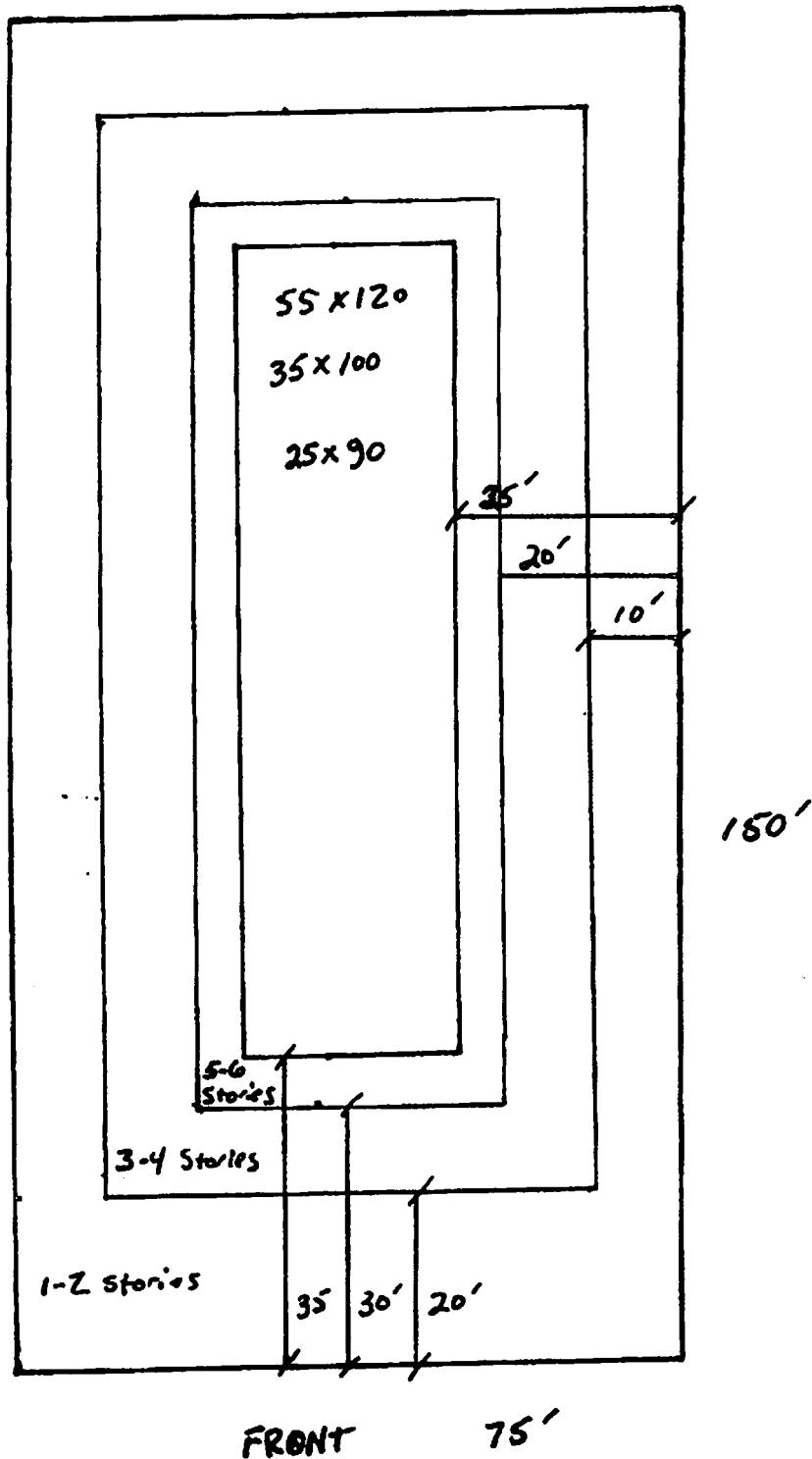
75' Lot Width

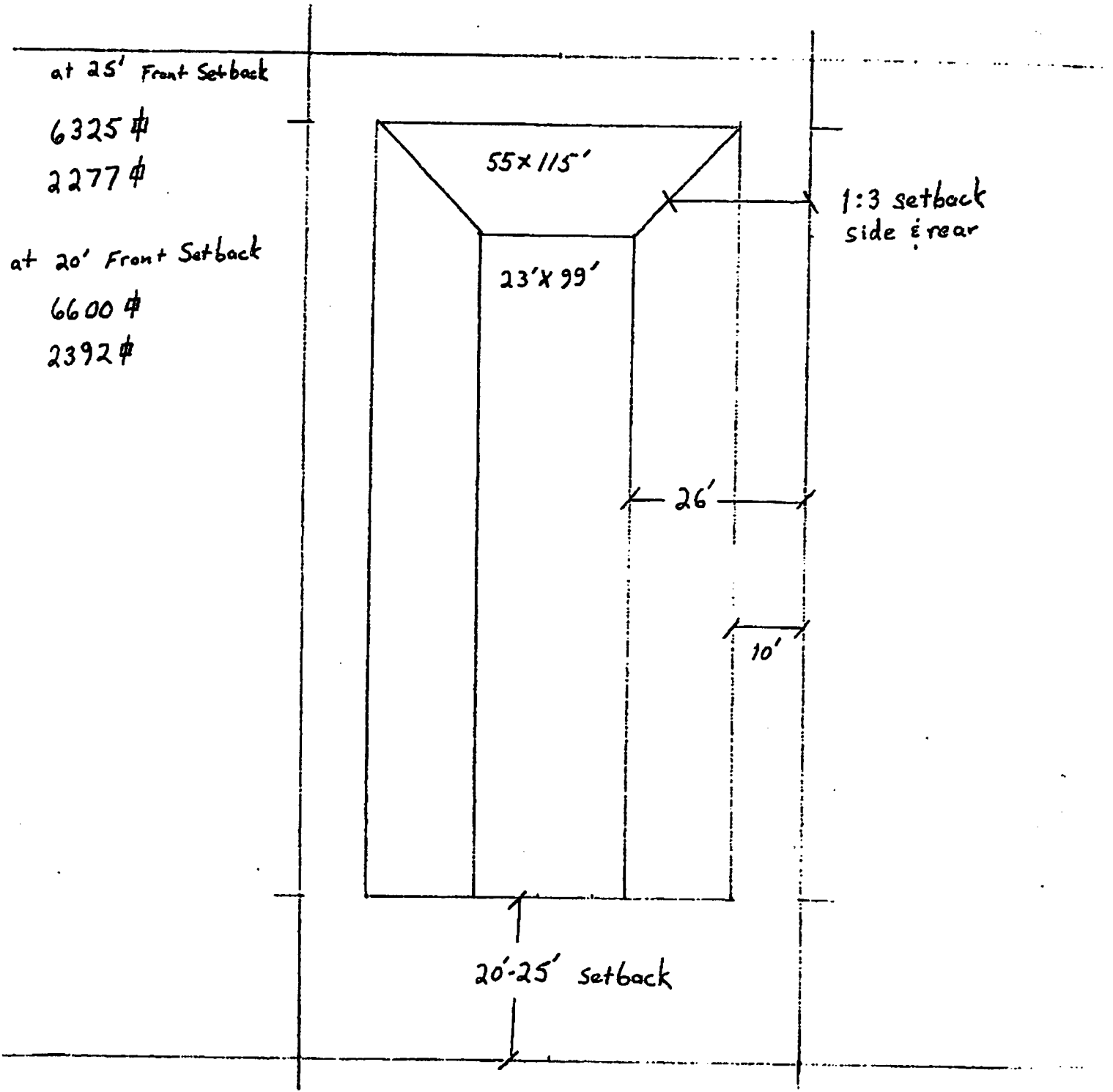
Proposed Zoning



Max 8 Units Permitted

6600 ϕ @ 20'
3500 ϕ @ 30'
2250 ϕ @ 35'





at 25' Front Setback

6325 Φ

2277 Φ

at 20' Front Setback

6600 Φ

2392 Φ

55' x 115'

23' x 99'

1:3 setback
side & rear

26'

10'

20'-25' setback

Front or Waterside