

NOTE: A request form is available from the Deputy Town Clerk or on the Town's website; please fill it in and return it no later than the "Public Comment" section of the meeting if you would like to address the Town Council. When you speak, you must come to the podium in the front and clearly state your name and address for the record. Please mute or turn off your cell phone or electronic devices at the start of the meeting. Thank you.

**TOWN OF BAY HARBOR ISLANDS
MORRIS N. BROAD COMMUNITY CENTER
1175 95TH STREET
BAY HARBOR ISLANDS, FL 33154**

REGULAR COUNCIL MEETING

AGENDA

October 14, 2024
(RESCHEDULED FROM OCTOBER 9, 2024)
5:30 PM

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 in being barred from the meeting. Persons exiting the Chambers shall do so quietly.

SPECIAL NOTICE

A Regular Meeting of the Town Council of the Town of Bay Harbor Islands will take place in-person and virtually through the Zoom platform, on Monday, October 14, 2024, at 5:30 p.m.

"In an effort to provide greater public access and comment on pending matters, the Town of Bay Harbor Islands is providing a Zoom link to enable members of the public to comment on pending items on the Town Council agenda. Zoom access is provided under the same terms and conditions as in-person access, including length of time and decorum. Anyone desiring to be heard may utilize the Zoom link. However, members of the public must understand that the provision of Zoom access for comments is a courtesy, not a vested right, and that access is provided subject to the availability and functionality of the Town's equipment. There is no guarantee that internet service will be reliable or that the Town's equipment will function as intended. In the event that the Zoom access is unavailable or interrupted for any reason, the Town Council meeting will still proceed forward, and will not be stopped or rescheduled in any regard. Those wishing to be absolutely certain that their comments are heard by the Town Council should present themselves in person at the Council meeting and seek recognition, or alternatively, should submit their comments in advance of the meeting in writing to the Town Clerk, and ask that they be read into the record, subject to the above terms and conditions, such as length and decorum. The validity of any actions taken by the Town Council will in no way be affected by the use or functionality of Zoom access for comments."

Zoom Meeting Link: <https://us06web.zoom.us/j/85392078298>
Meeting ID: 853 9207 8298

To request to speak during Public Comment, please utilize the "raise your hand" Zoom feature on your electronic device. You will be recognized at the direction of the Zoom Meeting Host.

In addition, any member of the public who does not wish, or is unable to participate through the Zoom video conferencing platform, but would still like to participate can do so by listening to the meeting as it happens by dialing the Toll-free numbers below:

US Toll Free Numbers: 877 853 5247 or 888 788 0099
For higher quality, dial a number based on your current location):
US: 1 305 224 1968 or 1 646 558 8656 or 1 301 715 8592

Meeting ID: 853 9207 8298
Participant ID: Press the # key.

To request to speak: Dial *9 on your telephone device to activate the “Raise your Hand” feature on the Zoom platform.

Members of the Public can also submit their request to speak and/or comments via email to the Office of the Town Clerk at yhamilton@bayharborislands-fl.gov prior to 4:00 p.m. on the day of the meeting.

CALL TO ORDER: Approximately 5:30 p.m.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

SPECIAL PRESENTATION:

1. Proclamation - Red Ribbon Week - October 23-31, 2024

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

TOWN MANAGER’S REPORT:

COUNCIL REPORTS:

PUBLIC COMMENT

There is a three (3) minute time limit for each speaker during public comment and a two (2) minute time limit for each speaker during all other agenda items. Your cooperation is appreciated in observing the three (3) minute rule. If you have a matter you would like to discuss which requires more than three (3) minutes, please arrange a meeting with the Town Manager or appropriate administrative official. A request form is available from staff or on the Town's website; please fill it in and return it to the Deputy Town Clerk no later than the conclusion of "Public Comment" section of the meeting, if you would like to address the Town Council. Please come forward to the podium, give your name and address, and the name and address of the organization you are representing if any.

COMMITTEE REPORTS:

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

2. **Consideration and Approval** of a request authorizing the issuance of a Request for Proposal for a vendor to perform Low Voltage service for the Town. Enclosed is the Staff Memo.
3. **Consideration and Approval** of a resolution implementing an Agreement between the Town of Bay Harbor Islands and Critical Event Response Applications (CERA) Program. Enclosed are the Letter of Intent, Benefits & Scope Document and Agreement, and draft resolution.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE A SOFTWARE SERVICE AGREEMENT BETWEEN THE TOWN OF BAY HARBOR ISLANDS AND CERA SOFTWARE, INC., TO PROVIDE THE BAY HARBOR ISLANDS POLICE DEPARTMENT ACCESS TO CERA THREAT RESPONSE PLATFORM TO PROACTIVELY PROMOTE PUBLIC SAFETY; PROVIDING FOR INCORPORATION OF RECITALS AND AN EFFECTIVE DATE.

4. **Consideration and Approval** of a resolution authorizing the Town Manager to award a competitively bid contract to Awnings Universal, Inc., the lowest responsible, responsive bidder, for \$62,000.00, pursuant to ITB No. ITB-8-1021-CC-0-2024/FVR, for replacement of the existing side-front awning on the west side of the Morris N. Broad Community Center. Enclosed are the Staff Memo, Resolution, and Bid Tabulation.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE A CONTRACT WITH AWNINGS UNIVERSAL, INC. IN THE AMOUNT OF \$62,000 FOR AWARD OF INVITATION TO BID NO. ITB-8- 1021-CC-0-2024/FVR FOR REPLACEMENT OF THE EXISTING SIDE-FRONT AWNING ON THE WEST SIDE OF THE MORRIS N. BROAD COMMUNITY CENTER; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE.

5. **Consideration and Approval** of a resolution authorizing the Town Manager to award a competitively bid contract to Smart Coat Painting, LLC, the lowest responsible, responsive bidder, for \$68,750.00, pursuant to ITB No. ITB-8-1020-CC-0-2024/FVR for painting the Morris N. Broad Community Center and the Parking Garage. Enclosed is the draft resolution, Staff Memo, and Bid Tabulation.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE A CONTRACT WITH SMART COAT PAINTING, LLC IN THE AMOUNT OF \$68,750 FOR AWARD OF INVITATION TO BID NO. ITB-8-1020-CC-0-2024/FVR, FOR PAINTING THE MORRIS N. BROAD COMMUNITY CENTER; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE.

6. **Consideration and Approval** of a resolution approving a Task Order with 300 Engineering Group, LLC. in the amount of \$77,410 to perform the comprehensive lead service line inventory for the Town's water distribution system required by the Environmental Protection Agency (EPA). Enclosed are the Task Order, Staff Memo, and draft resolution.

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA APPROVING A TASK ORDER WITH 300 ENGINEERING GROUP, LLC, IN THE AMOUNT OF \$77,410, FOR THE COMPREHENSIVE LEAD SERVICE LINE INVENTORY FOR THE TOWN'S WATER DISTRIBUTION SYSTEM REQUIRED BY THE ENVIRONMENTAL PROTECTION AGENCY; PROVIDING FOR INCORPORATION OF RECITALS AND AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Approve

POLL VOTE

ORDINANCES ON SECOND READING:

7. **Consideration** and **Approval** of an ordinance on Second Reading amending Sections 20-5 and 20-6 of the Town Code to increase the monthly rate for water service to pass through the increase charged by Miami-Dade County Water & Sewer Department. Enclosed are the proposed ordinance and supporting documents.

AN ORDINANCE OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING SECTIONS 20-5 AND 20-6 OF THE TOWN CODE TO INCREASE THE MONTHLY CHARGE FOR WATER SERVICE TO \$6.23 PER ONE THOUSAND GALLONS, AND THE MINIMUM MONTHLY SERVICE CHARGE FOR EACH WATER METER TO \$28.96; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Approve

POLL VOTE

8. **Consideration** and **Approval** of an ordinance on Second Reading amending Section 23-12(22) of the Town Code pertaining to fences that include lighting features. Sponsored by Council Member Robert Yaffe. Enclosed are the proposed ordinance and Staff Memo.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES RELATING TO THE REGULATION OF WALLS AND FENCES; AMENDING CHAPTER 23, ARTICLE I, SECTION 23-12(22); PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Council's Discretion

POLL VOTE

ORDINANCES ON FIRST READING:

9. **Consideration** and **Approval** of an ordinance on First Reading amending Chapter 24, Section 16 related to the regulations of landscape requirements. Sponsored by Council Member Robert Yaffe. Enclosed are the proposed ordinance and Staff Memo.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES RELATED TO THE REGULATION OF LANDSCAPE REQUIREMENTS, AMENDING CHAPTER 24 OF THE TOWN'S CODE OF ORDINANCES ENTITLED PROPERTY MAINTENANCE STANDARDS; AMENDING SECTION 24-16 ENTITLED MINIMUM LANDSCAPE STANDARDS TO MODIFY THE LANDSCAPE STANDARDS; RETITLING SECTION 24-16.1 FROM "USE OF FERTILIZER" TO "TREE REMOVAL, PROTECTION, REPLACEMENT AND ABUSE"; SECTION 24-16.3 "DEFINITIONS"; RETITLING SECTION 24-16.10 FROM "MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER" TO "MAINTENANCE REQUIREMENTS"; SECTION 24-16.15 "ENFORCEMENT AND PENALTIES"; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

STAFF RECOMMENDATION: Council's Discretion

POLL VOTE

DEFERRED ITEMS:

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

10. **Consideration** of a request from 9955 Bay Harbor Development, LLC, the owner of the lots located at 9927 – 9955 East Bay Harbor Drive, to modify Resolution No. 2162 to reflect a transaction for one (1) TDR unit instead of the three (3) that were previously approved. Enclosed are the supporting documents.

STAFF RECOMMENDATION: Council's Discretion

POLL VOTE

DISCUSSION ITEMS:

11. **Discussion and possible action** regarding the location of pickleball courts on the island. Sponsored by Council Member Stephanie Bruder.

ADJOURNMENT: Approximately 7:00 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

October 14, 2024

ITEM NUMBER: 1.

ITEM: Proclamation - Red Ribbon Week - October 23-31, 2024

DESCRIPTION:

Red Ribbon serves as a catalyst to mobilize communities to educate youth and encourage participation in drug prevention activities. October 23-31 has been designated National Red Ribbon Week, which encourages Americans to wear a red ribbon to show their support for a drug-free environment. The Young Marines may be in attendance to receive the proclamation.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk

ATTACHMENTS

1.	Proclamation - Red Ribbon Week
2.	Proclamation Request - Red Ribbon Week 2024

WHEREAS, communities across America have been plagued by the numerous problems associated with illicit drug use and those that traffic in them; and

WHEREAS, there is hope in winning the war on drugs, and that hope lies in education and drug demand reduction, coupled with the hard work and determination of organizations, such as the Young Marines of the Marine Corps League to foster a healthy, drug-free lifestyle; and

WHEREAS, governments and community leaders know that citizens' support is one of the most effective tools in the effort to reduce the use of illicit drugs in our communities; and

WHEREAS, the Red Ribbon has been chosen as a symbol commemorating the work of Enrique 'Kiki' Camarena, a Drug Enforcement Administration agent who was murdered in the line of duty, and represents the belief that one person can make a difference; and

WHEREAS, the Red Ribbon Campaign was established by Congress in 1988 to encourage a drug-free lifestyle and involvement in drug prevention and reduction efforts; and

WHEREAS, October 23-31 has been designated as National Red Ribbon Week, which encourages Americans to wear a red ribbon to show their support for a drug-free environment.

NOW, THEREFORE, I, Mayor Elizabeth Tricoche, on behalf of the Town of Bay Harbor Islands, Miami-Dade County, Florida, do hereby proclaim October 23-31 as **RED RIBBON WEEK** in Bay Harbor Islands, Florida and urge all citizens to join me in this special observance.

IN WITNESS WHEREOF, I hereunto set my hand and cause the seal of the Town of Bay Harbor Islands to be affixed this 14th day of October 2024.

JOSHUA D. FULLER
MAYOR



PFC Bruce W. Carter MOH Young Marines

Training Location: Metropolitan Police Training Institute, Doral, FL 33178

Mailing Address: 6692 Northwest 107th Court, Doral, FL 33178

September 4, 2024

Mayor Joshua D. Fuller
Town of Bay Harbor Islands
1030 95th Street,
Bay Harbor Islands, FL 33154

Dear Mayor Joshua D. Fuller:

Red Ribbon Week will take place during the week of 23 to 31 October 2024 and the PFC Bruce W. Carter MOH Young Marines are looking for your support in issuing a proclamation as we will be actively participating in this nationally recognized illicit drug awareness event. You can assist us in publicizing and promoting this week by issuing a proclamation that boldly declares our support and commitment in the fight against illegal drugs and those that promote their use.

The mission of the Young Marines program is to develop good citizenship and promote a healthy, drug-free lifestyle in our youth. Drug awareness and education are vital and key elements in the Young Marine's fight against illicit drug use and trafficking in our communities. To win this war on drugs, we must reduce the demand for illicit drugs and one of the best ways to accomplish this mission is through education and awareness. Red Ribbon Week is an excellent opportunity to promote illicit drug Awareness and we hope that you will join with us in this campaign. Young Marines will actively and aggressively participate in the Red Ribbon Week campaign. Having our Mayor's support in this Young Marines project will greatly assist us in getting our antidrug message out. In addition to showing your support with your proclamation, your participation by wearing a red ribbon is even more important. Enclosed you will find red ribbons for you and some of your staff. Please wear your ribbon, show your support, and let's work together to rid our communities of illicit drug use and those that traffic and profit from them. The Young Marines program is having a positive impact in our youth and our communities; we are developing responsible citizenship in our youth.

You will find a sample proclamation in word document form attached for your use.

If it is possible we would also like to receive the proclamation at a future Town Council meeting for possible photo opportunities to help us when completing our after-action reports.

Should you have questions, feel free to call me at (786) 597-9338.

The Point of Contact and mailing address is as follows:

POC: Executive Officer, Romina Tripichio
Address: 6692 Northwest 107th Court, Doral, FL 33178
EMAIL: PFCBruceWCarter@youngmarines.org

Sincerely yours,

Sample Proclamation

Whereas, communities across America have been plagued by the numerous problems associated with illicit drug use and those that traffic in them; and

Whereas, there is hope in winning the war on drugs, and that hope lies in education and drug demand reduction, coupled with the hard work and determination of organizations such as the Young Marines of the Marine Corps League to foster a healthy, drug-free lifestyle; and

Whereas, governments and community leaders know that citizen support is one of the most effective tools in the effort to reduce the use of illicit drugs in our communities; and

Whereas, the red ribbon has been chosen as a symbol commemorating the work of Enrique "Kiki" Camarena, a Drug Enforcement Administration agent who was murdered in the line of duty, and represents the belief that one person can make a difference; and

Whereas, the Red Ribbon Campaign was established by Congress in 1988 to encourage a drug-free lifestyle and involvement in drug prevention and reduction efforts; and

Whereas, October 23-31 has been designated National Red Ribbon Week, which encourages Americans to wear a red ribbon to show their support for a drug-free environment;

Now, Therefore, I, (name of official), (title of official) do hereby proclaim October 23-31, 2024 as **RED RIBBON WEEK** in **(municipality or state)**, and urge all citizens to join me in this special observance.

AGENDA ITEM REPORT

October 14, 2024

ITEM NUMBER: 2.

ITEM: Consideration and Approval of a request authorizing the issuance of a Request for Proposal for a vendor to perform Low Voltage service for the Town. Enclosed is the Staff Memo.

DESCRIPTION:

Staff recommends that the Town Council approve the issuance of a Request for Proposal (RFP) for a qualified vendor to provide low voltage service in the delivery and installation of wiring, camera installation, and access control.

At the present time, the Town does not have a contract with a company for low voltage services. Previously, low voltage work was done to rewire the trailers, for employees access cards, and installation of security cameras. Vendors were selected on their availability. Staff feel that it is in the best interest of the Town to procure an agreement with a company for these services. This RFP would provide the opportunity to select a qualified company to be available when such service is needed.

Staff is required to obtain the Town Council's approval to solicit proposals for this service because funds were not appropriated in the FY 2025 Budget.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

Except for an advertisement fee, there is no other cost associated with soliciting Request for Proposals.

GL Line-Item Number: 0

Total Amount Budgeted: 0

Encumbered Amount: 0

Balance Remaining: 0

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk

ATTACHMENTS

1.	Staff Memo - Low Voltage System
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**TOWN OF BAY HARBOR ISLANDS
FINANCE DEPARTMENT
MEMORANDUM**

TO:	Mayor and Town Council Members
CC:	Joseph S. Geller, Esq., Town Attorney Yvonne P. Hamilton, CMC, Town Clerk
THROUGH:	Jenice Rosado, ICMA-CM Town Manager Mike Mesa, CBO, CFM, Assistant Town Manager/ Building Official
FROM:	Roberto Gonzalez IT Director
DATE:	October 9, 2024
SUBJECT:	Request to solicit Request for Proposals (RFP) for Low Voltage Service

RECOMMENDATION

Staff recommends that the Town Council approve the issuance of a Request for Proposal (RFP) for a qualified vendor to provide low voltage service in the delivery and installation of wiring, camera installation, and access control.

BACKGROUND / ANALYSIS

At the present time, the Town does not have a contract with a company for low voltage services. Previously, low voltage work was done to rewire the trailers, for employees access cards, and installation of security cameras. Vendors were selected on their availability. Staff feels that it is in the best interest of the Town to procure an agreement with a company for these services. This RFP would provide the opportunity to select a qualified company to be available when such service is needed.

Staff is required to obtain the Town Council's approval to solicit proposals for this service because funds were not appropriated in the FY 2025 Budget.

EXECUTE

If this request is approved, staff will put out a Request for Proposal to obtain qualified companies to provide the service. A contract will be provided to the Town Council for approval.

FINANCIAL ANALYSIS

Except for an advertisement fee, there is no other cost associated with soliciting Request for Proposals.

GL Line-Item Number: 0

Total Amount Budgeted: 0

Encumbered Amount: 0

Balance Remaining: 0

ATTACHMENTS

1. Staff Memo

AGENDA ITEM REPORT

October 14, 2024

ITEM NUMBER: 3.

ITEM: Consideration and Approval of a resolution implementing an Agreement between the Town of Bay Harbor Islands and Critical Event Response Applications (CERA) Program. Enclosed are the Letter of Intent, Benefits & Scope Document and Agreement, and draft resolution.

DESCRIPTION:

Staff recommends approval of a resolution implementing an Agreement between the Town of Bay Harbor Islands and Critical Event Response Applications (CERA) Program.

Mass casualty events are on the rise. From the Marjory Stoneman Douglas attack in Florida, to Robb Elementary in Uvalde, Texas, the chaos and failures of Public Safety are rooted in antiquated technology like 911 and two-way radios, which were never designed to handle the speed, volume and precision needed for effective response.

3 universal response objectives have been identified.

1. CONTAIN THE SCENE
2. STOP THE THREAT
3. TREAT INJURIES

CERA GPS-plots all incoming data and personnel on the CERA OpsCenter map, which is shared with every respondent; everything is instant and simultaneous, cutting response time in half.

CERA-Critical Event Response Applications is a cloud based, agency-agnostic, and a visual response system for Public Safety to move quickly in crisis. Command personnel from multiple agencies can apply rapid reporting to meet objectives to save lives. Created by Veteran First Responders from Police, Fire and EMS; CERA provides ICS Command and mutual aid on a unified platform. CERA is the only visual response platform for Public Safety to command personnel from multiple agencies during a critical event, such as a school shooting. CERA instantly shares critical information in real time, when seconds save lives.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

CERA has collaborated with Stand with Parkland - The National Organization of Families for Safe Schools, for a grant covering all costs for the CERA Program until June 30, 2026. At that time, participating agencies can choose to opt out of the program. If the agency chooses to continue with the program, the potential cost is below.

After the three-year term is complete, the Bay Harbor Islands Police Department will be eligible to enroll for an additional three (3) year term at Tier 1 Pricing (up to 50 Sworn personnel).

Current 2024 Tier 1 pricing is listed below (subject to change for inflation adjustments in 2027).

Subscription Plan	1 Year	3 Year Upfront (-40%)
Small Size Agency (Up to 50 Users)	\$9,995	\$18,000

BUDGET IMPACT:

Submitted By: Analily Perez, Compliance Manager
 Lindsley Noel

ATTACHMENTS

1.	Staff Memo for Council CERA-
2.	Resolution - CERA Software Inc
3.	CERA_SwP SaaS Agreement Bay Harbor Islands DRAFT
4.	Letter of Intent Cera
5.	CERA Benefits & Scope Bay Harbor Islands



TOWN OF BAY HARBOR ISLANDS POLICE DEPARTMENT MEMORANDUM

TO:	Mayor and Town Council Members
THRU:	Jenice Rosado, ICMA-CM Town Manager
CC:	Joseph S. Geller, Esq., Town Attorney Yvonne P. Hamilton, CMC, Town Clerk
FROM:	Lindsley Noel Chief of Police
DATE:	September 20, 2024
SUBJECT:	Town of Bay Harbor Islands – Consideration and Approval of a resolution approving an Agreement between the Town of Bay Harbor Islands and Critical Event Response Applications (CERA) Program.

RECOMMENDATION

Staff recommends approving a resolution implementing an Agreement between the Town of Bay Harbor Islands and Critical Event Response Applications (CERA) Program.

Mass casualty events are on the rise. From the Marjory Stoneman Douglas attack in Florida, to Robb Elementary in Uvalde, Texas, the chaos and failures of Public Safety are rooted in antiquated technology like 911 and two-way radios, which were never designed to handle the speed, volume and precision needed for effective response.

3 universal response objectives have been identified.

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CERA GPS-plots all incoming data and personnel on the CERA OpsCenter map, which is shared with every responder. Everything is instant and simultaneous, cutting response time in half.

BACKGROUND / ANALYSIS

CERA-Critical Event Response Applications is a cloud based, agency-agnostic, visual response system for Public Safety to move quickly in crisis, command personnel from multiple agencies can apply rapid reporting to meet objectives to save lives. Created by Veteran First Responders from Police, Fire and EMS, CERA provides ICS Command and mutual aid on a unified platform. CERA is the only visual response platform for Public Safety to command personnel from multiple agencies during a critical event, such as a school shooting. CERA instantly shares critical information in real time, when seconds saves lives.

The Letter of Intent, Benefits & Scope Document and Agreement are attached.

EXECUTE

The term of this agreement shall be for an initial period of three (3) years.

FINANCIAL ANALYSIS

CERA has collaborated with Stand with Parkland-The National Organization of Families for Safe Schools, for a grant covering all costs for the CERA Program until June 30, 2026. At that time, the agency can choose to opt out of the program. If the agency chooses to continue with the program, the potential cost is below.

After the three-year term is completed, Bay Harbor Islands Police Department will be eligible to enroll for an additional three (3) year term at Tier 1 Pricing (up to 50 Sworn personnel). Current 2024 Tier 1 pricing is listed below (subject to change for inflation adjustments in 2027).

Subscription Plan	1 Year	3 Year Upfront (-40%)
Small Size Agency (Up to 50 Users)	\$9,995	\$18,000

ATTACHMENTS

1. Town Memorandum
2. Agreement
3. Letter of Intent
4. Benefits & Scope Document

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE A SOFTWARE SERVICE AGREEMENT BETWEEN THE TOWN OF BAY HARBOR ISLANDS AND CERA SOFTWARE, INC., TO PROVIDE THE BAY HARBOR ISLANDS POLICE DEPARTMENT ACCESS TO CERA THREAT RESPONSE PLATFORM TO PROACTIVELY PROMOTE PUBLIC SAFETY; PROVIDING FOR INCORPORATION OF RECITALS AND AN EFFECTIVE DATE.

WHEREAS, Stand with Parkland, The National Association of Families for Safe Schools (“Stand with Parkland”) has been awarded the Justice Assistant Grant for initiatives aimed at improving school safety; and

WHEREAS, Stand with Parkland has partnered with CERA Software, Inc. (“CERA”) for the implementation of the CERA Software for public safety; and

WHEREAS, the Town of Bay Harbor Islands, Florida (the “Town”) is desirous of implementing the software and enter into a Software Service Agreement with CERA to provide the Bay Harbor Islands Police Department access to CERA’s threat response platform; and

WHEREAS, CERA’s platform enhances communication by instantly displaying key data, eliminating delays in 911 and radio dispatch, ensuring effective reporting during critical events for timely responses by law enforcement and emergency personnel; and

WHEREAS, the safety and security of students, staff, and the general public within the Town of Bay Harbor Islands are of paramount importance; and

WHEREAS, Bay Harbor Islands Police Department has determined that access to CERA will enhance its ability to streamline communication, expedite response times, and improve situational awareness during emergencies; and

WHEREAS, the Town Council finds that approving the CERA Software and Service Agreement are in the best interest of the residents of the Town of Bay Harbor Islands.

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

Section 1. Recitals: The recitals listed above are incorporated in this Resolution as if fully set forth in this Resolution.

Section 2. Approval. The Town Council hereby approves the Software Service Agreement between the Town of Bay Harbor Islands and the CERA Software, Inc., in substantially the form attached hereto as “Exhibit 1”.

Section 3. Authority of Town Manager. The Town Manager is authorized to execute the agreement.

Section 4. Effective Date. This Resolution shall be effective upon adoption.

PASSED and ADOPTED this 14th day of October 2024.

JOSHUA D. FULLER, MAYOR

ATTEST:

YVONNE P. HAMILTON, TOWN CLERK

APPROVED AS TO FORM:

**GREENSPOON MARDER LLP
TOWN ATTORNEYS
BY: Joseph S. Geller, Esq.**

CERA SOFTWARE INC.
SOFTWARE AS A SERVICE (SAAS) AGREEMENT

This SaaS Agreement (the "Agreement") is entered into this [REDACTED] (the Effective Date"), between **Town of Bay Harbor Islands Police Department** ("Subscriber"), with offices located at **1030 95th Street, Bay Harbor Islands, FL** and CERA Software, Inc. ("Licensor") with offices located at 3100 Ray Ferrero Jr. Blvd, Davie, Florida 33314. Stand With Parkland (Third Party Payor) is a party for purposes of financial obligation only (Exhibit D). For purposes of this Agreement, Subscriber and Licensor each will be referred to individually as a "Party" and together as the "Parties."

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. License to Receive the Service.

- (a) Grant.** Licensor hereby grants the Subscriber identified on the Schedule A Order Form attached hereto a limited, non-exclusive and non-transferable license, without right of sublicense, during the Term to access, via either a Vendor or the Feed, and display on Subscriber's Display Devices within the United States, the Service, and to permit Authorized Users to use the Service, subject to the terms and conditions of this Agreement. All rights in the Service not expressly granted hereunder are reserved to Licensor.
- (b) Scope.** The license granted to Subscriber hereunder is limited to a single, authorized Application for the display and retrieval of the Service on an Authorized User's desktop. The license does not extend to multiple applications for the display or retrieval of content within the Services. Subscriber shall have no right pursuant to this Agreement to distribute the Service in whole or in part over the Internet, or via email or instant messaging (other than as set forth in Section 9), via an Intranet, personal digital assistant, wireless application protocol, short message service or radio system. An enhanced license encompassing such applications is available as a supplement to this Agreement. Nothing in this Agreement shall obligate Licensor to continue providing access to any Service beyond the date when Licensor ceases providing such Service to subscribers generally. If Licensor ceases providing such Service to subscribers generally, neither the Third Party Payor nor the Subscriber will be under any obligation to remit further payment to Licensor pursuant to this Agreement.
- (c) Restrictions Use.** Subscriber shall not edit, alter, abridge or otherwise change in any manner the content of the Service, including, without limitation, all copyright and proprietary rights notices. Subscriber may not, and may not permit others to:

 - (i) reverse engineer, decompile, decode, decrypt, disassemble, or in any way derive source code from, the software or Service;
 - (ii) modify, translate, adapt, alter, or create derivative works from the Service;

- (iii) copy (other than one back-up copy), distribute, publicly display, transmit, sell, rent, lease or otherwise exploit the Service; or
- (iv) distribute, sublicense, rent, lease, loan or grant any third party access to or use of the Service.

2. Definitions. As used herein,

- (a) **“Agreement”** shall mean these terms and conditions, the Order Form, attached Schedules, and any written amendments signed by both parties;
- (b) **“Application”** shall mean either the Licensor-developed application used by Subscriber for the Service hereunder;
- (c) **“Authorized Users”** shall mean Subscriber’s employees and independent contractors working for Subscriber in the ordinary course of Subscriber’s business who: (i) agree to be bound by the terms of this Agreement; and (ii) are specifically authorized by Subscriber to access the Service;
- (d) **“Billing Start Date”** shall mean the date identified on the Order Form as the date from which billing shall be calculated (which under no circumstances shall be later than the Service Start Date, as defined below);
- (e) **“Display Devices”** shall mean any display device used to access and display the Service;
- (f) **“Service”** shall mean Licensor’s information applications subscribed to by Subscriber hereunder;
- (g) **“Service Start Date”** shall mean the date from which Subscriber receives the applicable Service;
- (h) **“Fees”** shall mean the fees payable pursuant to Section 3 hereof;
- (i) **“Office”** shall mean the address(es) of Subscriber’s office(s) in which a Display Device is located;
- (j) **“Order Form”** shall mean the attached Order Form that sets out the commercial terms and is executed by the parties;
- (k) **“Term”** shall mean the period identified in the Order Form, or any renewal term, as applicable;
- (l) **“Vendor”** shall mean the single distributor that delivers the Service to Subscriber as identified on the Order Form, subject to Licensor’s continuing authorization of such Vendor’s Application.

3. Fees and Payment.

- (a) **Fees.** Commencing on the Billing Start Date, the Third Party Payor, Stand With Parkland, shall pay Licensor on behalf of Subscriber for the Term hereof the Fees, payable in advance, based on the Services and the number of Users identified in the Order Form, and on any other commercial terms contained in this Agreement. Subscriber shall inform Licensor of any increases in the number of Users no later than

seven (7) days after the date of such increase and the Order Form will be deemed amended accordingly. Subscriber shall have no financial liability for subscription fees under this agreement.

- (b) **Taxes.** Licensor will be responsible for, and will promptly pay all sales, use, excise, value-added or similar taxes, assessments, or duties.
- (c) **Professional Services.** During the term of this Agreement, Subscriber may request Licensor to perform professional services in the nature of software development, customization add-in, documentation and/or integration services (hereinafter, “Professional Services”). Upon receipt of a request, Licensor may provide Subscriber with a written proposal, and when the parties agree to all requirements of the proposed Professional Services, a Task Order for the Professional Services, in the form of Exhibit C, shall be executed by the parties. All Task Orders shall be subject to the terms and conditions of this Agreement. Services performed by Licensor are not exclusive to Subscriber, and Licensor may perform services of any type or nature for any other person or entity at any time.

4. Access.

- (a) **Vendor.** If the Service is delivered to Subscriber via a Vendor, Subscriber acknowledges that the Vendor Delivery Fees may be charged to Subscriber by such Vendor or by Licensor on behalf of the Vendor.

5. Monthly Reports; Records.

- (a) **Vendors.** If the Services are delivered to Subscriber by a Vendor, Subscriber agrees that Licensor may rely on such third-party vendor’s monthly entitlement reports for billing purposes.

- 6. **Mergers and Acquisitions.** For the purpose of calculating the Fees, it is not the parties’ intention that the Fees charged under this Agreement will include Display Devices and Services added through a merger or acquisition. Accordingly, in the event of any merger or acquisition that would result in Subscriber’s ownership or control of Display Devices formerly owned or controlled by another entity, such additional Display Devices and Services will not be covered by the Fees charged under this Agreement. Subscriber agrees that such Display Devices and Services shall be subject to additional fees, based upon the then current listed price for the additional Display Devices and/or Services resulting from the acquisition or merger. For the avoidance of doubt a merger and/or acquisition shall not entitle Subscriber to terminate this Agreement other than in accordance with its terms.

- 7. **Copyright Protection; Use Restrictions; Security.** Subscriber agrees that the Service and Feed specifications, including without limitation the editorial coding and metadata contained therein, are the property of Licensor or Licensor’s licensors. *The works and databases included in the content of the Service are protected by applicable copyright laws.* Subscriber agrees that only Authorized Users shall be permitted access to the Service. Except as set forth herein, no clients or other persons or entities who are not legal employees of Subscriber or independent contractors consulting for Subscriber in the ordinary course of Subscriber’s

business may be Authorized Users. Subscriber shall not reverse engineer, decompile or disassemble any part of the Service. Subscriber further agrees that neither Subscriber nor any Authorized User shall store (except as permitted under Section 1(d)(ii) for retrieval and display purposes only), copy, reproduce, retransmit, disseminate, sublicense, sell, distribute, publish, broadcast, circulate, create derivative works (including, without limitation, trading algorithms), test algorithms in conjunction with, or distribute by any means the Service in whole or in part to anyone, including, but not limited to, other employees of Subscriber, without Licensor's express prior written consent; provided, however, that Authorized Users may on an occasional basis in the normal course of business include limited portions of the Service (a) in oral and (with proper attribution to the respective Service) non-electronic written communications with clients and other employees, and (b) in email and instant messaging communications with other employees and/or securities professionals. Without limiting the foregoing, under no circumstances shall distribution under this Section by Subscriber be permitted if such distribution may be viewed as a substitute for a subscription to the Service itself. Subscriber agrees that when using the Service in this way, the facts, content and intent of the Service will not be changed in form or in spirit or otherwise in any way be prejudicial to the integrity of the Service or Licensor.

- 8. Disclaimer.** SUBSCRIBER ACKNOWLEDGES AND AGREES THAT THE SERVICE(S), THE CONTENTS THEREIN, AND ANY ACCOMPANYING DOCUMENTATION ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS AND LICENSOR DOES NOT MAKE ANY AND HEREBY SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, ENDORSEMENTS, GUARANTEES, OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

9. Indemnification.

- (a) Subscriber Infringement Indemnity.** Subscriber, at its expense, will defend, indemnify, and hold Licensor harmless from and against any and all third party claims for damages (whether ordinary, direct, indirect, incidental, special, consequential, or exemplary), judgments, liabilities, fines, penalties, losses, claims, costs, and expenses including, without limitation, reasonable attorneys' fees, finally awarded by a court of competent jurisdiction, after all rights of appeal are exhausted, against Licensor which directly relate to a claim, action, lawsuit, or proceeding made or brought against Licensor by a third party alleging the infringement or violation of such third party's registered patent, trade secret, copyright, or trademark (each a "Licensor Claim") by way of Licensor's use of any Subscriber Content that Subscriber provides to Licensor and Licensor uses in the provision of any Services.
- (b) Licensor Infringement Indemnity.** Licensor, at its expense, will defend, indemnify, and hold Subscriber harmless from and against any and all third party claims for damages (whether ordinary, direct, indirect, incidental, special, consequential, or exemplary), judgments, liabilities, fines, penalties, losses, claims, costs, and expenses including, without limitation, reasonable attorneys' fees, finally awarded by a court of competent jurisdiction, after all rights of appeal are exhausted, against Subscriber

which directly relate to a claim, action, lawsuit, or proceeding made or brought against Subscriber by a third party alleging the infringement or violation of such third party's registered patent, trade secret, copyright, or trademark (each a "Subscriber Claim") by way of Subscriber's use of the Service that Licensor provides to Subscriber.

10. Limitation of Liability. LICENSOR AND ITS SUBSIDIARIES, AFFILIATES, SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES AND LICENSORS ("THE PARTIES") WILL NOT BE LIABLE (JOINTLY OR SEVERALLY) TO SUBSCRIBER, AUTHORIZED USERS, OR ANY THIRD PARTY, FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST SAVINGS AND LOST REVENUES (COLLECTIVELY, THE "EXCLUDED DAMAGES"), WHETHER OR NOT CHARACTERIZED IN NEGLIGENCE, TORT, CONTRACT, OR OTHER THEORY OF LIABILITY, EVEN IF ANY OF THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN ANY OF THE EXCLUDED DAMAGES, AND IRRESPECTIVE OF ANY FAILURE OF AN ESSENTIAL PURPOSE OF A LIMITED REMEDY. IN NO EVENT WILL THE LIABILITY OF THE PARTIES ARISING OUT OF ANY CLAIM RELATED TO THIS AGREEMENT EXCEPT FOR INTELLECTUAL PROPERTY INFRINGEMENT OR THE SUBJECT MATTER HEREOF EXCEED THE AGGREGATE AMOUNT PAID BY SUBSCRIBER HEREUNDER IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IF ANY APPLICABLE AUTHORITY HOLDS ANY PORTION OF THIS SECTION TO BE UNENFORCEABLE, THEN THE PARTIES' LIABILITY WILL BE LIMITED TO THE FULLEST POSSIBLE EXTENT PERMITTED BY APPLICABLE LAW. SUBSCRIBER WILL INDEMNIFY, DEFEND AND HOLD HARMLESS LICENSOR FOR ANY LOSS, DAMAGE OR COST IN CONNECTION WITH ANY CLAIM OR ACTION WHICH MAY BE BROUGHT BY ANY THIRD PARTY AGAINST LICENSOR RELATING TO ANY BREACH OF THIS AGREEMENT BY SUBSCRIBER.

11. Term; Early Termination. This Agreement shall become effective when Subscriber signs the Order Form and, unless terminated earlier in accordance herewith, shall continue from the Billing Start Date for the period of time specified in the Order Form. This Agreement may be renewed for subsequent like terms unless either party gives the other written notice of its intention not to renew no later than sixty (60) days prior to the end of the then-current term. For the avoidance of doubt: (i) in the event Subscriber executes the Order Form after the Billing Start Date then this Agreement will be deemed effective from the Billing Start Date, and (ii) in the event Subscriber receives the Service before the Order Form is executed, then this Agreement shall be deemed effective from the Service Start Date. Modifications in any ongoing Fees in connection with direct access to a Feed shall be communicated to Subscriber no later than ninety (90) days prior to their effective date, and such modified Fees shall be deemed to replace those previously stated in the Order Form. This Agreement may be terminated as follows: (a) if either party commits a breach of any provision of this Agreement and fails to remedy such breach within thirty (30) days of receiving written notice thereof by the non-breaching party ("Notice of Breach"), the party giving such notice may then deliver a second written notice to the breaching party terminating this Agreement, in

which event this Agreement, and the licenses granted hereunder, will terminate on the date specified in such second notice; or (b) if a receiver is appointed over any assets of either party or if either party makes any arrangement with its creditors or becomes subject to an administration order or goes into liquidation or anything equivalent to the foregoing under any jurisdiction or ceases to carry on business, the other may terminate by giving written notice with immediate effect. If this Agreement is terminated before the end of its then current term for any reason other than by Subscriber under Clause 14 (a) or (b), then Subscriber will pay to Licensor as liquidated damages the amount due by Subscriber for the previous calendar month times the number of months remaining in such Term ("Liquidated Damages") within 30 days after such termination. The parties agree that the Liquidated Damages under this clause are not intended to be and will not be punitive in effect and that the Liquidated Damages are a genuine pre-estimate of loss (which may be difficult to ascertain) resulting from early termination of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, if Subscriber receives any notice of late payment under this Agreement in any form, written or electronic, from Licensor including any business division (e.g., Licensor' Credit Department), such notice will be deemed to be a Notice of Breach.

12. Confidentiality. Subscriber and Licensor understand and agree that in the performance of this Agreement each party may have access to private or confidential information of the other party which either is marked as "confidential" or the receiving party should reasonably know under the circumstances that such information is confidential and/or proprietary information of the other party. Each of us shall hold such information in confidence and not, without the consent of the other, disclose it to a third party or use it for any purpose other than in performance of this Agreement. This obligation of confidentiality shall not apply to information that is generally available to the public through no act or omission of the receiving party or becomes known to the receiving party through a third party with no obligation of confidentiality, or is required to be disclosed by law, court or by any government or regulatory authority. If any Confidential Information is required to be disclosed by statute, rule, regulation or order of any court of competent jurisdiction, before any such disclosure the receiving party will provide notice to the disclosing party reasonably sufficient to allow the disclosing party the opportunity to apply for a protective order or other restriction regarding such disclosure. If either party elects to file this Agreement with the U.S. Securities and Exchange Commission or any other securities exchange or market, regulatory authority or other body, the filing party will provide the non-filing party, no less than five (5) business days before the expected date of the filing (the "Filing Date"), a copy of the Agreement marked to show the sections for which the filing party plans to seek confidential treatment. The filing party agrees to expand its confidential treatment request to include those provisions of this Agreement reasonably indicated by the non-filing party before the Filing Date as provisions for which the non-filing party requests confidential treatment. All confidential information will remain the exclusive property of the owner. No public announcement, press release or communication concerning this Agreement shall be made without the prior consent of the other party.

13. Miscellaneous.

- (a) **Notice.** All notices to a party hereunder shall be in writing, and delivered by certified mail, return receipt requested, overnight courier service, or by facsimile with confirmation by the above described mailing methods to the address(es) set forth on the Order Form, or to a different address which a party may give written notice of pursuant to this Section from time to time. Notice will be deemed delivered and received on the date it is actually received.
- (b) **Amendment.** The parties acknowledge that Subscriber is responsible for notifying Vendor directly of any Vendor-related issues. This Agreement may not be amended except in a writing executed by authorized representatives of Subscriber and Licensor.
- (c) **Assignment.** This Agreement is not transferable, assignable, delegable, or sublicensable by Subscriber in whole or in part, without the prior written permission of Licensor. This Agreement will be binding upon and inure to the benefit of the parties and their respective successors, trustees, administrators, and assigns.
- (d) **Survival.** The following obligations of the parties will survive termination or expiration of this Agreement for any reason: Sections 2., 9., 10., 11., 12., 13., 14. (but only for three (3) years after such termination or expiration), and 15. of this Agreement and any payment obligations of Subscriber that accrue prior to such termination or expiration.
- (e) **Independent Contractor.** Licensor is acting in performance of this Agreement as an independent contractor.
- (f) **Binding Effect and Third-Party Beneficiary.** Except if specifically stated in this Agreement, neither party, nor any of their respective employees or agents, will have the power or authority to bind or obligate the other party. No third party is a beneficiary of this Agreement.
- (g) **Waiver of Rights.** Except where specifically stated to the contrary, all remedies available to either party for breach of this Agreement under this Agreement, at law, or in equity, are cumulative and nonexclusive. A waiver or failure of either party at any time to require performance by the other party of any provision hereof will not affect the full right to require such performance at any time thereafter.
- (h) **Injunctive Relief.** If Subscriber breaches Section 1 of this Agreement, Licensor will be entitled, in addition to any other rights available under this Agreement or at law or in equity, to apply for immediate injunctive relief without any requirement to post a bond or other security and Subscriber acknowledges and agrees to not contest such application.
- (i) **Severability.** If any provision or portion thereof of this Agreement or its application in a particular circumstance is held to be invalid or unenforceable to any extent in any jurisdiction, such provision or portion thereof will, as to such jurisdiction only, be ineffective to the extent of such unenforceability, all other provisions and portions thereof of this Agreement will not be affected thereby and will be valid and enforced to the fullest extent permitted by law.
- (j) **Choice of Law and Venue.** This Agreement, as well as any and all tort claims arising from this Agreement or arising from any of the proposals, negotiations, communications or understandings regarding this Agreement, will be governed by and

construed in accordance with the laws of the State of Florida, United States of America (“Florida”), applicable to contracts made entirely within Florida and wholly performed in Florida, without regard to any conflict or choice of law principles. The sole jurisdiction and venue for any litigation arising out of this Agreement will be an appropriate federal or state court located in Broward County, Florida.

- (k) **Force Majeure.** Any failure or delay by Licensor in the performance of its obligations pursuant to this Agreement will not be deemed a default or breach of the Agreement or a ground for termination to the extent such failure or delay is due to computer or Internet or telecommunications breakdowns, denial of service attacks, fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil unrest, rebellions or revolutions in the United States or any nation where the obligations under this Agreement are to be executed, strikes, supplier and third party failure, lockouts, or labor difficulties, or any similar cause beyond the reasonable control of Licensor.
- (l) **Entire Agreement.** This Agreement contains the final and entire agreement of the parties and supersedes all previous and contemporaneous verbal or written negotiations, understandings, or agreements regarding the Agreement’s subject matter.
- (m) **Exhibits.** The following Exhibits are attached hereto and incorporated herein by this reference:

 - Exhibit A. Order Form for specific services
 - Exhibit B. Service Level and Support Services Agreement
 - Exhibit C. Task Order Form for specific tasks and payment
 - Exhibit D. Funding Confirmation Letter from Third Party Payor

WHEREFORE, the Parties hereto have signed this Agreement.

Town of Bay Harbor Islands

CERA Software, Inc.

By:_____

By:_____

Print:_____

Print:_____

Title:_____

Title:_____

Exhibit A. Order Form

Billing Start Date: [REDACTED]

Service Start Date: [REDACTED]

SERVICES

Subject to the terms and conditions of the Agreement, Licensor will provide to Subscriber the following Services for the following fees:

1. **Technology Description:**

- a. CERA Public Safety Platform for members of Bay Harbor Islands Police
- b. CERA Duress Application for all municipal locations and municipal employees
- c. CERA Duress Application for all Public and Charter Schools (K-12) within the municipality of Bay Harbor Islands
- d. CERA Duress Application for all Jewish & Religious Facilities
- e. All training, onboarding and support for the term of the agreement

2. **Term:** The term of this Schedule will commence as of the Billing Start Date and will end on June 30th, 2026 (“Initial Term”).

3. **Fees:** **NO FEE FOR SUBSCRIBER;** See Exhibit D-Paid by Third-Party Payor, Stand With Parkland. If the Third-Party Payor fails to remit payment to the Licensor, Subscriber will not be responsible for remitting any unpaid amounts to the Licensor.

4. **Maximum Number of Authorized Users:** Unlimited municipal Users

5. **Access:** Access is limited to Authorized Users.

6. **Training Rates:** All training is included for the three-year term

SUPPORT SERVICES

Support Services as set forth on **Exhibit B.** (“Support Services Description”) are included as part of the Fees.

Exhibit B. Service Level and Support Services Agreement

Licensor will provide the Service to Subscriber, not including scheduled maintenance time. Scheduled maintenance time will not exceed five (5) hours a month, and will take place during Non-Peak Hours. "Non-Peak Hours" will be the hours between 12:00 AM and 5:00 AM EST. The Service and Work Products will function and be available as provided in this Agreement with the Uptime specified below (with the exception of any scheduled maintenance performed by Licensor).

Technical Contacts. During the Term and any renewal term of the Agreement, Licensor will make available a technical point of contact for Subscriber technical support inquiries.

Deductions from Monthly Fees as a result of Service Level Non-Performance. If Licensor has failed to meet any of the Service Levels set forth herein, Subscriber will be entitled to receive deductions from its monthly fee as set forth below. Deductions are expressed as a percentage of Licensor's total monthly charges during the month in which the service deduction applies, with each section being applied separately against the total monthly charges and then the totals of each chart aggregated.

Uptime. Licensor will provide an Uptime of 99% or better, and Uptime as defined herein will include any significant third party product included in the Service. If Licensor's noncompliance is from 1% to 2%, Company will be credited five (5) percent (5%) of its monthly fee. If noncompliance is from 2 % to 5%, the credit will be ten percent (10%) of the monthly fee. There will be an additional two percent (2%) credit of the monthly fee for each additional one percent (1%) of noncompliance beyond __%.

Alternate Clauses/Definitions for SLAs:

"Downtime" means, for a domain, if there is more than a five percent user error rate. Downtime is measured based on server side error rate.

"Downtime Period" means, for a domain, a period of ten consecutive minutes of Downtime. Intermittent Downtime for a period of less than ten minutes will not be counted towards any Downtime Periods.

"Monthly Uptime Percentage" means total number of minutes in a calendar month minus the number of minutes of Downtime suffered from all Downtime Periods in a calendar month, divided by the total number of minutes in a calendar month.

"Scheduled Downtime" means those times where Licensor notified Customer of periods of Downtime at least five days prior to the commencement of such Downtime. There will be no more than twelve hours of Scheduled Downtime per calendar year. Scheduled Downtime is not considered Downtime for purposes of this SLA, and will not be counted towards any Downtime Periods.

Exhibit C. [Form of Task Order]

Task Order # _____

THIS IS TASK ORDER #____, BEING EXECUTED PURSUANT TO SAAS AGREEMENT BETWEEN CERA Software, Inc. (“LICENSOR”) AND [name] (“SUBSCRIBER”) DATED AS OF [date] (THE “AGREEMENT”).

Project: _____ **Hourly Rate:** _____ **Actual # of Hours** _____ **Billed # of Hours** _____ **Actual Cost** _____ **Billed Cost** _____

Total:

ESTIMATE FOR PROJECT

Notes:

1. Above fees are billed in advance to the **Third-Party Payor**.
2. All work is performed on a time and materials basis. This Task Order is a good faith estimate of the work required to complete the Task Order based on past experience and basic analysis of the project.
3. Intellectual Property Ownership Provision: The Intellectual Property Ownership Provisions of the Agreement are incorporated by reference herein.
4. Acceptance: The Deliverables described in the Project Scope of this Task Order will be deemed accepted by Subscriber upon receipt by Licensor of written notice by Subscriber that the Deliverables have been accepted.

CERA Software, Inc. Professional Services Rate Schedule:

Development Resource: \$ _____ per hour

Account Management Resource: \$ _____ per hour

Accepted by: Subscriber: _____

By:		
Name:		
Title:		
Date:		

Exhibit D. Funding Confirmation Letter



December 18, 2023

Chief Ra Shana Dabney-Donovan
Pembroke Park Police Department
3150 SW 52nd Avenue
Pembroke Park, FL 33023

Chief Dabney-Donovan,

Stand with Parkland - The National Association of Families for Safe Schools - is a national organization representing American families committed to advocating for practical public safety reforms focused on the security of students and staff at school, improved mental health support, and responsible firearms ownership. We were founded by the families whose loved ones were taken during the Marjory Stoneman Douglas high school massacre on February 14, 2018. Although we are devastated by the loss of our loved ones and spouses and children while at school, we work to help avoid mass shootings.

Stand with Parkland has received a BJA Byrne Discretionary Grants Program from the fiscal year 2023 grant is to provide funding to programs that use technology to enhance school safety. Stand with Parkland may provide cost-free implementation to communities.

Following your decision to use CERA Software, Inc. Stand with Parkland is offering to use the CERA Software, Inc platform in the Town of Pembroke Park Police Department. The duration of the funding will be through June 30, 2026 or the termination of the Pembroke Park Police Department agreement, whichever comes first. This funding arrangement is between CERA Software, Inc. and Stand with Parkland – The National Association of Families for Safe School.

We applaud the decision of Chief Ra Shana Dabney-Donovan to proactively promote school safety by using CERA Software, Inc to enhance the ability of students, and staff, to report vital information in order to have it relayed to responding officers, and on scene commanders, thus helping prevent a tragedy similar to what our Founding families have suffered. Stand with Parkland is pleased to partner with CERA Software, Inc by providing grant funding for this innovative pilot program helping to continue our mission to improve the safety of all students and teachers at school.

Please contact us with any questions you may have.

Tony Montalto
President
Stand with Parkland – The National Association of Families for Safe Schools

STANDWITHPARKLAND.ORG 5944 CORAL RIDGE DRIVE #273 CORAL SPRINGS, FL 33076 INFO@STANDWITHPARKLAND.ORG



BAY HARBOR ISLANDS POLICE DEPARTMENT



Lindsley Noel
Chief of Police

9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154
(305) 866-6242

Maria Lasday
Town Manager

May 7, 2024,

CERA Software, Inc.
Edward McGovern, CEO
3100 Ray Ferrero Jr. Blvd
Davie, FL 33314

Mr. McGovern,

This letter serves as non-binding confirmation that the Bay Harbor Islands Police Department intends to procure the CERA Threat Response Platform through the Justice Assistance Grant award to Stand With Parkland, The National Association of Families for Safe Schools. A procurement date will be contingent upon, and coinciding with, the release of the grant funding, which was awarded for FY2023 by the U.S. Department of Justice. Once the grant funding is released, we may commence the procurement and onboarding process. We look forward to this collaboration.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Noel".

Chief Lindsley Noel
Bay Harbor Islands Police Department
9665 Bay Harbor Terrace
Bay Harbor Islands, FL 33154

CERA

Critical Event
Response
Applications

>>>>>



CERA Benefits & Scope

Bay Harbor Islands Police Department

Prepared: April 12, 2024

About CERA

Overview:

CERA-Critical Event Response Applications is a cloud based, agency-agnostic, visual response system for Public Safety to move quickly in crisis, command personnel from multiple agencies, and apply rapid reporting to meet objectives to save lives. Created by Veteran First Responders from Police, Fire and EMS, CERA provides ICS Command and mutual aid on a unified platform. CERA is the only visual response platform for Public Safety to command personnel from multiple agencies during a critical event, such as a school shooting. CERA instantly shares critical information in real time, when seconds saves lives.

Problem We Solve:

Mass casualty events are on the rise. From the Marjory Stoneman Douglas attack in Florida, to Robb Elementary in Uvalde, Texas, the chaos and failures of Public Safety are rooted in antiquated technology like 911 and two-way radios, which were never designed to handle the speed, volume and precision needed for effective response.

We identified our 3 universal response objectives:

1. CONTAIN THE SCENE
2. STOP THE THREAT
3. TREAT INJURIES

CERA GPS-plots all incoming data and personnel on the CERA OpsCenter map, which is shared with every responder. Everything is instant and simultaneous, cutting response time in half. Police address threats while Fire/EMS video conferences through CERA to provide First Aid instructions to victims. They can color code each injury based on severity. This gives us the location and priority of injuries before EMS even enters the building.

CERA-QR Connect™

All public safety agencies in the area can join an event taking place in a neighboring jurisdiction. Even if an agency without CERA responds, they can still join the event through CERA-QR Connect™. Our platform creates a unique QR Code of non-CERA agencies which are managed on scene creating a comprehensive Incident Command System structure.

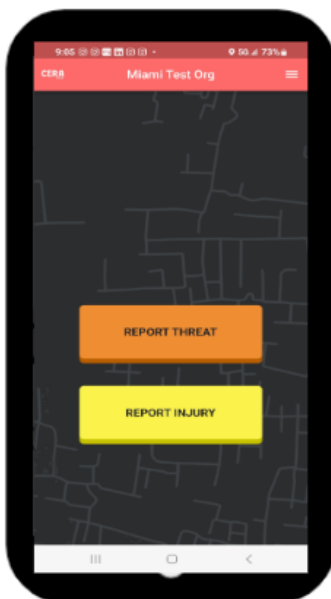
CERA- Duress App for Schools, Businesses and Government Facilities

The power of information sharing during a critical event is vital to saving lives. Traditional communications, like 911 and two-way radios, were never designed to handle the speed and volume of information during an attack.

The CERA-Duress app was built to solve this problem. Each Duress App location is organization-based and not open to the public. The users make up the stakeholder groups within that organization. For example, a local CERA high school would provide the Duress App to faculty, staff and other members within that organization. The school would then be directly connected to the public safety agencies in that jurisdiction.

Once an emergency is identified, a user can set off an alarm from their CERA-Duress App, which notifies every other user in that campus of a serious threat so they can immediately begin lockdown or other emergency protocols. The Duress app also instantly notifies the jurisdictional Police and Fire Departments, as well as every individual Public Safety member logged on.

Once the alarm has sounded, every Duress App user will see the Reporting Page on their device. This allows them to report the location of the suspect or a location with injuries. Reports instantly plot on the Public Safety map for Police and Fire, giving them immediate corresponding information that helps achieve the three objectives mentioned earlier. The CERA Duress App can be downloaded to any iOS or Android device.



CERA-Public Safety for Police & Fire

Once the emergency alarm is received, Police, Fire and EMS can all share information on the CERA platform and view the map with plotted threat and injury locations. Police and Fire/EMS can now work simultaneously to end the emergency, saving time and lives. The Public Safety platform can be accessed through iOS, Android and web devices. ICS is achieved quickly to manage the response.

CERA Virtual Triage & First Aid

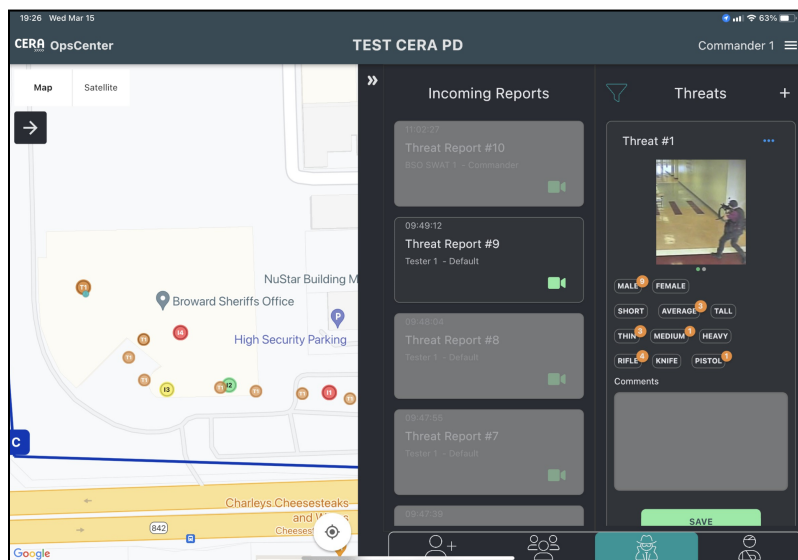
Public Safety members on CERA can perform virtual triage and first aid through our proprietary video conference feature. This allows Police or Fire to make video calls to the person that reported an injury location. They can use this feature to visually assess injuries, take notes and provide life saving first aid instructions. They can also color code each injury based on severity: red, yellow or green. The color also changes on the plotted map location, creating a prioritized injury evacuation plan.

CERA Threat Tracking

All reports of suspects are tracked chronologically on the map, with the most recent report bold and bright. This provides a “breadcrumb trail” that shows the direction of travel for the suspect, allowing police to intercept faster.

Mutual Aid

Every person from each agency responding to the event is visible on the map and tracking live, real-time locations. Commanders can tap on a unit's icon and see the agency and ID number for the unit. SWAT, K9 and Commander monikers are also affixed to the icon for specialized units.



CERA for the Bay Harbor Islands Police Department

As a mission-driven company, CERA is committed to providing safety to Bay Harbor Islands, and would be eligible for the following:

Benefits

1. **CERA-Public Safety Response Platform**
2. **CERA-Quick Events** (*Release Summer 2024*)
3. **CERA-Duress App for all Public/Charter K-12 Schools, Pre-K and religious facilities**
4. **CERA-Duress App for all municipal facilities**
5. **All support, training and onboarding**

Costs

As part of our collaboration with Stand with Parkland- The National Organization of Families for Safe Schools, **all costs for CERA until June 30, 2026.** This includes all of the benefits listed above.

After the three year term is complete, Bay Harbor Islands Police Department will be eligible to enroll for an additional three (3) year term at Tier 1 Pricing (up to 50 Sworn). Current 2024 Tier 1 pricing is listed below (*subject to change for inflation adjustments in 2027*)

Subscription Plan	1 Year	3 Year Upfront (-40%)
Small Size Agency (Up to 50 Users)	\$9,995	\$18,000

This also includes all training, onboarding and support throughout the life of the agreement. This includes the CERA-Duress App users for government facilities and Public/Charter K-12 Schools.

AGENDA ITEM REPORT

October 14, 2024

ITEM NUMBER: 4.

ITEM: Consideration and Approval of a resolution authorizing the Town Manager to award a competitively bid contract to Awnings Universal, Inc., the lowest responsible, responsive bidder, for \$62,000.00, pursuant to ITB No. ITB-8-1021-CC-0-2024/FVR, for replacement of the existing side-front awning on the west side of the Morris N. Broad Community Center. Enclosed are the Staff Memo, Resolution, and Bid Tabulation.

DESCRIPTION:

Staff recommends that the Town Council approve the attached resolution awarding a competitively bid contract to Awnings Universal, Inc., the lowest responsible, responsive bidder, for \$62,000.00, pursuant to ITB No. ITB-8-1021-CC-0-2024/FVR, for replacement of the existing side front awning on the west side of the Morris N. Broad Community Center.

The Community Center awning is in poor condition, with visible holes, rust, and significant wear. Its deteriorating state has become an eyesore, detracting from the appearance of the area. To address these concerns and improve the overall aesthetic, the Town issued an Invitation to Bid on September 12, 2024, soliciting qualified vendors with experience in awning installation to submit proposals to replace the structure with a new fabric awning.

On September 27, 2024, three (3) proposals were received from the following companies:

Company	Bid Price
Awnings Universal, Inc	\$62,000.00
V Engineering Corp	\$79,900.00
Walker Awning - Sky Awning	\$104,802.00

Awnings Universal, Inc. was both responsible and responsive, submitting the lowest bid.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

Transferred \$200,000 from FY 2024 remaining funds in Machinery Equipment GL Line-Item Number: 001.5190.400064.000 to Buildings GL Line-Item Number: 001.5190.400062.000 to cover the painting and the awning of the Community Center Building.

GL Line-Item Number: 001.5190.400062.000

Total Revised Budget: \$200,000

Encumbered Amount: \$130,750

Balance Remaining: \$69,250

BUDGET IMPACT:

Submitted
By: Yvonne Hamilton, Town Clerk

ATTACHMENTS

1.	Staff Memo - Community Center Awning Replacement-
2.	Resolution -Awnings Universal Inc. - Replacement of Community Center Awning
3.	BID TABULATION



**TOWN OF BAY HARBOR ISLANDS
FINANCE DEPARTMENT
MEMORANDUM**

TO:	Mayor and Town Council Members
CC:	Joseph S. Geller, Esq., Town Attorney Yvonne P. Hamilton, CMC, Town Clerk
FROM:	Jenice Rosado, ICMA-CM Town Manager Mike Mesa, CBO, CFM, Assistant Town Manager/ Building Official
DATE:	October 9, 2024
SUBJECT:	Bay Harbor Islands Morris N. Broad Community Center Awning Replacement

RECOMMENDATION

Staff recommends that the Town Council approve the attached resolution awarding a competitively bid contract to Awnings Universal, Inc., the lowest responsible, responsive bidder, for \$62,000.00, pursuant to ITB No. ITB-8-1021-CC-0-2024/FVR, for replacement of the existing side front awning on the west side of the Morris N. Broad Community Center.

BACKGROUND / ANALYSIS

The Community Center awning is in poor condition, with visible holes, rust, and significant wear. Its deteriorating state has become an eyesore, detracting from the appearance of the area. To address these concerns and improve the overall aesthetic, the town issued an Invitation to Bid on September 12, 2024 soliciting qualified vendors with experience in awning installation to submit proposals to replace the structure with a new fabric awning.

On September 27, 2024, three (3) proposals were received from the following companies:

Company		Bid Price
Awning Universal, Inc		\$62,000.00
V Engineering Corp		\$79,900.00
Walker Awning - Sky Awning		\$104,802.00

Awning Universal, Inc. was both responsible and responsive, submitting the lowest bid.

EXECUTE

If the Town Council approves the attached resolution, the Town Manager will execute an agreement with Awning Universal to complete the project as outlined in the Invitation to Bid at a price not to exceed \$62,000.

FINANCIAL ANALYSIS

Transfer \$200,000 from FY 2024 remaining funds in Machinery Equipment GL Line-Item Number: 001.5190.400064.000 to Buildings GL Line-Item Number: 001.5190.400062.000 to cover the painting and the awning of the Community Center Building.

GL Line-Item Number: 001.5190.400062.000

Total Revised Budget: \$200,000

Encumbered Amount: \$130,750

Balance Remaining: \$69,250

ATTACHMENTS

1. Staff Memo
2. Resolution
3. Bid Tabulation

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE A CONTRACT WITH AWNINGS UNIVERSAL, INC. IN THE AMOUNT OF \$62,000 FOR AWARD OF INVITATION TO BID NO. ITB-8-1021-CC-0-2024/FVR FOR REPLACEMENT OF THE EXISTING SIDE-FRONT AWNING ON THE WEST SIDE OF THE MORRIS N. BROAD COMMUNITY CENTER; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 2-1.1 of the Town Code requires all contracts for the purchase of supplies and materials or work involving an expenditure in excess of \$50,000 to be competitively bid; and

WHEREAS, on September 12, 2024, the Town Council authorized the solicitation of bids for a vendor to replace the existing side front awning on the west side of the Morris N. Broad Community Center; and

WHEREAS, in compliance with Section 2.1.1 of the Town Code, the Town published notice and provided due advertisement calling for bids on the project; and

WHEREAS, three (3) submissions were received from Awnings Universal, Inc. for \$62,000, V Engineering Corp for \$79,900, and Walker Awning-Sky Awning for \$104,802; and

WHEREAS, the Town desires to award the contract for replacing the awning at the Morris N. Broad Community Center to Awnings Universal, Inc., the lowest responsible, responsive bidder at a bid price of \$62,000.

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

Section 1. The foregoing recitals are adopted and hereby incorporated as if fully set forth herein.

Section 2. The Town Council hereby authorizes the Town Manager to execute a contract with Awnings Universal, Inc., the lowest responsible, responsive bidder, for award of Invitation to Bid No. ITB-8-1021-CC-0-2024/FVR, to replace the awning at the Morris N. Broad Community Center in an amount not to exceed \$62,000.

Section 3. If any provision, section, phrase, or word of this Resolution is declared invalid or unenforceable by a court of competent jurisdiction, the remaining provisions, sections, phrases or words of this Resolution shall remain in full force and effect.

Section 4. This Resolution shall become effective immediately upon its adoption. **PASSED and ADOPTED this 14th day of October 2024.**

JOSHUA D. FULLER, MAYOR

ATTEST:

YVONNE P. HAMILTON, TOWN CLERK

APPROVED AS TO FORM:

**GREENSPOON MARDER LLP
TOWN ATTORNEYS
BY: Joseph S. Geller, Esq.**



BID TABULATION

Bay Harbor Islands Community Center Awning Replacement

Three proposals properly sealed and noted, were received from the following companies:

Company		Bid Price
Awning Universal, Inc		\$62,000.00
V Engineering Corp		\$79,900.00
Walker Awning - Sky Awning		\$104,802.00

Fausto Vargas
Procurement Officer

AGENDA ITEM REPORT

October 14, 2024

ITEM NUMBER: 5.

ITEM: Consideration and Approval of a resolution authorizing the Town Manager to award a competitively bid contract to Smart Coat Painting, LLC, the lowest responsible, responsive bidder, for \$68,750.00, pursuant to ITB No. ITB-8-1020-CC-0-2024/FVR for painting the Morris N. Broad Community Center and the Parking Garage. Enclosed is the draft resolution, Staff Memo, and Bid Tabulation.

DESCRIPTION:

Staff recommends that the Town Council approve the attached resolution awarding a competitively bid contract to Smart Coat Painting, LLC, the lowest responsible, responsive bidder, for \$68,750.00, pursuant to ITB No. ITB-8-1020-CC-0-2024/FVR for painting the Morris N. Broad Community Center and the Parking Garage

The exterior paint of the garage building is in poor condition, with visible peeling, fading, and signs of wear. Its deteriorating state has become an eyesore, detracting from the overall appearance of the property. To address these concerns and improve the aesthetics, the town issued an Invitation to Bid on September 12, 2024, for painting the exterior of the building.

On September 27, 2024, a total of eight (8) proposals were received from the following companies:

Company	Bid Price
Smart Coat Painting, LLC	\$68,750.00
Five 12 Painting - Remodeling	\$69,123.00
All Counties Painting, LLC	\$79,108.00
Quick Painting Group Corp	\$95,552.00
Roof Painting By Hartzell, Inc.	\$103,750
New Age Construction	\$135,142.86
V Engineering Corp	\$149,000.00
Prestige Maintenance Construction	&\$234,000.00

Smart Coat Painting, LLC. was both responsible and responsive, submitting the lowest bid.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

Transferred \$200,000 from FY 2024 remaining funds in Machinery Equipment GL Line-Item Number: 001.5190.400064.000 to Buildings GL Line-Item Number: 001.5190.400062.000 to cover the painting and the awning of the Community Center Building.

GL Line-Item Number: 001.5190.400062.000

Total Revised Budgeted: \$200,000

Encumbered Amount: \$130,750

Balance Remaining: \$69,250

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk

ATTACHMENTS

1.	Staff Memo - Paint of Community Center
2.	Resolution - Smart Coat Painting LLC
3.	BID TABULATION



**TOWN OF BAY HARBOR ISLANDS
FINANCE DEPARTMENT
MEMORANDUM**

TO:	Mayor and Town Council Members
CC:	Joseph S. Geller, Esq., Town Attorney Mike Mesa, CBO, CFM, Assistant Town Manager/Building Official Yvonne P. Hamilton, CMC, Town Clerk
FROM:	Jenice Rosado, ICMA-CM Town Manager
DATE:	October 9, 2024
SUBJECT:	Bay Harbor Islands Community Center and Garage Exterior Paint.

RECOMMENDATION

Staff recommends that the Town Council approve the attached resolution awarding a competitively bid contract to Smart Coat Painting, LLC, the lowest responsible, responsive bidder, for \$68,750.00, pursuant to ITB No. ITB-8-1020-CC-0-2024/FVR for painting the Morris N. Broad Community Center and the Parking Garage

BACKGROUND / ANALYSIS

The exterior paint of the garage building is in poor condition, with visible peeling, fading, and signs of wear. Its deteriorating state has become an eyesore, detracting from the overall appearance of the property. To address these concerns and improve the aesthetics, the town issued an Invitation to Bid on September 13, 2024, for painting the exterior of the building.

On September 27, 2024 a total of eight (8) proposals were received from the following companies:

Company	Bid Price
Smart Coat Painting, LLC	\$68,750.00
Five 12 Painting - Remodeling	\$69,123.00
All Counties Painting, LLC	\$79,108.00

Company		Bid Price
Quick Painting Group Corp		\$95,552.00
Roof Painting By Hartzell, Inc		\$103,750.00
New Age Construction		\$135,142.86
V Engineering Corp		\$149,000.00
Prestige Maintenance & Construction		\$234,000.00

Smart Coat Painting, LLC. was both responsible and responsive, submitting the lowest bid.

EXECUTE

If the Town Council approves the attached resolution, the Town Manager will execute an agreement with Smart Coat Painting, LLC to complete the project as outlined in the Invitation to Bid at a price not to exceed \$68,750.

FINANCIAL ANALYSIS

Transferred \$200,000 from FY 2024 remaining funds in Machinery Equipment GL Line-Item Number: 001.5190.400064.000 to Buildings GL Line-Item Number: 001.5190.400062.000 to cover the painting and the awning of the Community Center Building.

GL Line-Item Number: 001.5190.400062.000

Total Revised Budget: \$200,000

Encumbered Amount: \$130,750

Balance Remaining: \$69,250

ATTACHMENTS

1. Staff Memo
2. Draft Resolution
3. Bid Tabulation

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA AUTHORIZING THE TOWN MANAGER TO EXECUTE A CONTRACT WITH SMART COAT PAINTING, LLC IN THE AMOUNT OF \$68,750 FOR AWARD OF INVITATION TO BID NO. ITB-8-1020-CC-0-2024/FVR, FOR PAINTING THE MORRIS N. BROAD COMMUNITY CENTER; PROVIDING FOR INCORPORATION OF RECITALS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Section 2-1.1 of the Town Code requires all contracts for the purchase of supplies and materials or work involving an expenditure in excess of \$50,000 to be competitively bid; and

WHEREAS, on September 12, 2024, the Town Council authorized the solicitation of bids for a vendor to paint the exterior the Morris N. Broad Community Center; and

WHEREAS, in compliance with Section 2.1.1 of the Town Code, the Town published notice and provided due advertisement calling for bids on the project; and

WHEREAS, eight (8) submissions were received from the following companies; and

Company	Bid Price
Smart Coat Painting, LLC	\$68,750.00
Five 12 Painting – Remodeling	\$69,123.00
All Counties Painting, LLC	\$79,108.00
Quick Painting Group Corp	\$95,552.00
Roof Painting By Hartzell, Inc	\$103,750.00
New Age Construction	\$135,142.86
V Engineering Corp	\$149,000.00
Prestige Maintenance & Construction	\$234,000.00

WHEREAS, the Town desires to award the contract for painting the exterior of the Morris N. Broad Community Center to Smart Coat Painting, LLC, the lowest responsible, responsive bidder at a bid price of \$68,750.

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

Section 1. The foregoing recitals are adopted and hereby incorporated as if fully set forth herein.

Section 2. The Town Council hereby authorizes the Town Manager to execute an agreement with Smart Coat Painting, LLC, the lowest responsible, responsive bidder, for award of Invitation to Bid No. ITB-8-1021-CC-0-2024/FVR to paint the exterior of the Morris N. Broad Community Center in an amount not to exceed \$68,750.

Section 3. If any provision, section, phrase, or word of this Resolution is declared invalid or unenforceable by a court of competent jurisdiction, the remaining provisions, sections, phrases or words of this Resolution shall remain in full force and effect.

Section 4. This Resolution shall become effective immediately upon its adoption. **PASSED and ADOPTED this 14th day of October 2024.**

JOSHUA D. FULLER, MAYOR

ATTEST:

YVONNE P. HAMILTON, TOWN CLERK

APPROVED AS TO FORM:

**GREENSPOON MARDER LLP
TOWN ATTORNEYS
BY: Joseph S. Geller, Esq.**



BID TABULATION

Bay Harbor Islands Community Center And Garage Exterior Paint

Eight (8) proposals properly sealed and noted, were received from the following companies:

Company		Bid Price
Smart Coat Painting, LLC		\$68,750.00
Five 12 Painting - Remodeling		\$69,123.00
All Counties Painting, LLC		\$79,108.00
Quick Painting Group Corp		\$95,552.00
Roof Painting By Hartzell, Inc		\$103,750.00
New Age Construction		\$135,142.86
V Engineering Corp		\$149,000.00
Prestige Maintenance & Construction		\$234,000.00

Fausto Vargas
Procurement Officer

AGENDA ITEM REPORT

October 14, 2024

ITEM NUMBER: 6.

ITEM: Consideration and Approval of a resolution approving a Task Order with 300 Engineering Group, LLC. in the amount of \$77,410 to perform the comprehensive lead service line inventory for the Town's water distribution system required by the Environmental Protection Agency (EPA). Enclosed are the Task Order, Staff Memo, and draft resolution.

DESCRIPTION:

Staff recommends that the Town Council approve the Task Order with 300 Engineering Group, LLC., in the amount of \$77,410, for the comprehensive lead service line inventory for our water distribution system required by the Environmental Protection Agency (EPA).

The U.S. Environmental Protection Agency (EPA) has revised the Lead and Copper Rule, requiring water systems to create an inventory of lead service lines by October 16, 2024. This is part of a national effort to reduce lead exposure from drinking water.

Lead exposure, even at low levels, can be harmful, especially to children and pregnant women. By identifying lead service lines, we can take targeted action to reduce potential lead exposure in our community.

This inventory will help us prioritize which areas need immediate attention for lead service line replacement, allowing for more efficient use of resources.

Providing this information to the public ensures transparency about the state of our water infrastructure and any potential risks.

A comprehensive inventory can help us qualify for federal and state funding for lead service line replacement programs.

If the Town Council approves the attached resolution, the Town Manager will execute a Task Order with 300 Engineering Group, LLC (1 of 5 engineering companies on record for the Town) to complete the study as outlined in the Task Order at a price not to exceed \$77,410.

RECOMMENDED ACTION:

Approve

FINANCIAL ANALYSIS:

Funds were allocated in the FY 2024 Budget.

GL Line-Item Number: 403.5330.400063.000

Total Amount Budgeted: \$1,113,110

Encumbered Amount: \$77,410

Balance Remaining: \$1,035,700

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk

ATTACHMENTS

1.	Staff Memo Lead and Copper Rule (003)
2.	Resolution - 300 Engineering Group LLC - Lead and Copper Rule Study
3.	Task Order 1 - 300 Engineering - Fee Proposal LCRR 20240925 (005)



**TOWN OF BAY HARBOR ISLANDS
FINANCE DEPARTMENT
MEMORANDUM**

TO:	Mayor and Town Council Members
CC:	Joseph S. Geller, Esq., Town Attorney Mike Mesa, CBO, CFM, Assistant Town Manager/Building Official Yvonne P. Hamilton, CMC, Town Clerk
FROM:	Jenice Rosado, ICMA-CM Town Manager
DATE:	October 9, 2024
SUBJECT:	Lead and Copper Rule Study.

RECOMMENDATION

Staff recommends that the Town Council approve the Task Order with 300 Engineering Group, LLC., in the amount of \$77,410, for the comprehensive lead service line inventory for our water distribution system require by Environmental Protection Agency (EPA).

BACKGROUND / ANALYSIS

The U.S. Environmental Protection Agency (EPA) has revised the Lead and Copper Rule, requiring water systems to create an inventory of lead service lines by October 16, 2024. This is part of a national effort to reduce lead exposure from drinking water.

Lead exposure, even at low levels, can be harmful, especially to children and pregnant women. By identifying lead service lines, we can take targeted action to reduce potential lead exposure in our community.

This inventory will help us prioritize which areas need immediate attention for lead service line replacement, allowing for more efficient use of resources.

Providing this information to the public ensures transparency about the state of our water infrastructure and any potential risks.

A comprehensive inventory can help us qualify for federal and state funding for lead service line replacement programs.

EXECUTE

If the Town Council approves the attached resolution, the Town Manager will execute a Task Order with 300 Engineering Group, LLC (1 of 5 engineering companies on record for the Town) to complete the study as outlined in the Task Order at a price not to exceed \$77,410.

FINANCIAL ANALYSIS

Funds were allocated in the FY 2024 Budget.

GL Line-Item Number: 403.5330.400063.000

Total Amount Budgeted: \$1,113,110

Encumbered Amount: \$77,410

Balance Remaining: \$1,035,700

ATTACHMENTS

1. Task Order
2. Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA APPROVING A TASK ORDER WITH 300 ENGINEERING GROUP, LLC, IN THE AMOUNT OF \$77,410, FOR THE COMPREHENSIVE LEAD SERVICE LINE INVENTORY FOR THE TOWN'S WATER DISTRIBUTION SYSTEM REQUIRED BY THE ENVIRONMENTAL PROTECTION AGENCY; PROVIDING FOR INCORPORATION OF RECITALS AND AN EFFECTIVE DATE.

WHEREAS, the Lead and Copper Rule (LCR), established in 1991, requires Utilities to monitor and control lead and copper levels in drinking water; and

WHEREAS, the LCR Revisions were promulgated in January 2021 and include sweeping changes to many aspects of the Rule, constituting the first major update to the National Primary Drinking Water Regulations in more than a decade and impacting every U.S. water system; and

WHEREAS, the revisions will significantly alter how Utilities implement corrosion control treatment, conduct compliance sampling, manage lead service lines, and communicate with customers. Understanding the implications of these Revisions will allow Utilities to plan for continued compliance; and

WHEREAS, compliance with the LCR Revision involves Lead Service Line Inventory, Sampling Plan, Customer Communication, Lead Service Line Replacement, Corrosion Control Treatment, and School and Child Care facility testing; and

WHEREAS, the deadline for compliance with the LCR Revisions is October 16, 2024. This includes submittal of both the Lead Service Line Inventory and the Lead Service Line Replacement Plan; and

WHEREAS, the Town of Bay Harbor Islands is required by the Environmental Protection Agency's (EPA) Lead and Copper Rule to develop and maintain an inventory of all service line lines within its water system, including the identification of lead service lines; and

WHEREAS, the Town desires to comply with this requirement by engaging a qualified contractor to conduct a comprehensive survey and create a detailed service line inventory; and

WHEREAS, 300 Engineering Group, LLC has been retained by the Town on an engineering consulting services continuing contract, through a competitive bidding process; and

WHEREAS, 300 Engineering Group, LLC submitted a Task Order in the amount of \$77,410 to perform the comprehensive lead service line inventory for the Town's water distribution system as required by the Environmental Protection Agency (EPA).

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

Section 1. Recitals: The recitals listed above are incorporated in this Resolution as if fully set forth in this Resolution.

Section 2. Approval. The Town Council hereby approves the Task Order with 300 Engineering Group, LLC in the amount of \$77,410, in substantially the form attached hereto as Exhibit 1, for the comprehensive lead service line inventory for the Town's distribution system, as required by the EPA.

Section 3. Authority of Town Manager. The Town Manager is authorized to execute the Task Order.

Section 4. Effective Date. This Resolution shall be effective upon adoption.

PASSED and ADOPTED this 14th day of October 2024.

JOSHUA D. FULLER, MAYOR

ATTEST:

YVONNE P. HAMILTON, TOWN CLERK

APPROVED AS TO FORM:

**GREENSPOON MARDER LLP
TOWN ATTORNEYS
BY: Joseph S. Geller, Esq.**

TASK ORDER NO. 1; 300 ENGINEERING GROUP, LLC

Dated this September 25, 2024

ENGINEERING DEPARTMENT

LEAD & COPPER RULE COMPLIANCE ASSISTANCE

PROFESSIONAL SERVICES

This Task Order between the Town of Bay Harbor Islands, a Florida municipal corporation ("TOWN"), and 300 ENGINEERING GROUP, a limited liability company (or applicable entity designation) authorized to transact business in Florida ("CONSULTANT"), is pursuant to the Engineering Consultant Services Agreement dated 11/13/23 and expiring on 11/13/25 ("MASTER AGREEMENT").

PROJECT BACKGROUND

The Town of Bay Harbor Islands (TOWN) has a population of approximately 5,700 residents within 383 acres. BHI maintains and operates the water supplied to the islands by Miami-Dade County Water and Sewer Department (WASD). The Lead and Copper Rule (LCR), established in 1991, requires utilities to monitor and control lead and copper levels in drinking water. The LCR Revisions were promulgated in January 2021 and include sweeping changes to many aspects of the Rule, constituting the first major update to the National Primary Drinking Water Regulations in more than a decade and impacting every U.S. water system.

The Revisions will significantly alter how utilities implement corrosion control treatment, conduct compliance sampling, manage lead service lines, and communicate with customers. Understanding the implications of these Revisions will allow utilities to plan for continued compliance.

Compliance with the LCR Revision involves the following key areas:

- Lead Service Line Inventory
- Sampling Plan
- Customer Communication
- Lead Service Line Replacement
- Corrosion Control Treatment
- School and Child Care facility testing

The deadline for compliance with the LCR Revisions is October 16, 2024. This includes submittal of both the Lead Service Line Inventory and the Lead Service Line Replacement Plan. These items are discussed in more detail in the following sections and will require updating annually thereafter. Given the fast approaching deadline, The CONSULTANT does not guarantee that all required submittals will be completed before the October 16, 2024 deadline but will assist the TOWN in submitting available information by the EPA deadline.

The proposal has been divided into the following tasks:

TASK ORDER NO. 2; 300 ENGINEERING GROUP, LLC

Task	Description
1	Project Management, Coordination Meetings
2	Data Collection
3	Lead Service Line (LSL) Inventory Framework
4	Sampling Plan
5	Lead Status Unknown Verification Plan
6	Communications & Public Education Strategy

Additional support may be provided in future phases under separate Scope(s) of Work which may include:

- Implementation of Service Material Identification & Inventory Updates
- Continuing Support for Customer Outreach & Education Program
- Development of Corrosion Control Evaluation & Future Optimization
- Perform LCRR Compliance Sampling Training
- Others, as needed

GENERAL REQUIREMENTS

Design Standards

The CONSULTANT shall be solely responsible for determining the standards the work shall meet and obtain all the requisite regulatory approvals. The design shall include, but is not limited to, the plans and specifications, which describe all systems, elements, details, components, materials, equipment, and any other information necessary for construction. The design shall be accurate, coordinated between disciplines, and in all respects, adequate for construction, and shall be in conformity, and compliance, with all applicable laws, codes, permits, and regulations.

Quality Control

The CONSULTANT is responsible for the quality control (QC) of their work and of its sub-consultants. The CONSULTANT shall provide to the Town the list of sub-consultants which shall be used for this project. This list shall not be changed without prior approval of the TOWN. All sub-consultant documents and submittals shall be submitted directly to the CONSULTANT for their independent QC review. The Town shall only accept submittals for review and action from the CONSULTANT.

The CONSULTANT shall be responsible for the professional quality, technical accuracy, and coordination of all pre-design services, designs, drawings, specifications, and other services furnished by the CONSULTANT and their sub-consultant(s). It is the CONSULTANT's responsibility to independently and continually QC their plans, specifications, reports, electronic files, progress payment applications, schedules, and all project deliverables required by this task order. The CONSULTANT shall provide the TOWN with a marked up set of plans and/or specifications showing the CONSULTANT's QC review. Such mark-ups shall accompany the CONSULTANT's scheduled deliverables. The submittal shall include the names of the CONSULTANT's staff that performed the QC review for each component (structures, roadway, drainage, etc.).

Project Schedule

TASK ORDER NO. 2; 300 ENGINEERING GROUP, LLC

The CONSULTANT shall submit a preliminary project schedule as an exhibit of this task order. The schedule shall be prepared in Microsoft Project and shall utilize an estimated Notice-to-Proceed (NTP), based on best available information.

The CONSULTANT shall submit a final project schedule to the TOWN, for approval, within 10 business days after receiving the NTP and prior to beginning work. No work shall commence without an approved schedule. The final schedule shall include design, permitting activities, submittal review timeframes, and other project activities as required to complete the work. The CONSULTANT shall submit updated project schedules as required in the specific scope of services.

Permitting

The CONSULTANT shall coordinate with the TOWN, regulatory agencies, and any other government entity having an interest or jurisdiction, which may require permits for this project. The CONSULTANT shall provide an estimate of fees and duration associated with the permitting process. Some of the regulatory or permitting agencies that may be associated with this project include, but are not limited to:

- South Florida Water Management District (SFWMD)
- U.S. Army Corps of Engineers (USACE)
- U.S. Coast Guard (USCG)
- Miami Dade County Division of Environmental Resources Management (DERM)
- Town of Bay Harbor Islands Building Department

SPECIFIC SCOPE OF SERVICES

The Scope of Services to be provided by CONSULTANT shall be as follows:

Task 1 – Project Management Services & Coordination Meetings

- The CONSULTANT will provide project management services, which will include the following main activities:
 - Kick-off Meeting
 - Coordination meeting with the TOWN's Utility Billing Department
 - Coordination Meetings with representatives from the TOWN's Public Works Department
 - Monthly Progress Reports

Deliverables: The following deliverables shall be provided under Task 1:

- Monthly Progress Reports (three (3) total)
- Meeting agendas and minutes (One (1) kick-off meeting and four (4) coordination meetings)

Task 2 – Data Collection & Analysis

The CONSULTANT will prepare a Request for Information (RFI) for currently available data to support the creation of the Lead Service Line Inventory (LSLI). However, due to the time constraint

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of the approaching deadline, data will only be requested and collected before the October 16, 2024 deadline. Analysis and incorporation of collected data into the LSLI will be provided after the October deadline.

Data Collection may include but is not limited to:

- Geographic information system (GIS) databases with installation dates, location, diameter, and material data for water mains and service lines
- Computerized maintenance management system (CMMS) database or other work order system records
- Paper records and property data
- Previous materials evaluation performed to identify lead and galvanized iron or steel under the original Lead and Copper Rule
- Construction and plumbing codes, permits, and existing records or other documentation that indicates the service line materials used to connect structures to the distribution system
- Customer billing data which includes connection dates and active accounts
- Distribution system maps, drawings & As-builts
- Historical records on each service connection
- Meter installation records, e.g., typical details, GIS data on locations, diameters, and installation dates
- Historical capital improvement or master plans
- Standard operating procedures
- Inspections and records of the distribution system that indicate the material composition of the service connections that connect a structure to the distribution system
- Interviews with O&M staff
- Private-side construction permits, e.g., plumbing permits
- Existing records or other documentation that indicates the private-side service line material, e.g., tap cards, work order notes or forms
- Historical capital improvement plans (for as many years available)

Deliverables: The following deliverables shall be provided under Task 2:

- Request for Information (RFI)
- Database of compiled support information (electronic copy)

Task 3 – Lead Service Line Inventory (LSLI) Framework

- When present, lead service lines are the primary source of lead in drinking water. The first step in understanding and addressing lead service line risks is to determine their locations in the TOWN's public water distribution system. The LCRR requires all water systems to develop a publicly available inventory of all publicly and privately-owned service lines in the distribution system, which must be submitted by the October 16, 2024, deadline.
- Systems will be required to submit annual notification letters to all customers with lead service lines or service lines of unknown material. While many systems have unknown service line materials (often historically assumed to be non-lead), the LCR Revisions will require unknown service line materials to be presumably lead.
- At a minimum, the EPA requires that each water system provide a preliminary inventory to include:
 - All service lines, regardless of use or ownership

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- A material classification for each service line, such as lead, galvanized, non-lead, or lead status unknown
- A location identifier for each service line, including a unique service line ID number and a street address
- The CONSULTANT will assist the TOWN in filling out the initial Lead Service Line Inventory per the EPA's "Service Line Inventory Template" released on August 4, 2022. The CONSULTANT will incorporate the available Location Information portion of the inventory per water meter records and water customer account information to be requested and provided by the Utility Billing Department. If a unique service line ID number is not available or established by the TOWN for each water service line, The CONSULTANT will provide a standard nomenclature suggestion in order to track and update the LSLI inventory over time and comply with the LSLI requirements. Incorporating all water service accounts in the LSLI template will be the foundation for updating the inventory as the system-owned and customer-owned service line material classification are investigated and updated over time. The TOWN will provide work information for the material classification of public and private portions of the water service lines that have been field verified through investigation at the meter pit. Any service lines that have not been verified or classified by the TOWN will be marked as "Unknown-Material Unknown."
- The CONSULTANT will submit this draft inventory to the TOWN for review based on customer account location information and verified service lines provided by the TOWN. The TOWN is responsible for submitting the final package to the EPA.
- The LSLI must then be updated on a yearly basis. The CONSULTANT will support the TOWN in one LSLI update after the October 16, 2024 deadline based on data collected under Task 2.

Deliverables: The following deliverables shall be provided under Task 3:

- Preliminary Lead Service Line Inventory (with customer account location information) to be provided in USEPA sample format. The CONSULTANT will submit inventory to the TOWN whereas the TOWN will subsequently review and submit final package to the EPA/DOH.

Task 4 – Sampling Plan

- The LCRR also introduces additional sampling requirements. For systems with lead service lines, compliance sampling will include a first liter and a fifth liter sample, which monitors lead release directly from the lead service line.
- The CONSULTANT will review available water sampling data from the TOWN and assist the TOWN in developing an updated adequate Sampling Plan based on the tiers established by the LCRR including:
 - Number of Tap Samples required
 - Standard vs Reduced Monitoring frequency requirements
 - Procedure on collecting samples
 - Establishing Action Levels based on 90th Percentile Lead and Copper Levels
 - Evaluation of Corrosion Control Techniques in place in the TOWN

School and Childcare Facility Testing

- By October 16, 2024, the TOWN must develop a list of all schools and childcare facilities built before January 1, 2014, served by its water system(s). Over a 5-year period,

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sampling must be conducted in 20% or more of the elementary schools and in at least 20% of the childcare facilities starting in 2024. Communications for school and childcare facilities include:

- providing information of health risks of lead in water, and notification of sampling requirement instructions 30 days prior to a sampling event on identifying sample outlets and how to prepare for the sampling event
- Sample location and quantity requirements are listed in the table below. If a facility does not contain the types of faucets as listed below, samples shall be collected at another outlet typically used for consumption.

Facility Type	Sample Quantity and Location
School	• Drinking water fountain x 2 • Kitchen Faucet x 1 • Classroom faucet or other drinking outlet x1 • Nurse's office faucet x1
Childcare Facility	• Drinking Water Fountain x1 • Kitchen Faucet, Classroom Faucet, or other drinking outlet x1

- Due to the proximity of the October 16, 2024 deadline, this task may not be completed prior to the deadline and will have to be completed after the deadline.

Deliverables: The following deliverables shall be provided under Task 4:

- Recommendations & development of the lead and copper sampling monitoring program, including the alignment with new sampling tiers (to be completed after October deadline)
- List of all schools and licensed day care facilities within the TOWN facilities built before January 1, 2014

Task 5 – “Lead Status Unknown” Verification Plan

- The next requirement for the October 2024 deadline is the lead service line replacement plan. All water systems with one or more lead, galvanized requiring replacement, or lead status unknown service lines in their distribution system must, by October 16, 2024, submit a lead service line replacement plan to the USEPA. The CONSULTANT, in coordination with the TOWN, will develop an LSLR Plan which will include the following:
 - Plan for determining the composition of the “lead status unknown” service lines per findings of Task 3 (LSLI)
 - General procedure for conducting full lead service line replacement, and Lead service line replacement prioritization strategy
 - Communications Strategy for informing customers before a full or partial lead service line replacement (Refer to Task 6)
 - Identification of Funding Strategies
- Public side field verification is needed for all pipes with unknown construction materials that were either constructed prior to 1989 or where the construction date is unknown. Priority should be given to older sections of the distribution system which are more likely to contain lead. The following are a few options:

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- The TOWN can perform a quick check of the service lines immediately upstream of the meter box. If it is galvanized, there is a good chance the line is connected to the main with a lead gooseneck. These lines should be categorized as containing lead on the LSL Inventory and should be scheduled for replacement.
 - A Subsurface Utility Engineering (SUE) contractor can perform soft-digs to visibly confirm the pipe material.
- Private side field verification for developments prior to 1989 is considerably more time consuming due to the vast number of privately maintained services. This is exacerbated by challenges with access rights on private property. It will likely take a multi-stage approach to compile a complete LSL of privately owned services.
 - For new plumbing permits issued for properties developed prior to 1989, consider adding a requirement to verify existing plumbing material, if no such requirement already exists
 - Research known available plumbing materials used in the area prior to 1989
 - Random samples, test the pipe surface for lead content with readily available testing strips or test markers
- The LCR Revisions includes guidelines for material identification and USEPA recently released "Guidance for Developing and Maintaining a Service Line Inventory." Both sources identify multiple potential methods for consideration, but implementation is largely site specific where applicability varies based on existing data sources and organizational practices as well as available utility resources. The CONSULTANT will develop a Field Verification Plan, in coordination with the TOWN, based on the preliminary LSLI findings. Since physically inspecting every service line to determine if it is lead is unrealistic, a representative, uniformly random number of service lines are recommended to be physically verified as a statistically sound subset to improve reliability of the LSLI.
- Execution of field verification activities and implementation support for service line identification will be presented in a separate/future scope of work.
- The CONSULTANT will develop a list of funding mechanisms available to the TOWN.
- The CONSULTANT will develop a matrix of funding options and requirements for TOWN's consideration.

Deliverables: The following deliverables shall be provided under Task 5:

- Action Plan to determine lead status of "unknown" service lines
- Lead Service Line Replacement Plan including Prioritization Criteria
- Funding Mechanisms Summary Matrices

Task 6 - Communications & Public Education Strategy

- The CONSULTANT will work with the TOWN to develop a Communications Strategy for residents including providing guidance and templates for public communications.
- The LCRR includes provisions to inform the public about their drinking water system and the occurrence of lead service lines. Specifically, large community water systems (serving more than 10,000 customers) must make their LSL inventory publicly available. Systems serving more than 50,000 customers are required to post LSL inventories online. In addition, the TOWN is required to notify the occupants of homes with lead service lines and to include options for mitigating the risk associated with the LSL. These revisions will ultimately improve communications with the customers and provide increased transparency on LCRR compliance. A public outreach & education campaign can help focus the public on the positive aspects of the LCRR and the TOWN's proactive response in assessing its distribution system.

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- Once the initial LSLI is submitted on Oct 16, 2024, the TOWN has 30 days to provide notifications to its water customers with service lines classified as: lead, galvanized requiring replacement (GRR), or lead status unknown. The TOWN must provide notification by mail or by another method approved by the primacy agency which allow consumers to review the information. The following notification content should be provided based on the service line material classification.
- This Task includes:
 - Develop educational materials and programs to inform the public about the risks of lead and copper in drinking water as well as Lead & Copper Rule compliance efforts
 - Assist in the development of outreach, educational, and promotional materials for each phase: inventory, replacement, sampling, etc.
 - Provide suggested verbiage to include in TOWN-developed materials including language that explains the LCRR in simple & positive terms
 - Template for customer notification regarding lead, galvanized requiring replacement (GRR), or lead status unknown classifications

PROJECT ASSUMPTIONS

- All requested information will be made available by the TOWN
- Survey services will not be performed. If surveys are determined to be required during the project execution, they will be additional services and will require a scope revision.
- The TOWN's staff will be available to attend meetings and assist with site visits and provide access to the lift stations and wastewater treatment plant during survey and geotechnical investigations
- All materials & deliverables shall be submitted electronically to the TOWN
- No design or permitting services are included in this Scope of Work
- No surveying, Subsurface Utility Engineering services, geotechnical investigations, water sampling, or on-site field inspections are included
- The TOWN to provide a database of schools within the TOWN's boundaries/Water Service Area including address (or georeferenced location), date of construction and building type
- It is assumed that all pipes constructed after the 1986 SDWA Lead Ban are in compliance with this ban and will not be included on the LSL inventory
- The TOWN, will provide GIS data sources necessary for inventory framework including property and parcel information, and locations and sizes of existing water distribution lines, meter and service lines
- The TOWN will review and confirm the service line designation criteria in the inventory database.
- Additional field verification or other actions may be needed to verify the accuracy of existing records and indirect service line designation criteria. Once the preliminary database is created, additional record review and/or field investigation will likely be required. This can either be done by TOWN staff, the CONSULTANT under a separate task order, or a third party hired by the TOWN
- The TOWN will provide an electronic database of all known licensed childcare facilities within the TOWN's service area including address (or geocoded location), date of construction, and building type
- The TOWN will schedule and coordinate any public notice meeting(s)

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- This Scope of Work provides the first steps towards compliance with the LCR Revisions and will require further steps to bring the TOWN into full compliance, as well as ongoing efforts thereafter based on timeframes and cycles specified by the USEPA
- It is anticipated that additional efforts may be required to support the implementation of a Lead & Copper Rule Program such as preparing design details, specification and contract documents for the excavation of test pits or SUE activities, construction management & administration for SUE contractors, technical specifications, drawings & standard details associated with the replacement of lead service lines, generation of SOPs for strategies where individual lead samples exceed the action limit, SOPs for reporting results to customer within the LCRRs required timeframes, additional training and public outreach activities, laboratory testing, tracking of sampling results, ordering, tracking and shipping sampling kits, applying for grants and/or other funding mechanisms, Corrosion Control Treatment (CCT) studies, among others. Additional efforts not specified in this Scope of Work or exceeding the efforts estimated herein, will be presented under a separate Scope of Work in order to provide continuous service and support to the TOWN for the LCRR Compliance Program
- The TOWN will conduct submittal reviews and provide comments within five (5) working days of submittal
- Non-Solicitation of Employees and Independent Contractors and Covenant Not to Hire. The TOWN agrees that they will not, directly or indirectly, initiate efforts aimed at the hiring of the CONSULTANT's employees or independent contractors or solicit, hire, employ, recruit, the CONSULTANT's employees or independent contractors, without the prior written approval of THE CONSULTANT until after three (3) years from the effective date of this Agreement.

ADDITIONAL SERVICES

If authorized in writing by the TOWN, as an amendment to this Task Order, the CONSULTANT shall furnish, or obtain, Additional Services of the types listed in the MASTER AGREEMENT. The TOWN, as indicated in the MASTER AGREEMENT, will pay for these services.

PERFORMANCE SCHEDULE

The CONSULTANT shall perform the services identified in Tasks 1 through 6 within four (4) months of the written Notice to Proceed. It is important to understand that THE CONSULTANT will not be able to submit a complete and accurate report to USEPA/FDEP before the October 16 deadline.

PROJECT FUNDING

Performance of this project is at the TOWN's discretion and may be contingent upon the TOWN receiving funding and work shall not begin until the TOWN provides a Notice to Proceed to CONSULTANT.

METHOD OF COMPENSATION

The services performed will be accomplished using the Lump Sum method of compensation. The total hourly rates payable by the TOWN for each of CONSULTANT's employee categories, reimbursable expenses, if any, and sub-consultant fees, if any, are shown on **Exhibit A** attached hereto and made a part hereof. Pay application requests shall be prepared on the TOWN's

TASK ORDER NO. 2; 300 ENGINEERING GROUP, LLC

approved pay application request form. The CONSULTANT shall submit the pay application request to the TOWN's Project Manager for review and approval. Once the TOWN's Project Manager approves the CONSULTANT's pay application request, the CONSULTANT may submit it to the TOWN's accounts payable department via email (mromero@bayharborislands-fl.gov) with a copy to the Project Manager. Pay application requests shall be submitted monthly.

TERMS OF COMPENSATION

Services will be provided for the following Lump Sum amounts:

Task 1 – Project Management & Coordination Meetings	\$ 6,170.00
Task 2 – Data Collection & Analysis	\$ 2,030.00
Task 3 – Lead Service Line Inventory (LSLI)	\$23,920.00
Task 4 – Sampling Plan	\$5,730.00
Task 5 – Lead Status Unknown Verification Plan	\$ 18,900.00
Task 6 – Communications & Public Education Strategy	\$20,660.00
Grand Total	\$77,410.00

TASK ORDER NO. 2; 300 ENGINEERING GROUP, LLC

TOWN CONTACTS

Requests for payments should be directed to Town of Bay Harbor Islands Accounts Payable via e-mail to mromero@bayharborislands-fl.gov after getting approval from the TOWN's Project Manager. All other correspondence and submittals should be directed to the attention of Fausto Vargas, Procurement Officer, at the address shown below. **Please be sure that all correspondence refers to the TOWN project number and title as stated above.**

Fausto Vargas

Procurement Officer

Town of Bay Harbor Islands

9665 Bay Harbor Terrace

Bay Harbor Islands, FL 33154

(305) 455-7108

rcarrerosantana@bayharborislands-fl.gov

CONSULTANT CONTACTS

Consultant: Rodolfo E. Remon, MS, ENV SP

Firm Name 300 Engineering Group, LLC

Address: 2222 Ponce De Leon Blvd, Suite 300, Coral Gables, FL 33134

Email: rereumon@300eng.com

Phone: [\(786-352-6788\)](tel:786-352-6788)

Fax: (305) 675-2373

TOWN

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

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

Jenice Rosado
Town Manager

Date

TASK ORDER NO. 2; 300 ENGINEERING GROUP, LLC

CONSULTANT/CONTRACTOR

WITNESSES:

300 Engineering Group, LLC , ,
a LLC corporation authorized to
transact business in Florida)

[Witness print/type name]

Rodolfo E Remon, MS, ENV SP.

[Print Name, check title]

☐ President ☒ Vice President

☐ Authorized Signatory (Please provide
corporate authorization)

[Witness print/type name]

ATTEST:

(CORPORATE SEAL)

Secretary

[Print Name]

STATE OF _____:
COUNTY OF _____:

The foregoing instrument was acknowledged before me by means of ☐ physical
presence or ☐ online notarization, this ____ day of _____, 2020, by
_____ as _____ for _____,
a _____ company (or corporation).

(SEAL)

(Signature of Notary Public – State of Florida)

(Print, Type or Stamp Commissioned Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

TASK ORDER NO. BHI-229-1; 300 ENGINEERING GROUP, LLC

Exhibit A – Work Break Down Fee Schedule



**BAY HARBOR
ISLANDS**

Town of Bay Harbor Islands
RFQ No. 5-1005-23-0-2023 / Task Order No. 2
Lead and Copper Rule Compliance Assistance
PROPOSED FEE SCHEDULE



Appendix A

							Budget	
		Principal Engineer	Project Manager	Project Engineer	Staff Engineer	Total Hours	Labor	Subtotal
Rate, \$/Hr		\$260.00	\$220.00	\$190.00	\$135.00			
Task								
1	Project Management, Progress Meetings & Regulatory Coordination	4	12	6	10	32	\$6,170.00	\$6,170.00
	<i>Kick-off Meeting</i>	0	2	2	4	8	\$1,360.00	
	<i>Coordination Meetings (3)</i>	4	4	4	6	18	\$3,490.00	
	<i>Ongoing Project Management</i>	0	6	0	0	6	\$1,320.00	
							\$0.00	
2	Data Collection & Analysis	0	1	1	12	14	\$2,030.00	\$2,030.00
	<i>Preparation of RFI and Follow ups</i>	0	1	1	12	14	\$2,030.00	
							\$0.00	
3	Lead Service Line Inventory (LSLI) Framework	2	12	24	120	158	\$23,920.00	\$23,920.00
	<i>Assistance in filling out the initial Lead Service Line Inventory</i>	2	12	24	120	158	\$23,920.00	
							\$0.00	
4	Sampling Plan	1	3	4	30	38	\$5,730.00	\$5,730.00
	<i>Sampling Program Recommendations</i>	1	2	4	24	31	\$4,700.00	
	<i>School and Childcare Facility Research and Listing</i>	0	1	0	6	7	\$1,030.00	
							\$0.00	
5	Lead Status Unknown Verification Plan	3	13	32	68	116	\$18,900.00	\$18,900.00
	<i>Action Plan to determine lead status of "unknown" service lines</i>	2	8	8	40	58	\$9,200.00	
	<i>Lead Service Line Replacement Plan including Prioritization Criteria</i>	1	4	8	24	37	\$5,900.00	
	<i>Funding Mechanisms Summary Matrices</i>	0	1	16	4	21	\$3,800.00	
							\$0.00	
6	Communications & Public Education Strategy	1	12	48	64	125	\$20,660.00	\$20,660.00
	<i>Public Education & Outreach Plan Strategy</i>	1	12	48	64	125	\$20,660.00	
							\$0.00	
							\$0.00	
	Total (Hours)	11	53	115	304	483	\$77,410.00	
	Sub-Total Labor Fee						\$77,410.00	\$77,410.00
	ODC's (Mileage, Reproduction & Reimbursable) (See Appendix B)							\$0.00
	Sub-Total Labor Fee/ODC							\$77,410.00
	Total Project Cost (Labor/ODC)							\$77,410.00
	% Utilization	2.28%	10.97%	23.81%	62.94%	100.00%		
	Total (\$)	\$2,860.00	\$11,660.00	\$21,850.00	\$41,040.00			\$77,410.00

AGENDA ITEM REPORT

October 14, 2024

ITEM NUMBER: 7.

ITEM: Consideration and Approval of an ordinance on Second Reading amending Sections 20-5 and 20-6 of the Town Code to increase the monthly rate for water service to pass through the increase charged by Miami-Dade County Water & Sewer Department. Enclosed are the proposed ordinance and supporting documents.

DESCRIPTION:

Miami-Dade County adopted an increase to its wholesale water rates. The Town purchases water directly from the County and the sewage is pumped by the City of Miami Beach into the County's system. We propose increasing the water consumption fee at the same percentage as Miami-Dade County, which is 13.6%, in order to pass through our increased costs.

RECOMMENDED ACTION:

Approve

FINANCIAL ANALYSIS:

The Town is increasing the water consumption fee at the same percentage as Miami-Dade County, which is 13.6%, in order to pass through our increased costs. The water rate increase will generate an estimated \$176,000 in revenue. The revenue will offset the increase in the operating expense charged by Miami-Dade County for water purchase.

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk

ATTACHMENTS

1.	Second Hearing-Water Rate Increase Memo FY2025
2.	Ordinance - Water Rate Increase - 9-26-2024
3.	2023 True-up and 2025 Wholesale Rate Presentation Final
4.	Utility Water Rate Increase FY 2024-25



TOWN OF BAY HARBOR ISLANDS MEMORANDUM

TO:	Mayor and Town Council Members
CC:	Joseph S. Geller, Esq., Town Attorney Mike Mesa, CBO, CFM, Assistant Town Manager/Building Official Yvonne P. Hamilton, CMC, Town Clerk
FROM:	Jenice Rosado, ICMA-CM Town Manager
DATE:	September 26, 2024
SUBJECT:	Town of Bay Harbor Islands – Water Rate Increase for FY 2024-2025

RECOMMENDATION

Staff recommends increasing the water consumption fee at the same percentage as Miami-Dade County, which is 13.6%, in order to pass through our increased costs.

BACKGROUND / ANALYSIS

Miami-Dade County adopted an increase to its wholesale water rates. The town purchases water directly from the County and the sewage is pumped by the City of Miami Beach into the County's system.

EXECUTE

Pursuant to Section 20-5 of the Town Code, water service charges shall be in addition to the percent of such charges as determined from time to time by Miami-Dade County to compensate for the Miami-Dade County water and sewer utility charges to finance the Environmental Resources Management Department's water protection and utility regulation program.

FINANCIAL ANALYSIS

The water rate increase will generate an estimated \$176,000 in revenue. The revenue will offset the increase in the operating expense charged by Miami-Dade County for water purchase.

ATTACHMENTS

1. 2023 True-up and 2025 Wholesale Rate Presentation Final.
2. Utility Water Rate Increase FY 2024-25
3. Ordinance - Water Rate Increase - 9-26-2024

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING SECTIONS 20-5 AND 20-6 OF THE TOWN CODE TO INCREASE THE MONTHLY CHARGE FOR WATER SERVICE TO \$6.23 PER ONE THOUSAND GALLONS, AND THE MINIMUM MONTHLY SERVICE CHARGE FOR EACH WATER METER TO \$28.96; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT AND REPEALER; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Bay Harbor Islands is charged with protecting and preserving the public health, safety and welfare of the residents and those coming into the Town of Bay Harbor Islands; and

WHEREAS, the Town of Bay Harbor Islands purchases its water from Miami-Dade County; and

WHEREAS, Miami-Dade County has indicated an increase of 13.6% for water services in its preliminary budget; and

WHEREAS, the Town of Bay Harbor Islands does not currently have an alternative source to purchase water and in order to maintain proper fiscal discipline must pass-through the County's increase; and

WHEREAS, it is necessary for the Town of Bay Harbor Islands to increase the rates which it charges for water services because of higher operating costs.

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

Section 1. The foregoing recitals are adopted and hereby incorporated as if fully set forth herein.

Section 2. Section 20-5 of the Code of the Town of Bay Harbor Islands is hereby amended as follows:

The charges for water service in the Town shall be at the rate of ~~five dollars and forty-eight cents (\$5.48)~~ six dollars and twenty-three cents (\$6.23) per one thousand (1,000) gallons plus that percent of such charges as determined from time to time by Miami-Dade County to compensate for the Miami-Dade County Water and Sewer utility charges to finance the Environmental Resources Management Department's water protection and utility regulation program.

Section 3. Section 20-6 of the Code of the Town of Bay Harbor Islands is hereby amended as follows:

There shall be a minimum water service charge for each water meter in the amount of ~~\$25.49~~ \$28.96.

Section 4. **Severability**

The provisions of this Ordinance are declared to be severable and if any section, sentence, clause or phrase of this Ordinance shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance, but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. **Inclusion in the Code**

It is the intention of the Town Council, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Bay Harbor Islands; that the sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions; and that the word "Ordinance" may be changed to "Section" or any other appropriate word.

Section 6. Repeal of Ordinances in Conflict

All ordinances or parts of ordinances in conflict herewith or inconsistent herewith, are hereby repealed, but only insofar as such ordinances may be inconsistent or in conflict with this Ordinance.

Section 7. **Effective Date**

This Ordinance shall be effective for all billings rendered after November 1, 2024.

PASSED on First Reading this 26th day of September
2024. **PASSED** on Second Reading this 14th day of
October 2024.

Joshua D. Fuller, Mayor

ATTEST:

Yvonne P. Hamilton, Town Clerk

APPROVED AS TO FORM:

GREENSPOON MARDER LLP
TOWN ATTORNEYS
BY: Joseph S. Geller, Esq.



Miami-Dade Water and Sewer Department

Presentation of Wholesale True-Up Results: Fiscal Year 2022-23

Preliminary Proposed Wholesale Customer Rates: Fiscal Year 2024-25

Wholesale True-Up Results

Fiscal Year 2022-23

Agenda

Introductions

Wholesale True-up Results:

- Cost Allocation Approach
- Budgetary Variances
- Cost of Service – Fiscal Year 2022-23
- 2022-23 Rates vs. Actual Costs
- Results of the Fiscal Year 2022-23 True-Up

Cost Allocation Approach

- The approach for calculating annual true-up and allocable costs is provided for in the Wholesale Agreements
- The annual true-up adjustment amount (debit/credit) is imposed in the fiscal year following the completion of the Department's audited financial report
- The true-up is based on the variances in the Department's projected wholesale expenses and the actual audited wholesale expenditures

Cost Allocation Approach

Allocation of costs between Water and Wastewater:

- Allocable costs include O&M Expenses, Debt Service, Renewal & Replacement, and Other Charges/ Adjustments
- Allocation based on Fiscal Year 2022-23 audited results

Allocation of costs between Local and Regional:

- Local costs serve WASD retail customers only
- Regional costs serve both retail and wholesale customers

Budget to Actual Variance Fiscal Year 2022-23 - Water



Increase in Operating Expenses:

- Purification: Increases in chemical pricing for Liquid Caustic Soda, Sodium Polyphosphate and Sodium Hypochlorite, and salaries-fringes.
- Transmission & Distribution: Plumbing supplies and overtime from emergency repairs of transmission lines breaks
- General & Administration: Increases in Pension Expense and Other Post-Employment Benefits (OPEB) as result of Florida Senate Bill 7024
- Offset by Source of Supply: A portion of the anticipated cost for Aquifer Storage and Recovery (ASR) cycle testing, contracted services, and modeling of southwest wellfield will be realized in FY 2024.

Increase in Debt Service:

- Debt Service: Requirement to fund debt service reserves to cover expiring surety policies

Renewal & Replacement Higher than Budget:

- Increased cost of construction related equipment.
- Emergency replacement of large diameter water mains including the following projects:
 - 96-inch raw water main at Northwest Well Field Water Main
 - Replace existing main under the I-395 bridge
 - Emergency Repair of a 48-in Transmission main at SW 110TH
 - Emergency repair of pipe caps and supports of water main on NE 79th St. Bridge Normandy Island

Increase in Interest Earnings:

- Higher than anticipated interest rates.

Fiscal Year 2022-23 Cost of Service Water



Description	Local		Regional		Change in Regional Cost	% Change in Regional Costs
	Budget	Actual	Budget	Actual		
Operating Expenses						
Source of Supply	\$ 0	\$ 0	\$ 18,746,000	\$ 17,140,000	\$ (1,606,000)	-0.8%
Power & Pumping	0	0	2,178,000	2,212,000	34,000	0.0%
Purification	0	0	83,108,000	90,212,000	7,104,000	3.4%
Transmission & Distribution	36,966,149	36,224,329	9,950,851	12,961,671	3,010,820	1.4%
Customer Accounting/Service	13,264,000	14,085,000	0	0	0	0.0%
General & Administration	21,259,726	20,774,000	34,675,274	50,595,000	15,919,726	7.6%
Total Operating Expenses	\$ 71,489,875	\$ 71,083,329	\$ 148,658,125	\$ 173,120,671	\$ 24,462,546	11.7%
Other Revenue Requirements						
Debt Service	\$ 12,662,854	\$ 11,446,434	\$ 41,819,728	\$ 43,160,096	\$ 1,340,368	0.6%
Renewal & Replacement	18,039,018	20,301,600	18,960,982	32,498,400	13,537,418	6.5%
Change in Op. Reserve. Req.	301,679	270,415	627,321	658,585	31,264	0.0%
Interest Earnings	(252,949)	(3,595,311)	(1,032,051)	(13,957,689)	(12,925,638)	-6.2%
Inter-Departmental Charges	83,107,895	60,981,000	0	-	0	0.0%
Total Revenue Requirements	\$ 185,348,372	\$ 160,487,467	\$ 209,034,105	\$ 235,480,064	\$ 26,445,959	12.7%
Percent of Total	47.0%	40.5%	53.0%	59.5%		
Wholesale Flow (1,000 gal)			20,300,000	22,485,000		
Allocable Unbilled Flow (1,000 gal)			1,716,286	1,763,336		
Total Wholesale Flow (1,000 gal)			22,016,286	24,248,336		
Production (1,000 gal)			117,881,088	119,306,000		
% Wholesale			18.7%	20.3%		
Regional Cost Allocated to Wholesale			\$ 39,040,652	\$ 47,860,121		
Wholesale Customer Accounting/Service			83,196	106,082		
Total Wholesale cost			\$ 39,123,848	\$ 47,966,203		
Wholesale Rate (\$ per 1,000 gal)			\$1.9273	\$2.1333		

Budget to Actual Variance Fiscal Year 2022-23 - Wastewater



Increase in Total Operating Expenses:

- Treatment & Disposal: Increases in chemical pricing for sodium hypochlorite, ferric sulfate and polymers; electrical services; diesel fuel for generators; construction supplies and overtime
- Collection & Transmission: supplies and overtime from emergency repairs of transmission lines breaks.
- Pumping: supplies and overtime from emergency repairs regional pump stations.
- General & Administration: Increases in Pension Expense and Other Post-Employment Benefits (OPEB) as result of Florida Senate Bill 7024

Increase in Debt Service:

- Debt Service: Requirement to fund debt service reserves to cover expiring surety policies

Increase in Renewal & Replacement:

- Additional required rehabilitation at regional wastewater treatment plants; increased cost of construction related equipment; replacement of effluent pump station chillers

Increase in Interest Earnings:

- Higher than anticipated interest rates.

Fiscal Year 2022-23 Cost of Service Wastewater



Description	Local		Regional		Change in Regional Cost	% Change in Regional Costs
	Budget	Actual	Budget	Actual		
Operating Expenses						
Collection & Transmission	\$ 29,229,923	\$ 26,973,176	\$ 10,658,077	\$ 12,278,824	\$ 1,620,747	0.4%
Pumping	40,483,671	45,126,169	16,733,329	19,387,831	2,654,502	0.7%
Treatment & Disposal	0	0	119,772,000	137,878,000	18,106,000	4.4%
Customer Accounting/Service	9,915,000	9,105,000	0	0	0	0.0%
General & Administration	28,152,707	28,236,979	40,212,293	58,968,021	18,755,728	4.6%
Total Operating Expenses	\$ 107,781,301	\$ 109,441,324	\$ 187,375,699	\$ 228,512,676	\$ 41,136,977	10.1%
Other Revenue Requirements						
Debt Service	\$ 21,818,403	\$ 24,502,620	\$ 181,017,524	\$ 187,096,354	\$ 6,078,830	1.5%
Renewal & Replacement	23,697,400	18,809,280	39,302,600	48,390,720	9,088,120	2.2%
Change in Op. Reserve. Req.	721,528	665,481	1,333,472	1,389,519	56,047	0.0%
Interest Earnings	(145,004)	(1,467,930)	(1,402,996)	(24,952,070)	(23,549,074)	-5.8%
Inter-Departmental Charges	(105,527,163)	(127,436,000)	0	0	0	0.0%
Total Revenue Requirements	\$ 48,346,466	\$ 24,514,775	\$ 407,626,299	\$ 440,437,199	\$ 32,810,900	8.0%
Percent of Total	10.6%	5.3%	89.4%	94.7%		
Wholesale Flow (1,000 gal)			29,000,000	33,636,000		
Plant Flow (1,000 gal)			109,000,000	115,354,000		
% Wholesale			26.6%	29.2%		
Regional Cost Allocated to Wholesale			\$ 108,451,034	\$ 128,426,805		
Wholesale Customer Accounting/Service			72,103	91,938		
Total Wholesale cost			\$ 108,523,137	\$ 128,518,743		
Wholesale Rate (\$ per 1,000 gal)			\$3.7422	\$3.8209		

Fiscal Year 2022-23 Cost Of Service – Sales (1,000 gals)

Description	2022-23 Budget	2022-23 Actual	Difference	Percent
Water System				
Retail Customers	62,800,000	63,456,000	656,000	0.6%
All Wholesale Customers	20,300,000	22,485,000	2,185,000	1.9%
Unbilled	34,781,000	33,365,000	(1,416,000)	-1.2%
Total Distributed	117,881,000	119,306,000	1,425,000	1.2%
Unbilled %	29.51%	27.97%		
Wastewater System				
Retail Customers	49,250,000	49,620,000	370,000	0.3%
All Wholesale Customers	29,000,000	33,636,000	4,636,000	4.3%
Infiltration/Inflow	30,750,000	32,098,000	1,348,000	1.2%
Total Treated	109,000,000	115,354,000	6,354,000	5.8%
Infiltration/Inflow %	28.21%	27.83%		

Fiscal Year 2022-23 Rates vs. Actual Costs – True-up

Description	2022-23 Adopted Rate	2022-23 Actual Cost-of-Service	True-Up Amount	True-Up Percent
Wholesale Water Rates	\$ 1.9273	\$ 2.1333	\$ 0.2060	10.69%
Wholesale Wastewater Rates	\$ 3.7422	\$ 3.8209	\$ 0.0787	2.10%

Note: Negative True-up represents monies owed to customers; positive True-up represents monies owed to WASD.

True-up Breakdown

Description	2022-23 Adopted Rate	2022-23 Actual Cost-of-Service	Change From Adopted	
			Amount	Percent
Wholesale Water Rates				
Rate per 1,000 gallons	\$ 1.9273	\$ 2.1333	\$ 0.2060	10.69%
Summary Breakdown				
Flow Related			\$ (0.0378)	-1.96%
Cost of Service			\$ 0.2438	12.65%
Wholesale Wastewater Rates				
Rate per 1,000 gallons	\$ 3.7422	\$ 3.8209	\$ 0.0787	2.10%
Summary Breakdown				
Flow Related			\$ (0.2225)	-5.95%
Cost of Service			\$ 0.3012	8.05%

Results of Fiscal Year 2022-23 True-up



Description	Water		Sewer		Net
	Consumption (1,000, gal)	True-up	Consumption (1,000, gal)	True-up	True-up
Bal Harbor	457,000	\$ 94,142	0	\$ 0	\$ 94,142
Bay Harbor Islands	299,000	61,594	0	0	61,594
Coral Gables	0	0	1,344,000	105,773	105,773
Florida City	0	0	572,000	45,016	45,016
Hialeah	6,140,000	1,264,840	13,903,000	1,094,166	2,359,006
Hialeah Gardens	801,000	165,006	725,000	57,058	222,064
Homestead Air Force Base	0	0	63,000	4,958	4,958
Homestead, City of	877,000	180,662	1,689,000	132,924	313,586
Indian Creek Village	235,000	48,410	0	0	48,410
Medley	501,000	103,206	568,000	44,702	147,908
Miami Beach	8,568,000	1,765,008	8,459,000	665,723	2,430,731
North Bay Village	371,000	76,426	354,000	27,860	104,286
North Miami	2,758,000	568,148	3,545,000	278,992	847,140
North Miami Beach	6,000	1,236	1,277,000	100,500	101,736
Opa-Locka	747,000	153,882	899,000	70,751	224,633
Surfside	277,000	57,062	0	0	57,062
Virginia Gardens	84,000	17,304	0	0	17,304
West Miami	364,000	74,984	238,000	18,731	93,715
Total	22,485,000	\$ 4,631,910	33,636,000	\$ 2,647,154	\$ 7,279,064

Note: Negative True-up represents monies owed to customers; positive True-up represents monies owed to WASD.

Note: Some numbers are rounded and may lead to slight variances in totals.

Preliminary Proposed Wholesale Customer Rates Fiscal Year 2024-25

Agenda

Preliminary Proposed Wholesale Rates:

- Wholesale Rate Calculation
- WASD Proposed Budget Fiscal Year 2024-25
- Results of Water Cost Allocation – Fiscal Year 2024-25
- Results of Sewer Cost Allocation – Fiscal Year 2024-25
- Water & Sewer Wholesale Customer Rates – Fiscal Year 2024-25
- Wholesale Customer Charges Adjusted for True-up
- Discussion and Questions

Wholesale Rate Calculation

- The methodology for calculating wholesale rates follows the formula established in the Wholesale Agreements
- The wholesale rates include only those components outlined and agreed upon in the Wholesale Agreements
- The wholesale customer rate is a uniform rate for all customers in this class and is based upon the Department budget for Fiscal Year 2024-2025

WASD Proposed Budget FY 2025

The Fiscal Year 2025 water and sewer wholesale rates proposed herein are based on the Department's proposed budget as of June 6, 2024. The results presented herein are subject to change pursuant to adoption of the final budget.

Results subject to BCC Budget Approval in September 2024

- First Budget Hearing scheduled for September 5, 2024
- Second Budget Hearing scheduled for September 19, 2024

Variance From Current Rates – Water

Increase In Projected Operating Expenses:

- Source of Supply: increase hydrogeological contracted services for water use permit cluster 10 and C-51 maintenance cost and modeling services
- Purification: increases in chemical prices for sodium hypochlorite, liquid caustic soda, lime, and natural gas delivery. Price escalations are materializing as contracts are renegotiated. Department personnel services costs are higher due to COLA and related benefit cost increases.
- General & Administration: Increases in personnel services, electrical services and security services costs

Increase in Renewal & Replacement Transfer:

- Increased investment to create the Water Reset Program to address aging water treatment plant equipment and infrastructure

Change in Operating Reserve Deposit Requirement:

- The change in FY 2025 Operating Reserve Deposit Requirement is less than FY 2024 as the change in growth of the water system budget from FY 2024 to FY 2025 is lower than that of FY 2023 to FY 2024, requiring a lower allocation to the Operating Reserve per bond ordinance.

Interest Earnings:

- Higher interest rates are anticipated.

Water Cost of Service Proposed Budget Fiscal Year 2024-25



Description	Local		Regional		Change in Regional Cost	% Change in Regional Costs
	FY2023-24	FY2024-25	FY2023-24	FY2024-25		
Operating Expenses						
Source of Supply	\$ 0	\$ 0	\$ 23,977,000	\$ 26,255,000	\$ 2,278,000	0.9%
Power & Pumping	0	0	2,146,000	1,937,000	(209,000)	-0.1%
Purification	0	0	98,781,000	112,365,000	13,584,000	5.3%
Transmission & Distribution	38,338,193	42,745,828	12,838,807	13,295,172	456,365	0.2%
Customer Accounting/Service	24,539,000	26,748,000	0	0	0	0.0%
General & Administration	18,569,093	16,694,240	37,738,907	40,658,760	2,919,853	1.1%
Total Operating Expenses	\$ 81,446,285	\$ 86,188,068	\$ 175,481,715	\$ 194,510,932	\$ 19,029,218	7.4%
Other Revenue Requirements						
Debt Service	\$ 12,168,598	\$ 11,806,622	\$ 43,937,424	\$ 44,527,963	\$ 590,540	0.2%
Renewal & Replacement	11,339,021	27,018,046	36,062,979	43,249,954	7,186,975	2.8%
Change in Op. Reserve. Req.	2,726,693	535,667	5,874,850	1,208,903	(4,665,947)	-1.8%
Interest Earnings	(675,443)	(4,108,336)	(3,584,557)	(17,373,664)	(13,789,107)	-5.3%
Inter-Departmental Charges	43,956,000	46,758,000	0	0	0	0.0%
Total Revenue Requirements	\$ 150,961,153	\$ 168,198,066	\$ 257,772,411	\$ 266,124,088	\$ 8,351,677	3.2%
Percent of Total	36.9%	38.7%	63.1%	61.3%		
Wholesale Flow (1,000 gal)			21,000,000	22,500,000		
Allocable Unbilled Flow (1,000 gal)			1,743,150	1,794,218		
Total Wholesale Flow (1,000 gal)			22,743,150	24,294,218		
Production (1,000 gal)			118,235,634	119,950,000		
% Wholesale			19.2%	20.3%		
Regional Cost Allocated to Wholesale			\$ 49,583,669	\$ 53,899,763		
Wholesale Customer Accounting/Service			105,451	106,082		
Total Wholesale cost			\$ 49,689,120	\$ 54,005,845		
Wholesale Rate (\$ per 1,000 gal)			\$2.3661	\$2.4003		

Note: The adopted FY2024 rate was less than the calculated cost of service rate.

Variance From Current Rates – Wastewater

Increase In Projected Operating Expenses:

- Treatment & Disposal: sodium hypochlorite, ferric sulfate price escalations are materializing as contracts are renegotiated, higher operating costs of reclamation plant to meet reuse compliance of the Ocean Outfall legislation. Department personnel services costs are higher due to COLA and related benefit cost increases.
- Collection & Transmission: price escalations in plumbing, construction and mechanical supplies, asphalt and personnel services
- Pumping: price escalations in mechanical, electrical supplies and personnel services
- General & Administration: Increases in personnel services, electrical services and security services costs

Increase in Debt Service:

- Planned Series 2025 Bond totaling \$381 million.

Change in Operating Reserve Deposit Requirement:

- Required per bond ordinance; reserve of 2-months of O&M budget.

Increase in Interest Earnings credit:

- Higher interest rates are anticipated.

Wastewater Cost of Service Proposed Budget Fiscal Year 2024-25

Description	Local		Regional		Change in Regional Cost	% Change in Regional Costs
	FY2023-24	FY2024-25	FY2023-24	FY2024-25		
Operating Expenses						
Collection & Transmission	\$ 27,190,048	\$ 30,579,494	\$ 12,540,952	\$ 13,920,506	\$ 1,379,554	0.3%
Pumping	41,901,714	48,173,099	15,342,286	20,696,901	5,354,615	1.3%
Treatment & Disposal	0	0	130,558,000	162,963,000	32,405,000	7.6%
Customer Accounting/Service	18,711,000	20,398,000	0	0	0	0.0%
General & Administration	24,823,735	22,697,732	43,997,265	47,400,268	3,403,002	0.8%
Total Operating Expenses	\$ 112,626,497	\$ 121,848,326	\$ 202,438,503	\$ 244,980,674	\$ 42,542,171	10.0%
Other Revenue Requirements						
Debt Service	\$ 20,486,960	\$ 25,731,947	\$ 194,125,928	\$ 197,375,871	\$ 3,249,942	0.8%
Renewal & Replacement	16,543,946	11,120,987	36,054,054	28,611,013	(7,443,041)	-1.8%
Change in Op. Reserve. Req.	396,860	3,619,771	716,140	7,213,229	6,497,089	1.5%
Interest Earnings	(310,936)	(1,661,244)	(8,555,064)	(36,603,756)	(28,048,692)	-6.6%
Inter-Departmental Charges	(89,125,000)	(81,575,000)	0	0	0	0.0%
Total Revenue Requirements	\$ 60,618,326	\$ 79,084,787	\$ 424,779,562	\$ 441,577,031	\$ 16,797,469	4.0%
Percent of Total	12.5%	15.2%	87.5%	84.8%		
Wholesale Flow (1,000 gal)			30,100,000	33,637,000		
Plant Flow (1,000 gal)			107,857,667	116,000,000		
% Wholesale			27.9%	29.0%		
Regional Cost Allocated to Wholesale			\$ 118,543,866	\$ 128,045,919		
Wholesale Customer Accounting/Service			91,391	91,938		
Total Wholesale cost			\$ 118,635,256	\$ 128,137,857		
Wholesale Rate (\$ per 1,000 gal)			\$3.9414	\$3.8094		

Proposed Rates – Fiscal Year 2024-25

Description	2023-24 COS Rate	2023-24 Adopted Rate	2024-25 Budget COS Rate	2024-25 Proposed Rate	Change From Existing	
					\$	%
Wholesale Water Rates						
Rate per 1,000 gallons		\$ 2.1130	\$ 2.4003	\$ 2.4003	\$ 0.2873	13.60%
Rate per 1,000 gallons	\$ 2.3661		\$ 2.4003	\$ 2.4003	\$ 0.0342	1.44%
Wholesale Wastewater Rates						
Rate per 1,000 gallons	\$ 3.9414	\$ 3.9414	\$ 3.8094	\$ 3.8094	\$ (0.1320)	-3.35%
Wet Season	\$ 4.4341	\$ 4.4341	\$ 4.2856	\$ 4.2856	\$ (0.1485)	-3.35%
Dry Season	3.4487	3.4487	3.3332	3.3332	(0.1155)	-3.35%

Note: For FY2024, the adopted rate (\$2.1130) was less than the calculated cost of service rate (\$2.3661)

Estimated Charges Fiscal Year 2024-25 (Excluding True-up)



Description	Water		Sewer		Net
	Consumption (1,000, gal)	Annual Charge	Consumption (1,000, gal)	Annual Charge	Total
2025 Proposed Rate (\$/1,000 gal)		\$ 2.4003		\$ 3.8094	
Bal Harbor	457,000	\$ 1,096,937	\$ 0	\$ 0	\$ 1,096,937
Bay Harbor Islands	299,000	717,690	0	0	717,690
Coral Gables	0	0	1,344,000	5,119,834	5,119,834
Florida City	0	0	572,000	2,178,977	2,178,977
Hialeah	6,150,000	14,761,845	13,904,000	52,965,898	67,727,743
Hialeah Gardens	801,000	1,922,640	725,000	2,761,815	4,684,455
Homestead Air Force Base	0	0	63,000	239,992	239,992
Homestead, City of	878,000	2,107,463	1,689,000	6,434,077	8,541,540
Indian Creek Village	236,000	566,471	0	0	566,471
Medley	501,000	1,202,550	568,000	2,163,739	3,366,290
Miami Beach	8,570,000	20,570,571	8,459,000	32,223,715	52,794,286
North Bay Village	371,000	890,511	354,000	1,348,528	2,239,039
North Miami	2,758,000	6,620,027	3,545,000	13,504,323	20,124,350
North Miami Beach	6,000	14,402	1,277,000	4,864,604	4,879,006
Opa-Locka	747,000	1,793,024	899,000	3,424,651	5,217,675
Surfside	278,000	667,283	0	0	667,283
Virginia Gardens	84,000	201,625	0	0	201,625
West Miami	364,000	873,709	238,000	906,637	1,780,346
Total	22,500,000	\$ 54,006,750	33,637,000	\$ 128,136,788	\$ 182,143,538

Note: Some numbers are rounded and may lead to slight variances in totals.

Estimated Charges After Adjustment for True-up Fiscal Year 2024-25



Description	Water			Sewer			Total Annual Charge
	2024-25 Charge	2022-23 True-up	Total Water	2024-25 Charge	2022-23 True-up	Total Sewer	
Bal Harbor	\$ 1,096,937	\$ 94,142	\$ 1,191,079	\$ 0	\$ 0	\$ 0	\$ 1,191,079
Bay Harbor Islands	717,690	61,594	779,284	0	0	0	779,284
Coral Gables	0	0	0	5,119,834	105,773	5,225,607	5,225,607
Florida City	0	0	0	2,178,977	45,016	2,223,993	2,223,993
Hialeah	14,761,845	1,264,840	16,026,685	52,965,898	1,094,166	54,060,064	70,086,749
Hialeah Gardens	1,922,640	165,006	2,087,646	2,761,815	57,058	2,818,873	4,906,519
Homestead Air Force Base	0	0	0	239,992	4,958	244,950	244,950
Homestead, City of	2,107,463	180,662	2,288,125	6,434,077	132,924	6,567,001	8,855,126
Indian Creek Village	566,471	48,410	614,881	0	0	0	614,881
Medley	1,202,550	103,206	1,305,756	2,163,739	44,702	2,208,441	3,514,198
Miami Beach	20,570,571	1,765,008	22,335,579	32,223,715	665,723	32,889,438	55,225,017
North Bay Village	890,511	76,426	966,937	1,348,528	27,860	1,376,388	2,343,325
North Miami	6,620,027	568,148	7,188,175	13,504,323	278,992	13,783,315	20,971,490
North Miami Beach	14,402	1,236	15,638	4,864,604	100,500	4,965,104	4,980,742
Opa-Locka	1,793,024	153,882	1,946,906	3,424,651	70,751	3,495,402	5,442,308
Surfside	667,283	57,062	724,345	0	0	0	724,345
Virginia Gardens	201,625	17,304	218,929	0	0	0	218,929
West Miami	873,709	74,984	948,693	906,637	18,731	925,368	1,874,061
Total	\$ 54,006,750	\$ 4,631,910	\$ 58,638,660	\$ 128,136,788	\$ 2,647,154	\$ 130,783,942	\$ 189,422,602

Note: Negative True-up represents monies owed to customers, positive True-up represents monies owed to WASD.
 Some numbers are rounded and may lead to slight variances in totals.

Discussion and Questions



TOWN OF BAY HARBOR ISLANDS, FL FY 2024-25 Utility Rates

WATER UTILITY SERVICE RATE 13.60% PASS THROUGH INCREASE

All Users (Residential & Non-Residential)

The charges for water service are increasing to a rate of six dollars and twenty-three cents \$6.23 per 1,000 thousand gallons plus that percent of such charges as determined from time to time by Miami-Dade County to compensate for the Miami-Dade County Water and Sewer utility charges to finance the Environmental Resource Management Department's water and utility regulation program.

The minimum water service charge for each water meter is increasing to the amount of twenty eight dollars and ninety six cents \$28.96.

Water Meter Size		FY 2024 Minimum Charge	FY 2025 Minimum Charge	FY 2024 ADOPTED Rate For Consumption 1 Kgal	FY 2025 Pass through increase 13.6% Rate for Consumption 1 Kgal
1 inch		\$ 25.49	\$ 28.96	\$ 5.48	\$ 6.23
1.5 inch		\$ 25.49	\$ 28.96	\$ 5.48	\$ 6.23
2 inch		\$ 25.49	\$ 28.96	\$ 5.48	\$ 6.23
3 inch		\$ 25.49	\$ 28.96	\$ 5.48	\$ 6.23
4 inch		\$ 25.49	\$ 28.96	\$ 5.48	\$ 6.23

SEWER UTILITY SERVICE RATE (NO INCREASE)

Residential Users and Non-Residential Users

Sewer charges based upon water usage (excluding water usage through meters used exclusively for irrigation) remains at a rate of nine dollars and twenty five cents \$9.25 per 1,000 thousand gallons.

The monthly base charges are as follows:

Residential Users

Water Meter Size		FY 2024 Base Charge	FY 2025 Base Charge	FY 2024 ADOPTED Rate For Consumption 1 Kgal	FY 2025 Pass through increase 0% Rate for Consumption 1Kgal
5/8					
3/4					
1 inch		\$ 24.19	\$ 24.19	\$ 9.25	\$ 9.25
1.5 inch		\$ 24.19	\$ 24.19	\$ 9.25	\$ 9.25
2 inch		\$ 24.19	\$ 24.19	\$ 9.25	\$ 9.25
3 inch		\$ 24.19	\$ 24.19	\$ 9.25	\$ 9.25
4 inch		\$ 24.19	\$ 24.19	\$ 9.25	\$ 9.25

Non-Residential Users

Water Meter Size		FY 2024 ADOPTED Base Rate	FY 2025 PROPOSED Base Rate	FY 2024 ADOPTED Rate For Consumption 1 Kgal	FY 2025 Pass through increase 0% Rate for Consumption 1Kgal
5/8		\$ -	\$ -		
3/4		\$ -	\$ -		
1 inch		\$ 101	\$ 101	\$ 9.25	\$ 9.25
1.5 inch		\$ 202	\$ 202	\$ 9.25	\$ 9.25
2 inch		\$ 323	\$ 323	\$ 9.25	\$ 9.25
3 inch		\$ 606	\$ 606	\$ 9.25	\$ 9.25
4 inch		\$ 918	\$ 918	\$ 9.25	\$ 9.25



TOWN OF BAY HARBOR ISLANDS, FL FY 2024-25 Utility Rates

SOLID WASTE UTILITY RATES (NO INCREASE)

The Town of Bay Harbor Islands shall collect or franchise a service for collection and disposal of garbage, and yard waste as prescribed by Section 9-38 (B) of the Code of the Ordinances, and all persons, firms, or corporations whose premises are serviced thereby shall pay the following rates:

Residential Users

Solid Waste Collection Classification	Solid Waste Fees
1) For a Condominium or Co-Op Building with three or more units	\$20.68/Unit
2) For a Rental Apartment Building with three or more units	\$20.68/Unit
3) For Single Family Residences	\$23.78/Unit

Non-Residential Users

Solid Waste Collection Classification	Solid Waste Fees
<u>COMMERCIAL UNITS</u>	
1) 96-gallon solid waste container, per unit, per month:	\$151.07/Container
<u>RESTAURANTS</u>	
1) Daily Collection Services:	Actual Cost-plus 10% Admin Fee
2) 96 Gallon Solid Waste Container:	\$151.07/Container
3) One (1) Yard Solid Waste Container	\$277.49/Container
4) Two (2) Yard Solid Waste Container	\$554.97/Container
5) Four (4) Yard Solid Waste Container	\$1,109.94/Container

STORMWATER RATE (NO INCREASE)

The charges for stormwater utility fees per Equivalent Residential Unit (ERU) are fifteen dollars and zero cents \$15.00 per month. The authority for stormwater utility charges is granted to the Town Council by the Town of Bay Harbor Charter Section 20-15(a).



TOWN OF BAY HARBOR ISLANDS, FL FY 2024-25 Proposed Utility Rate Increase

Bill Comparison based on a 1" Water Meter:

Single Family Home 6,000 Gallons Bill			6 Unit Multi-Family Bldg. 6,000 Gallons Bill			Commercial Unit 6,000 Gallons Bill with 96 Gallon Container		
Monthly Bill	Residential Users and Non-	Rate Increase	Monthly Bill	Current Rates	Rate Increase	Monthly Bill	Current Rates	Rate Increase
Water Consumption	\$ 32.88	\$ 37.35	Water Consumption	\$ 32.88	\$ 37.35	Water Consumption	\$ 32.88	\$ 37.35
Sewer Base	\$ 24.19	\$ 24.19	Sewer Base	\$ 145.13	\$ 145.13	Sewer Base	\$ 100.96	\$ 100.96
Sewer Consumption	\$ 55.53	\$ 55.53	Sewer Consumption	\$ 55.53	\$ 55.53	Sewer Consumption	\$ 55.53	\$ 55.53
Derm Fee *	\$ 6.76	\$ 7.02	Derm Fee *	\$ 14.01	\$ 14.28	Derm Fee *	\$ 11.36	\$ 11.63
Solid Waste	\$ 23.78	\$ 23.78	Solid Waste	\$ 124.08	\$ 124.08	Solid Waste	\$ 151.07	\$ 151.07
Stormwater	\$ 15.00	\$ 15.00	Stormwater	\$ 90.00	\$ 90.00	Stormwater	\$ 135.00	\$ 135.00
Total Bill	\$ 158.13	\$ 162.87	Total Bill	\$ 461.63	\$ 466.38	Total Bill	\$ 486.81	\$ 491.55
Overall Monthly Increase \$ 4.74			Overall Monthly Increase \$ 4.74			Overall Monthly Increase \$ 4.74		
Overall Monthly Avg. Increase for 6,000 Gallon Consumption 3.0%			Overall Monthly Avg. Increase for 6,000 Gallon Consumption 1.0%			Overall Monthly Avg. Increase for 6,000 Gallon Consumption 1.0%		

●13.6% monthly rate increase for water service to pass through the increase charged by Miami-Dade County Water & Sewer Department.

AGENDA ITEM REPORT

October 14, 2024

ITEM NUMBER: 8.

ITEM: Consideration and Approval of an ordinance on Second Reading amending Section 23-12(22) of the Town Code pertaining to fences that include lighting features. Sponsored by Council Member Robert Yaffe. Enclosed are the proposed ordinance and Staff Memo.

DESCRIPTION:

The amendment to Sec. 23-12(22) of the Town Code introduces a new requirement for Design Review Board (DRB) approval of all fences featuring lighting. This is a change from the current Code, which only mandates DRB approval for walls. Fences that meet existing Code requirements currently only require staff approval. The new provision ensures that any walls or fences with lighting will require DRB approval and must include a photometric plan, ensuring compliance with outdoor site lighting regulations and minimizing light pollution and disturbances.

Staff recommends that the Town Council consider the attached Ordinance amending Section 23-12(22) of the Town Code regarding fences featuring lighting. The amendments include clear definitions of nuisances and updated requirements for wall and fence approvals, including provisions for lighting features.

RECOMMENDED ACTION:

Council's Discretion

FINANCIAL ANALYSIS:

There is no fiscal impact.

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk
Robert Yaffe, Council Member

ATTACHMENTS

1.	2nd Staff Memo for Council Agenda Items Fences with Lighting features
2.	Ordinance - Sec. 23_12.____ Fences with Lighting Features



**TOWN OF BAY HARBOR ISLANDS
BUILDING, PLANNING AND ZONING DEPARTMENT
MEMORANDUM**

TO:	Mayor and Town Council Members
THRU:	Jenice Rosado, ICMA-CM Town Manager Mike Mesa, CBO, CFM, Assistant Town Manager/ Building Official
CC:	Joseph S. Geller, Esq., Town Attorney Yvonne P. Hamilton, CMC, Town Clerk
FROM:	Lorrainia Belle Town Planner
DATE:	October 8, 2024
SUBJECT:	Town of Bay Harbor Islands – Amending the Town’s Code of ordinances related to the fences with lighting features.

RECOMMENDATION

Staff recommends the approval of the proposed amendments to Sections 23-12(22) of the Town Code. These changes aim to enhance property maintenance standards, ensure proper regulation of walls and fences, and improve overall neighborhood aesthetics and safety. The amendments include clear definitions of nuisances and updated requirements for wall and fence approvals, including provisions for lighting features.

BACKGROUND / ANALYSIS

The proposed amendment to Sec. 23-12(22) addresses the design, installation, and maintenance of walls and fences. This amendment introduces a requirement for Design Review Board (DRB) approval for all fences that feature lighting, which is a new provision as the current Code only requires DRB approval for walls. While fences that comply with existing Code requirements currently only need Staff approval, the amendment stipulates that any walls or fences with lighting must receive DRB approval and include a photometric plan. This new requirement is intended to ensure that lighting complies with outdoor site lighting regulations, thereby reducing the risk of light pollution and minimizing disturbances to neighboring properties.

EXECUTE

To implement these changes, the Town will first present the proposed amendments for approval by the Town Council. Following approval, the Town Code will be updated to reflect the new provisions. Staff will ensure that the updated sections are clearly communicated to the public, including property owners, to inform them of their new responsibilities regarding property maintenance and wall/fence regulations. Additionally, staff will implement the revised regulations and procedures for reviewing and approving walls and fences, particularly those with lighting features and require DRB approval.

CONCLUSION

The proposed amendments to Sec. 23-12(22) are designed to address key issues related to property maintenance and the regulation of walls and fences. By clarifying what constitutes a nuisance and setting detailed requirements for wall and fence approvals, including lighting features, the Town aims to improve neighborhood aesthetics and safety. These changes will provide property owners with clear guidelines and support the Town's efforts to maintain a high standard of community environment. The ordinance was presented for its first reading on September 12, 2024, and was approved by the Town Council with no changes. The Second Reading is scheduled for October 8, 2024. Staff recommends the approval of these amendments to achieve these objectives.

FINANCIAL ANALYSIS

GL Line Item Number: N/A

Total Amount Budgeted: N/A

Encumbered Amount: N/A

Balance Remaining: N/A

ATTACHMENTS

1. 2nd Reading Draft Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES RELATING TO THE REGULATION OF WALLS AND FENCES; AMENDING CHAPTER 23, ARTICLE I, SECTION 23-12(22); PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Bay Harbor Islands desires to enhance property maintenance standards and improve the regulation of walls and fences within the Town; and

WHEREAS, the Town Council periodically reviews and updates the Town's Code to address issues related to property upkeep and neighborhood aesthetics; and

WHEREAS, after a thorough review of the existing Code provisions, the Town Council has identified the need to amend Sections 23-12(22) to update approval requirements for walls and fences, including those with lighting features; and

WHEREAS, the Town Council has held duly advertised public hearings to consider the proposed amendments to the Town's Code related to property maintenance and the regulation of walls and fences.

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

Section 1: The foregoing recitals are adopted and hereby incorporated as if fully set forth herein.

Section 2: That Chapter 23, Article I, Section 23-12(22) of the Town of Bay Harbor Islands Code of Ordinances is hereby amended to require Design Review Board (DRB) approval for all fences with lighting features and mandates the submission of a photometric plan to ensure compliance with outdoor site lighting regulations. The revised language is indicated by underlining in the attached Exhibit A which is made a part hereof by reference.

Section 3: That if any section, paragraph, sentence, or word of this Ordinance or its application to any person or circumstance is held invalid, such invalidity shall not affect the remaining sections, paragraphs, sentences, words, or application of this Ordinance.

Section 4: That it is the intention of the Town Council of the Town of Bay Harbor Islands that the provisions of this Ordinance shall become and be made a part of the Town's Code of Ordinances, and that sections of this Ordinance may be renumbered or re-lettered to accomplish such intention, and that the term "Ordinance" may be changed to "Section" or another appropriate term.

Section 5: That all Ordinances, parts of Ordinances, Resolutions, or parts of Resolutions in conflict herewith are hereby repealed to the extent of such conflict.

Section 6: That this Ordinance shall be in full force and take effect immediately upon its passage and adoption.

PASSED on First Reading this 12th day of September

2024. PASSED on Second Reading this 14th day of

October 2024.

JOSHUA D. FULLER, MAYOR

ATTEST:

YVONNE P. HAMILTON, CMC
TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

GREENSPOON MARDER, LLP
TOWN ATTORNEYS
BY: JOSEPH S. GELLER, ESQ.

“EXHIBIT A”

Sec. 23-12. General provisions.

- (1) Nothing shall be done or suffered to be done or permitted to exist on any improved or unimproved property which may be or become an annoyance, blight, eyesore, danger or nuisance to the neighborhood, the inhabitants of buildings or the safety and welfare of the general public. Without limiting the foregoing, the following shall constitute a nuisance: deteriorated landscaping, deteriorated fences, deteriorated roofs, deteriorated windows, deteriorated shutters, deteriorated screens, deteriorated exterior paint, deteriorated railings, deteriorated fascia boards, deteriorated exterior doors, deteriorated driveways, deteriorated parking areas, deteriorated garbage containers, deteriorated swimming pools and pool areas or any deteriorated part of structures to the extent it causes a blight on the neighborhood or endangers life or property. Deteriorated is defined as degeneration in the substance of the thing such as that arising from decay, corrosion, disintegration, lack of paint, broken parts, holes, or leaking in the case of roofs. No monkeys, apes, reptiles, horses, cattle, swine, goats, poultry, fowl or any other livestock shall be kept on any lot.

.....

(22) Walls and fences. The following provisions apply to the design, installation, location and maintenance of walls and fences:

- (a) *Approval of town.* No wall or fence of any kind shall be erected or maintained at any lot except as above set forth until the height, type, design, and location thereof shall have been approved by the [town]. Notwithstanding the above, walls or fences that include lighting features will require approval by the Design Review Board. Additionally, all lighting features must be accompanied by a photometric plan to ensure compliance with Sec. 23-19 outdoor site lighting requirements.
- (b) *Maximum height of walls or fences; placement restrictions.* No wall or fence may be erected or maintained in any setback areas on any lot in the town higher than six feet above the average finished grade of adjoining lots, except privacy walls or fences abutting Kane Concourse may be seven feet; all heights measured from the ground at the base of the wall or fence to the highest point of the wall or fence and shall in all cases be uniform and follow the contour of the land. Minor variations in the height of portions of walls, not to exceed four inches in any ten-foot section of a wall, may be permitted due to changing slopes of lots. The town may approve decorative columns with a height not exceeding one foot higher than the wall or fence. If a fence or wall is proposed in a front or side street setback area adjacent to a street right-of-way, the fence or wall shall not be placed in the public right-of-way nor closer than two feet to the property line. Within the two-foot area, landscape materials of a design and quantity, as deemed necessary by the town, shall be required.
- (c) *Child-safe latch on swimming-pool gates.* Any fence or wall installed at a property with a swimming pool must have a self-closing gate with a child-safe latch located at a minimum of four feet above grade.
- (d) *Chain link fence or wire fence prohibited in front yard setback.* No chain link or wire fence shall be installed or maintained which protrudes or extends beyond the

imaginary extension of a line from the front wall of any building or structure to the side yard property line of said building or structure ("front yard setback").

- (e) *Vinyl-clad material required.* If chain link fencing is proposed for installation where permitted, only green or black vinyl-clad material shall be allowed.
- (f) *Hedge material required for fencing and walls.* All fencing or walls must have hedge material installed simultaneously with the installation of the fence or wall. Said hedge must be planted along the entire length of the fence or wall, except at gate locations or as otherwise approved by the town and shall have a height at the time of planting of at least 50 percent of the height of the fence or wall and must be installed a maximum of two feet apart, measured from the center of the plants. Planting materials associated with fences or walls must be of a type that will grow to a height equal to or greater than the height of the fence or wall and shall be of a depth so as to engulf and hide the fence or wall. The location of any required hedge material shall be determined on a case-by-case basis. Hedges shall be kept and maintained in a neat and attractive manner. If the hedge deteriorates, new planting material to match the existing hedge shall be added.
- (g) *Hedge planting material required with certain fences or walls.* If a wall or fence is installed in the front (street) yard setback (or for corner lots the side yard facing a street) without fencing or wall material along the sides of the property, then the sides shall be planted with hedge material in accordance with the requirements stated in subsection (f) above.
- (h) *Permit required for walls or fences.* The installation or maintenance of any walls or fence shall require the application and receipt of a permit authorizing said installation. Each applicant for a permit authorizing said installation shall be required to submit to the town for its approval, prior to the commencement of such installation the following:
 - 1. A landscaping plan, indicating type, sizes and quantities of proposed landscaping materials to be used between the wall or fence and the street or adjoining properties.
 - 2. A color sample of the proposed stucco, plaster or other materials, or paint sample, representative of the proposed finish surface of the wall or fence.
 - 3. In the case of walls, architectural drawings indicating some type of architectural features such as banding, quoins, etc., on stucco walls. Said drawings shall clearly indicate the proposed shape and design of said wall. See below for minimum design standards.
 - 4. In the case of wood fences, a scale drawing, photograph or brochure of the proposed style, as well as a color sample of the paint or stain, shall be submitted to the town for approval.
 - 5. If any wall or fence is to be constructed on a common property line, written permission from any adjoining lot owner shall be required to be submitted to the town with the permit application to construct, finish and/or maintain the exterior of the wall facing the adjoining owner's lot. Any damage done to an adjoining owners' property shall be repaired and/or replaced by the applicant.
- (i) *Minimum design standards for walls or fences.* The design of any wall or fence shall comply, at a minimum, with the following design standards:
 - 1. If walls are to be stucco, they must be finished and architectural features shall be required on both sides of a wall (facing interior of lot as well as any adjoining lot,

street or waterway). Plain walls with large unbroken surfaces shall be prohibited. The architectural design of the wall/fence shall be compatible with the main building architecture.

2. The use of brick, stone, coral, glass block, metal or other decorative material is encouraged.
3. The finished side of a wood fence shall face the street or any adjoining property with any exposed structural columns facing the interior of the lot.
4. If any wall or fence is to be constructed on a common property line, all improvements including support structures (footers, etc.) shall be placed on the applicant's property and may not encroach onto any adjoining owner's property, without the adjoining property owners written consent.
5. For those portions of walls/fences within the front setback area (adjoining any street), the following additional design standards are established to avoid the appearance of large expanses of solid wall/fence surfaces:
 - a) A maximum of three (3) feet of solid opaque wall/fence surface above grade shall be permitted, except as provided hereinafter.
 - b) The balance of allowable wall/fence height up to the maximum heights may be constructed of non-opaque material such as wrought iron, aluminum, decorative open weave concrete or clay products, glass block and similar materials.
 - c) Not more than 75 percent of any such overall wall/fence surface shall be opaque. Notwithstanding the above, portions of solid walls/fence surfaces not exceeding eight feet in width may be permitted for screening of parking areas, provided the design of the exterior surface of the wall/fence facing a street is approved by the town.
 - d) The design review board may grant exceptions to the above criteria for specific sites based on creative and compatible design solutions and location issues.
6. For walls/fences/hedges constructed on waterfront lots within the minimum rear setback area to the seawall, including any such wall/fence parallel to the seawall, or on a dock adjoining the seawall, at least 75 percent of that portion of the wall/fence and any hedge materials placed similarly, shall provide for see-through visibility to the adjoining water.

The town shall determine whether the installation and maintenance of a wall or fence (is) appropriate and harmonious to the other buildings, structures, walls, fences and overall design of the town. Prior to obtaining a permit, the applicant shall be required to submit a property survey to verify the proposed location of said fence or wall to the town. All fences and walls which require landscaping shall require prior approval of the town. If the application is approved by the town, a permit shall be issued for the installation and maintenance of the wall or fence.

- (j) *Application to waterfront properties.* With respect to waterfront properties, the provisions of this section shall apply to the rear yard setback, which is that portion of the property abutting the street.

- (23) It shall be the duty of the immediately adjacent property owner, lessee, or mortgagee to properly and adequately maintain the area between the designated roadway and the

property line of such property, regardless of whether such area is landscaping, parking of any kind, or sidewalks, or any combination thereof.

AGENDA ITEM REPORT

October 14, 2024

ITEM NUMBER: 9.

ITEM: Consideration and Approval of an ordinance on First Reading amending Chapter 24, Section 16 related to the regulations of landscape requirements. Sponsored by Council Member Robert Yaffe. Enclosed are the proposed ordinance and Staff Memo.

DESCRIPTION:

The proposed Landscape Ordinance for the Town of Bay Harbor Islands aims to enhance community aesthetics and promote environmental sustainability by amending existing landscape standards. Key changes include the retitling of sections related to tree removal and maintenance, as well as the establishment of clear guidelines for Florida-friendly landscaping. These guidelines focus on increasing tree diversity, requiring minimum tree heights based on building stories, and outlining strict conditions for tree removal and protection during construction.

The ordinance will also enforce regular inspections to ensure compliance with aesthetic and health standards, with penalties for violations. It includes a list of prohibited invasive species that must be removed and replaced with native alternatives. To support these changes, a community education program will be implemented to inform residents about the new requirements, while the Code Enforcement Department will oversee enforcement and conduct annual reviews to assess the ordinance's effectiveness. Overall, this initiative aligns with the town's goals for sustainable development and community beautification.

Staff recommends that the Town Council approves the proposed Landscape Ordinance amending Section 24-16 entitled minimum landscape standards, to modify the landscape standards, retitling Section 24-16.1 from "Use of Fertilizer" to "Tree removal, protection, replacement, and abuse", Section 24-16.3 "Definitions", Retitling Section 24-16.10 from "Management of grass clippings and vegetative matter" to "Maintenance requirements", Section 24-16.15 "Enforcement and penalties". This ordinance will establish comprehensive guidelines for Florida-friendly landscaping to enhance the community's aesthetic quality, promote environmental sustainability, and ensure compliance with maintenance standards.

RECOMMENDED ACTION:

Council's Discretion

FINANCIAL ANALYSIS:

There is no fiscal impact.

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk
Robert Yaffe, Council Member

ATTACHMENTS

1.	Staff Memo for Landscape 1st Reading-
2.	landscape 1st Reading



**TOWN OF BAY HARBOR ISLANDS
BUILDING, PLANNING AND ZONING DEPARTMENT
MEMORANDUM**

TO:	Mayor and Town Council Members
THRU:	Jenice Rosado, ICMA-CM Interim Town Manager Mike Mesa, CBO, CFM, Assistant Town Manager/ Building Official
CC:	Joseph S. Geller, Esq., Consultant Town Attorney Yvonne P. Hamilton, CMC, Town Clerk
FROM:	Lorrainia Belle Town Planner
DATE:	October 9, 2024
SUBJECT:	Town of Bay Harbor Islands – Amending the Town’s Code of ordinances related to the regulation of landscape requirements

RECOMMENDATION

Staff recommends that the Town Council approve the proposed Landscape Ordinance amending Section 24-16 entitled minimum landscape standards, to modify the landscape standards, retitling Section 24-16.1 from “Use of Fertilizer” to “Tree removal, protection, replacement, and abuse”, Section 24-16.3 “Definitions”, Retitling Section 24-16.10 from “Management of grass clippings and vegetative matter” to “Maintenance requirements”, Section 24-16.15 “Enforcement and penalties”. This ordinance will establish comprehensive guidelines for Florida-friendly landscaping to enhance the community's aesthetic quality, promote environmental sustainability, and ensure compliance with maintenance standards.

BACKGROUND

The Town of Bay Harbor Islands is dedicated to preserving its natural environment, which holds significant ecological and aesthetic value. As development progresses, the need for clear landscaping guidelines has become critical to protecting and enhancing the town's green spaces. Currently, the landscape ordinances primarily reference the Miami-Dade County Landscape Code; however, recent updates to the county regulations necessitate a comprehensive revision. The proposed Landscape Ordinance seeks to

address these changes by providing detailed requirements tailored to the town's unique coastal barrier island context. Key improvements will focus on tree diversity, native plant use, and maintenance practices, aligning with community goals for enhanced landscaping aesthetics and environmental resilience. Notably, the minimum tree height requirement has been increased in relation to the number of stories in the building, a point discussed by the Design Review Board members who advocated for this adjustment. Additionally, the ordinance introduces guidelines for tree removal, protection, replacement, and abuse, aiming to minimize damage to existing trees and ensuring they are planted in appropriate locations. It also includes a list of prohibited species, specifying conditions under which these species must be removed.

ANALYSIS

The proposed Landscape Ordinance encompasses several key provisions. First, property owners will be required to install and maintain landscaping that meets specified aesthetic and health standards, with regular inspections to ensure compliance. The ordinance establishes minimum tree requirements based on property type and size, promoting a diverse and resilient tree canopy. Specific standards will include the minimum number of trees per property type, specifications for plant materials—including height and species diversity to avoid monocultures—and buffer requirements to separate different land uses.

Regarding tree removal, the ordinance stipulates that any removal must be justified, with property owners required to demonstrate that the tree poses a safety hazard, is dead or diseased, or interferes with construction. For trees that are removed, a replacement plan must be submitted to ensure that the ecological balance is maintained, typically requiring the planting of new trees that meet minimum size and species diversity criteria. The ordinance also includes a list of prohibited species, which must be removed if they are found on a property. This list is based on invasive species that pose a threat to local ecosystems, and property owners will be required to replace any prohibited species with approved native alternatives.

Protection measures during construction will be emphasized, including guidelines for installing protective barriers around trees to prevent damage from equipment and foot traffic. The ordinance will also encourage residents and developers to engage in pre-construction assessments to identify tree preservation strategies. This includes selecting suitable locations for new trees, taking into account factors such as soil conditions, sunlight, and existing infrastructure, to promote healthy growth and longevity.

Additionally, the ordinance provides more detailed information on enforcement procedures and the associated penalties for violations. This includes a structured process for addressing non-compliance, with escalating fines based on the severity and frequency of violations. Specific penalties will be outlined for damaging protected trees, failing to adhere to removal and replacement guidelines, and neglecting maintenance requirements. The enforcement process will also include a clear notification system to inform property owners of violations and give them the opportunity to rectify issues before fines are imposed.

By enhancing property aesthetics and promoting environmental sustainability, the ordinance aims to elevate the quality of life for residents and create a more attractive community for visitors.

EXECUTE

If approved, the ordinance will be implemented through a community education program designed to inform residents about the new requirements and the benefits of Florida-friendly landscaping. This initiative may include workshops, informational materials, and direct communication with property owners. The Code Enforcement Department will oversee enforcement, conducting regular inspections and establishing a tracking system to monitor compliance and address violations promptly. Additionally, the ordinance will undergo annual reviews to assess its effectiveness and incorporate necessary adjustments based on community feedback and compliance inspection results.

CONCLUSION

The adoption of the Landscape Ordinance will significantly benefit the Town of Bay Harbor Islands by promoting sustainable landscaping practices, enhancing the community's aesthetic appeal, and ensuring compliance with established standards. By prioritizing environmental stewardship and community beautification, this ordinance aligns with the town's goals for a vibrant and sustainable future.

FINANCIAL ANALYSIS

GL Line Item Number: N/A

Total Amount Budgeted: N/A

Encumbered Amount: N/A

Balance Remaining: N/A

ATTACHMENTS

1st Draft Ordinance

ORDINANCE NO. ___

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES RELATED TO THE REGULATION OF LANDSCAPE REQUIREMENTS AMENDING CHAPTER 24 OF THE TOWN'S CODE OF ORDINANCES ENTITLED PROPERTY MAINTENANCE STANDARDS; AMENDING SECTION 24-16 ENTITLED MINIMUM LANDSCAPE STANDARDS, TO MODIFY THE LANDSCAPE STANDARDS; RETITLING SECTION 24-16.1 FROM "USE OF FERTILIZER" TO "TREE REMOVAL, PROTECTION, REPLACEMENT AND ABUSE"; SECTION 24-16.3 "DEFINITIONS"; RETITLING SECTION 24-16.10 FROM "MANAGEMENT OF GRASS CLIPPINGS AND VEGETATIVE MATTER" TO "MAINTENANCE REQUIREMENTS"; SECTION 24-16.15 "ENFORCEMENT AND PENALTIES"; PROVIDING FOR INCORPORATION OF RECITALS; PROVIDING FOR CONFLICT AND REPEALER; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Bay Harbor Islands originally adopted Property Maintenance Standards regulations for the community in September 1996; and

WHEREAS, the Town of Bay Harbor Islands has been required to enforce the Miami-Dade County Landscape Code (Chapter 18A) requirements since 1994; and

WHEREAS, the Town Council periodically studies various land development issues and periodically amends the Code accordingly; and

WHEREAS, some of the existing land development in the Town were constructed prior to the enactment of the Miami-Dade County Landscape Code or Town Supplemental Landscape Code and do not comply with minimum criteria; and

WHEREAS, the Town Council desires that older nonconforming sites be upgraded when substantial improvements are made to properties and has established thresholds when nonconforming site upgrades are required; and

WHEREAS, after studying the existing Code provisions, the Town Council finds that a need exists to modify these provisions; and

WHEREAS, the Town Council held duly advertised public hearings to consider the proposed modifications to the Town's Landscape Standards.

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

Section 1: That the Town of Bay Harbor Islands Property Maintenance Standards Code is hereby amended to revise Section 24-16 entitled “Minimum Landscape Standards” to modify the requirement for compliance for nonconforming properties, as more fully set forth in the attached Exhibit “A”, and by reference made a part hereof.

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

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

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

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

PASSED on First Reading this 9th day of October 2024

PASSED on Second Reading TBA.

JOSHUA D. FULLER, MAYOR

ATTEST:

YVONNE P. HAMILTON, CMC TOWN CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

GREENSPOON MARDER, LLP TOWN ATTORNEYS

BY: JOSEPH S. GELLER, ESQ

Article II

Sec. 24-16. Minimum landscape standards.

~~The Miami-Dade County~~ The purpose of this ordinance is to set forth guidelines for the installation and maintenance of Florida-friendly landscaping and landscaped open spaces. This ordinance aims to utilize these areas to conserve energy, preserve open spaces, and improve the aesthetic quality of Bay Harbor Islands. The Landscape Ordinance is hereby adopted as the minimum landscape standard for landscaping across all properties ~~all property~~ within the town. ~~In addition to the minimum standards set forth in the Miami-Dade County Landscape Ordinance, section 18A, all property properties within the town shall also comply with the following additional landscape maintenance standards:~~ Additionally, all properties must adhere to the following supplemental landscape maintenance standards:

- 1) A property owner is responsible for ensuring that landscaping required to be planted pursuant to this section or any previous applicable ordinance(s), is:
 - a. Installed in compliance with applicable ordinances;
 - b. Maintained so as to represent a healthy, vigorous, and neat appearance, free from over growths, weeds, refuse and debris;
 - c. Sufficiently fertilized and watered to maintain the plant material in a healthy condition, including appropriate use of pesticides as necessary.
- 2) *[Supplemental landscape standards adopted.]* ~~In addition to the minimum standards set forth in the Miami-Dade County Landscape Code.~~ The town hereby adopts the following supplemental landscape standards for all property within the town that exceeds or supplements the Miami-Dade standards due to the town's coastal barrier island location and the community's desire to achieve a higher quality landscape appearance:
 - a. Number of required trees.
 - i. Single-family. Single-family home sites located on non-waterfront lot(s) are required to have a minimum of five (5) trees per lot. Single-family home sites located on waterfront lot(s) are required to have a minimum of six (6) trees per lot. Single-family homes located on a corner lot(s) are required to have a minimum of seven (7) trees per lot.
 - ii. Two-family (duplex). Two-family home sites are required to have a minimum of five (5) trees per lot. Two-family home sites homes located on a corner lot(s) are required to have a minimum of seven (7) trees per lot.
 - iii. Multiple-family. Multiple-family home sites are required to have a minimum of 28 trees per net acre of lot. ~~quantity requirements listed in the Miami-Dade Landscape Code.~~
 - iv. Commercial. Commercial sites are required to meet the minimum of 22 trees per net acre of lot. ~~tree quantity requirements listed in the Miami-Dade Landscape Code.~~
 - v. Community facilities/parks. Community facilities such as schools, town parking lots, parks and recreational sites are required to meet the minimum of 22 trees per net acre of lot. ~~tree quantity requirements listed in the Miami-Dade Landscape Code.~~

- b. Minimum standards of plant materials at time of planting.
 - i. For single-family and two-family developments ~~at least~~ two (2) shade trees or their equivalent shall be planted in the front yard area.
 - ii. Street trees. Street trees shall be a minimum of fifteen (15) feet in overall height with at least six (6) feet of clear wood before branching, a minimum caliper of two and one-half (2 ½) inches and shall be planted at to meet the Miami-Dade minimum criteria of thirty-five (35) feet average separation but shall not exceed forty (40) feet on center at time of planting. The town reserves the right to designate a common tree species for a roadway or portion of certain roadway segments to achieve a uniformity of appearance. All street trees planted after the effective date of this section shall comply with the town's street master plan species and specifications.
 - iii. Shade trees. Depending on the height of the building, shade trees shall be a minimum of twelve (12) to eighteen (18) feet in overall height with at least four feet of clear wood before branching and a minimum caliper of two and one-half (2 ½) inches at the time of planting. Fifty (50) percent of required shade trees shall be a native species.
 - iv. Palms. Palm trees shall be a minimum of 15 feet in overall height with a minimum caliper of ~~three~~ four (4) inches at time of planting. Palm trees may be used to meet the required tree quantities at a 3:1 ratio. Royal palm trees, canary Island date palms and other similar large palm species shall count one-for-one as meeting the minimum tree requirements if the palm tree has over fifteen (15) feet of grey wood before any palm fronds start. Palm tree species shall comprise no more than twenty-five (25) percent of the required tree quantity.
 - v. Shrubs. Shrubs shall be a minimum of twenty-four (24) inches in height and shall be planted at a maximum of twenty (24) inches on center at time of planting. If shrubs are used as a visual screen between dissimilar land uses such shrubs shall be planted at a minimum of thirty-six (36) inches in height and twenty-four (24) inches on center.
 - 1. Shrubs shall be provided at ratio of ten (10) per required tree;
 - 2. Eighty (80) percent shall be native species;
 - 3. Fifty (50) percent shall be low maintenance and drought tolerant;
 - vi. Plant quality. All tree species and other landscape material shall be Florida #1 or better, as established by "Grades and Standards for Nursery Plants" of the State of Florida Department of Agriculture.
 - vii. Landscape material near overhead power lines. Notwithstanding the above standards, the size of trees planted in proximity to overhead power lines may be adjusted to provide tree species recommended in the Florida Power and Light (FPL) publication entitled "Plant the Right Tree in the Right Place," current revision, upon site plan review.
- c. Number of different required tree species. In order to avoid a mono-species appearance in the town and to circumvent significant tree loss due to disease to

a specific tree species, the number of different required tree species to be planted is as follows:

i. Table 1

Required Trees	Tree Species
1-5	2
6-10	3
11-15	4
16-20	5
21-30	6
31 or more	7

- d. Size of tree species in relationship to building height. In order to provide trees scaled to the on-site building massing and individual site conditions, the following additional minimum tree heights shall apply:

i. Table 2: Single family and Two family

No. Stories	Min. Trees Height (ft.)	Min. Spread (ft.)	Palm Height (ft.)
<u>1</u>	<u>12</u>	<u>5</u>	<u>14-18</u>
<u>2</u>	<u>14</u>	6	18—22

ii. Table 3: Multiple-family, Commercial, and Community facilities

No. Stories	Percent	Min. Trees Height (ft.)	Min. Spread (ft.)	Palm Height (ft.)
1—2		12 14	5 6	14 15- 18
3	50%	50% min. req. 12 14	5 6	14 15-18
	50%	50% 14-16 16-18*	6 7	18 -22
4	50%	50% min. req. 16	5 6	14 15-18
	25%	25% 14-16 18-20	6 7	18 -22
	25%	25% 16-18 20-22*	7 8	22 -28
5 plus	25%	25% min. req. 18	5 7	14 15-18
	50%	50% 18—20 20-22	7 8	22—28
	25%	25% 20-22 22-24*	8 9	22—28

*The tallest trees are required in the front yard.

- 3) Open space requirements. Open space requirements are established to ensure adequate green areas within developments, promoting environmental sustainability and community aesthetics. Properties must maintain specified percentages of landscaped "green" open space at ground level, as detailed in the relevant sections of this code. For further information and specific guidelines regarding open space requirements, please refer to [Section 23-11](#).

- a. Artificial turf shall be classified as an impervious surface and must not exceed ten percent (10%) of the total impervious area on a property. Furthermore, it shall not be counted toward the minimum landscaped area, buffers, foundation plantings, or landscape islands.
- b. RD-Single Family Area:
- i. For one-story homes, each plot shall maintain a minimum of thirty-five percent (35%) open space at ground level.

- ii. For homes exceeding one story, each plot shall maintain a minimum of forty percent (40%) open space at ground level.
 - iii. Each plot shall provide a minimum of fifty percent (50%) landscaped "green" pervious open space in the front yard area.
 - iv. Pervious pavers or landscape strips in driveways or walkways shall not be included in the fifty percent (50%) landscaping requirement.
 - v. Sufficient open space and landscaping materials shall be provided within front setback areas to break up large expanses of hardscape, screen parking areas, and provide shade.
 - c. RM-1 Multiple Family Residential district (Waterfront lots).
 - i. Each plot shall provide a minimum of twenty percent (20%) landscaped "green" open space at ground level.
 - ii. If a flat roof deck is used for recreational purposes, a minimum of fifteen percent (15%) of that area shall be landscaped. For this section, landscaping does not include swimming pools, decks, patios, or other impervious surfaces.
 - d. RM-2 Multiple Family Residential district (Non-waterfront).
 - i. Each plot shall provide a minimum of twenty percent (20%) landscaped "green" open space at ground level.
 - ii. If a flat roof deck is utilized for recreational purposes, a minimum of fifteen percent (15%) of that area shall be landscaped, excluding swimming pools, decks, patios, or other impervious surfaces.
 - e. B-1 Business district. East Bay Harbor Drive, West Bay Harbor Drive, Bay Harbor Terrace, 95th Street and 97th Street:
 - i. Within the designated setback areas, a minimum of seventy-five percent (75%) of the total area must consist of landscape materials, while the remaining area may include hardscape features such as walkways and pavers.
 - ii. For further information and specific guidelines regarding the designated setback requirements, please refer to [Section 23-11](#).
- 4) Buffers designed to separate the following areas must ensure that all plants used within these buffers meet the minimum size and spacing requirements outlined in subsection (2)(b)(iv).
- a. On-site parking lots from adjacent public rights-of-way are required to provide a minimum ten (10) foot landscape strip.
 - i. ~~At a minimum,~~ Continuous shrubs as specified herein shall be provided between any on-site parking space or driveway and the street line.
 - ii. If walls or fence are used as a screening device in the landscape strip they must conform to the requirements within the ~~Miami-Dade County Landscape Code (section 18-A)~~ and Town Code subsection 23-12(22).
 - b. Dissimilar land uses from adjacent properties are required to provide a minimum five (5) foot landscape strip.
 - i. Continuous shrubs as specified herein shall be provided between any and the street line.

- ii. If walls or fence are used as a screening device in the landscape strip they must conform to the requirements within the ~~Miami-Dade County Landscape Code (section 18-A)~~ and Town Code subsection 23-12(22). The wall or fence must be a minimum of six (6) foot with a life expectancy of at least ten (10) years with shrubs.
- 5) Selecting landscape materials and soil conditions. Landscape materials installed within the town shall be selected based on suitability to the nearby oceanfront location and are generally salt tolerant. Landscape materials should be planted at locations that take into account future mature growth of the selected materials so as not to interfere with overhead or underground utilities, parking lots, sidewalks and roads (roots) and structures. Because of the existing barrier island soil composition, the soils where the landscape materials are to be planted shall be modified as necessary to allow all plantings to survive, including any planters not at ground level (roofs/terraces).
- 6) Disposal of landscape materials. Landscape materials, including but not limited to tree branches, palm fronds, dead or diseased plant materials and grass clippings shall be disposed of properly. Grass clippings shall be collected and removed from all sites and shall not be placed on public right-of-way or allowed to enter the stormwater system as the town's federal Environmental Protection Agency (EPA) and national pollution discharge elimination system (NPDES) permit conditions. In no instance shall grass clippings be accumulated and/or swept into stormwater catch basins. All landscape materials shall be removed from the site to a suitable disposal facility, except as specified in Sections 9-22, 9-23, and 9-24.
- 7) Irrigation of landscape materials. Landscape materials shall be properly irrigated to ensure survival. Open-air spray irrigation shall be limited to the maximum degree possible and the use of drip irrigation systems with water soil moisture sensors is strongly encouraged. The collection of stormwater for reuse is strongly encouraged as well as the use of gray water when it becomes available from the Miami-Dade Water and Sewer Department.
- 8) Fertilizers and pesticides. Landscape materials shall be properly fertilized and if necessary pesticides applied to ensure survival. Such products shall be used in accordance with the manufacturer's recommended specifications for application, storage and disposal. In no instance shall such products be disposed of through the town's stormwater system and efforts shall be made to limit runoff into the town's stormwater system. Alternatives to the use of pesticides are encouraged.
- 9) ~~Requirements for Compliance requirements for nonconforming properties. It is the express intent and desire of the town council that all sites comply with and meet the minimum requirements set forth in the Miami-Dade Countywide Landscape Code and town supplemental standards stated herein. The town recognizes that many of the properties in the town were constructed prior to the enactment of either the county or town supplemental code requirements. Property owners are encouraged to meet the most~~

~~recent minimum standards, if possible. All new development must comply with the most stringent standards set forth in either code. All redevelopment of existing properties that add more than 200 square feet of gross floor area to an existing structure, shall upgrade the landscaping on the property to meet current day standards.~~ The Town Council intends for all properties to adhere to the minimum requirements set forth by the town and its supplemental standards. The town acknowledges that many properties were constructed prior to the adoption of these standards. Property owners are encouraged to align with the most current minimum standards where feasible. All new developments must comply with the most stringent standards outlined in either code. Additionally, any redevelopment of existing properties that increases the gross floor area by more than 200 square feet must upgrade the landscaping to meet contemporary standards.

10) Appeals from administrative decisions. Enforcement of the provisions of this section shall be responsibility of the town manager or their designee. If a dispute arises as to the application of the Code requirements or an enforcement action which cannot be resolved by staff, the matter may be appealed through the town clerk to the design review board. If the matter cannot be resolved by the design review board, the matter may be appealed through the town clerk to the town council.

~~11) Enforcement. The town's code enforcement department shall give at least one courtesy warning notice before enforcement under this section.~~

Sec. 24-16.1. – Use of fertilizer. Tree removal, protection, replacement and abuse.

~~[Provisions regulating the use of fertilizer follow in sections 20-16.2—20-16.15 below.]~~

It is the intent and desire of the town council to preserve and enhance the tree canopy in the town for aesthetic and environmental reasons.

- 1) ~~The Miami-Dade Countywide Landscape Code requires that prior to any tree removal on any site, except single family and two family sites, a tree removal permit must be obtained from the Miami-Dade County Department of Environmental Protection (DERM). A tree removal permit must be obtained from the Miami-Dade County Department of Environmental Protection (DERM) prior to any tree removal on properties, except for single-family and two-family sites.~~
- 2) ~~Within~~ In the Town of Bay Harbor Islands, a tree-removal or relocation permit is required for all properties, ~~shall be obtained for any tree removal or relocation, including single-family and two-family. Tree removal is prohibited unless the tree is diseased or dead, classified as invasive on the Miami-Dade County prohibited species list, or causing damage to utilities, roadways, or sidewalks. The minimum number of street trees and on-site trees must be maintained or replaced as specified in the Town Code. The town shall administer the tree removal and relocation permit process for single-family and two-family properties. Tree removal shall be prohibited unless the tree is diseased or dead, is invasive and listed on the Miami-Dade County prohibited species list unless determined by the~~

~~town council on a case-by-case basis that the tree is unique, unreasonably restricts or interferes with the use of the land as determined by the town council or is damaging utilities, roadways, sidewalks. In all instances the minimum number of street trees and on-site trees shall must be maintained or replaced as specified on the Town Code. herein. In all instances each~~ All sites must comply with the minimum tree quantity and quality requirements, except where unless off-site mitigation is allowed permitted.

- a. The single family and two-family tree permit shall include the following:
 - i. Name, address and telephone number of those persons or entities who own the property and those persons or entities conducting the removal activities.
 - b. A detailed written statement indicating the reasons for the clearing of land, dripline encroachment, removal, relocation or replacement of the trees and a proposal to replace or relocate removed or damaged trees and including the following:
 - i. The amount of land to be disturbed.
 - ii. The method and equipment to be used.
 - iii. The dates the clearing of land, dripline encroachment, removal, relocation or replacement of trees will take place.
 - c. Provide a survey
 - i. Location of all existing structures including the building pad as defined herein, improvements and site uses, properly dimensioned and referenced to property lines, setback and yard requirements.
 - ii. Location of existing utility services and all easements.
 - iii. The name, common and botanical, size and location of all trees on the site specifically designated by number. The trees shall be tagged and identified consistently with the numbering system utilized on the tree survey. Groups of nuisance trees in close proximity may be designated as "clumps" of trees with the predominate type shown.
 - d. Multifamily, Commercial and Community facilities/parks requires a site development plan approval in accordance with the requirements specified in [Section 5.23.1.](#)
- 3) ~~If the tree(s) or replacement trees cannot be replanted onsite, an owner may request permission from the town to replant the tree(s), plant replacement trees at other locations within the town or contribute to a tree trust fund. All such tree removal requests shall be accompanied by a current survey not more than six months old of the lot showing all physical improvements on the site, within the adjoining public right-of-way and on adjacent lots within ten feet of the property line as well as all tree locations, species, caliper and estimated height. If tree branches on adjoining properties or right of way extend into the site they must be identified. A statement from the owner or a professional must be provided explaining why the request is being made. Publically owned land shall be considered first priority for any offsite tree placement such as parks, open spaces, rights-of-way and other town-owned lands. Second priority for any offsite tree replacement may be other privately-owned lands, if approved by the town. If a tree(s) cannot be replanted onsite or replaced as specified, the owner may request to contribute funds equal to the values of the tree(s)~~

~~into the Miami-Dade County Tree Trust Fund as required under section 24-49 of the county's Code or into the town's tree trust fund. Any funds in the town tree trust fund shall only be expended only on the design, acquisition and tree planting or other equivalent landscaping within the town and shall not be used as general revenue. Within the town all trees removed are subject to mitigation, including native, other acceptable and not preferred/invasive trees. If on-site replanting of the tree(s) or replacement trees is not feasible, the property owner may seek permission from the town to either replant the tree(s) or replacement trees at alternate locations within the town or contribute to the town's tree trust fund. All requests for tree removal must be accompanied by a current survey, dated within the last six months, showing all physical improvements on the lot, within the adjacent public right-of-way, and on adjacent lots within ten feet of the property line. The survey must include details of all tree's locations, species, caliper, and estimated height. Additionally, any tree branches extending from adjoining properties or rights-of-way into the site must be identified. A professional statement explaining the reasons for the request is also required.~~

- 4) Publicly owned lands will be given first priority for any offsite tree placements, including parks, open spaces, rights-of-way, and other town-owned properties. Private lands may be considered for offsite tree replacement as a second priority, subject to town approval.
- 5) If replanting or replacement as specified is not feasible, the property owner may opt to contribute an amount equivalent to the value of the tree(s) to the town's tree trust fund. Funds in the tree trust fund will be used solely for the design, acquisition, and planting of trees or other equivalent landscaping within the town and will not be used for general revenue purposes. All removed trees, including native, acceptable, and non-preferred/invasive species, are subject to mitigation within the town.
- 6) No replacement of not preferred or invasive trees species is permitted; however, equivalent mitigation based on the tree trunk caliper is required. Tree replacement shall be based on the provisions contained in [Section 24-49](#) of the Miami-Dade Tree Preservation and Protection Ordinance. ~~The town and/or property owner may~~ must retain a professional tree arborist to assist in the determination of value and replacement mitigation. Replacement tree species shall be selected to replace the existing tree canopy being removed, unless otherwise approved by the town due to location.
- 7) During site development, all trees designated for preservation must be protected by installing barriers around each tree or cluster of trees in accordance with the requirements specified in [Section 24-16.10](#).
- 8) Prohibited species may not be planted anywhere within the Town of Bay Harbor Islands, in accordance with the Landscape Code. Effective [Date of Adoption], these species must be removed from all sites during site development reviews or when a tree permit is submitted. The requirements for a tree permit are detailed in subsection 24-16-1(2). Please refer to the list below for the prohibited species.

a. Table 4: Prohibited Plant Species

Botanical Name	Common Name
<u>Acacia auriculiformis</u>	<u>Earleaf Acacia</u>
<u>Adenanthera pavonina</u>	<u>Red sandalwood</u>
<u>Aeginetiaspp. (all)</u>	<u>Aeginetia</u>
<u>Ageratina adenophora</u>	<u>Crofton weed</u>
<u>Albizia julibrissin</u>	<u>Mimosa</u>
<u>Albizia lebbeck</u>	<u>Woman's Tongue</u>
<u>Alectra spp. (all)</u>	<u>Yerba de hierro</u>
<u>Alternanthera philoxeroides</u>	<u>Alligator weed</u>
<u>Alternanthera sessilis</u>	<u>Sessile joyweed</u>
<u>Araucaria heterophylla</u>	<u>Norfolk Island Pine</u>
<u>Ardisia crenata</u>	<u>Coral ardisia</u>
<u>Ardisia solanacea</u>	<u>Shoebutton Ardisia</u>
<u>Asphodelus fistulosus</u>	<u>Onionweed</u>
<u>Avena sterilis</u>	<u>Animated oat</u>
<u>Azolla pinnata</u>	<u>Asian mosquito fern</u>
<u>Bischofia javanica</u>	<u>Bischofia, Toog</u>
<u>Borreria alata</u>	<u>Broadleaf buttonweed</u>
<u>Brassaia actinophylla</u>	<u>Schefflera</u>
<u>Broussonetia papyrifera</u>	<u>Paper mulberry</u>
<u>Carthamus oxycantha</u>	<u>Wild safflower</u>
<u>Casuarina spp.</u>	<u>Australian Pine</u>
<u>Cestrum diurnum</u>	<u>Day blooming jasmine</u>
<u>Chrysopogon aciculatus</u>	<u>Pilipiliula</u>
<u>Cinnamomum camphora Colocasia esculenta</u>	<u>Camphor tree Taro</u>
<u>Colubrina asiatica</u>	<u>Latherleaf</u>
<u>Commelina benghalensis</u>	<u>Benghal dayflower</u>
<u>Crassula helmsii</u>	<u>Swamp stonecrop</u>
<u>Crupina vulgaris</u>	<u>Common crupina</u>
<u>Cupianopsis spp.</u>	<u>Carrotwood</u>
<u>Cuscuta japonica</u>	<u>Japanese dodder</u>
<u>Cuscuta megalocarpa</u>	<u>Bigfruit dodder</u>
<u>Cuscuta potosina</u>	<u>Globe dodder</u>
<u>Cuscutaspp. (except natives)</u>	<u>Exotic dodder vines</u>
<u>Dalbergia sissoo</u>	<u>Indian Rosewood</u>
<u>Digitaria abyssinica</u>	<u>Couch grass</u>
<u>Digitaria velutina</u>	<u>Velvet finger grass</u>
<u>Dioscorea alata</u>	<u>White yam</u>

<u>Dioscorea bulbifera</u>	<u>Air potato</u>
<u>Drymaria arenarioides</u>	<u>Alfombrilla</u>
<u>Eichhornia azurea</u>	<u>Anchored waterhyacinth</u>
<u>Eichhornia spp. (all)</u>	<u>Water hyacinths</u>
<u>Emex australis</u>	<u>Three-cornered jack</u>
<u>Emex spinosa</u>	<u>Devil's thorn</u>
<u>Enterolobium contortisliquum</u>	<u>Ear-pod tree</u>
<u>Eucalyptus spp. (1 or more)</u>	<u>Eucalyptus trees</u>
<u>Euphorbia prunifolia</u>	<u>Painted euphorbia</u>
<u>Fatoua spp. (all)</u>	<u>Fescue</u>
<u>Ficus altissima</u>	<u>False banyan</u>
<u>Ficus benghalensis</u>	<u>Banyan tree</u>
<u>Ficus benjamina</u>	<u>Weeping fig</u>
<u>Ficus carica</u>	<u>Edible fig</u>
<u>Ficus decora</u>	<u>Rubber tree</u>
<u>Ficus nitida/Ficus microcarpa</u>	<u>Cuban laurel</u>
<u>Ficus religiosa</u>	<u>Bo tree</u>
<u>Ficus spp. (all non-natives)</u>	<u>Ficus</u>
<u>Flacourtia indica</u>	<u>Governor's plum</u>
<u>Flueggea virosa</u>	<u>Flueggea</u>
<u>Foeniculum vulgare</u>	<u>Fennel</u>
<u>Fragaria chiloensis var. Ananassa</u>	<u>Strawberry</u>
<u>Fraxinus uhdei</u>	<u>Shamel ash</u>
<u>Galega officinalis</u>	<u>Goatsrue</u>
<u>Grevillea robusta</u>	<u>Silk Oak</u>
<u>Heracleum mantegazzianum</u>	<u>Giant hogweed</u>
<u>Hibiscus tiliaceus</u>	<u>Mahoe</u>
<u>Hydrilla verticillata</u>	<u>hydrilla</u>
<u>Hygrophila polysperma</u>	<u>Miramar weed</u>
<u>Imperata brasiliensis</u>	<u>Brazilian satintail</u>
<u>Imperata spp.</u>	<u>Cogon grass</u>
<u>Ipomoea aquatica</u> <u>Ipomoea fistulosa</u>	<u>Chinese waterspinach</u> <u>Shrub morning glory</u>
<u>Ipomoea triloba</u>	<u>Little bell morning glory</u>
<u>Jacaranda acutifolia</u>	<u>Jacaranda</u>
<u>Jasminum dichotomum</u>	<u>Gold Coast jasmine</u>
<u>Jasminum fluminense</u>	<u>Brazilian jasmine</u>
<u>Lagarosiphon major</u>	<u>Oxygen weed</u>
<u>Lagarosiphonspp. (all)</u>	<u>African elodeas</u>
<u>Lantana camara</u>	<u>Shrub verbena</u>
<u>Leptochloa chinensis</u>	<u>Asian sprangletop</u>
<u>Leucaena leucocephala</u>	<u>Lead Tree, Jumbie Bean</u>

<u>Ligustrum sinense</u>	Chinese privet
<u>Limnocharis flava</u>	Sawa flowering-rush
<u>Limnophila sessiliflora</u>	Ambulia
<u>Lonicera japonica</u>	Japanese honeysuckle
<u>Lycium ferocissimum</u>	African boxthorn
<u>Lygodium japonicum</u>	Japanese climbing fern
<u>Lygodium microphyllum</u>	Old World climbing fern
<u>Lythrum salicaria</u>	Purple loosestrife
<u>Manilkara zapota</u>	Sapodilla
<u>Melaleuca quinquenervia</u>	Melaleuca or Paperbark
<u>Melastoma malabathricum</u>	Indian rhododendron
<u>Melia azederach</u>	Chinaberry tree
<u>Merremia tuberosa</u>	Woodrose
<u>Mikania cordata</u>	Mile-a-minute vine
<u>Mikania micrantha</u>	Mile-a-minute vine
<u>Mimosa invisa</u>	Giant sensitive plant
<u>Mimosa pigra</u>	Cat-claw mimosa
<u>Monochoria hastata</u>	Monochoria
<u>Monochoria vaginalis</u>	Asian pickerel weed
<u>Myriophyllum spicatum</u>	Eurasian watermilfoil
<u>Nassella trichotoma</u>	Serrated tussock
<u>Nechamandra alternifolia</u>	Indian elodea
<u>Neyraudia reynaudiana</u>	Burma reed
<u>Orobanchespp. (except O. uniflora)</u>	Broomrape
<u>Oryza longistaminata</u>	Red rice
<u>Oryza punctata</u>	Red rice
<u>Oryza rufipogon</u>	Wild red rice
<u>Ottelia alismoides</u>	Duck-lettuce
<u>Paederia cruddasiana</u>	Sewer vine
<u>Paederia foetida</u>	Skunk vine
<u>Paspalum scrobiculatum</u>	Kodo-millet
<u>Pennisetum clandestinum</u>	Kikuyu grass or Napier grass
<u>Pennisetum macrourum</u>	African feather grass
<u>Pennisetum pedicellatum</u>	Kyasuma grass
<u>Pennisetum polystachyon</u>	Mission grass
<u>Pistia stratiotes</u>	Water-lettuce
<u>Pongamia pinnata</u>	Pongam
<u>Pontederia rotundifolia</u>	Tropical pickerelweed
<u>Prosopis spp. (except natives)</u>	Mesquite
<u>Pueraria Montana</u>	Kudzu
<u>Rhodomyrtus tomentosa</u>	Downy Rose Myrtle
<u>Ricinus communis</u>	Castor bean

<u>Rottboellia cochinchinensis</u>	<u>Itch grass</u>
<u>Rubus fruticosus</u>	<u>European bramble blackberry</u>
<u>Rubus moluccanus</u>	<u>Asian wild raspberry</u>
<u>Saccharum spontaneum</u>	<u>Wild sugarcane</u>
<u>Sagittaria sagittifolia</u>	<u>Eurasian arrowhead</u>
<u>Salsola vermiculata</u>	<u>Wormleaf salsola</u>
<u>Salvinia spp.</u>	<u>Salvinia</u>
<u>Sapium sebiferum</u>	<u>Chinese tallow tree</u>
<u>Scaevola taccada</u>	<u>Beach naupaka</u>
<u>Schefflera actinophylla</u>	<u>Queen's Island umbrella</u>
<u>Schinus terebinthifolius</u>	<u>Brazilian Pepper, Florida Holly</u>
<u>Setaria pallidefusca</u>	<u>Cattail grass</u>
<u>Solanum tampicense</u>	<u>Wetland nightshade</u>
<u>Solanum torvum</u>	<u>Turkeyberry</u>
<u>Solanum viarum</u>	<u>Tropical soda apple</u>
<u>Sparganium erectum</u>	<u>Exotic bur-reed</u>
<u>Stratiotes aloides</u>	<u>Water-aloe</u>
<u>Striga asiatica</u>	<u>Asiatic witchweed</u>
<u>Striga densiflora</u>	<u>Denseflower witchweed</u>
<u>Striga gesnerioides</u>	<u>Cowpea witchweed</u>
<u>Striga hermonthica</u>	<u>Purple witchweed</u>
<u>Syzygium cumini</u>	<u>Java plum or Jambolan</u>
<u>Syzygium jambos</u>	<u>Rose-apple</u>
<u>Terminalia cattapa</u>	<u>Tropical Almond</u>
<u>Thespesia populnea</u>	<u>Seaside Mahoe</u>
<u>Trapaspp. (all)</u>	<u>Water chestnuts</u>
<u>Tribulua cistoides</u>	<u>Puncture vine</u>
<u>Tridax procumbens</u>	<u>Coat buttons</u>
<u>Urochloa panicoides</u>	<u>Liverseed grass</u>
<u>Vossia cuspidate</u>	<u>Hippo grass</u>
<u>Wedelia trilobata</u>	<u>Wedelia</u>

Sec. 24-16.3. - Definitions.

For this section, the following terms shall have the meanings set forth unless the context clearly indicates otherwise.

1. *Administrator*: Town manager or his/her designee authorized to administer and enforce the provisions of this section.
2. *ANSI A300 Standards*: Industry-developed standards of practice for tree care. Acronym for American National Standards Institute.
3. *Application* or *apply*: The actual physical deposit of fertilizer to turf, specialized turf, or landscape plants.
4. *Applicator*: Any person who applies fertilizer on turf and/or landscape plants in the town.

5. Artificial turf: A surface of synthetic fibers made to look like natural grass.
6. Automatic irrigation system: An irrigation system with a programmable controller or timing mechanism.
7. Best management practices: Turf and landscape practices, or combination of practices based on research, field-testing, and expert review, determined to be the most effective and practicable on-location means, including economic and technological considerations, for improving water quality, conserving water supplies and protecting natural resources.
8. Buffer, perimeter landscape: An area of land which is set aside along the perimeter of a parcel of land in which landscaping is required to provide an aesthetic transition between different land uses and to eliminate or reduce the adverse environmental impact, and incompatible land use impacts.
9. Clearance pruning: Pruning required to avoid damage or danger related to structures, power distribution and property, as defined in the current ANSI A300 Standards.
10. Controlled plant species: Those plant species listed in the Landscape Manual which tend to become nuisances because of their ability to invade proximal native plant communities or native habitats, but which, if located and cultivated properly may be useful or functional as elements of landscape design.
11. Commercial fertilizer applicator (except as provided in 482.1562(9) Fla. Stat). Any person who applies fertilizer for payment or other consideration to property not owned by the person or firm applying the fertilizer, or the employer of the applicator.
12. Diameter at breast height (DBH): Diameter of a tree's trunk measured at a height four and one-half (4 ½) feet above natural grade. In the case of multiple-trunk trees, the DBH shall mean the sum of each trunk's diameter measured at a height of four and one-half (4 ½) feet above natural grade.
13. Fertilize, fertilizing, or fertilization. The act of applying fertilizer to turf, specialized turf, trees, or landscape plants.
14. Fertilizer: Any substance or mixture of substances that contains one or more recognized plant nutrients and promotes plant growth, or controls soil acidity or alkalinity, or provides other soil enrichment, or provides other corrective measures to the soil.
15. Fertilizer-free zone. Within 20 feet from the top of a seawall or bank of any surface water of Biscayne Bay and any storm drain, pond, stream, waterway, lake, canal, or wetland, as defined by the Florida Department of Environmental Protection.
16. Florida-friendly landscaping: Quality, low-maintenance landscapes that conserve water, protect the environment, are adaptable to local conditions, and are drought tolerant. The principles of such landscaping include planting the right plant in the right place, efficient watering, appropriate fertilization, mulching, attraction of wildlife, responsible management of yard pests, recycling yard waste, reduction of stormwater runoff, and waterfront protection. Additional components include practices such as landscape planning and design, soil analysis, the appropriate use of solid waste compost and minimizing the use of irrigation, pesticides, and fertilizers.
17. Green infrastructure: A management approach engineered-as-natural ecosystems such as green roofs, porous pavement, swales and rain gardens that largely rely on using soil and vegetation to infiltrate, evapotranspire, and/or harvest stormwater runoff and reduce

flows to drainage collection systems. This practice aims to preserve, restore and create green space using soils, vegetation, and rainwater harvest techniques.

18. *Guaranteed analysis*: Percentage of plant nutrients or measures of neutralizing capability claimed to be present in a fertilizer.
19. *Hatrack*: To flat-cut the top of a tree, severing the leader or leaders, or the removal of any branch three (3) inches or greater in diameter at any point other than the branch collar.
20. *Hazard pruning*: The removal of dead, diseased, decayed, or obviously weak branches two (2) inches in diameter or greater.
21. *High-impact areas in public parks*: Turf grass areas that are heavily utilized by pedestrian traffic year-round.
22. *Impervious surface*: A surface that has been compacted or covered with a layer of material so that it is highly resistant or prevents infiltration by stormwater. It includes roofed areas and surfaces such as compacted sand, lime rock, or clay, as well as conventionally surfaced streets, sidewalks, parking lots, and other similar surfaces such as roads, sidewalks, driveways and parking lots, as well as industrial areas such as logistics and distribution centers, that are covered by impenetrable materials such as asphalt, concrete, brick, stone, and rooftops.
23. *Institutional applicator*: Any person, other than a private, non-commercial or a commercial applicator (unless such definitions also apply under the circumstances), that applies fertilizer for the purpose of maintaining turf and/or landscape plants on their properties. Institutional applicators shall include, but shall not be limited to, owners, managers or employees of public lands, schools, parks, religious institutions, utilities, industrial or business sites and any residential properties maintained in condominium and/or common ownership.
24. *Landscape plant*: Any native or exotic tree, shrub, or groundcover (excluding turf).
25. *Low maintenance zone*: An area a minimum of ten (10) feet wide adjacent to surface waters which is planted to capture and treat stormwater and is designed to not require fertilization, watering, mowing, etc.
26. *Low impact development (LID)*: Systems and practices that use or mimic natural processes that result in the infiltration, evapotranspiration or use of stormwater in order to protect water quality and associated aquatic habitat. LID is an approach to land development or re-development that works with nature to manage stormwater as close to its source as possible.
27. *Organic fertilizers. Materials that are derived from living materials*: Examples of organic fertilizers include animal manures, composted materials, and plant residues. Organic fertilizers are usually considered to be "slow-release" fertilizers because many of the nutrients must be broken down by soil microbes before they become available for plant uptake.
28. *Person*: Any natural person, business, corporation, limited liability company, partnership, limited partnership, association, club, organization, and/or any group of people acting as an organized entity.
29. *Prohibited application period*: June 1st through November 1st, and, otherwise, the time period during which a flood watch or warning, or a tropical storm watch or warning, or a

hurricane watch or warning is in effect for any portion of the town, issued by the National Weather Service, or if heavy rain is likely.

30. *Rapid release or water-soluble nitrogen*: Any product containing:
- Ammonium nitrate.
 - Ammonium sulfate.
 - Calcium nitrate.
 - Diammonium phosphate.
 - Monoammonium phosphate.
 - Potassium nitrate.
 - Sodium nitrate.
 - Urea (not in the form of slow-release nitrogen).
 - Others as may be designated by the Association of American Plant Food Control Officials.
31. *Saturated soil*: Soil in which the voids are filled with water. Saturation does not require flow. For the purposes of section 24-16.2—24-16.15, soils shall be considered saturated if standing water is present or the pressure of a person standing on the soil causes the release of free water.
32. *Slow release, controlled release, timed release, slowly available, or water insoluble nitrogen*: Nitrogen in a form which delays its availability for plant uptake and use after application, or which extends its availability to the plant longer than a reference rapid or quick release product. Forms of slow release, controlled release, slowly available, or water insoluble nitrogen include:
- Isobutylidene diurea ("IBDU").
 - Resin, polymer, or sulphur coated urea.
 - Biosolids or residuals from domestic wastewater treatment.
 - Urea formaldehyde.
 - Composted animal manure.
 - Others as may be designated by the Association of American Plant Food Control Officials.
33. *Specialized turf*: Areas of grass used for athletic fields and high impact areas, and other similar activities.
34. Street tree: Any approved tree planted within the public right-of-way or along private roads with the express purpose of shading impervious surfaces thereby minimizing the heat island effect.
35. *Surface waters*. As defined by the Florida Department of Environmental Protection (Chapter 62-340, Florida Administrative Code) means waters on the surface of the earth, contained in bounds created naturally or artificially, including, the Atlantic Ocean, bays, bayous, sounds, estuaries, lagoons, lakes, ponds, impoundments, rivers, streams, springs, creeks, branches, sloughs, tributaries, canals, and ditches.
36. *Town council*: Town Council of the Town of Bay Harbor Islands, Florida.
37. *Town of Bay Harbor Islands approved best management practices training program*: A training program approved pursuant to Section 403.9338, Fla. Stat., or any more stringent requirements set forth in this section that includes the most current version of the Florida Department of Environmental Protection's "Florida-friendly Best Management Practices

for Protection of Water Resources by the Green Industries, 2008," as revised, and approved by the administrator.

38. Tree abuse: Tree abuse shall include:

- a. Damage inflicted upon any part of a tree, including the root system, by machinery, construction equipment, cambium layer penetration, storage of materials, soil compaction, excavation, chemical application or spillage, or change to the natural grade.
- b. Hatracking.
- c. Girdling or bark removal of more than one-third ($\frac{1}{3}$) of the tree diameter.
- d. Tears and splitting of limb ends or peeling and stripping of bark resulting from improper pruning techniques not in accordance with the current ANSI A300 Standards.

39. Tree canopy: The aerial extent of the branches and foliage of a tree as defined by the drip line.

40. Turf, sod, or lawn. Piece of grass-covered soil held together by the roots of the grass.

41. Urban landscape. Pervious areas on residential, commercial, industrial, institutional, highway rights-of-way, or other nonagricultural lands that are planted with turf or horticultural plants. For the purposes of this section, agriculture has the same meaning as in Section 570.02 Fla. Stat.

Sec. 24-16.10. - Management of grass clippings and vegetative matter. Maintenance requirements.

~~In no case shall grass clippings, vegetative material and/or vegetative debris either intentionally or accidentally be swept, or blown off into stormwater drains, ditches, conveyances, water bodies, sidewalks or roadway. Any material that is erroneously so deposited shall be immediately removed to the maximum extent practicable. The town reserves the right to impose additional maintenance requirements that align with community standards. Failure to install or maintain landscaping in accordance with this section constitutes a violation of the Town Code. Additionally, failure to plant, preserve, or maintain each individual tree is considered a separate violation of the Code. Each day that landscaping or individual trees are not installed or maintained as required will be considered a continuing and separate violation.~~

- 1) Replacement of trees. ~~If any tree dies, such tree or plant shall be replaced with another tree. All stumps shall be removed below the surface of the ground. Trees may not be painted and shall be maintained in their natural state as to color. Any tree or plant that dies must be replaced with a new tree. Stumps must be removed below the surface of the ground. Trees may not be painted and must be maintained in their natural color. Tree removal must include the complete removal and fully grinding of the stump and associated root system possible.~~
- 2) Pruning Trees shall be pruned as follows:
 - a. All cuts must be clean, flush, and made at junctions, laterals, or crotches, as close as possible to the trunk or parent limb without cutting into the branch collar or leaving a stub.

- b. Dead wood, crossing branches, weak or insignificant branches, and suckers must be removed simultaneously with any crown reduction.
 - c. Removal of more than one-third ($\frac{1}{3}$) of the branches on one side of a tree is only permitted for hazard reduction or clearance pruning.
 - d. Lifting or thinning branches should distribute more than half of the tree's mass in the lower two-thirds ($\frac{2}{3}$) of the tree.
 - e. No more than one-third ($\frac{1}{3}$) of a tree's living canopy may be removed within a one-year period.
 - f. Trees must be pruned in accordance with the current ANSI A300 Standards.
- 3) ~~Grass areas. Except in periods of officially declared drought, grass areas shall be maintained by adequate irrigation so as to remain healthy and present a good appearance. Adequate pest control shall be applied to prevent the spread of cinch bugs or other grass-damaging pests. Grass areas shall be maintained so as to prevent excessive growth and unsightly conditions.~~ Except during officially declared drought periods, grass areas must be properly irrigated to ensure they remain healthy and visually appealing. Adequate pest control measures should be implemented to prevent the spread of cinch bugs and other pests that may damage the grass. Grass areas must be maintained to avoid excessive growth and unsightly conditions, and grass height must not exceed eight (8) inches on any property within the town.
- 4) *Vegetative materials.* Grass clippings, vegetative material, and debris must not be intentionally or accidentally swept or blown into stormwater drains, ditches, conveyances, water bodies, sidewalks, or roadways. Any material inadvertently deposited must be removed immediately and thoroughly.
- 5) *Irrigation.* All newly landscaped areas must be equipped with a fully automatic underground irrigation system that provides complete coverage to all landscaped areas, except for single-family and two-family homes. The irrigation system should be designed to supply only the necessary water to maintain healthy plant material. The use of a porous, pipe subsurface irrigation system, which requires low water volume and pressure, is encouraged in areas adjacent to roadways.
- a. Irrigation systems must not operate during periods of heavy rainfall and must comply with the standards and regulations established by the South Florida Water Management District. Controllers should be switched to manual mode during increased rainfall, and rain gauge sensors are required.
 - b. To promote water conservation and sound horticultural practices, sprinkler heads for lawns or other high-water-demand areas must be on separate zones and schedules from those used for trees, shrubs, or areas with lower water requirements.
 - c. Landscape irrigation systems should be designed to minimize water application to non-pervious areas wherever possible.
 - d. The use of non-potable water for irrigation is required when available.
 - e. Existing properties that receive three or more code violations related to landscaping within a twelve-month period, which are deemed by the town to be due, in whole or in part, to inadequate watering, must install an irrigation system.
 - f. Irrigation is only permitted between the hours of 10:00 p.m. and 5:00 a.m.

- 6) *Lawns*. Lawns shall be maintained so that edges are neatly trimmed, and so that grass runners or weeds will not grow over adjacent drives or curbs.
- 7) *Hedges*. ~~Hedges shall be maintained so as to have a solid appearance, with no gaps or spaces. Grass or other growths shall not be allowed to grow up into the hedge. All hedges shall be kept neatly trimmed.~~ Hedges must be maintained to ensure a solid, gap-free appearance. Grass or other vegetation must not encroach into the hedge. All hedges are required to be kept neatly trimmed at all times.
- 8) *Removal of root systems*: Removal of root systems which show evidence of destroying public or private property is required. The removal of the root systems or any root pruning must be done so as to not irreparably damage the tree or create a safety hazard.
- 9) *Protective Barrier*: During site development, trees designated for preservation must be enclosed with protective barriers placed at the drip line of each tree or cluster of trees, or at least six feet from the trunk, whichever distance is greater. Additionally, no excess soil, fill, equipment, building materials, or debris may be deposited within the areas enclosed by these protective barriers.
- 10) *Trees Damaged During Construction*: The developer must have any trees damaged by construction repaired by a professional arborist in a manner acceptable to the town.
 - a. *Immediate Notification*: The town manager or their designee must be notified immediately following any damage to trees caused by construction activities.
 - b. *Prompt Repair*: Necessary repairs must be made promptly after damage occurs to prevent further deterioration of the damaged trees.
 - c. *Removal and Replacement*: Trees deemed incapable of returning to a normal growth pattern by the town manager or their designee must be removed by the developer. These trees will be subject to replacement according to the provisions of this section.
 - d. *Equivalent Value Replacement*: Any tree designated for preservation that is damaged by development activities in violation of this section (excluding bonded trees within a dripline encroachment plan) and subsequently dies must be replaced according to the tree replacement or removal requirements herein. The equivalent value or replacement for the dead tree may be calculated using ABH (Average Breast Height) instead of DBH (Diameter at Breast Height) as defined in this section.
- 11) *Sight distance triangle*. Trees, shrubs, hedges, and bushes shall not be maintained or allowed to exist in such a way that the plant material interferes with the sight distance triangle relative to vehicles or interferes with the passage of any vehicles along the town's roadways.
- 12) *Containers*. No plant materials shall be maintained or allowed to exist in nondecorative containers (i.e. plastic nursery pots).
- 13) *Pest or nuisance trees/shrubs*. On properties where a construction permit is issued, any "pest" or "nuisance" trees/shrubs (such as melaleuca, Brazilian pepper, Australian pine) must be removed.
- 14) *Town rights-of-way; utility easements*. Trees, shrubs or hardscape located within the town's right-of-way or utility easements, regardless of when such items were installed,

shall be removed at the expense of the property owner upon the request or necessity of the town.

- 15) *Hurricane preparedness; restriction on placement of landscape debris.* Once an official "hurricane watch" is issued by the National Weather Service for an area which includes the town, no person shall place any yard waste including, but not limited to, vegetative clippings, trees, palm fronds, leaves, branches or any vegetative debris on any portion of public right-of-way or on private property, unless the property owner makes arrangement for a private hauler to pick-up such debris prior to the issuance of a "hurricane warning".
- 16) *Protection of electric power lines and overhead utilities.* Each person owning property within the town shall maintain and locate their landscaping so that at any point vegetative matter is no closer than five (5) feet from any energized electric transmission or electric service line.
 - a. All newly installed vegetation that is in proximity to an overhead utility line shall comply with the plant selection and distance restrictions stipulated in the Florida Power and Light (FPL) publication "Plant the Right Tree in the Right Place," current revision, upon the issuance of any construction permit. Examples of trees that can cause conflict when planted near overhead power lines are: Australian pine, melaleuca, Brazilian pepper, tree bamboo, Schefflera and Ficus trees.
 - b. Existing vegetation closer than five feet from energized electric transmission or electric service line shall be trimmed to comply with these provisions within 90 days from the passage of this subsection.
 - c. In the event that a property owner does not timely cause improperly installed vegetation to be trimmed or removed within seven days after having received a written notice from the town to do so, the town manager shall be authorized to arrange for town employees or contractors to perform such work. The town shall place a lien upon the property for the purpose of securing full reimbursement to the town for all costs incurred for said work and may record and enforce said lien to the fullest extent authorized by law.

Sec. 24-16.15. - Enforcement and penalties.

Failure to install or maintain landscaping in accordance with this chapter shall be deemed a violation of this Code.

- 1) Failure to plant, preserve, or maintain each individual tree shall be considered a separate violation. Each day that landscaping or individual trees are not installed or maintained as required shall be considered a continuing and separate violation.
 - a. Tree abuse is prohibited, and all trees must be pruned in accordance with the current ANSI A300 Standards. Actions such as hat-racking a tree, failing to install a tree protective barrier, or removing a tree without a permit are violations.
 - i. Penalty: A fine of \$500.00, in addition to replace the tree and/or palm.
 - ii. Enforcement: Code enforcement will issue a written notice of violation, granting a ten (10) day period to obtain the necessary permit and achieve compliance.

- b. Grass that exceeds 8 inches in height from the ground.
 - i. Code enforcement will issue a written notice of violation with a seven (7) day period to achieve compliance. If the grass is not cut by the 8th day, the town will arrange for the service at the property owner's expense. Costs incurred by the town for cutting and removing high grass, weeds, accumulated trash, and rubbish will be charged to the property.
 - 1. First violation: \$250.00
 - 2. Section violation: \$500.00
 - 3. Third or subsequent violation \$750.00
 - ii. All charges will include labor, equipment, and administrative costs and will have the same effect as a lien on the property.
 - c. Landscape materials, including but not limited to tree branches, palm fronds, dead or diseased plants, and grass clippings, shall not be discarded in public rights-of-way, except as specified in Sections 9-22, 9-23, and 9-24.
 - i. Code enforcement will issue a written notice of violation with a 24-hour period to achieve compliance. If the landscape materials are not removed, the town will arrange for the service at the property owner's expense.
 - 1. First violation: \$100, plus labor
 - 2. Section violation: \$300, plus labor
 - 3. Third or subsequent violation \$500, plus labor
 - ii. All charges will include labor, equipment, and administrative costs and will have the same effect as a lien on the property.
 - d. All other violation of this section, the code compliance officer shall issue a notice of violation, with fines in the amount of:
 - i. First violation: \$250.00
 - ii. Second violation: \$500.00
 - iii. Third or subsequent violation: \$1,000.00.
- 2) Funds generated by penalties imposed under this section shall be used by the Town for the administration, education and enforcement of the corresponding sections of Chapter 24, section 24-16, and to further water conservation, nonpoint pollution prevention activities, water quality improvements, and marine and coastal ecosystems enhancements that protect the town's water resources and Biscayne Bay.
- 3) All notices required by this shall be provided to the alleged violator by:
- a. Certified mail to the address listed in the tax collector's office for tax notices or to the address listed in the county property appraiser's database. The town may also provide an additional notice to any other address it may find for the property owner. For property owned by a corporation, notices may be provided by certified mail to the registered agent of the corporation. If any notice sent by certified mail is not signed as received within 30 days after the postmarked date of mailing, notice may be provided by posting as described in subparagraphs (3)(a)(i), (3)(a)(ii) and (3)(a)(iii); or

- i. Hand delivery by law enforcement officer, code compliance officer, or designated person from the town; or
 - ii. Leaving the notice at the violator's usual place of residence with any person residing therein who is above 16 years of age and informing such person of the contents of the notice; or
 - iii. In the case of commercial premises, leaving the notice with the manager or other person in charge.
- b. The notice shall be in substantially the following form:

Courtesy Notice

Date: _____

File Number: _____

Property Address: _____

After a recent inspection of your property, we have observed a code violation(s) and we are asking you to please correct them on or before the [date]. If you have any questions, please contact our office at 305-993-1786. Office hours are Monday thru Friday from 8:00 a.m. to 3:30 p.m. Failure to address this Notice will result in the issuance of a Notice of Violation. Notice of Violations not corrected within the time allotted will result in fines accruing daily.

The following code violations were observed:

Received a complaint regarding hedges growing over the swale.

Code: [Provide the Section]

Violation: [Briefly describe the violation.]

Correction Action: [Specify required action, e.g., grass is cut to the appropriate height, landscape materials are properly disposed of, etc.]

Please be aware that a building permit may be required for some of the repairs noted above. Contact the Building Department (305) 993-1786 to inquire. Doing work without a permit is also a violation punishable by the Town Code.

Thank you in advance for your cooperation.

Sec.24-16.16. - Property Liens and Remediation Procedures.

The town shall hold a lien on the property for the amount due until it is paid, which will take priority over all other liens except taxes. If the lien remains unpaid for ninety (90) days, it may be foreclosed in the same manner as mortgage foreclosures.

1. Remediation of Violations

- a. If a property owner fails to remedy conditions in violation of this article within five (5) days of receiving notice, the Town shall proceed to correct such conditions through contracts, direct labor, or both.
 - b. The costs incurred shall constitute a lien against the property thirty (30) days after the notice of completion is issued, with the same rights and penalties as special assessment liens.
 - c. The total costs charged to the property owner shall not exceed the amount specified in the initial notice.
2. Payment of Liens. Liens for costs associated with clearing lots, parcels, or tracts of land found in violation of this article, along with any administrative fees, shall be due and payable thirty (30) days after the publication of the notice of completion. In instances where a petition is filed within this period, as provided in Section 34-60, and the Commission adjusts the lien amount, the revised lien shall become due thirty (30) days following the Commission's decision. Unpaid liens will be deemed delinquent after the due date and shall accrue interest at the rate of six percent (6%) per annum until they are sold at the next annual lien sale of the Town.
3. Preliminary Lien Log. Upon determining that specific properties are in violation of this article, the Finance Director shall maintain a preliminary lien log, which shall be open to public inspection. This log shall include the legal description of the property, estimated costs, and the date of notice.
4. Final Lien Log and Compliance.
 - a. After receiving a completion report, the Finance Director shall maintain a final lien log that includes:
 - i. The legal description of the property;
 - ii. The name and address of the owner as recorded in county tax rolls;
 - iii. The date the work was completed;
 - iv. The actual costs incurred for remediation, including any administrative charges;
 - v. Payment status and any other relevant information.
 - b. If the property owner complies with the terms of this article, the lien shall be voided.
5. Statement of Costs and Public Notification. Upon completion of work performed by the Town, the City Manager shall execute and file a statement of costs and completion with the City Clerk. The City Clerk shall then publish a notice detailing the property description, the amount of work costs, the date of completion, and the fact that these costs constitute a lien against the property.

AGENDA ITEM REPORT

October 14, 2024

ITEM NUMBER: 10.

ITEM: Consideration of a request from 9955 Bay Harbor Development, LLC, the owner of the lots located at 9927 – 9955 East Bay Harbor Drive, to modify Resolution No. 2162 to reflect a transaction for one (1) TDR unit instead of the three (3) that were previously approved. Enclosed are the supporting documents.

DESCRIPTION:

Matt Amster, with Bercow Radell Fernandez Larkin & Tapanes, filed an application on behalf of 9955 Bay Harbor Development, LLC, the property owner of the lots located at located at 9927 – 9955 East Bay Harbor Drive, to modify Resolution No. 2162 to reflect a transaction for one (1) TDR unit instead of the three (3) previously approved.

The Planning & Zoning Board approved a Site Development application on March 20, 2018, for development of a 35-dwelling unit building at 9927 - 9955 East Bay Harbor Drive, with the acquisition of 9 TDR units to construct the project. The Town Council approved 3 TDR applications to acquire the 9 TDR units, all from private property owners (Resolutions 2160 for 2 TDRs, 2161 for 4 TDRs, and 2162 for 3 TDRs). The real estate closing occurred for the 2 TDR and 4 TDR transactions; the real estate closing for the 3 TDR transaction from 10301 East Bay Harbor Drive did not occur.

The property at 9927 - 9955 East Bay Harbor Drive was sold to 9955 Bay Harbor Development, LLC, the same property owner of the 10301 East Bay Harbor Drive site, which is currently being used as a sales center. The new owners retained Kobi Karp Architecture & Interior Design, Inc. to upgrade the project, which resulted in a decrease of the number of units from 35 to 33. The Design Review Board approved the redesign on December 6, 2022.

On November 1, 2016, the Planning & Zoning Board approved a site plan for development of a 10-unit mid-rise development at 10301 East Bay Harbor Drive (receiving site). When the property was sold in 2018, the new owners retained Kobi Karp Architecture & Interior Design, Inc. to upgrade the project, which resulted in a new design with only seven (7) dwelling units. The owners submitted an application to transfer the three (3) TDRs to the 9927-9955 East Bay Harbor Drive site, which was approved by the Town Council on September 17, 2018. A revised Site Development Plan application was approved by the Design Review Board on May 2, 2023, for a nine-dwelling unit building, which requires 2 TDRs.

Since the Town Council approved the 3 TDR transaction in 2018, this request is limited to a revision to allow the transfer of 2 TDRs back to the 10301 East Bay Harbor Island site to allow the 9-dwelling unit project to proceed, while maintaining 1 TDR at the 9927-9955 East Bay Harbor Island site for the 33-unit development project.

RECOMMENDED ACTION:

Council's Discretion

FINANCIAL ANALYSIS:

There is no budget impact.

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk

ATTACHMENTS

1.	BHI 9955 EBHD TDR Rev 2024 TC Staff Report Oct 2 2024
2.	LOI Modification of TDR Approval for 9955 EBHD 9.26.2024 (002)
3.	TDR Application Executed 09 25 2024
4.	Special Warranty Deed ORB 33165 Page 2059_ 10301 E Bay Harbor Drive
5.	PSA Executed 09 25 2024
6.	9927-9955 EBH Survey
7.	10301 EBH Survey
8.	2162 - TDR Congress Group - from 10301 EBHD

Fax

To:	Yvonne P. Hamilton, CMC - Town Clerk	From:	Michael J. Miller, AICP 
	Town of Bay Harbor Islands		Consultant Town Planner
Fax:	305-866-4863	Pages:	2 (Including Cover Page)
Phone:	305-866-6241	Date:	10/2/2024
Re:	Transfer of Development Rights (TDR)	CC:	Jenice Rosado – Town Manager
	Revision to 2018 Town Council Approval		Mike Mesa – Asst. TM / Bldg. Official
	9927-9955 E. Bay Harbor Dr. (33 DU)		Joseph. S. Geller, Esq. – Town Attorney

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **As Requested**

TDR Request – 3 Private DU (Keep 1 TDR at 9955 EBHD & Return 2 TDRs to 10301 EBHD)

Donor Site: 10301 E. Bay Harbor Drive / Lot 1 of Block 4 (Future 9 DU MFR Project)

Receiving Site: 9955 E. Bay Harbor Drive / Lots 19-21 of Block 4 (Future 33 MFR Project)

In response to the Town's request for our firm's analysis of the lands proposed to be involved with the above referenced TDR application requesting approval of revisions to the transfer of three (3) private TDR units, following is our analysis.

Our records indicate the **Receiving Site** (9927-9955 EBHD) was originally granted Site Development Plan approval by the PZ Board on March 20th, 2018, for a total of 35 DU. The survey submitted for that site showed that the site was slightly larger than usual as it is a curved pie-shaped lot. The combined parcel size is 33,748 sq. ft. / .77 acres. Therefore, the allowable base zoning density of 34 DUA would allow for 26 DU on the receiving site (.77 acres X 34 DUA = 26.18 or 26 DU). Since that proposed project included 35 total dwelling units, the acquisition of nine (9) TDR units was required to construct the project. The former developer (Congress) filed a total of three (3) TDR applications to acquire the nine (9) TDR units – all from private property owners. The Town Council approved all 3 TDR applications on Sept. 17th, 2018 (Res. No. 2160 = 2 TDRs / Res. No. 2161 = 4 TDRs / Res. No. 2162 = 3 TDRs). Subsequently, real estate closings occurred for only the 2 TDR & 4 TDR transactions. The real estate closing for the 3 TDR transaction from 10301 EBHD never occurred. The subject site (9927-9955 EBHD) was sold to the current owner (9955 Bay Harbor Development, LLC). The same property owner also owns the 10301 EBHD site, which is currently being used as a sales center. The new owners retained a new architect (Kobi Karp) and desired to "upgrade" the project, which resulted in a decrease of the number of DU (33).

The Design Review Board (DRB) approved their redesign on December 6th, 2022. The developer is currently processing final Building Permits for that site and development is imminent.

The **Donor Site** (10301 EBHD) is 12,991 sq. ft. (0.30 acres) in size, an irregular pie-shaped lot. Therefore, the allowable base zoning density of 34 DUA would allow for 10 DU (.30 acres X 34 DUA = 10.20 or 10 DU). The site was originally approved by the PZ Board in the fall of 2016 to be developed as a 10-unit multifamily complex. As with the 9927-9955 EBHD site, when the property was sold in 2018, the new owners retained a new architect (Kobi Karp) and desired to "upgrade" the project. This resulted in a new site design with only 7 DU. Since the site has development rights for 10 DU the owners (same) submitted an application to transfer 3 TDRs to the 9927-9955 EBHD site. As stated above the Town Council approved this on September 17th, 2018. Since the same landowner controls both sites and the subject site has been used as a temporary sales center (ONDA / now others), development did not proceed. The new developer filed a revised Site Development Plan application in 2023 for a 9 DU multifamily complex on the site. Therefore, they need 2 TDRs to build the current 9 DU project (7 DU + 2 TDRs = 9 DU). The Town's Design Review Board (DRB) approved the revised Site Development Plan for 9 DU on May 2nd, 2023. Since the Town Council approved the 3 TDR transaction in 2018, this request is limited to a revision to allow the transfer of 2 TDRs back to the 10301 EBHD site to allow the 9 DU project to proceed, while maintaining 1 TDR at the 9927-9955 EBHD site to allow the 33 DU project to proceed (26 base DU + 6 previous TDRs + 1 TDR = 33 total DU).

Our office was not requested to perform any inspections of the donor or receiving sites to determine if the sites comply with Town Codes or has any Code violations. We assume other Town staff members will perform those tasks in conformance with the Town TDR Code requirements.

Summary – This application is essentially a paper transfer modification between two (2) sites owned by the same developer. Due to previous Town approvals, changes in land ownership, and changes to the project designs, the available 3 total TDRs will be split with 1 TDR remaining assigned to the 9927-9955 EBHD site (33 DU) and 2 TDRs being returned to the 10301 EBHD site to allow the 9 DU project.



200 S. Biscayne Boulevard
Suite 300, Miami, FL 33131

www.brzoninglaw.com

305.377.6236 office
305.377.6222 fax
mamster@brzoninglaw.com

VIA ELECTRONIC MAIL & HAND DELIVERY

September 26, 2024

Jenice Rosado, Town Manager
Town of Bay Harbor Islands
1030 95th Street, Trailer 5
Bay Harbor Islands, Florida 33154

Re: Modification of Approved Transaction for 3 Private TDR Units
from 10301 East Bay Harbor Drive to 9927 – 9955 East Bay
Harbor Drive, Bay Harbor Islands, Florida

Dear Ms. Rosado:

This law firm represents 9955 Bay Harbor Development, LLC (the "Current Owner"), the owner of the lots located at 9927 – 9955 East Bay Harbor Drive (collectively, the "Property" and a.k.a. "Receiver Site") in the Town of Bay Harbor Islands (the "Town"). The Current Owner seeks to modify Resolution No. 2162, in which the Town Council approved a transaction for three (3) transfer of development rights ("TDRs") from 10301 East Bay Harbor Drive (the "Donor Site") to the Receiver Site. The purpose is to reflect the changed needs for TDRs on both Receiver and Donor Sites.

Property. The Property, shown in Figure 1, is a vacant, waterfront site, located northeast of the intersection of 99 Street and East Bay Harbor Drive, that overlooks Indian Creek toward Bal Harbor. It is further identified by Miami-Dade County Property Appraiser Folio Nos. 13-2227-001-0970 and 13-2227-001-0960 and consists of three (3) platted lots: Lots 19, 20, and 21 of Block 4 of the Bay Harbor Island Plat as recorded in Plat Book 46, Page 5 of the Public Records of Miami-Dade County. The Property is approximately 33,852 square feet (0.777 acres) in size and is in the Multiple Family Residential ("RM-1") Zoning District.



Figure 1

The Project Background. On March 20, 2018, the Planning and Zoning Board (PZB) approved the site plan submitted by Congress Driftwood, LLC (the "Former Owner"), the former owner of the Property, for a multifamily residential project entitled "Driftwood" (the "Former Project"). Designed by Stantec Architecture, the Former Project was a 7-story multifamily residential building with ground level parking garage. The Former Project was approved for thirty-five (35) units and needed 9 TDRs, which the Former Owner obtained through private transactions approved by the Town Council as further described below. However, the Former Owner did not go forward with that and instead sold the Property to the Current Owner, who then sought a new approval for a differently designed development. On December 6, 2022, the Design Review Board ("DRB" and formerly known as the PZB) approved a thirty-three (33) unit multifamily residential project with ground level parking designed by Kobi Karp Architecture (the "Current Project"). The reduced density means the Current Project only requires 7 TDRs.

TDRs. At base density, the Property size provides for twenty-six (26) dwelling units, which means the Current Project requires seven (7) TDR units, rather the nine (9) previously required. Before selling the Property to the Current Owner, the Former Owner obtained nine (9) TDR units through three (3) private agreements that were approved by the Town Council on September 17, 2018.

First, the Town Council approved a private transaction between BH 101, LLC and the Former Owner for two (2) TDRs from a property located at 1155 101 Street. See Composite Exhibit A, Resolution No. 2160 and Quit Claim Deed.

Second, the Town Council approved a private transaction between Congress BHE, LLC and the Former Owner for four (4) TDRs from a property located at 9781 East Bay Harbor Drive ("9781 EBHD"). See Exhibit B, Resolution No. 2161.¹

Finally, the Town Council approved a private transaction between Congress BHN, LLC and the Former Owner for three (3) TDRs from a property located at 10301 East Bay Harbor Drive ("10301 EBHD"). See Exhibit E, Resolution No. 2162. The Former Owner did not proceed with the development, so no warranty deed was recorded following the Town's approval.

Modification Request. Since the Current Project now requires only seven (7) rather than nine (9) TDR units, the Current Owner respectfully requests a modification of Resolution No. 2162 to reflect a transaction for one (1) TDR unit instead of three (3).

For a summary of the TDR history and requested modification, please see Table 1 below.

Town Council Approvals	TDRs obtained for the Former Project (total 35 units)	TDRs needed for the Current Project (total 33 units)
Resolution No. 2160 – 2 TDRs from 1155 101 Street	2	2
Resolution No. 2161 – 4 TDRs from 9781 EBHD	4	4
Resolution No. 2162 – 3 TDRs from 10301 EBHD to be modified to 1 TDR	3	1
Total	9	7

Table 1

¹ The size of 9781 EBHD allows for nine (9) dwelling units, and a previous owner of 9781 EBHD obtained approval of a project with thirteen (13) units, which required four (4) TDRs. On August 11, 2014, the Town Council approved a private transaction for four (4) TDRs from 9350 Condominium Association, Inc. See Composite Exhibit C, Resolution No. 2021 and Warranty Deed. On September 20, 2016, Congress BHE, LLC, the then owner of 9781 EBHD obtained approval of a new 9-unit multifamily development that did not require any TDRs, thus freeing up the four (4) TDRs. See Exhibit D, Resolution No. 2102, attached. As such, Congress BHE, LLC granted its four (4) extra TDRs to the Former Owner in a private transaction approved by the Town Council via Resolution No. 2161.

Another reason for the modification is that the two (2) TDRs that are not needed for the Current Project are needed for development on 10301 EBHD. The size of 10301 EBHD allows for ten (10) dwelling units and on May 2, 2023, the DRB approved a 9-unit multifamily residential project for the owner, 10301 Bay Harbor Development LLC. This means 10301 EBHD only has 1 TDR to transfer to the Current Owner to still be able to develop that project on 10301 EBHD. Notably, the Current Owner and the owner of 10301 EBHD are sister entities of the same ultimate owner, so there is complete cooperation between the parties on this request. Further, the prior development on 10301 EBHD has been demolished for many years and the only improvement at this time is a temporary sales center. That sales center will be removed when 10301 Bay Harbor Development LLC begins construction on that property.

Conclusion. Since the Current Project at 9955 EBHD only requires one (1) TDR and the other two (2) TDRs are needed for 10301 EBHD, the Owner respectfully requests a modification to Resolution No. 2162 to reflect a transaction for one (1) TDR rather than three (3). This will result in a fair and efficient allocation of development rights. We look forward to your favorable recommendation and the Town Council's approval of this application. Should you have any questions, comments, or require additional information, please contact me at (305) 377-6236.

Very truly yours,



Matthew Amster

Attachments

cc: Michael Yanopoulos, Esq.

COMPOSITE EXHIBIT "A"

RESOLUTION NO. 2160

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AUTHORIZING THE TRANSFER OF TWO (2) DEVELOPMENT RIGHTS TO CONGRESS DRIFTWOOD, LLC FOR ITS PROPERTY LOCATED AT 9927-9955 EAST BAY HARBOR DRIVE, BAY HARBOR ISLANDS, FLORIDA (RECEIVING SITE) FROM BH 101, LLC FOR ITS PROPERTY LOCATED AT 1155 101 STREET, BAY HARBOR ISLANDS, FLORIDA (DONOR SITE), REQUIRING THE MEMORIALIZATION OF THE TRANSFER OF TRANSFER OF DEVELOPMENT RIGHTS VIA A RECORDED WARRANTY DEED, AND AUTHORIZING THE TOWN MANAGER TO MAKE THE APPROPRIATE NOTATIONS IN THE PUBLIC RECORDS AS TO THE DONOR SITE AND RECEIVING SITE.

WHEREAS, pursuant to the Town's Code of Ordinances (Ordinance No. 769 and Section 23-22.2), the Town has established a system of Transfer of Development Rights (TDRs); and

WHEREAS, on March 20, 2018, Congress Driftwood, LLC received authorization from the Planning and Zoning Board to develop a thirty-five (35) unit condominium building on Lots 19, 20, and 21, Block 4, Plat Book 46, Page 5, located at 9927-9955 East Bay Harbor Drive, Bay Harbor Islands, Florida, ("Project") pending approval of the Transfer of Development Rights ("TDR") of nine (9) TDR units; and

WHEREAS, an application for Transfer of Development Rights was filed by Congress Driftwood, LLC ("Applicant") for its property located at 9927-9955 East Bay Harbor Drive, Bay Harbor Islands, Florida ("Receiving Site") from BH 101, LLC ("Donor") for its property located at 1155 101 Street, Bay Harbor Islands, Florida ("Donor Site")(the "Application"); and

WHEREAS, the Town conducted a public meeting in accordance with law on September 17, 2018, and approved the transfer of Two (2) TDR dwelling units from the Donor Site to the Receiving Site for the Project.

NOW THEREFORE, be it resolved that:

1. The Application for a transfer of Two (2) TDR dwelling unit from the Donor Site to the Receiving Site for the Project is hereby authorized and approved.
2. The Town Council hereby authorizes the Town Manager and the Town Planner to make the appropriate notations in the Public Record memorializing the Transfer of Development Rights from the Donor Site to the Receiving Site.
3. The Applicant and Donor shall record a warranty deed in the Miami-Dade public records memorializing the transfer of Two (2) TDR dwelling unit from the Donor Site to the Receiving Site.

4. This Resolution shall become effective immediately upon its adoption.

PASSED this 17th day of September, 2018.

TOWN OF BAY HARBOR ISLANDS

By: 
STEPHANIE BRUDER,
MAYOR

ATTEST:


MARLENE M. SIEGEL,
TOWN CLERK

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**


FRANK C. SIMONE, ESQ., CFP®,
ASSISTANT TOWN ATTORNEY

RECORD AND RETURN TO:

Name: KIM M. RUBIN, Esquire
Address: 55 Lynn Road
Needham, MA 02494

THIS INSTRUMENT PREPARED BY:

Name: GARY A. KORN, Esquire
LEOPOLD KORN, P.A.
Address: 20801 Biscayne Blvd., #501
Aventura, Florida 33180



CFN 20190068952
DR BK 31312 Pg 4855 (1Pgs)
RECORDED 02/04/2019 15:18:49
DEED DOC TAX \$0.60
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

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SPECIAL WARRANTY DEED FOR TWO (2) TRANSFERABLE DEVELOPMENT RIGHTS

THIS INSTRUMENT is executed this 28th day of January, 2019 by **BH 101 LLC**, a Florida limited liability company (hereinafter referred to as "Grantor") in favor of **CONGRESS DRIFTWOOD LLC**, a Delaware limited liability company, whose post office address is c/o The Congress Group, 33 Arch Street, Suite 1100, Boston, Massachusetts 02110 (hereinafter referred to as "Grantee"):

WITNESSETH: That the Grantor, for and in consideration of the sum of \$10.00 and other good and valuable considerations, in hand paid by the Grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the Grantee, its successors and assigns forever:

Two (2) transferable development rights (the "Development Rights") appurtenant to the following described parcel of real property (the "Donor Parcel"):

Lots 13 and 14, Block 6, **BAY HARBOR ISLANDS**, according to the Plat thereof, as recorded in Plat Book 46, at Page 5 of the Public Records of Miami-Dade County, Florida

for utilization by Grantee as an appurtenance to the following described parcel of real property (the "Receiving Property") in accordance with the provisions of Section 23.22.2 of the Town of Bay Harbor Islands Code of Ordinances (the "Town Code"), as approved through Resolution No. 2160:

Lots 19, 20 and 21, Block 4, **BAY HARBOR ISLAND**, according to the Plat thereof, as recorded in Plat Book 46, at Page 5 of the Public Records of Miami-Dade County, Florida.

AND Grantor does hereby fully warrant the title to the Development Rights and will defend the same against the lawful claims of all persons whomsoever claiming by, through or under Grantor. Grantor further represents and warrants that the Development Rights have not been previously used, demised or sold and agrees that the Development Rights are hereby severed from the Donor Parcel.

This instrument is for a transfer of Development Rights to the Receiving Property and does not transfer any interests in real property. Accordingly, pursuant to TAA No. 03B4-007 (July 14, 2003), no documentary stamp tax is due in connection herewith.

IN WITNESS WHEREOF, Grantor has executed this instrument as of the day and year first above written.

WITNESSES:

Anet Rosenthal
Print Name: Anet Rosenthal

[Signature]
Print Name: _____

BH 101 LLC, a Florida limited liability company

By: [Signature]
KIMBERLY HILL, Manager

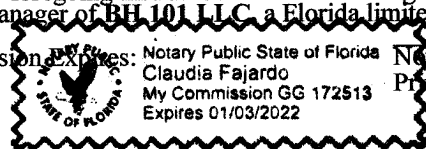
Address: 3930 Max Place
Boynton Beach, Florida 33496

STATE OF FLORIDA }
COUNTY OF PALM BEACH } SS:

The foregoing instrument was acknowledged before me this 28th day of January, 2019 by **KIMBERLY HILL**, as Manager of **BH 101 LLC**, a Florida limited liability company, who is personally known to me.

My Commission Expires: Notary Public State of Florida
Claudia Fajardo
My Commission GG 172513
Expires 01/03/2022

Notary Public, State of Florida
Print Name: Claudia Fajardo



LEOPOLD KORN, P.A.
20801 Biscayne Boulevard, Suite 501, Aventura, FL 33180 Telephone: 305-935-3500

I:\WORK\CONDO\101 BAY HARBOR\TDRS\SALE\SPECIAL WARRANTY DEED-A.DOCX

RECORD AND RETURN TO:

Name: KIM M. RUBIN, Esquire
Address: 55 Lynn Road
Needham, MA 02494

THIS INSTRUMENT PREPARED BY:

Name: GARY A. KORN, Esquire
LEOPOLD KORN, P.A.
Address: 20801 Biscayne Blvd., #501
Aventura, Florida 33180



GFN 2019R0068953
RECORDED 02/04/2019 15:18:49
DEED DOC TAX \$0.60
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

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QUIT CLAIM DEED FOR TWO (2) TRANSFERABLE DEVELOPMENT RIGHTS

THIS INSTRUMENT is executed this 28th day of January, 2019 by **101 BAY HARBOR TOWNHOUSE CONDOMINIUM ASSOCIATION, INC.**, a not-for-profit Florida corporation (hereinafter referred to as the "Party of the First Part") in favor of **CONGRESS DRIFTWOOD LLC**, a Delaware limited liability company, whose post office address is c/o The Congress Group, 33 Arch Street, Suite 1100, Boston, Massachusetts 02110 (hereinafter referred to as the "Party of the Second Part").

WITNESSETH: That the Party of the First Part, for and in consideration of the sum of \$10.00 and other good and valuable considerations, in hand paid by the Party of the Second Part, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the Party of the Second Part, its successors and assigns forever:

Two (2) transferable development rights (the "Development Rights") appurtenant to the following described parcel of real property (the "Donor Parcel"):

Lots 13 and 14, Block 6, **BAY HARBOR ISLANDS**, according to the Plat thereof, as recorded in Plat Book 46, at Page 5 of the Public Records of Miami-Dade County, Florida

for utilization by the Party of the Second Part as an appurtenance to the following described parcel of real property (the "Receiving Property") in accordance with the provisions of Section 23.22.2 of the Town of Bay Harbor Islands Code of Ordinances (the "Town Code"), as approved through Resolution No. 2160:

Lots 19, 20 and 21, Block 4, **BAY HARBOR ISLAND**, according to the Plat thereof, as recorded in Plat Book 46, at Page 5 of the Public Records of Miami-Dade County, Florida.

This instrument is for a transfer of Development Rights to the Receiving Property and does not transfer any interests in real property. Accordingly, pursuant to TAA No. 03B4-007 (July 14, 2003), no documentary stamp tax is due in connection herewith.

IN WITNESS WHEREOF, the Party of the First Part has executed this instrument as of the day and year first above written.

WITNESSES:

Print Name: Janet Rosenthal

Print Name: Jeffrey Korn

101 BAY HARBOR TOWNHOUSE CONDOMINIUM ASSOCIATION, INC., a not-for-profit Florida corporation

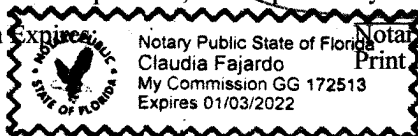
By:
KIMBERLY HILL, President

Address: 3930 Max Place
Boynton Beach, Florida 33496

STATE OF FLORIDA }
COUNTY OF PALM BEACH } SS:

The foregoing instrument was acknowledged before me this 28th day of January, 2019 by **KIMBERLY HILL**, as President of **101 BAY HARBOR TOWNHOUSE CONDOMINIUM ASSOCIATION, INC.**, a not-for-profit Florida corporation, who is personally known to me.

My Commission Expires:



Notary Public, State of Florida
Print Name: Claudia Fajardo

LEOPOLD KORN, P.A.
20801 Biscayne Boulevard, Suite 501, Aventura, FL 33180 Telephone: 305-935-3500

I:\WORK\CONDO\101 BAY HARBOR\TDRS\SALE\QUITCLAIMDEED-A.DOCX

EXHIBIT "B"

RESOLUTION NO. 2161

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AUTHORIZING THE TRANSFER OF FOUR (4) DEVELOPMENT RIGHTS TO CONGRESS DRIFTWOOD, LLC FOR ITS PROPERTY LOCATED AT 9927-9955 EAST BAY HARBOR DRIVE, BAY HARBOR ISLANDS, FLORIDA (RECEIVING SITE) FROM CONGRESS BHE, LLC FOR ITS PROPERTY LOCATED AT 9781 EAST BAY HARBOR DRIVE, BAY HARBOR ISLANDS, FLORIDA (DONOR SITE), REQUIRING THE MEMORIALIZATION OF THE TRANSFER OF TRANSFER OF DEVELOPMENT RIGHTS VIA A RECORDED WARRANTY DEED, AND AUTHORIZING THE TOWN MANAGER TO MAKE THE APPROPRIATE NOTATIONS IN THE PUBLIC RECORDS AS TO THE DONOR SITE AND RECEIVING SITE.

WHEREAS, pursuant to the Town's Code of Ordinances (Ordinance No. 769 and Section 23-22.2), the Town has established a system of Transfer of Development Rights (TDRs); and

WHEREAS, on March 20, 2018, Congress Driftwood, LLC received authorization from the Planning and Zoning Board to develop a thirty-five (35) unit condominium building on Lots 19, 20, and 21, Block 4, Plat Book 46, Page 5, located at 9927-9955 East Bay Harbor Drive, Bay Harbor Islands, Florida, ("Project") pending approval of the Transfer of Development Rights ("TDR") of nine (9) TDR units; and

WHEREAS, an application for Transfer of Development Rights was filed by Congress Driftwood, LLC ("Applicant") for its property located at 9927-9955 East Bay Harbor Drive, Bay Harbor Islands, Florida ("Receiving Site") from Congress BHE, LLC ("Donor") for its property located at 9781 East Bay Harbor Drive, Bay Harbor Islands, Florida ("Donor Site")(the "Application"); and

WHEREAS, the Town conducted a public meeting in accordance with law on September 17, 2018, and approved the transfer of Four (4) TDR dwelling units from the Donor Site to the Receiving Site for the Project.

NOW THEREFORE, be it resolved that:

1. The Application for a transfer of Four (4) TDR dwelling unit from the Donor Site to the Receiving Site for the Project is hereby authorized and approved.
2. The Town Council hereby authorizes the Town Manager and the Town Planner to make the appropriate notations in the Public Record memorializing the Transfer of Development Rights from the Donor Site to the Receiving Site.
3. The Applicant and Donor shall record a warranty deed in the Miami-Dade public records memorializing the transfer of Four (4) TDR dwelling unit from the Donor Site to the Receiving Site.

4. This Resolution shall become effective immediately upon its adoption.

PASSED this 17th day of September, 2018.

TOWN OF BAY HARBOR ISLANDS

By: 
STEPHANIE BRUDER,
MAYOR

ATTEST:


MARLENE M. SIEGEL,
TOWN CLERK

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**


FRANK C. SIMONE, ESQ., CFP®,
ASSISTANT TOWN ATTORNEY

COMPOSITE EXHIBIT "C"

RESOLUTION NO. 2021

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AUTHORIZING THE TRANSFER OF DEVELOPMENT RIGHTS TO BEAU RIVAGE, LLC FOR ITS PROPERTY LOCATED AT 9781 EAST BAY HARBOR DRIVE, BAY HARBOR ISLANDS, FLORIDA (RECEIVING SITE) FROM 9350 CONDOMINIUM ASSOCIATION, INC. FOR ITS PROPERTY LOCATED AT 9350 WEST BAY HARBOR DRIVE, BAY HARBOR ISLANDS, FLORIDA (DONOR SITE), REQUIRING THE MEMORIALIZATION OF THE TRANSFER OF TRANSFER OF DEVELOPMENT RIGHTS VIA A RECORDED WARRANTY DEED, AND AUTHORIZING THE TOWN MANAGER TO MAKE THE APPROPRIATE NOTATIONS IN THE PUBLIC RECORDS AS TO THE DONOR SITE AND RECEIVING SITE.

WHEREAS, pursuant to the Town's Code of Ordinances (Ordinance No. 769 and Section 23-22.2), the Town established a system of Transfer of Development Rights; and

WHEREAS, on June 3, 2014, the Applicant received authorization from the Planning and Zoning Board to develop a thirteen (13) unit condominium building on Lot 28, Block 4, Plat Book 46, Page 5, located at 9781 East Bay Harbor Drive, Bay Harbor Islands, Florida, ("Beau Rivage Condominium Project") pending approval of the Transfer of Development Rights of four (4) TDR units; and

WHEREAS, an Application for the Transfer of Development Rights ("TDRs") was filed by Beau Rivage, LLC ("Applicant") for its property located at 9781 East Bay Harbor Drive, Bay Harbor Islands, Florida ("Receiving Site") from 9350 Condominium Association, Inc. ("Donor") for its property located at 9350 West Bay Harbor Drive, Bay Harbor Islands, Florida ("Donor Site"); and

WHEREAS, the Town conducted a public meeting in accordance with law on August 11, 2014 and approved the transfer of four (4) dwelling units from the Donor Site to the Receiving Site.

NOW THEREFORE, be it resolved that:

1. The Application for a transfer of four (4) dwelling units from the Donor Site to the Receiving Site for the Beau Rivage Condominium Project is hereby authorized and approved.
2. The Town Council hereby authorizes the Town Manager and the Town Planner to make the appropriate notations in the Public Record memorializing the Transfer of Development Rights from the Donor Site to the Receiving Site.

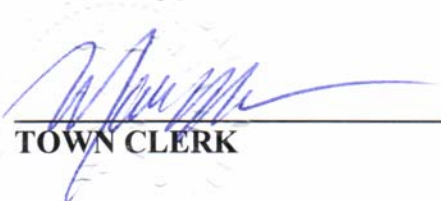
3. The Applicant and Donor shall record a warranty deed in the Miami-Dade public records memorializing the transfer of four (4) dwelling units from the Donor Site to the Receiving Site.
4. This Resolution shall become effective immediately upon its adoption.

PASSED and ADOPTED this 11th day of August, 2014.

TOWN OF BAY HARBOR ISLANDS

BY:  _____
MAYOR

ATTEST:



TOWN CLERK

This instrument was prepared by:

Name: Richard I. Kroop, Esq.

Address: 800 West Ave., #C-1

Miami Beach, Florida 33139

Folio Nos: _____



CFN 2014R0564926
OR Bk 29267 Pgs 3883 - 3884; (2pgs)
RECORDED 08/12/2014 13:25:49
DEED DOC TAX 0.60
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

WARRANTY DEED
FOR TRANSFER OF DEVELOPMENT RIGHTS
AND DECLARATION OF RESTRICTIONS

THIS INDENTURE, Made this 24 day of July, 2014, BETWEEN

9350 CONDOMINIUM ASSOCIATION, INC.

Grantor

whose post office address is

9350 W. Bay Harbor Drive, Bay Harbor Islands, FL 33154

and

BEAU RIVAGE, LLC, a Florida limited liability company

Grantee

whose post office address is

9781 East Bay Harbor Drive, Bay Harbor Islands, FL 33154

WITNESSETH, That said grantor, for and in consideration of the sum of
TEN AND 00/00 ----- (\$10.00) ----- Dollars,
and other good and valuable considerations to said grantor in hand paid by said
grantee, the receipt whereof is hereby acknowledged, has granted bargained and sold
to the said grantee forever, FOUR UNITS OF DEVELOPMENT RIGHTS (the "Development
Rights") as set forth in the Town of Bay Harbor Island Zoning and Planning Code (the
"Town Code"), Section 23.22.2, from the following described property (the "Donor
Parcel") , situate, lying and being in Miami-Dade County, Florida, to-wit:

Said Donor Parcel being known as Lots 11, 12 & 13 in Block 2 of BAY HARBOR
ISLANDS, according to the Plat thereof recorded in Plat Book 46, at
Page 5 of the Public Records of Miami-Dade County, Florida

A/K/A Unit Nos, 2A, 2B, 2C, 3A, 3B, 3C, 4A, 4B, 4C, 5A, 5B, 5C, 6A, 6B, 6C,
PH A, PH B and PH C of 9350 CONDOMINIUM OF BAY HARBOR, a Condominium
according to the Declaration thereof, as recorded in Official Records
Book 10862, at Page 240, of the Public Records of Miami-Dade County,
Florida, as amended from time to time, together with an undivided interest
in the common elements appurtenant thereto.

AND THE GRANTOR DOES HEREBY FULLY WARRANT the title to said Development Rights
and will defend the same against the lawful claims of all persons, whosoever, and
the Grantor hereby represents that the transfer of Development Rights to the Grantee
herein has been approved by the Town of Bay harbor Islands in accordance with the
requirement of the Town Code, avers that the Development Rights have not been
previously used, demised or sold, and agrees that the Development Rights are hereby
severed and extinguished from the Donor Parcel.

SAVING AND RESERVING TO THE GRANTOR all other rights to develop the Donor
Parcel in accordance with the Town Code, except for the Development Rights that are
hereby transferred to the Grantee.

The Development Rights transferred t the Grantee by this instrument are and
shall be appurtenant to the following described land now owned by the Grantee (the
"Receiving Parcel") unless and until such Development Rights are subsequently
transferred in accordance with the provisions of the Town Code:

Lot 28 of Block 4, "Bay Harbor Islands" Subdivision, according
to the Plat thereof, as recorded in Plat Book 46, at Page 5, of the
Public Records of Miami-Dade County, Florida

The use of the Donor Parcel and the receiving Parcel is hereby restricted to
uses permitted under the Town Code, as amended from time to time.

This instrument may be executed in counterparts with the respective original signature pages assembled into one document for recordation in the Public Records of Miami-Dade County, Florida

IN WITNESS WHEREOF, Grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered
in our presence:

GRANTOR:

9350 Condominium Association, Inc.

BY [Signature] (Seal)
GERALD MILLER, President

[Signature]
Witness
RICHARD KROOP
Printed Name of Witness

[Signature]
Witness
Ceil Kroop
Printed Name of Witness

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

THE FOREGOING INSTRUMENT was acknowledged before me this 24 day of July, 2014 by GERALD MILLER, President of 9350 Condominium Association, Inc., who is (or are) personally known to me or who has produced _____ as identification.



[Signature]
NOTARY PUBLIC

EXHIBIT "D"

RESOLUTION NO. 2102

A RESOLUTION OF THE PLANNING AND ZONING BOARD OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, APPROVING THE SITE DEVELOPMENT PLAN APPLICATION FOR THE BEAU RIVAGE CONDOMINIUM.

WHEREAS, Congress BHE, LLC c/o The Congress Group (hereinafter the “Applicant”), filed an initial application for site plan approval on April 23, 2016. On August 29, 2016, Applicant submitted a revised site plan for a nine (9) unit condominium building, consisting of one (1) story of parking and seven (7) stories of habitable units thereupon located at 9781 East Bay Harbor Dr., Bay Harbor Islands, Florida, and legally described as:

Lot 28, Block 4, “Bay Harbor Island” according to the plat thereof, as recorded in Plat Book 46, at Page 5 of the Public records of Miami-Dade County;

(hereinafter the “Site Plan” or the “Project”); and

WHEREAS, a site plan for new construction requires approval by the Planning and Zoning Board pursuant to Section 5-23.1(c) of the Town of Bay Harbor Islands’ Code of Ordinances (hereinafter the “Code”); and

WHEREAS, on September 20, 2016, the Town’s Planning and Zoning Board approved the Site Plan, pursuant to Section 5-23.1(c) of the Code, with the conditions set forth below.

NOW THEREFORE, be it resolved that:

1. **Recitals.** The foregoing recitals are hereby ratified as true and correct and incorporated herein by reference.
2. **Finding.** The Planning and Zoning Board finds that the Site Plan is consistent with the criteria set forth in Section 5-23.1 of the Code and approves the Site Plan dated August 29, 2016, subject to the below conditions for approval.
3. **Effective Date.** This Resolution shall take effect upon the date of its adoption (the “Effective Date”).
4. **Conditions of Approval.**
 - A. This approval is based on the Site Plan dated August 29, 2016. Any modifications thereto shall require separate approvals from either staff or the Planning and Zoning Board, as specified in the Code.
 - B. Prior to the issuance of a building permit, the Applicant shall obtain and present a concurrency determination demonstrating that the Project meets school concurrency requirements. Applicant shall coordinate with Miami-Dade County School Board staff through the Town staff (Building Dept.) to provide calculations and address any deficiencies at the public schools that serve the Project. If mitigation is required, an agreement, including any payment, must be finalized prior to the issuance of building permits.

- C. Payment of all required Town impact fees prior to issuance of building permits.
- D. When the Miami-Dade Fire Department formally reviews the Project, if any material site design changes are required, a re-approval of the Site Plan shall be required by staff or the Planning and Zoning Board, as specified in the Code.
- E. Applicant shall submit final working plans within 365 days after the Effective date of this Resolution, unless extended by the Town Manager, or his or her designee, for up to 180 days. Applicant shall obtain a building permit within 90 days after the approval of final working plans, unless extended by the Town Manager, or his or her designee, for up to 90 days. Failure to obtain a building permit within the prescribed time shall result in the invalidation of the Site Plan, except and unless this Resolution is extended pursuant to the Code or other valid extension as prescribed by Florida law.
- F. The existing overhead power lines adjoining the Project shall be relocated underground during the redevelopment of the site at the sole expense of the Applicant, pursuant to Section 18-22 of the Code.

5. **Severability.** If any provision, section, phrase or word of this Resolution is declared invalid or unenforceable by a court of competent jurisdiction, the remaining provisions, sections, phrases or words of this Resolution shall remain in full force and effect.

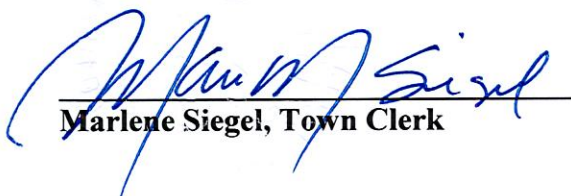
6. This Resolution shall become effective immediately upon its adoption, unless a timely appeal is filed with the Town Council.

PASSED this 20th day of September, 2016.

**PLANNING AND ZONING BOARD
TOWN OF BAY HARBOR ISLANDS**

By: 
Steven Hurwitz, Chair Person

ATTEST:


Marlene Siegel, Town Clerk

APPROVED AS TO FORM:

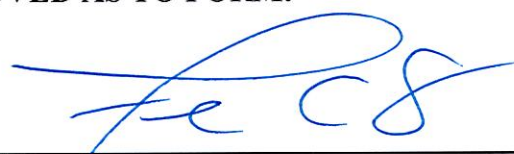

Frank C. Simone, Esq., Assistant Town Attorney

EXHIBIT "E"

RESOLUTION NO. 2162

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AUTHORIZING THE TRANSFER OF THREE (3) DEVELOPMENT RIGHTS TO CONGRESS DRIFTWOOD, LLC FOR ITS PROPERTY LOCATED AT 9927-9955 EAST BAY HARBOR DRIVE, BAY HARBOR ISLANDS, FLORIDA (RECEIVING SITE) FROM CONGRESS BH, LLC FOR ITS PROPERTY LOCATED AT 10301 EAST BAY HARBOR DRIVE, BAY HARBOR ISLANDS, FLORIDA (DONOR SITE), REQUIRING THE MEMORIALIZATION OF THE TRANSFER OF TRANSFER OF DEVELOPMENT RIGHTS VIA A RECORDED WARRANTY DEED, AND AUTHORIZING THE TOWN MANAGER TO MAKE THE APPROPRIATE NOTATIONS IN THE PUBLIC RECORDS AS TO THE DONOR SITE AND RECEIVING SITE.

WHEREAS, pursuant to the Town's Code of Ordinances (Ordinance No. 769 and Section 23-22.2), the Town has established a system of Transfer of Development Rights (TDRs); and

WHEREAS, on March 20, 2018, Congress Driftwood, LLC received authorization from the Planning and Zoning Board to develop a thirty-five (35) unit condominium building on Lots 19, 20, and 21, Block 4, Plat Book 46, Page 5, located at 9927-9955 East Bay Harbor Drive, Bay Harbor Islands, Florida, ("Project") pending approval of the Transfer of Development Rights ("TDR") of nine (9) TDR units; and

WHEREAS, an application for Transfer of Development Rights was filed by Congress Driftwood, LLC ("Applicant") for its property located at 9927-9955 East Bay Harbor Drive, Bay Harbor Islands, Florida ("Receiving Site") from Congress BH, LLC ("Donor") for its property located at 10301 East Bay Harbor Drive, Bay Harbor Islands, Florida ("Donor Site")(the "Application"); and

WHEREAS, the Town conducted a public meeting in accordance with law on September 17, 2018, and approved the transfer of Three (3) TDR dwelling units from the Donor Site to the Receiving Site for the Project.

NOW THEREFORE, be it resolved that:

1. The Application for a transfer of Three (3) TDR dwelling unit from the Donor Site to the Receiving Site for the Project is hereby authorized and approved.
2. The Town Council hereby authorizes the Town Manager and the Town Planner to make the appropriate notations in the Public Record memorializing the Transfer of Development Rights from the Donor Site to the Receiving Site.
3. The Applicant and Donor shall record a warranty deed in the Miami-Dade public records memorializing the transfer of Three (3) TDR dwelling unit from the Donor Site to the Receiving Site.

4. This Resolution shall become effective immediately upon its adoption.

PASSED this 17th day of September, 2018.

TOWN OF BAY HARBOR ISLANDS

By: 
STEPHANIE BRUDER,
MAYOR

ATTEST:


MARLENE M. SIEGEL,
TOWN CLERK

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**


FRANK C. SIMONE, ESQ., CFP®,
ASSISTANT TOWN ATTORNEY



Application Fee: \$1,000 Private Transaction - \$500 Town Owned Units

(For official use only)	
DATE RECEIVED: _____	TDR UNIT COST: \$ _____
TDR UNITS REQUESTED _____	PROJECT TOTAL UNITS _____
APPROVAL DATE : _____	APPROVED BY: _____

TOWN OF BAY HARBOR ISLANDS APPLICATION FORM TRANSFER OF DEVELOPMENT RIGHTS

APPLICANT INFORMATION

Name 9955 Bay Harbor Development LLC		
Phone ()	e-mail michael@regencydevgroup.com	Fax ()
Address 18101 Collins Avenue, Suite 3908		
City and State Sunny Isles, Florida		Zip Code 33160
Relationship to Property: Owner		

RECEIVER SITE INFORMATION

Owner's Name 9955 Bay Harbor Development LLC	
Phone ()	e-mail
Fax ()	
Address 18101 Collins Avenue, Suite 3908	
City and State Sunny Isles, Florida	Zip Code 33160
Property Address/Location 9927 and 9955 E Bay Harbor Drive	
Legal Description: LOT(S) 19, 20 and 21 BLOCK 4	
Folio Number 13-2227-001-0970, 13-2227-001-0960	Current Zoning RM-1
Property size 33,852 square feet (0.777 acres)	Purchase date April 6, 2022
Existing use of the property Vacant	
Describe Existing Structure on Property Vacant	
Dwelling units to be received 1	
Total Dwelling units including TDR 33	

HAS SITE PLAN FOR RECEIVING PROPERTY BEEN APPROVED?

☒ Yes ☐ No

If Yes, then provide date of approval 12/6/2022
If Not, then attach preliminary site plan.



ARE TDRs BEING REQUESTED FROM THE TOWN? Yes ☐ No ☒

If Yes, skip the donor site portion

If Not, then fill in the donor site portion.

DONOR SITE INFORMATION, IF APPLICABLE

Owner's Name 10301 Bay Harbor Development, LLC		
Phone ()	e-mail michael@regencydevgroup.com	Fax ()
Address 18101 Collins Avenue, Suite 3908		
City and State Sunny Isles, Florida		Zip Code 33160
Property Address/Location 10301 E Bay Harbor Drive		
Legal Description: LOT(S) 1 BLOCK 4		
Folio Number 13-2227-001-0800	Current Zoning RM-1	Year built 2021
Property size 14,460 square feet (0.331 acres)	Purchase date April 6, 2022	
Existing use of the property Sales Center		
Describe Existing Structure on Property Sales Center		
Dwelling units to be transferred to Receiver site TDR Bank 1		
Units permitted 10		

APPRAISAL INFORMATION - IF APPLICABLE

(Appraiser must be approved by the Town)

(Only fill this portion out if purchasing TDRs from the Town and if the amount set by the Town is not accepted by you.)

Name:		
Phone ()	e-mail	Fax ()
Address		
City and State		Zip Code
Date of Appraisal / /	Appraisal Value of TDR unit \$	
Proposed TDR Unit Value \$		



SURVEY COMPANY INFORMATION - (provide survey’s for both receiver and donor sites)
Survey must be current (no more than 6 months old)

Name of Surveyor Lannes & Garcia, Inc. - Francisco Farardo		
Address 4967 SW 75 Avenue		
Phone (305) 666-7909	e-mail lannes2garcia@gmail.com	Fax ()

Name of Surveyor Lannes & Garcia, Inc. - Francisco Farardo		
Address 4967 SW 75 Avenue		
Phone (305) 666-7909	e-mail lannes2garcia@gmail.com	Fax ()

PROPERTY CODE INSPECTION RESULTS - (Donor Site)

The Town requires, as a condition of permitting any transfer or development rights, that the donor parcel and/or receiving parcel improve the site to meet as many current day code requirements as possible, as determined by the Town. This may include the Town’s land development code such as zoning, landscaping, signage and property maintenance. It may also include Building Code and Life Safety Code improvements.

- ☐ **Building must have obtained 40 or 50 Year Certification - If Applicable**
- ☐ **Outstanding Liens or Code Violations must be cured and/or paid - If Applicable**

Other inspections to be performed may include, but are not limited to, the following items:

- | | | | |
|---|--|---|---------------------------------------|
| ☐ Exterior paint | ☐ Windows | ☐ Doors | ☐ Elevators |
| ☐ Steps | ☐ Railings | ☐ Landscaping | ☐ Parking area |
| ☐ Pool/Recreation facilities | | ☐ Fences/Walls | ☐ Plumbing |
| ☐ Electrical System | ☐ A/C equipment | ☐ Roof mounted equipment/screening | |
| ☐ Roofing | | | |

I hereby certify that:

- 1) The information furnished on this application and the attachments is true.
- 2) I am the owner(s) of record of the property described in this application.
- 3) If the application, as modified or amended during the review and approval process, is granted, I agree, in consideration therefore, to indemnify and hold harmless, and promise not to sue, the Town of Bay Harbor Islands, include its officers and employees, in connection with any claims or other actions arising out of said review and approval.

A Contract for Sale and Purchase of Development Rights and Deed of Transfer of Development Rights shall be required as part of the approval of a TDR transfer. The deed transferring the development rights shall be recorded in the public records prior to the issuance of a development permit.

RECEIVER SITE

DocuSigned by:



8CA5BC5D459F461...

Signature of Owner (Applicant)

9/25/2024

Date

Signature of Owner (Co-Applicant)

Date

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 25 day of September, 2024,
by Michael Troyanovsky, Manager on behalf of
9955 Bay Harbor Development LLC, a Florida (corporation) (partnership) (Other:
_____.) He/She is personally known to me or has produced
(type of identification produced) as identification and did take
an oath.

Diana Ramos

Commission # HH 386927

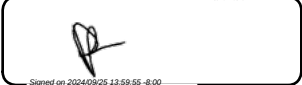
Notary Public - State of Florida

My Commission Expires Apr 16, 2027



Notary Stamp 2024/09/25 13:59:55 PST

89E08B00798D



Signed on 2024/09/25 13:59:55 -8:00

Notary Public, State of Florida

Print Name: Diana Ramos

DONOR SITE

DocuSigned by:



8CA5BC5D459F461...

Signature of Owner (Applicant)

9/25/2024

Date

Signature of Owner (Co-Applicant)

Date

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me this 25 day of September, 2024,
by Michael Troyanovsky, Manager on behalf of
10301 Bay Harbor Development, LLC, a Florida (corporation) (partnership) (Other:
_____.) He/She is personally known to me or has produced
(type of identification produced) as identification and did take
an oath.

Diana Ramos

Commission # HH 386927

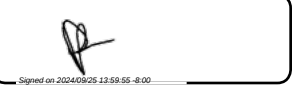
Notary Public - State of Florida

My Commission Expires Apr 16, 2027



Notary Stamp 2024/09/25 13:59:55 PST

89E08B00798D



Signed on 2024/09/25 13:59:55 -8:00

Notary Public, State of Florida

Print Name: Diana Ramos

Prepared by:

Jaime M. Coco, Esq
Jaime M Coco, PA
6000 Collins Ave Suite 111
Miami Beach, FL 33140

and return to:

Advisors Title Network
1250 E Hallandale Beach Blvd, Suite 807
Hallandale Beach, FL 33009

PARCEL IDENTIFICATION NO.:

13-2227-001-0800

FL 140568

SPECIAL WARRANTY DEED

THIS INDENTURE is made this 12 day of April, 2022 by and between BAY HARBOR NORTH LLC, a Delaware limited liability company formerly known as CONGRESS BHN LLC, a Delaware limited liability company (hereinafter called "Grantor"), whose address is 1217 S. Flagler Drive 2nd Floor West Palm Beach, Florida 33401, and 10301 BAY HARBOR DEVELOPMENT LLC, a Florida limited liability company (hereinafter called "Grantee"), whose address is 18101 Collins Ave., #3908, Sunny Isles Beach, FL 33160.

WITNESSETH

The Grantor, for and in consideration of the sum of Ten Dollars (\$10.00), to it in hand paid by the Grantee, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained and sold and does hereby grant, bargain and sell to Grantee the following described real estate, situated, lying and being in the County of Miami Dade, State of Florida, more particularly described on Exhibit "A" attached hereto and made a part hereof, together with all buildings, improvements and fixtures located thereon and owned by Grantor as of the date hereof and all right, title and interest, if any, that Grantor may have in and to all rights, privileges and appurtenances pertaining thereto including all of Grantor's right, title and interest, if any, in and to all rights-of-way, open or proposed streets, alleys, easements, strips or gores of land adjacent thereto (herein collectively called the "Real Property").

SUBJECT TO only those matters set forth on Exhibit "B" attached hereto and made a part hereof (the "Permitted Exceptions"), without reimposing same.

TO HAVE AND TO HOLD the aforesaid Real Property, together with all the improvements, licenses, tenements, hereditaments, easements and appurtenances thereto

belonging or in anywise appertaining unto Grantee, its successors and assigns in fee simple forever.

And Grantor hereby covenants with Grantee that Grantor is lawfully seized in fee simple of the aforesaid Real Property; that Grantor has good right to sell and convey the same; that the same is unencumbered except for the Permitted Exceptions, to all of which this conveyance is expressly made. Grantor hereby warrants the title to the aforesaid real estate and will defend same against the lawful claims of all persons claiming by, through or under Grantor, but no others.

(When used herein the terms "Grantor" and "Grantee" shall be construed to include, masculine, feminine, singular or plural as the context permits or requires, and shall include heirs, personal representatives, successors or assigns.)

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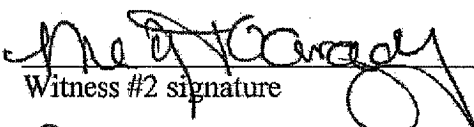
IN WITNESS WHEREOF, the Grantor has caused this Indenture to be executed in its name and caused its seal to be affixed as of the day and year first above written.

Signed, sealed and delivered in the presence of: **GRANTOR:**

BAY HARBOR NORTH LLC, a Delaware limited liability company formerly known as CONGRESS BHN LLC, a Delaware limited liability company

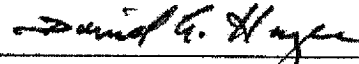

Witness #1 signature

Jaime M. Coco
Witness #1 print name


Witness #2 signature

Meg T. Corady
Witness #2 print name

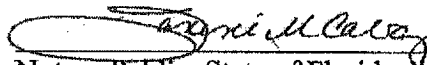
By: TRD Bay Harbor LLC,
a Florida limited liability company
Its: Managing Member


Name: Daniel G. Hayes
Title: Manager

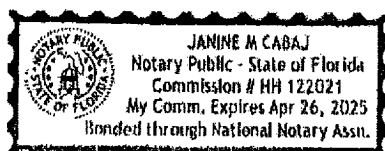
THE STATE OF FLORIDA §

COUNTY OF PALM BEACH §

The foregoing instrument was acknowledged before me this 6 day of April, 2022, by means of ☒ physical presence or ☐ online notarization of Daniel G. Hayes, the Manager of TRD Bay Harbor, a Florida limited liability company, the Managing Member of BAY HARBOR NORTH LLC, a Delaware limited liability company formerly known as CONGRESS BHN LLC, a Delaware limited liability, on behalf said company. He is personally known to me or produced _____ as identification.


Notary Public, State of Florida

My Commission Expires: 04/26/25



Janine M. Cabaj
Printed/Typed Name

EXHIBIT A TO SPECIAL WARRANTY DEED

Lot 1, Block 4, BAY HARBOR ISLAND, according to the plat thereof, recorded in Plat Book 46, Page 5 of the Public Records of Miami-Dade County, Florida.

EXHIBIT B TO SPECIAL WARRANTY DEED**PERMITTED EXCEPTIONS**

7. Taxes and assessments for the year 2022 and subsequent years which are not yet due and payable.
8. Any lien provided by Chapter 159, Florida Statutes, in favor of any city, town, village, or port authority for unpaid service charges for service by any water systems, sewer systems or gas systems serving the lands described herein.
9. Restrictions, reservations, covenants, easements, conditions and all other matters as shown on Plat recorded in Plat Book 46, Page 5, of the Public Records of Miami-Dade County, Florida.
10. Restrictive covenants, conditions, easements, stipulations, reservations and other provisions, as contained in instrument recorded in Deed Book 2848, Page 69; amended in Official Records Book 9632, Page 1157 and in Official Records Book 9649, Page 253 of the Public Records of Miami-Dade County, Florida.
11. Resolution No. 97-118 creating Special Taxing District filed in Official Records Book 17721, Page 2454 of the Public Records of Miami-Dade County, Florida.
12. The nature, extent, or existence of riparian rights, if any, appurtenant to the insured lands lying below the mean/ordinary high water mark, are neither guaranteed nor insured, and the riparian rights of others as the same may affect the said property, are hereby excepted.
13. Any portion of the Land lying waterward of the mean high water line of Indian Creek, and lands accreted thereto.
14. The rights, if any, of the public to use the public beach, recreation area, or any part of the land lying between the body of water abutting the subject property and the natural line of vegetation, the bulkhead line, the most extreme high water line or any other legally established boundary line separating the publicly used area from the upland private area.
15. Any and all rights of the United States of America in and to navigable waters or filled-in land formerly within navigable waters and any conditions contained in any permits authorizing the filling in of said land.
16. Unrecorded Lease Agreement between Bay Harbor North, LLC, as Landlord and BH Investments, LLC, as tenant.

**AGREEMENT FOR PURCHASE AND SALE OF TRANSFERFERABLE
DEVELOPMENT RIGHTS**

THIS AGREEMENT FOR PURCHASE AND SALE OF TRANSFERABLE DEVELOPMENT RIGHTS (the “**Agreement**”) is made and entered into this 25th day of September, 2024 (“**Effective Date**”) by and between, 9955 Bay Harbor Development LLC, a Florida limited liability company (“**Purchaser**”) and 10301 Bay Harbor Development LLC, a Florida limited liability company (“**Seller**”).

WITNESSETH:

- A. Seller is the owner of that certain real property located in Miami-Dade County, Florida, more particularly described on Exhibit “A” attached hereto and made a part hereof (the “**Seller Property**”).
- B. Purchaser is the owner of certain real property located in Miami-Dade County, Florida more particularly described on Exhibit “B” attached hereto and made a part hereof (the “**Property**”).
- C. Seller has agreed to sell Purchaser one (1) transferable development rights (“TDRs”) appurtenant to the Seller Property, which TDRs exist in accordance with the zoning laws and ordinances (collectively the “Laws”) in effect in the Town of Bay Harbor Islands (the “Town”), State of Florida, and Purchaser has agreed to purchase the TDRs from Seller, upon the terms and conditions contained hereinafter.

NOW, THEREFORE, for and in consideration of Ten and No/100 (\$10.00) Dollars and other good and valuable consideration in hand paid by Purchaser to Seller, the receipt, sufficiency and adequacy of which is hereby acknowledged, Seller and Purchaser, intending to be legally bound, do hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.
2. Agreement to Sell and Purchase. Seller hereby agrees to sell to Purchaser, and Purchaser hereby agrees to purchase from Seller, upon the terms and conditions set forth herein, the TDRs.
3. Purchase Price. Subject to the credits and adjustments set forth in this Agreement, Purchaser shall pay Seller \$100.00 (the “Purchase Price”) for the TDRs at Closing (as hereinafter defined) in good and immediately available United States funds by check or wire transfer to an account designated by Seller. The Purchase Price is predicated upon: (i) the Seller Property having 1 TDRs that can be conveyed and transferred from the Property in accordance with the Laws; and (ii) Seller having the right, in accordance with the Laws, to convey and transfer 1 TDRs from the Seller Property to the Property.



4. Fees, Costs, Expenses, Credits and Prorations:

The Parties agree that:

(a) Seller shall pay (i) all fees, costs, expenses and other charges payable to the consultants, attorneys and other third parties retained by Seller in connection with the transaction contemplated by this Agreement; and (ii) the cost of all documentary stamp tax, surtaxes and other governmental impositions due on the Deed (as hereinafter defined).

(b) Purchaser shall pay: (i) all fees, costs, expenses and other charges payable to the consultants, attorneys and other third parties retained by Purchaser in connection with the transaction contemplated by this Agreement; and (iii) the cost to record the Deed.

5. INTENTIONALLY DELETED.

6. Representations, Warranties, Covenants and Agreements of Seller.

Seller represents, warrants, covenants, agrees and states to and with Purchaser as follows:

(a) Seller has good and marketable fee simple title to the TDRs, free and clear of all liens and encumbrances, and has not previously sold, transferred, conveyed or encumbered the TDRs.

(b) Seller has the full right, power and authority to enter into and perform under this Agreement and to consummate the transaction contemplated herein. Other than obtaining the TDR Approval (hereinafter defined) from the Town, Seller does not need any further consent, joinder or other authorization from any governmental/quasi-governmental entity or authority, court, corporation, partnership, company, entity, trust, person or individual to: (i) execute and deliver this Agreement connection herewith; or (ii) perform any of its obligations under this Agreement or under any other agreement, document or instrument executed or to be executed in connection herewith. The person executing this Agreement on behalf of Seller is duly authorized to execute and bind Seller to this Agreement and all other agreements, documents and instruments executed and to be executed in connection with the transaction contemplated herein, and upon such execution and delivery, this Agreement and such other agreements, documents and instruments shall be valid, binding and enforceable against Seller.

(c) Neither the entering into of this Agreement, nor the performance of any obligation under this Agreement, nor the consummation of the transaction contemplated herein, will: (i) constitute a violation or breach by Seller of (A) any formation, organizational or governance document of Seller, (B) any agreement, document or instrument to which Seller is a party or by which Seller, the Seller Property or the TDRs are subject or bound, or (B) any judgment, order, writ, injunction or decree against or imposed upon Seller, the Seller Property or the TDRs; or (ii) provided the TDR Approval has been obtained, result in the violation of any



law, rule, regulation, ordinance, code or order promulgated or issued by any governmental/quasi-governmental entity or authority or court of competent jurisdiction that is applicable to Seller, the Seller Property or the TDRs.

(d) No other person or entity has any right of first refusal, right of first offer or other right to purchase or acquire the TDRs from Seller, and from and after the Effective Date and as long as this Agreement remains in effect, Seller shall not grant or enter into any agreement with any person or entity for any right of first refusal, right of first offer or other right to purchase or acquire the TDRs from Seller.

All of the representations, warranties, covenants, agreements and statements of Seller set forth in this Section shall be true and correct at all times from the Effective Date through and including the Closing Date (as hereinafter defined) and shall survive Closing.

7. Representations, Warranties, Covenants and Agreements of Purchaser:

Purchaser represents, warrants, covenants, agrees and states to and with Seller as follows:

(a) Purchaser is a validly formed business entity in good standing in the state of its formation and is duly authorized to conduct and transact business in the State of Florida. Purchaser has the full right, power and authority to enter into and perform under this Agreement and consummate the transaction contemplated herein. Purchaser does not need any further consent, joinder or other authorization from any governmental or quasi-governmental entity or authority, court, corporation, partnership, company, entity, trust, person or individual to: (i) execute and deliver this Agreement or any agreement, document or instrument executed or to be executed in connection herewith; or (ii) perform any of its obligations under this Agreement or any agreement, document or instrument executed or to be executed in connection herewith. The person executing this Agreement on behalf of Purchaser is duly authorized to execute and bind Purchaser to this Agreement, and all other agreements, documents and instruments executed and to be executed in connection with the transaction contemplated herein, and upon such execution and delivery, this Agreement and such other agreements, documents and instruments shall be valid, binding and enforceable against Purchaser.

(b) Neither the entering into of this Agreement, nor the performance of any obligation under this Agreement, nor the consummation of the transaction contemplated herein, will: (i) constitute a violation or breach by Purchaser of (A) any formation, organizational or governance document of Purchaser, (B) any agreement, document or instrument to which Purchaser is a party or by which Purchaser is subject or bound, or (C) any judgment, order, writ, injunction or decree issued against or imposed upon Purchaser; or (ii) result in the violation of any law, rule, regulation, ordinance or order promulgated or issued by any governmental or quasi-governmental entity or authority or court of competent jurisdiction that is applicable to Purchaser.



All of the representations, warranties, covenants, agreements and statements of Purchaser set forth in this Section shall be true and correct at all times from the Effective Date through and including the Closing Date and shall survive Closing.

8. TDR Approval.

(a) Purchaser shall have the right, at all times while this Agreement remains in effect to apply for, submit to and/or process with the Town all applications, petitions and other documents, agreements and/or instruments (any of the foregoing being referred to herein as an "Approval Submittal") necessary or desirable to obtain the Town's approval, as evidenced by a final non-appealable resolution approving the transfer of the TDRs as contemplated herein; and (ii) the conveyance and transfer of the TDRs from the Seller Property to the Property of Purchaser's use in connection with the development and construction of the Property. The approvals referred to in (i) and (ii) are referred to herein collectively as the "TDR Approval". Seller shall cooperate with and assist Purchaser in its efforts to apply for, process and obtain the Approval Submittals (and the Postponed Approval Submittal (as hereinafter defined), if applicable and the TDR Approval. In that regard, Seller covenant and agrees, promptly upon the request of Purchaser (but in no event later than five (5) days following receipt of such request, and at no cost or expense to Seller), to execute and deliver to Purchaser all applications, petitions, consents, authorizations and other documents, agreements, and instruments necessary or desirable for Purchaser to apply for, submit, process and obtain any Approval Submittal, Postponed Approval Submittal and/or TDR Approval. The failure of Seller to execute and deliver to Purchaser any of the foregoing items necessary for Purchaser to submit, process and/or obtain any Approval Submittal, Postponed Approval Submittal and/or TDR Approval within the time period required by this Section shall be a default by Seller under this Agreement (an "Execution/Delivery Default"), and in the event of an Execution/Delivery Default, Purchaser shall have the right (in addition to and not in lieu of any other right or remedy provided to Purchaser in this Agreement as a result of a Seller default) at its election to extend the Closing Date for a period of time equal to the delay incurred by Purchaser in submitting, processing and/or obtaining any Approval Submittal, Postponed Approval Submittal and/or TDR Approval as a result of an Execution/Delivery Default, provided the basis of such extension is submitted in writing to Seller.

(b) Purchaser shall have the right to modify, amend and/or withdraw any Approval Submittal, as well as postpone, delay and/or withdraw any Approval Submittal for consideration from any public hearing at which such Approval Submittal is being considered, to address and resolve any comments, concerns or objections by the Town or private organization, group, entity or individual. If Purchaser postpones, delays and/or withdraws any Approval Submittal for consideration from any public hearing at which such Approval Submittal is being considered (such public hearing is referred to herein as the "Postponed Hearing" and the Approval Submittal that was to be considered at such public hearing is referred to herein as the "Postponed Approval Submittal") in order to address and resolve any comments, concerns or objections by the Town or private organization, group, entity or individual, then the Closing Date shall be extended



on a day-for-day basis equal to the number of days between the date of the Postponed Hearing and the date of the re-scheduled public hearing at which the Postponed Approval Submittal is actually considered. Seller covenants and agrees: (i) not to withdraw, hinder, delay or object to the execution, delivery, preparation, submission, processing, hearing of, amendment to or modification of any Approval Submittal or TDR Approval in any way whatsoever (whether directly or indirectly);, and (iii) not to seek any amendment, modification, rescission, cancellation or termination of any Approval Submittal or TDR Approval, whether now or hereafter existing, unless otherwise requested to do so by Purchaser in writing.

9. Closing Conditions.

(a) Notwithstanding anything to the contrary contained in this Agreement, it shall be a condition precedent (each, a "Condition Precedent") to Purchaser's obligation to close on the transaction contemplated by this Agreement that as of the Closing Date (as hereinafter defined): (i) Seller shall not be in default of any term, covenant, condition or other provision of this Agreement; (ii) all of the representations, warranties, covenants, agreements and statements of Seller set forth in Section 6 above shall be materially true and correct in all respects; and (iii) the Town adopts a resolution issuing the TDR Approval (i.e., approval of this Agreement and the transaction contemplated herein, and approval of the conveyance and transfer of the TDRs from the Seller Property to the Property for Purchaser's use in connection with the development and construction of the Property) and all appeal periods to the TDR Approval have expired with no appeal to the TDR Approval having been filed, or any such appeal having been finally resolved in Purchaser's favor (such date on which all appeal periods to the TDR Approval have expired with no appeal to the TDR Approval having been filed or the date on which any appeal is finally resolved in Purchaser's favor is referred to herein as the "TDR Approval Date").

(b) If there is a failure of a Condition Precedent at any time prior to the Closing Date, then Purchaser shall have the right (in addition to, and not in lieu of any other right or remedy Purchaser may have as the result of such failure), in its sole and absolute discretion, to: (i) terminate this Agreement by delivering a written notice of termination to Seller on the Closing Date, whereupon this Agreement shall terminate and the parties shall be released from all terms, provisions, obligations and liabilities of this Agreement, except from those that expressly survive its termination; or (ii) extend the Closing Date for a reasonable period of time (as determined by Purchaser): (A) to allow Seller an opportunity to cure such failure, and/or (B) to obtain the TDR Approval, whichever the case may be. Should Purchaser elect to extend the Closing Date under (ii) above, Purchaser shall retain the right to elect (i) above until the Condition Precedent at issue is satisfied.

10. Documents to be Delivered at Closing.

At Closing: (a) Seller shall execute and deliver to Purchaser a Special Warranty Deed for Transfer of Development Rights, or such other instrument as the Town may require (in



either event, the “Deed”), in form and substance satisfactory to Purchaser and in recordable form. Conveying and transferring the TDRs to the Purchaser and the Property in fee simple free and clear of any and all claims, liens, mortgages, security agreements, financing statements and other encumbrances; (b) Seller shall deliver to Purchaser a resolution in recordable form, from the members of Seller or other form of authority acceptable to Purchaser authorizing the transaction be contemplated herein and the consummation thereof (including, without limitation, the authority to execute and deliver the Deed) by Seller; (c) if Seller submits the Seller’s Property to condominium form of ownership prior to the Closing, Seller shall deliver to Purchaser a Quitclaim Deed for Transfer of Development Rights, in form and substance satisfactory to Purchaser and in recordable form, executed on behalf of the condominium association pursuant to which the condominium association conveys and transfers any and all right, title and interest the condominium association may have in and to the TDRs to the Purchaser, free and clear of any claims, liens, mortgages, security agreements, financing statements or other encumbrances, together with such evidence of good standing and authority as Purchaser’s title company may require; (d) such other documents and instruments, including title and other affidavits and FIRPTA certificates, as Purchaser’s title company may reasonably require or are customarily given in transactions of this nature; and (e) each party shall execute and deliver to the other party a closing statement in usual and customary form. All of the closing documents referenced in this Section shall be in form and substance reasonably acceptable to Purchaser and to Seller.

11. Closing.

The “Closing” subject to the terms and provisions of this Agreement, shall take place at the offices of Purchaser’s counsel by escrow closing commencing at 11:00 AM on the date that is ten (10) days after the TDR Approval Date, provided that the Closing shall occur on or before the date that is 180 days from the Effective Date (the “Outside Closing Date”). Notwithstanding the foregoing, Purchaser may extend the Outside Closing Date as reasonably determined by Purchaser, provided Purchaser is pursuing the Approval Submittal or Postponed Approval Submittal, as the case may be, and the TDR Approval with reasonable diligence.

12. Default.

(a) If Purchaser defaults on any term, covenant, condition or other provision of this Agreement, and provided Seller is not in default of any term, covenant, condition, representation or warranty of this Agreement, then Seller shall have as its sole and exclusive remedy for such default the right to terminate this Agreement by giving a written notice of termination to Purchaser, whereupon this Agreement shall terminate, and the Parties shall be released from all terms, provisions, obligations and liabilities of this Agreement. The Parties acknowledge and agree that this provision for liquidated damages is a fair and reasonable measure of the damages to be suffered by Seller in the event of Purchaser's default under this Agreement based on the fact that the exact amount of damages that Seller may incur is incapable of ascertainment.



(b) If Seller defaults on any term, covenant, condition or other provision of this Agreement, and provided Purchaser is not in default of any term, covenant, condition, representation or warranty of this Agreement, then Purchaser shall have the right, in addition to, and not in lieu of any other right or remedy at law or in equity to terminate this Agreement by giving a written notice of termination to Seller, whereupon this Agreement shall terminate, and Seller shall immediately reimburse Purchaser an amount equal to all fees, costs, expenses and other charges incurred by Purchaser in connection with the transaction contemplated by this Agreement through the date of such termination (collectively, the "Actual Costs").

13. Notices.

All notices to be given under this Agreement shall be in writing and sent to Seller or Purchaser, as the case may be, at the addresses set forth below, by email with any attachment thereto in PDF format. Any such notice shall be deemed received upon the earlier of receipt or refusal by the addressee.

Notice to Purchaser shall be sent via email to Attn: Igor Michin, Phone No. (312) 914-0224, email address: igor@regencydevgroup.com with a copy to Mark S. Meland, Esq., Meland Budwick, P.A., Phone No. (305) 358-6363, email address: mmeland@melandbudwick.com.

Notices to Seller shall be sent via email to Attn: Igor Michin, Phone No. (312) 914-0224, email address: igor@regencydevgroup.com with a copy to Mark S. Meland, Esq., Meland Budwick, P.A., Phone No. (305) 358-6363, email address: mmeland@melandbudwick.com.

14. Broker

Purchaser and Seller represent and warrant to the other that there are and have been no real estate brokers, agents or finders involved with respect to this Agreement or the transaction contemplated herein. Each party (the "Indemnifying Party"), shall indemnify, defend and hold the other Party (the "Indemnified Party") harmless from and against any claim, cause of action, loss, damage, liability, fee, cost or expense incurred by the Indemnified Party (including reasonable attorneys fees and costs through all trial, appellate and post-judgment levels and proceedings) as a result of any breach by the Indemnifying Party of the foregoing representation and warranty. This section shall survive Closing or any earlier termination of this Agreement.

15. Miscellaneous.

(a) This Agreement shall be governed by, enforced and construed under the laws of the State of Florida. Venue for all actions, litigation and/or other proceedings arising out of this Agreement shall be exclusively in Miami-Dade County, Florida. The parties hereby knowingly and voluntarily waive the right to a trial by jury of any claim, controversy or disputed matter between them. The prevailing party in any action, litigation or other proceeding that is based on any claim, controversy or other disputed matter arising under, out of or in connection with this



Agreement (or any agreement, document or instrument executed or contemplated to be executed in conjunction herewith) shall recover from the non-prevailing party all fees, costs and expenses (including, without limitation, reasonable attorneys' fees and costs through all trial, appellate and post-judgment levels and proceedings) incurred by the prevailing party in such action, litigation or other proceeding. This Section shall survive Closing or any earlier termination of this Agreement.

(b) The Parties hereby acknowledge and agree that each has had an opportunity to be represented by or consult with independent legal counsel and that any rule of construction which provides that ambiguities are to be construed against the drafter shall not apply in the interpretation or construction of this Agreement. If any term, provision or portion of this Agreement is for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction, then such term, provision or portion of this Agreement shall be given its nearest valid, legal and enforceable meaning, or construed as deleted, whichever such court may determine, and the same shall not invalidate the remaining terms, provisions and/or portions of this Agreement, which remaining terms, provisions and portions of this Agreement will remain in full force and effect.

(c) This Agreement includes all exhibits and amendments that are executed in connection herewith, whether executed simultaneously with or subsequent to the execution of this Agreement. This Agreement, together with all such now or hereafter existing exhibits and amendments, contains the entire agreement and understanding between the parties hereto relating to the subject matter of this Agreement, and all prior or contemporaneous terms, covenants, conditions, representations, warranties, statements, agreements and understandings made by or on behalf of the parties, whether oral or written, are merged here in. This Agreement may not be amended or modified except by a written instrument executed by the party against whom enforcement of such amendment or modification is sought. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

(d) No default, term, covenant, condition or other provision of this Agreement may be waived by a Party, except by written instrument executed by the party against whom enforcement of such waiver is sought.

(e) Time is of the essence with respect to each and every term, covenant and condition of this Agreement and the parties' performance of the same; provided, however (i) any reference in this Agreement to a time period of less than six (6) days shall, in the computation thereof, exclude Saturdays, Sundays and legal holidays, (ii) any reference in this Agreement to a time period of six (6) days or more shall, in computation thereof, include Saturdays, Sundays and legal holidays, and (iii) if the last day of any time period is a Saturday, Sunday or legal holiday, then such period shall be extended to 5:00 PM Eastern Standard Time on the next day that is not a Saturday, Sunday or legal holiday.



(f) Purchaser shall have the right to assign this Agreement to any entity that purchases or otherwise acquires the Property from Purchaser provided such assignment is made pursuant to a written assignment and assumption agreement wherein Purchaser assigns all of its right, title and interest in and to this Agreement to the assignee and the assignee accepts such assignment and agrees to be bound by and to perform the terms, conditions, covenants, agreements and other provisions of this Agreement; and, upon any such assignment: (i) Purchaser shall be released from all obligations and liabilities under this Agreement, and (ii) Seller shall close on the transaction contemplated by this Agreement with the assignee as if the assignee were the original party to this Agreement. This Section shall survive Closing.

(g) Wherever appropriate in this Agreement, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of each gender shall be deemed to comprehend either or both of the other genders. The Section and paragraph headings in this Agreement are for convenience only and shall not affect the meaning, interpretation or scope of the terms or provisions set forth herein.

(h) This Agreement may be extended in multiple counterparts, each of which individually shall be deemed an original, but when taken together shall be deemed to be one and the same Agreement. The signature of any party on copies of this Agreement (or any exhibit or amendment hereto) may be signed by electronic signature shall be deemed to be an original for all purposes.

[Signatures on following page]



SELLER:

10301 Bay Harbor Development
LLC

DocuSigned by:

By: _____
Name: Michael Troyanovsky
Title: Vice President & MD

PURCHASER:

9955 Bay Harbor Development LLC

DocuSigned by:

By: _____
Name: Michael Troyanovsky
Title: Vice President & MD



EXHIBIT "A"

LEGAL DESCRIPTION OF SELLER PROPERTY

Lot 1, Block 4, **BAY HARBOR ISLAND**, according to the Plat thereof, as recorded in Plat Book 46, at Page 5, of the Public Records of Miami-Dade County, Florida



EXHIBIT “B”

Legal Description of Property

Lots 19, 20 and 21, Block 4, **BAY HARBOR ISLAND**, according to the Plat thereof, as recorded in Plat Book 46, at Page 5, of the Public Records of Miami-Dade County, Florida.

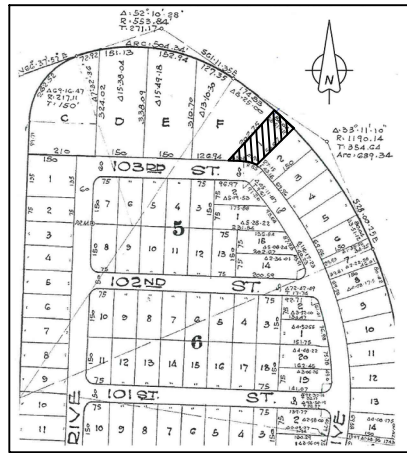


Donor Parcel

TOPOGRAPHIC SURVEY

LOCATION SKETCH

NOT TO SCALE



(C1)

R = 1190.14'
L = 80.04'
D = 03°51'12"
T = 40.04'
CH = 80.03'
CHB = S50°50'59"E

(C2)

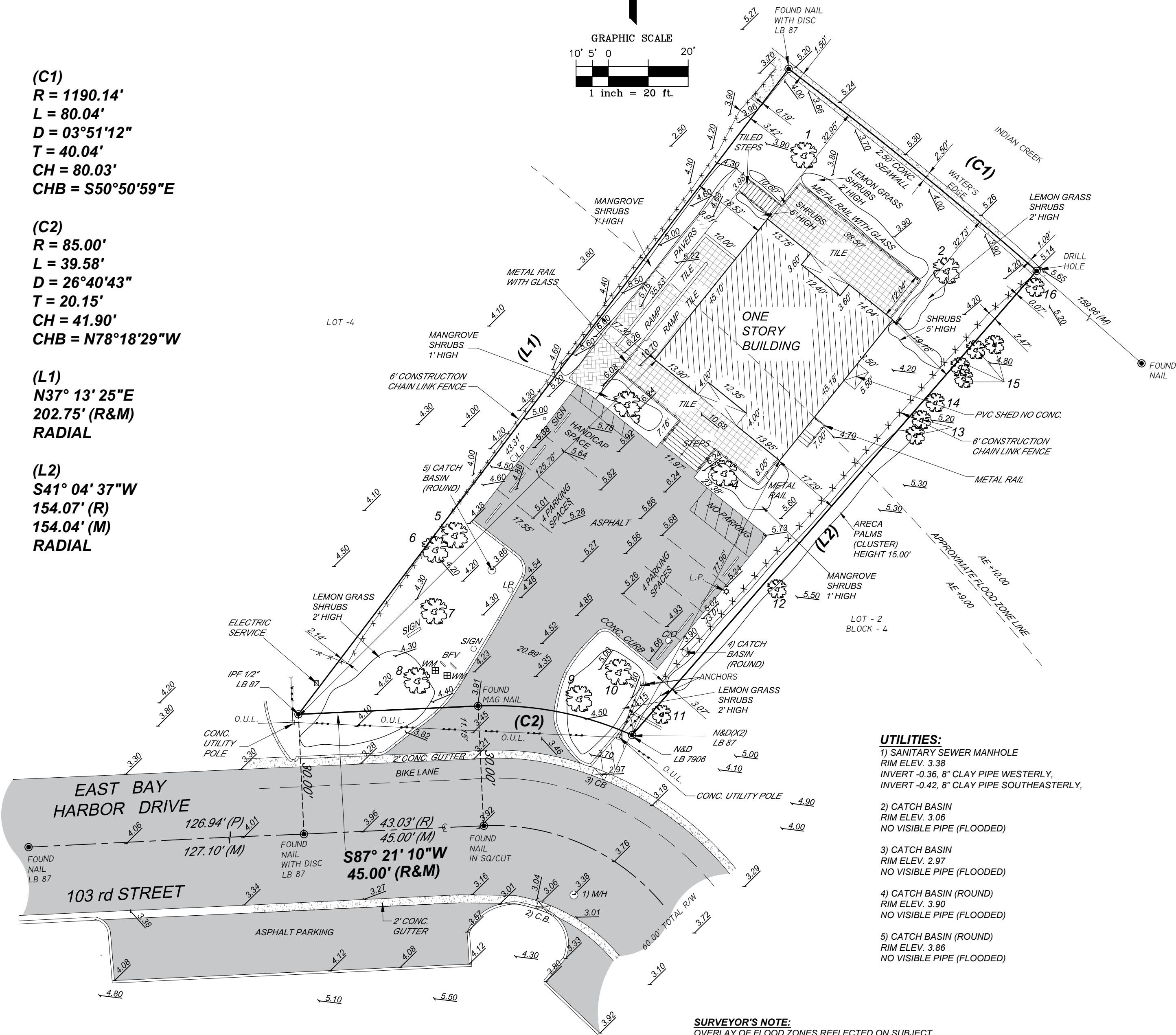
R = 85.00'
L = 39.58'
D = 26°40'43"
T = 20.15'
CH = 41.90'
CHB = N78°18'29"W

(L1)

N37° 13' 25"E
202.75' (R&M)
RADIAL

(L2)

S41° 04' 37"W
154.07' (R)
154.04' (M)
RADIAL



TREES:

(1) CLUSIA ROSEA
TRUNK: 0.45'
CANOPY: 8'
HEIGHT: 15'

(2) CLUSIA ROSEA
TRUNK: 0.45'
CANOPY: 10'
HEIGHT: 16'

(3) CLUSIA ROSEA
TRUNK: 0.35'
CANOPY: 9'
HEIGHT: 13'

(4) CLUSIA ROSEA
TRUNK: 0.35'
CANOPY: 9'
HEIGHT: 13'

(5) CLUSIA ROSEA
TRUNK: 0.30'
CANOPY: 8'
HEIGHT: 10'

(6) CLUSIA ROSEA
TRUNK: 0.35'
CANOPY: 6'
HEIGHT: 13'

(7) CHRYSOPHYLLUM
OLIVIFORME
TRUNK: 0.30'
CANOPY: 8'
HEIGHT: 15'

(8) CHRYSOPHYLLUM
OLIVIFORME
TRUNK: 0.25'
CANOPY: 8'
HEIGHT: 13'

(9) CHRYSOPHYLLUM
OLIVIFORME
TRUNK: 0.25'
CANOPY: 8'
HEIGHT: 13'

(10) CLUSIA ROSEA
TRUNK: 0.35'
CANOPY: 9'
HEIGHT: 13'

(11) CABBAGE PALM
TRUNK: 2.00'
CANOPY: 10'
HEIGHT: 15'

(12) PALM TREE
TRUNK: 0.30'
CANOPY: 10'
HEIGHT: 20'

(13) CABBAGE PALM
TRUNK: 1.50'
CANOPY: 10'
HEIGHT: 20'

(14) PALM TREE CLUSTER
TRUNK: 4.00'
CANOPY: 10'
HEIGHT: 20'

(15) PALM TREE
TRUNK: 0.25'
CANOPY: 10'
HEIGHT: 18'

(16) PALM TREE
TRUNK: 0.30'
CANOPY: 10'
HEIGHT: 15'

UTILITIES:

1) SANITARY SEWER MANHOLE
RIM ELEV. 3.38
INVERT -0.36, 8" CLAY PIPE WESTERLY,
INVERT -0.42, 8" CLAY PIPE SOUTHEASTERLY.

2) CATCH BASIN
RIM ELEV. 3.06
NO VISIBLE PIPE (FLOODED)

3) CATCH BASIN
RIM ELEV. 2.97
NO VISIBLE PIPE (FLOODED)

4) CATCH BASIN (ROUND)
RIM ELEV. 3.90
NO VISIBLE PIPE (FLOODED)

5) CATCH BASIN (ROUND)
RIM ELEV. 3.86
NO VISIBLE PIPE (FLOODED)

SURVEYOR'S NOTE:

OVERLAY OF FLOOD ZONES REFLECTED ON SUBJECT
SKETCH ARE OF AN APPROXIMATE NATURE.

SURVEYOR'S NOTES:

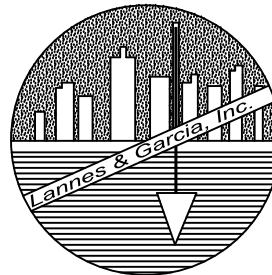
1) NOT VALID UNLESS SIGNATURE IS EMBOSSED WITH THE REGISTERED LAND
SURVEYOR'S SEAL. 2) LEGAL DESCRIPTION PROVIDED BY OTHERS.
3) PROPERTIES SHOWN HEREON WERE NOT ABSTRACTED FOR EASEMENTS OR OTHER
RECORDED ENCUMBRANCES NOT SHOWN ON THE PROPERTY PLAT OF RECORD.
4) MEASUREMENTS TO WOOD FENCES ARE TO OUTSIDE OF WOOD.
5) UNDERGROUND UTILITIES, FOUNDATIONS, OR OTHER IMPROVEMENTS, IF ANY, WERE
NOT LOCATED. 6) ELEVATIONS, IF SHOWN ARE BASED ON NATIONAL GEODETIC VERTICAL
DATUM 1929. 7) FENCE OWNERSHIP NOT DETERMINED UNLESS OTHERWISE NOTED.
8) MEASUREMENTS TO WIRE FENCES ARE TO CENTER OF WIRE.
9) WALL MEASUREMENTS ARE TO/FROM FACE OF WALL.
10) DRAWING DISTANCE BETWEEN WALLS AND/OR FENCES AND PROPERTY LINES MAY BE
EXAGGERATED FOR CLARITY. 11) FLOOD ZONE INFORMATION WAS DERIVED FROM
FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INFORMATION RATE MAPS
12) BEARINGS IF ANY SHOWN ARE BASED ON ASSUMED MERIDIAN AT: SOUTHEASTERLY
LINE OF SUBJECT LOT= (S41° 04' 37"W)



TOPOGRAPHIC SURVEY

I HEREBY CERTIFY THAT THIS TOPOGRAPHIC SURVEY
WAS MADE UNDER MY SUPERVISION AND MEETS
STANDARDS OF PRACTICE SET FORTH BY THE FLORIDA
BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS IN
CHAPTER 6J-17.050 THROUGH 6J-17.052, FLORIDA
ADMINISTRATIVE CODE, PURSUANT TO SECTION 472.027,
FLORIDA STATUTES, AND, THAT THE SKETCH HEREON IS
TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE
AND BELIEF. SUBJECT TO NOTES AND NOTATIONS
SHOWN HEREON.

FRANCISCO F. FAJARDO
FLORIDA PROFESSIONAL SURVEYOR AND MAPPER
REGISTRATION NO. 4767.



PROFESSIONAL SURVEYING AND MAPPING
LANNES AND GARCIA, INC.

LB # 2098
FRANCISCO F. FAJARDO PSM # 4767 (QUALIFIER)
4967 SW 75th AVENUE,
MIAMI, FLORIDA 33155
PH (305) 666-7909 FAX (305) 442-2530
269141-B
269141-A

UPDATED AND ELEV ADDED: 03/25/2023

TREES ADDED ONLY. NO BOUNDARY UPDATE
WAS COMPLETED. 02/10/2023

ORIGINAL FIELD DATE: 02/03/2022

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AUTHORIZING THE TRANSFER OF THREE (3) DEVELOPMENT RIGHTS TO CONGRESS DRIFTWOOD, LLC FOR ITS PROPERTY LOCATED AT 9927-9955 EAST BAY HARBOR DRIVE, BAY HARBOR ISLANDS, FLORIDA (RECEIVING SITE) FROM CONGRESS BH, LLC FOR ITS PROPERTY LOCATED AT 10301 EAST BAY HARBOR DRIVE, BAY HARBOR ISLANDS, FLORIDA (DONOR SITE), REQUIRING THE MEMORIALIZATION OF THE TRANSFER OF TRANSFER OF DEVELOPMENT RIGHTS VIA A RECORDED WARRANTY DEED, AND AUTHORIZING THE TOWN MANAGER TO MAKE THE APPROPRIATE NOTATIONS IN THE PUBLIC RECORDS AS TO THE DONOR SITE AND RECEIVING SITE.

WHEREAS, pursuant to the Town's Code of Ordinances (Ordinance No. 769 and Section 23-22.2), the Town has established a system of Transfer of Development Rights (TDRs); and

WHEREAS, on March 20, 2018, Congress Driftwood, LLC received authorization from the Planning and Zoning Board to develop a thirty-five (35) unit condominium building on Lots 19, 20, and 21, Block 4, Plat Book 46, Page 5, located at 9927-9955 East Bay Harbor Drive, Bay Harbor Islands, Florida, ("Project") pending approval of the Transfer of Development Rights ("TDR") of nine (9) TDR units; and

WHEREAS, an application for Transfer of Development Rights was filed by Congress Driftwood, LLC ("Applicant") for its property located at 9927-9955 East Bay Harbor Drive, Bay Harbor Islands, Florida ("Receiving Site") from Congress BH, LLC ("Donor") for its property located at 10301 East Bay Harbor Drive, Bay Harbor Islands, Florida ("Donor Site")(the "Application"); and

WHEREAS, the Town conducted a public meeting in accordance with law on September 17, 2018, and approved the transfer of Three (3) TDR dwelling units from the Donor Site to the Receiving Site for the Project.

NOW THEREFORE, be it resolved that:

1. The Application for a transfer of Three (3) TDR dwelling unit from the Donor Site to the Receiving Site for the Project is hereby authorized and approved.
2. The Town Council hereby authorizes the Town Manager and the Town Planner to make the appropriate notations in the Public Record memorializing the Transfer of Development Rights from the Donor Site to the Receiving Site.
3. The Applicant and Donor shall record a warranty deed in the Miami-Dade public records memorializing the transfer of Three (3) TDR dwelling unit from the Donor Site to the Receiving Site.

4. This Resolution shall become effective immediately upon its adoption.

PASSED this 17th day of September, 2018.

TOWN OF BAY HARBOR ISLANDS

By: 
STEPHANIE BRUDER,
MAYOR

ATTEST:


MARLENE M. SIEGEL,
TOWN CLERK

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**


FRANK C. SIMONE, ESQ., CFP®,
ASSISTANT TOWN ATTORNEY

AGENDA ITEM REPORT

October 14, 2024

ITEM NUMBER: 11.

ITEM: Discussion and possible action regarding the location of pickleball courts on the island. Sponsored by Council Member Stephanie Bruder.

DESCRIPTION:

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Yvonne Hamilton, Town Clerk

ATTACHMENTS

None