

# BAL HARBOUR

- V I L L A G E -

Mayor Jeffrey P. Freimark  
Vice Mayor Seth E. Salver  
Councilman David J. Albaum  
Councilman Buzzy Sklar  
Councilman David Wolf

Village Manager Jorge M. Gonzalez  
Village Clerk Dwight S. Danie  
Village Attorneys Weiss Serota  
Helfman Cole & Bierman, P.L.

## **Bal Harbour Village Council** Regular Council Meeting Agenda March 27, 2023 At 6:30 PM

Bal Harbour Village Hall • 655 - 96th Street • Bal Harbour • Florida 33154

---

*This meeting will be conducted in-person. In order to minimize exposure to the Coronavirus to Councilmembers and members of the public, the meeting will also broadcast on the Village's website ([www.balharbourfl.gov](http://www.balharbourfl.gov)). Members of the public are also encouraged to participate by email ([meetings@balharbourfl.gov](mailto:meetings@balharbourfl.gov)) or by telephone at 305-865-6449.*

*BHV Who We Are, Vision, Mission, Values / The Bal Harbour Experience*  
[The Bal Harbour Experience.pdf](#)

### **CALL TO ORDER/ PLEDGE OF ALLEGIANCE**

### **REQUESTS FOR ADDITIONS, WITHDRAWALS AND DEFERRALS**

### **PRESENTATIONS AND AWARDS**

**PA1** Colorectal Cancer Awareness Month - Recognition

**PA2** Women's History Month Proclamation

### **CONSENT AGENDA**

#### **C6 - COUNCIL MINUTES**

**C6A** February 21, 2023 Village Council Meeting Minutes  
[VillageCouncilRegularMeetingMinutes\\_February21\\_2023 new.pdf](#)

#### **C7 - CONSENT AGENDA RESOLUTIONS**

**C7A** Fleurs De Villes Program Funding Authorization  
A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; RATIFYING IN THE AMOUNT NOT TO EXCEED \$40,000 TO FUND THE 2023 FLEURS DE VILLES GLOBAL EXHIBITION; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

[Item Summary - Fleurs de Ville\\_ADA.pdf](#)  
[Council Memo - Fleurs de Ville\\_ADA.pdf](#)  
[Resolution - Fleurs de Ville\\_ADA.pdf](#)

- C7B** Ice Cream We Love Program Funding Authorization  
A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; AUTHORIZING AND APPROVING THE SPONSORSHIP OF UP TO \$50,000 FOR THE ICE CREAM WE LOVE EVENT AT THE BAL HARBOUR SHOPS TO BENEFIT THE HOLTZ CHILDREN'S HOSPITAL / UNIVERSITY OF MIAMI-JACKSON HEALTH SYSTEM; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

[Item Summary - Ice Cream We Love\\_ADA.pdf](#)  
[Council Memo - Ice Cream We Love\\_ADA.pdf](#)  
[Resolution - Ice Cream We Love\\_ADA.pdf](#)

- C7C** AAMusicians Event Management  
A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING AN AGREEMENT WITH AAMUSICIANS FOR EVENT PRODUCTION IN AN AMOUNT NOT TO EXCEED \$45,000; APPROVING AN INITIAL TERM OF ONE YEAR WITH TWO ADDITIONAL ONE-YEAR RENEWAL OPTIONS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

[Item Summary - AAMusicians\\_ADA.pdf](#)  
[Council Memo - AAMusicians\\_ADA.pdf](#)  
[Resolution - AAMusicians\\_ADA.pdf](#)  
[Attachment - AAMusicians Agreement OneYearTerm.pdf](#)  
[Attachment - AAMusicians Agreement OneYearTerm\\_ADA.pdf](#)

- C7D** FDOT (CIGP) Collins Avenue Traffic Study Grant Acceptance  
A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; ACCEPTING A FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) "COUNTY INCENTIVE GRANT PROGRAM" (CIGP) GRANT AWARD FOR THE COLLINS AVENUE TRAFFIC STUDY PROJECT AND ENTERING INTO AN AGREEMENT FOR THE PROJECT ACTIVITIES, AS DETAILED WITHIN THE GRANT APPLICATION SUBMITTED DECEMBER OF 2021 IN THE ESTIMATED GRANT FUNDED AMOUNT OF TWENTY-FOUR THOUSAND NINE-HUNDRED DOLLARS (\$24,900); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

[Item Summary - Collins CIGP\\_ADA.pdf](#)  
[Council Memo - Collins CIGP\\_ADA.pdf](#)  
[Resolution - Collins CIGP\\_ADA.pdf](#)  
[Attachment - CIGP application\\_ADA.pdf](#)

- C7E** Waterfront Park - Additional Services for Testing & Inspections  
A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING AMENDMENTS TO PREVIOUSLY APPROVED CONTRACT AMOUNTS WITH ENGINEERING FIRMS ARDAMAN AND ASSOCIATES, INC. AND FACADE AND ENVELOPE ENGINEERING

CONSULTANTS, LLC TO PROVIDE THE NECESSARY INSPECTION AND MATERIAL TESTING SERVICES FOR THE VILLAGE PARK PROJECT, IN THE AMOUNT OF TWO THOUSAND THREE HUNDRED NINETY DOLLARS (\$2,390) AND TWENTY-TWO THOUSAND SIX HUNDRED FORTY DOLLARS (\$22,640), RESPECTIVELY; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

[Item Summary - Ardaman Material Testing\\_ADA.pdf](#)

[Council Memo - Ardaman Material Testing\\_ADA.pdf](#)

[Resolution - Ardaman Material Testing\\_ADA.pdf](#)

[Attachment - Ardaman additional service proposal\\_ADA.pdf](#)

[Attachment - Facade and Envelope Add Service proposal\\_ADA.pdf](#)

[Attachment - Reso 2022-1448 Ardaman Material Testing\\_ADA.pdf](#)

[Attachment -Facade and Envelope executed for waterproofing\\_ADA.pdf](#)

## **R5 - ORDINANCES**

### **R5A** FDEP Pollution Control Ordinance - First Reading

AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, COMPREHENSIVELY UPDATING AND AMENDING SECTION 14-6 OF CHAPTER 14 "PROVISIONS OF DRAINAGE AND STORMWATER MANAGEMENT" OF THE VILLAGE'S CODE OF ORDINANCES BY CREATING SECTION 14-6(A), TO BE ENTITLED "WATER QUALITY," CREATING SECTION 14-6(B) TO BE ENTITLED "SEDIMENT AND EROSION CONTROL," AND CREATING SECTION 14-6(C) TO BE ENTITLED, "ADOPTION OF SECTION D4, WATER CONTROL, OF PART 2–PUBLIC WORKS MANUAL OF MIAMI-DADE COUNTY, FLORIDA"; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

[Item Summary - Ordinance Amendment Drainage and Stormwater Managment\\_ADA.pdf](#)

[Council Memo - Stormwater and Erosion Control Ordinance\\_ADA.pdf](#)

[Ordinance\\_ADA.pdf](#)

## **R7 - RESOLUTIONS**

### **R7A** Police Department Purchase of Marine Vessel

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE EXPENDITURE OF \$169,934 TO PURCHASE A POLICE MARINE PATROL BOAT; APPROVING VESSEL-RELATED EXPENDITURES NOT TO EXCEED \$7,060 FOR THE PURCHASE OF POLICE RADIOS AND ANCILLARY ITEMS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING AN EFFECTIVE DATE.

[Item Summary - FIND Grant Marine Patrol Vessel Expenditure\\_ADA.pdf](#)

[Council Memo - FIND Grant Marine Patrol Vessel Expenditure\\_ADA.pdf](#)

[Resolution - FIND Grant Marine Patrol Vessel Expenditure\\_ADA.pdf](#)

[Attachment - FLUID Patrol 780 Vessel Specification\\_ADA.pdf](#)  
[Attachment - Miami-Dade County ITD Radio Quote\\_ADA.pdf](#)  
[Attachment - Sirocco Marine Fluid Watercraft Quote #031323AP\\_ADA.pdf](#)

- R7B** Waterfront Park - Supplemental Funding  
A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE APPROVING SUPPLEMENTAL FUNDING TO THE NV2A CONSTRUCTION AGREEMENT OWNER'S CONTINGENCY FOR THE BAL HARBOUR VILLAGE PARK PROJECT IN THE AMOUNT OF NINE HUNDRED FIFTY THOUSAND DOLLARS (\$950,000) AND CONTINGENCY ALLOWANCE OF TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

[Item Summary - Village Park Supplemental Funding\\_ADA.pdf](#)  
[Council Memo -Village Park Supplemental Funding\\_ADA.pdf](#)  
[Resolution -Village Park Supplemental Funding\\_ADA.pdf](#)  
[Attachment - Resolution 2021 - 1408\\_ADA.pdf](#)  
[Attachment - Supplemental Funding\\_ADA.pdf](#)

- R7C** Village Attorney Annual Performance Review  
A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; ACCEPTING THE ANNUAL REPORT OF THE VILLAGE ATTORNEY AND APPROVING AN INCREASE IN COMPENSATION OF THREE PERCENT (3%); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

[Item Summary - 2023 Village Attorney Annual Report\\_ADA.pdf](#)  
[Council Memo - 2023 Village Attorney Annual Report\\_ADA.pdf](#)  
[Resolution - 2023 Village Attorney Annual Report and Increase\\_ADA.pdf](#)  
[Village Attorney Annual Report for 2022\\_ADA.pdf](#)

## **R9 - NEW BUSINESS AND COUNCIL DISCUSSION**

- R9A** Discussion Item - Sargassum Seaweed Movement Towards Florida - Mayor Jeffrey P. Freimark & Councilman Buzzy Sklar  
[Discussion Item - Sargassum\\_ADA.pdf](#)

### **R9B - PUBLIC COMMENT**

## **R10 - VILLAGE MANAGER REPORT**

## **R11 - VILLAGE CLERK REPORT**

- R11A** Lobbyist Report  
[R11A1\\_Lobbyist Registration Report as of March21\\_2023.pdf](#)

## **R12 - VILLAGE ATTORNEY REPORT**



**R12A Monthly Attorney Report**  
[Monthly Attorney Report February2023\\_ADA.pdf](#)

**END OF REGULAR AGENDA**

**ADJOURNMENT**

One or more members of any Village Committee/Board may attend this meeting of the Council and may discuss matters which may later come before their respective Boards/Committees.

The New Business and Council Discussion Section includes a section for Public Comment. On public comment matters, any person is entitled to be heard by this Council on any matter; however, no action shall be taken by the Council on a matter of public comment, unless the item is specifically listed on the agenda, or is added to the agenda by Council action.

Any person who acts as a lobbyist, pursuant to Village Code Section 2-301 (Lobbyists), must register with the Village Clerk, prior to engaging in lobbying activities before Village staff, boards, committees, and/or the Village Council. A copy of the Ordinance is available in the Village Clerk's Office at Village Hall.

If a person decides to appeal any decision made by the Village Council with respect to any matter considered at a meeting or hearing, that person will need a record of the proceedings and, for such purpose, 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 (F.S. 286.0105).

All persons who need assistance or special accommodations to participate in virtual meetings please contact the Village Clerk's Office (305-866-4633), not later than two business days prior to such proceeding.

In accordance with the Americans with Disabilities Act of 1990, all persons who are disabled and who need special accommodations to participate in this proceeding because of that disability should contact the Village Clerk's Office (305-866-4633), not later than two business days prior to such proceeding.

All Village Council meeting attendees, including Village staff and consultants, are subject to security screening utilizing a metal detector and/or wand, prior to entering the Council Chamber, Conference Room, or other meeting area located within Village Hall. This is for the safety of everyone. Thanks for your cooperation.

# BAL HARBOUR

- V I L L A G E -

Mayor Jeffrey P. Freimark  
Vice Mayor Seth E. Salver  
Councilman David J. Albaum  
Councilman Buzzy Sklar  
Councilman David Wolf

Village Manager Jorge M. Gonzalez  
Village Clerk Dwight S. Danie  
Village Attorneys Weiss Serota  
Helfman Cole & Bierman, P.L.

## **Bal Harbour Village Council** Regular Council Meeting Minutes February 21, 2023 At 6:30 PM

Bal Harbour Village Hall • 655 - 96th Street • Bal Harbour • Florida 33154

---

*This meeting was conducted in-person. In order to minimize exposure to the Coronavirus to Councilmembers and members of the public, the meeting was also broadcast on the Village's website ([www.balharbourfl.gov](http://www.balharbourfl.gov)). Members of the public were also encouraged to participate by email ([meetings@balharbourfl.gov](mailto:meetings@balharbourfl.gov)) or by telephone at 305-865-6449.*

**CALL TO ORDER/ PLEDGE OF ALLEGIANCE** - Mayor Jeffrey Freimark called the meeting to order at 6:45 P.M. following the General Employees' Retirement Board Meeting.

The following were present:

Mayor Jeffrey Freimark  
Vice Mayor Seth Salver (via Zoom)  
Councilman David Albaum  
Councilman Buzzy Sklar  
Councilman David Wolf

Also present:

Jorge M. Gonzalez, Village Manager  
Dwight S. Danie, Village Clerk  
Susan Trevarthen, Village Attorney

### **REQUESTS FOR ADDITIONS, WITHDRAWALS AND DEFERRALS**

Mr. Gonzalez noted that Agenda Items C7B and C7C had been added by a Supplemental Agenda.

### **PRESENTATIONS AND AWARDS**

#### **PA1** Black History Month Proclamation

Mayor Freimark read a Proclamation celebrating the Month of February 2023 as Black History Month.

**PA2** Colorectal Cancer Awareness Month Proclamation

Mayor Freimark read a Proclamation honoring the Month of March 2023 as Colorectal Cancer Awareness Month.

**CONSENT AGENDA**

**C6 - COUNCIL MINUTES**

**C6A** January 30, 2023 Village Council Meeting Minutes

**C7 - CONSENT AGENDA RESOLUTIONS**

**C7A** A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING AN AGREEMENT BETWEEN THE VILLAGE AND SKY ELEMENTS LLC. FOR THE PROVISION OF A DRONE LIGHT SHOW FOR THE ANNUAL INDEPENDENCE DAY CELEBRATION FOR A ONE-YEAR TERM IN AN AMOUNT NOT TO EXCEED \$50,000; AUTHORIZING THE MANAGER TO ENTER INTO AN AGREEMENT WITH THE NEXT LOWEST BIDDER, PIXIS DRONES, IF SKY ELEMENTS LLC. BECOMES UNRESPONSIVE OR BREACHES THE AGREEMENT; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

**SUPPLEMENTAL AGENDA CONSENT RESOLUTIONS**

**C7B** A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE PURCHASE OF OUTDOOR FURNITURE FROM LANDSCAPE FORMS FOR THE NEW WATERFRONT PARK IN THE AMOUNT OF \$53,579.54; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

**C7C** A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE PURCHASE OF INDOOR FURNITURE FROM PRADERE DESIGNER WORKSPACES FOR OFFICES AT THE NEW WATERFRONT PARK IN AN AMOUNT NOT TO EXCEED \$25,588.89; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

**MOTION: A motion to approve the Consent Agenda was moved by Councilman Buzzy Sklar and seconded by Councilman David Wolf.**

**VOTE: The Motion passed by unanimous voice vote (5-0).**

## R7 - RESOLUTIONS

**R7A** A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE BAL HARBOUR VILLAGE LEGISLATIVE AGENDA FOR THE 2023 FLORIDA LEGISLATIVE SESSION; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

Mr. Gonzalez introduced the item saying that this was the opportunity for the Village Council to provide instruction to Ron Book, the Villages hired lobbyist in Tallahassee. He said that, as in previous years, the Village has asked Mr. Book to focus on legislative requests for funding support and issues unique to Bal Harbour.

Ron Book, Ronald L. Book, P.A. said his two biggest priorities for the Village is the Jetty elevation and resiliency project for half-a-million dollars, and the stormwater improvements project for \$774 thousand. He said that he believed that these projects fit with the priorities of the State Legislature and the Governor.

Mr. Book added that the Legislature is also continuing to work on changes in sovereign immunity limits for damages against local governments. He said the Senate priorities include defining a wildlife corridor, affordable housing and preemptions limiting the powers of local government, while the House priorities include open carry laws, school choice and changes in higher education.

He described a billion-dollar tax relief package adding that the State is now flush with cash, having \$14-to-\$25 billion in reserves, which might prove to be beneficial for the Village.  
Budget

There were no comments from the public.

**MOTION: A motion to approve the resolution was moved by Vice Mayor Seth Salver and seconded by Mayor Jeffrey Freimark.**

**VOTE: The Motion passed by unanimous voice vote (5-0).**

**R7B** A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA: PROVIDING FOR THE SUBMISSION TO THE VILLAGE ELECTORS OF A PROPOSED AMENDMENT TO THE VILLAGE CHARTER, IN ACCORDANCE WITH SECTION 6.03 OF THE MIAMI-DADE COUNTY CHARTER, CONCERNING BUILDING HEIGHT; PROVIDING REQUISITE BALLOT LANGUAGE FOR SUBMISSION TO THE ELECTORATE; CALLING AN ELECTION ON THE PROPOSED AMENDMENT TO THE VILLAGE CHARTER TO BE HELD ON TUESDAY, \_\_\_\_\_, 2023;

PROVIDING NOTICE OF ELECTION; PROVIDING FOR BALLOTING;  
PROVIDING FOR INCLUSION IN THE CHARTER; PROVIDING FOR  
SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

This item was heard at 7:15 P.M. following Agenda Item R7C. Mr. Gonzalez introduced the item, saying that the question before the Council was: what type of building should the Village have for its new Village Hall? He said that zoning requirements limit the height of a building structure, and that, like the successful referendum for the Gated Community to allow the height to be measured from what State and Federal laws allow, it would be prudent to do the same for the proposed Village Hall.

He said that the architect, Bernard Zyscovich, had proposed adding an additional ten-feet, fifty-five feet total, to allow for more attractive building with a smaller footprint, with three floors of office space with appropriate ceiling height, above an adequate parking space. He said that this item would allow a referendum for a Charter amendment that only applies to municipal buildings.

Mr. Gonzalez said that questions before the Council are -- should there be a referendum? if so, which date should the election be held? and should the election be a mail ballot or a standard vote-in-person-Election-Day election?

Mayor Freimark and Councilman Sklar both clarified that the Council is being asked to call for a referendum and is not making the decision of what height the building should be.

Councilman Albaum asked what was the height of the new recreation center, to which Mr. Gonzalez responded that the top of the terrace ceiling was fifty feet, and above that, an elevator room is fifty-six feet. Councilman Albaum then asked what was the height of the Shops, to which Mr. Gonzalez said, fifty-six feet.

Matilde Reyes, Capital Program Director, said that the architect has made this recommendation for all the voters to decide, but she said that, not to do it, would be giving in to building that isn't possibly everything that it could be.

Councilman Sklar said that if this resolution passes, he would like to have a workshop at which Mr. Zyscovich could be present to answer people's questions so that they would be able to make more informed decisions. Mr. Gonzalez said that given the recent changes from the State Legislature, the Village will do whatever can be legally required to educate residents.

Babak Raheb, 128 Balfour Drive, said that it was disingenuous for the Council to say that it is up for the voters to decide, where they can make the decision right now to not have a referendum. He said the architect should be able to design within the current constraints.

Penny Sepler, 10275 Collins Avenue, said that she agreed with Mr. Raheb. She said that the architect should be charged with presenting a couple of preliminary designs to

demonstrate why the extra height is necessary before putting the question to a referendum.

Raj Singh, 53 Camden Drive and General Manager of the Seaview Hotel, said that the architect should be able to design a building that looks nice and is functional within existing constraints. He said that the recent referendum that sought building height changes failed by ninety percent of the vote, and to spend \$17,000 plus for a referendum that would have the same results would be a waste of funds.

Nina Rudolph, 212 Bal Bay Drive, said that even though this is just for a municipal building it would be a slippery slope. She said that the architect should be able to design a great building. She said that given what was originally planned for the Bal Harbour Shops and what was built on 90th Street, the Village needs to be careful. She said the problem with referendums is that the people who pay the money where its beneficial to them, but it's the residents that are affected.

Jose Biton, 168 Park Drive and the Bal Harbour Civic Association, agreed with the comments regarding the recently failed referendum and the slippery slope. He said that increasing building height would directly impact members of the Gated Community and for the homes along Park Drive, adding that it had already happened with the huge wall of the new community center, which he said was an eyesore.

Neca Logan, 64 Camden Drive, asked why a twenty-foot garage is needed when the average height of a fire engine is thirteen and half feet. She said the new community center is beautiful from the front, but is awful from the back, being a fifty-six-foot wall with a twelve-foot-wall right next to someone's house. She agreed that the architect could build something beautiful within the existing constraints.

Bernard Zyscovich, Zyscovich Architects, LLC, apologized for arriving late, then said that he works for his client in their best interest, and, in this case, his client is the Village. He said that he wants to design a building to provide decades of benefit to the community, that is considerate of sea level, as well as providing light, health and wellness within. He said the conversation is related to a referendum where people vote and the vote is what happens.

He said that the additional height gets the building out of the floodplain and that for functionally purposes, a twenty-foot-high garage makes more sense for events and for emergency operations in which oversized vehicles may be necessary during an emergency. He said the question is having either a wider or slimmer footprint, and that having additional height gives a better building. He said that it is up to the community to decide, and that he doesn't know what kind of building to design if he didn't know the height limit.

Lisa Petrillo McCue, 114 Park Drive, said that she would be living directly across from this building and the proposed height is way too high. She said that she has been living under

constant construction with trucks and construction workers, which was supposed to be for a short time, but has been out of control. She said a wider building would be better than taller.

Vice Mayor Salver said that what everyone has stated is important, but the rest of the residents of Bal Harbour deserve to have a say. He said if the professional architect that the Village has hired is telling us to do something, it is incumbent upon the Council to take that step, wherein the voters would have the final decision.

Councilman Sklar said that after hearing from the residents he is looking at the issue through a different prism. He said Mr. Zyscovich is unbelievably talented architect who, if given options, could produce what the Council and the residents would like.

Councilman Albaum said that he would not support an increase in building height and that we should look at alternatives.

Councilman Wolf said that, as a representative of the Gated Community, he was fully aware that although the community center was going to be beautiful, it was eyesore from the inside the gate, and the proposed additional height might have the same effect. He said that he was not clear enough on the vision to make decision or send to it to a referendum without more complete knowledge. He said that he would need to look at engineering and that he was not sure that a 20-foot garage was needed. He suggested that the Council make a decision this evening, and not put the question out to vote.

Vice Mayor Salver said that there are really two questions to be decided, the first being should the height of the building be allowed to be measured from base flood elevation? and the second being should the building height be allowed to increase ten-feet?

Mr. Gonzalez re-presented the three available options: Option A - status quo (forty-five-foot); Option B - measured from base flood elevation; and Option C - measured from base flood elevation not to exceed fifty-five feet.

Councilman Sklar said that with Option B and a sixteen-foot garage, the architect could still build a beautiful, functional building.

Mayor Freimark asked councilmembers not to design the building at the dais, and suggested deferring the item, then bring the resolution back with revised language and revised description, with samples that would allow for a meaningful discussion.

Mr. Gonzalez suggested bifurcating the question and have two questions for referendum, base flood elevation, and additional height, to which Mayor Freimark said that he would be cautious against unintended consequences.

Mr. Zyscovich suggested that, at the very least, the base flood elevation question should go to referendum. He said that he needed to know the parameters of building in order to

design it. He said he wanted to build a state-of-the-art building that would fulfill all the functions desired.

Mayor Freimark said that he has heard what the community members had said this evening, and that he is aware that there is construction fatigue and asked Councilmembers if there was consensus for moving ahead with a single question regarding measuring the building height from base flood elevation, to which all agreed.

**MOTION: A motion to amend the resolution by removing "not to exceed 55 feet" was moved by Mayor Jeffrey Freimark and seconded by Councilman Buzzy Sklar.**

**VOTE: The Motion passed by unanimous voice vote (5-0).**

**MOTION: A motion to further amend the resolution to set the election date to May 2, 2023 and to conduct a standard election was moved by Councilman Buzzy Sklar and seconded by Mayor Jeffrey Freimark.**

**VOTE: The Motion passed by unanimous voice vote (5-0).**

**MOTION: A motion to approve the amended resolution was moved by Councilman Buzzy Sklar and seconded by Mayor Jeffrey Freimark.**

**VOTE: The Motion passed by unanimous voice vote (5-0).**

**R7C** A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; AUTHORIZING THE BAL HARBOUR CIVIC ASSOCIATION TO ASSUME PROPERTY MANAGEMENT SERVICES WITHIN THE GATED COMMUNITY BY DIRECTLY CONTRACTING WITH FIRSTSERVICE RESIDENTIAL FOR SUCH SERVICES; AUTHORIZING THE VILLAGE MANAGER TO REIMBURSE THE ASSOCIATION FOR COSTS INCURRED IN CONNECTION WITH SERVICES RENDERED PROVIDED SUCH COSTS ARE APPROPRIATE AND PROPERLY SEGREGATED; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

This item was heard at 7:05 P.M. following Agenda Item R7A. Mr. Gonzalez introduced the item saying that, per the Milestone agreement with the Village in allowing the Civic Association to self-govern, this item would allow for a contract to provide property management services to the Civic Association with the Village being the fiscal agent. He said that since there had only been one responsive applicant to the RFP, the Civic



Association had determined that it would be in their best interest to defer this item, then re-issue the RFP.

Councilman Wolf said that it is important to get an entity that can manage the Civic Associations extensive needs.

Councilman Sklar said that in order for the Civic Association to be able to self-govern this item has to happen, and if they feel that they need more time, then the Council should allow that to happen.

Babak Raheb, 128 Balfour Drive, said that he was opposed to having the Village collect an assessment for a private homeowners association which, he said, technical is not one.

Neca Logan, 64 Camden Drive and President of the Bal Harbour Civic Association, said that she would like to extend the time and have the item go out to bid, so that they have more than one choice.

Nina Rudolph, 212 Bal Bay Drive, said that the new board of the Civic Association is a great new group of people and they have a particular person in mind who could serve their needs. She said she was in favor of extending the time for this item.

**MOTION: A motion to defer the resolution was moved by Councilman Buzzy Sklar and seconded by Councilman David Wolf.**

**VOTE: The Motion passed by unanimous voice vote (5-0).**

## **R9 - NEW BUSINESS AND COUNCIL DISCUSSION**

**R9A** Discussion Item - Broad Causeway Bridge Replacement Project Letter of Support -Village Manager Jorge M. Gonzalez and Councilman Buzzy Sklar

Councilman Sklar introduced the item said that the Mayor of Bay Harbour had contacted him asking for a letter of support for Federal funding for the project. There was a general consensus to send a letter that supports their efforts for securing funding, but it that be generic, without binding the Village to an undesirable outcome.

**R9B** Discussion Item - Ordinance to Strengthen Enforcement of the DEP Stormwater Permit - Village Manager Jorge M. Gonzalez

Mr. Gonzalez introduced the item saying the Department of Environmental Protection is requiring the Village to strengthen its ordinance to conduct monitoring and control illegal disposal into the Village's stormwater system. Mayor Freimark how much optionality the Village had, to which Mr. Gonzalez said that the Village pretty much had to pass an ordinance.

John Oldenburg, Director of Public Works and Beautification Department, described his work with the Village Attorney in crafting a draft ordinance adding that the Village has already implemented practices that are in compliance with what DEP is requiring.

There was a general consensus from the Council to bring an ordinance back for first reading at the March 2023 Village Council Meeting.

## **R9C - PUBLIC COMMENT**

Penny Sepler, 10275 Collins Avenue, said that people are feeding cats on Village sidewalks and asked what could be done about it, to which Mayor Freimark asked for Village Staff to look into what solutions there might be.

Raj Singh, 53 Camden Drive, asked what was the plan for the current Village Hall to which Mr. Gonzalez said Phase B of the Waterfront Park called for its demolition, then replacement with additional parking for the park, above which would be a still-to-be-decided open air or enclosed recreation area.

Neca Logan, 64 Camden Drive, asked for an updated timeline work on Bal Bay Drive with the water and FPL (electric) in order to get the Waterfront Park up and running and its impact on the Gated Community.

Babak Raheb, 128 Balfour Drive, mentioned the Shops' parking garage on 96th saying that it did not turn out the way that it was promised.

Mayya Stepanova, 10185 Collins Avenue, spoke about the various issues she was having at the Plaza of Bal Harbour, to which Mayor Freimark said that the Council is limited in how much it can intervene with condominium owners' rights and condominium associations.

## **R10 - VILLAGE MANAGER REPORT**

## **R11 - VILLAGE CLERK REPORT**

### **R11A** Lobbyist Report

## **R12 - VILLAGE ATTORNEY REPORT**

R12A Monthly Attorney Report

**END OF REGULAR AGENDA**

**ADJOURNMENT-** The meeting was adjourned at 8:37 PM.

---

Mayor Jeffrey P. Freimark



Attest:

---

Dwight S. Danie, Village Clerk

# BAL HARBOUR

- VILLAGE -

## COUNCIL ITEM SUMMARY

### Condensed Title:

**A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE RATIFYING IN THE AMOUNT OF UP TO \$40,000 TO FUND THE 2023 FLEURS DE VILLES GLOBAL EXHIBITION; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**

### Issue:

Should the Village Council approve the Resolution to fund the 2023 Fleurs de Villes activation in Bal Harbour Village?

### The Bal Harbour Experience:

- Beautiful Environment     Safety     Modernized Public Facilities/Infrastructure  
 Destination & Amenities     Unique & Elegant     Resiliency & Sustainable Community  
 Other: \_\_\_\_\_

### Item Summary / Recommendation:

In 2021, as part of the Village's 75th Anniversary celebrations, Bal Harbour Village participated along with the Bal Harbour Shops in the world-wide inaugural launch of Fleurs de Ville. In 2022, the Village again served as the host for the launch of the activation. In both 2021 and 2022, this event showcased floral activations throughout the Village in our public spaces, the Bal Harbour Shops and hotels. The 2023 edition has already taken place with Bal Harbour Village once again having served as the inaugural launch of this year's world-wide event. Earlier this month, from March 3 - 12, 2023, the Village was adorned with floral activations on our entrance signs, on various sculptures of our public art program, throughout the Bal Harbour Shops and in the Ritz-Carlton and the St. Regis Bal Harbour Resorts. This event is budgeted in the 2022-2023 Resort Tax Fund Budget for up to \$50,000, although the total cost of this year's activation was \$40,000.

**THE ADMINISTRATION RECOMMENDS APPROVAL OF THIS RESOLUTION.**

### Advisory Board Recommendation:

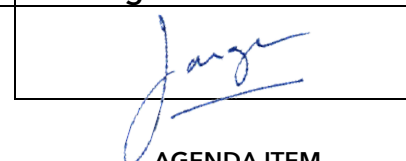
This item was previously discussed at the Resort Tax Committee during the budgeting process with the Committee supporting the event and recommending that funds be allocated in the 2022-2023 Resort Tax Fund Budget.

### Financial Information:

	Amount	Account	Account #
	\$40,000	Tourism-Sponsorships, Organizations & Contributions	10-52-504826

### Sign off:

<b>Assistant Village Manager</b> Ramiro Inguanzo	<b>Chief Financial Officer</b> Claudia Dixon	<b>Village Manager</b> Jorge M. Gonzalez
---	---	---



# BAL HARBOUR

- VILLAGE -

## COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager

DATE: March 27, 2023

SUBJECT: **A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; RATIFYING IN THE AMOUNT NOT TO EXCEED \$40,000 TO FUND THE 2023 FLEURS DE VILLES GLOBAL EXHIBITION; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**



### **ADMINISTRATIVE RECOMMENDATION**

I am recommending approval of this Resolution.

### **BACKGROUND**

In 2021, as part of the Village's 75<sup>th</sup> Anniversary celebrations, Bal Harbour Village participated along with the Bal Harbour Shops in the world-wide inaugural launch of Fleurs de Ville. In 2022, the Village again served as the host city for the launch. In both 2021 and 2022, this event showcased floral activations throughout the Village in our public spaces, the Bal Harbour Shops and hotels. The 2023 edition has already taken place with Bal Harbour Village once again having served as the inaugural launch of this year's world-wide event. Earlier this month, from March 3 - 12, 2023, the Village was adorned with floral activations on our entrance signs, on various sculptures of or public art program, throughout the Bal Harbour Shops and in the Ritz-Carlton Bal Harbour Resort and the St. Regis Bal Harbour Resort.

This event is budgeted in the 2022-2023 Resort Tax Fund Budget for up to \$50,000, although the total cost of this year's activation was \$40,000.

### **ANALYSIS**

Given the enormous success of both the 2021 and 2022 events which both drew strong participation as well as positive feedback from both residents and Hotel Partners, and positive press and social media coverage. During the 2023 fiscal year budgeting process, the Resort Tax Committee unanimously recommended that Bal Harbour Village participate in the Fleurs de Ville activation and allocated up to \$50,000 for this event. Bal Harbour Village once again served as the world-wide launch for the global exhibition which takes place during International Women's Month and this year took place from March 3-12, 2023.

Section 19-41 of the Code of Bal Harbour Village states that Resort Tax funds collected by Bal Harbour Village shall:

*“be used for the promotion of the tourist industry, which shall include but not be limited to the following: publicity, advertising, news bureau, promotional events, convention bureau activities, capital improvements and the maintenance of all physical assets in connection therewith, and the restoration and preservation of the ocean beach in the Village, the continued existence of which is essential to the maintenance of all other tourist attractions in the Village.”*

Using funds from the Resort Tax Fund to sponsor this event is appropriate given the media impressions and positive public relations which shall be generated.

### **THE BAL HARBOUR EXPERIENCE**

The Fleurs de Villes activation affords the Village the opportunity to continue to deliver on the *Bal Harbour Experience* by enhancing the Beautiful Environment of our destination. Being the only location in Florida for this event, and the world-wide launch for the event, contributes to the Destination & Amenities and Unique & Elegant pillars that our residents and guests come to expect to take place in Bal Harbour Village.

### **CONCLUSION**

Providing unique and elegant special events and activation opportunities which generate strong demand from both residents and guests as well as media coverage is the objective of our Resort Tax. During the Budget planning process, careful consideration was given as to what type of events and activations should be considered for the FY 2023 year and the Resort Tax Committee unanimously supported participating again in the Fleurs de Villes in 2023. The strong results of the 2021 and 2022 events also provided the rationale for again hosting this event in Bal Harbour Village. Additionally, this activation fulfills our aim to deliver on the Bal Harbour Experience. Therefore, I recommend approval of this item.

RESOLUTION NO. 2023-\_\_\_\_

**A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; RATIFYING IN THE AMOUNT NOT TO EXCEED \$40,000 TO FUND THE 2023 FLEURS DE VILLES GLOBAL EXHIBITION; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, in March 2021, Bal Harbour Village (“Village”) in conjunction with the Bal Harbour Shops (“Shops”) participated in the world-wide launch of Fleurs de Village - ROSE, an event that showcased floral decorated mannequins in the Shops and at other locations throughout the Village and the Village again served as the host city for the launch of the 2022 event; and

**WHEREAS**, the 2023 edition has already taken place with Bal Harbour Village once again serving as the inaugural launch of this year’s world-wide event when from March 3rd to March 12th the Village was adorned with floral activations on our entrance signs, on various sculptures of or public art program, throughout the Bal Harbour Shops and in the Ritz-Carlton Bal Harbour Resort and the St. Regis Bal Harbour Resort; and

**WHEREAS**, up to \$50,000 from the 2022-23 Resort Tax Fund was budgeted for the 2023 event, although the total cost of this year’s activation was \$40,000; and

**WHEREAS**, this Council desires to approve the recommendation of the Resort Tax Committee and to ratify the expenditures in the amount of \$40,000 to cover the costs associated with the 2023 Fleurs de Ville exhibit.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:**

**Section 1.** **Recitals Adopted.** That the above stated recitals are hereby adopted and confirmed.

**Section 2.** **Expenditure Approved.** That the expenditure to Fleurs de Ville in the amount of \$40,000 to underwrite the cost of the 2023 Fleurs de Ville global exhibit in Bal Harbour Village is hereby approved.

**Section 3. Implementation.** That the Village Manager is hereby authorized to take all actions necessary to implement the purposes of this Resolution

**Section 4. Effective Date.** That this Resolution shall take effect immediately upon the adoption hereof.

PASSED AND ADOPTED this 27<sup>th</sup> day of March, 2023.



\_\_\_\_\_  
Mayor Jeffrey P. Freimark

ATTEST:

\_\_\_\_\_  
Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Village Attorney  
Weiss Serota Helfman Cole & Bierman P.L.



# BAL HARBOUR

- VILLAGE -

## COUNCIL ITEM SUMMARY

### Condensed Title:

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE AUTHORIZING AND APPROVING THE SPONSORSHIP OF UP TO \$50,000 FOR THE 2023 ICE CREAM WE LOVE EVENT AT THE BAL HARBOUR SHOPS; TO BENEFIT THE HOLTZ CHILDREN'S HOSPITAL / UNIVERSITY OF MIAMI-JACKSON HEALTH SYSTEM; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

### Issue:

Should the Village Council approve the Resolution to fund and partner with, and co-sponsor the 5th annual "Ice Cream We Love" event on May 20-21, 2023 at the Bal Harbour Shops.

### The Bal Harbour Experience:

- Beautiful Environment     Safety     Modernized Public Facilities/Infrastructure  
 Destination & Amenities     Unique & Elegant     Resiliency & Sustainable Community  
 Other: \_\_\_\_\_

### Item Summary / Recommendation:

The Bal Harbour Shops (BHS), along with Holtz Children's Hospital / University of Miami-Jackson Health System, are inviting Bal Harbour Village to once again partner with, and co-sponsor the 5th annual "Ice Cream We Love" event on May 20-21, 2023 at the Bal Harbour Shops. This event is budgeted in the 2022-2023 Resort Tax Fund Budget. Bal Harbour Village has previously served as a sponsor of this event. Using funds from the Resort Tax Fund to sponsor this event is appropriate given that the Bal Harbour Village Sponsorship / Logo will be featured prominently in all marketing, PR, and Social Media placements which will generate media impressions and positive public relations coverage. Bal Harbour Residents and Hotel Guests will enjoy a designated 'pre-sales' period to ensure tickets are available in addition to "early access" to the event. Additionally, tickets will be provided to Ruth K. Broad K-8 School to be awarded to deserving students.

**THE ADMINISTRATION RECOMMENDS APPROVAL OF THIS RESOLUTION.**

### Advisory Board Recommendation:

This item was previously discussed at the Resort Tax Committee with the Committee supporting the event and recommending that funds be allocated in the 2022-2023 Resort Tax Fund Budget.

### Financial Information:

	Amount	Account	Account #
	\$50,000	Resort Tax- Sponsorships, Organizations & Contributions	10-52-504826

### Sign off:

Assistant Village Manager	Chief Financial Officer	Village Manager
Ramiro Inguanzo	Claudia Dixon	Jorge M. Gonzalez

  
AGENDA ITEM \_\_\_\_\_

# BAL HARBOUR

- VILLAGE -

## COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager



DATE: March 27, 2023

SUBJECT: **A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; AUTHORIZING AND APPROVING THE SPONSORSHIP OF UP TO \$50,000 FOR THE ICE CREAM WE LOVE EVENT AT THE BAL HARBOUR SHOPS TO BENEFIT THE HOLTZ CHILDREN'S HOSPITAL / UNIVERSITY OF MIAMI-JACKSON HEALTH SYSTEM; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**

### **ADMINISTRATIVE RECOMMENDATION**

I am recommending approval of this Resolution.

### **BACKGROUND**

The Bal Harbour Shops (BHS), along with Holtz Children's Hospital / University of Miami-Jackson Health System, are inviting Bal Harbour Village to once again partner with, and co-sponsor the 5<sup>th</sup> annual "Ice Cream We Love" event on May 20-21, 2023 at the Bal Harbour Shops. Bal Harbour Village has previously served as a sponsor for this event.

This ticketed event, with approximately 500 tickets sold per day, raises funds for the Holtz Children's Hospital in support of their efforts in caring for patients in need. Sales of the tickets will be done in advance of the event, with limited tickets being sold each day at the event. Ice Cream We Love vendors will be selected from local providers as well as from state and nationally recognized brands. Additionally, activations for children are also planned for each day of the event with face-painting, caricature sketch artists, coloring tables, story time activities, and a variety of games.

In the past, the Bal Harbour Village Council has approved contributions from the Resort Tax for several activations at the Bal Harbour Shops. Last year, \$50,000 was approved to sponsor the 2022 Ice Cream We Love event. Previously, \$100,000 was approved by the Village Council for the 2007 and 2009 Destination Fashion events, and \$125,000 for the 2016 event in support of The Buoniconti Fund to Cure Paralysis, the fundraising arm of The Miami Project to Cure Paralysis. In 2020 The Village Council approved a \$50,000 contribution for the Official Miami Super Bowl LIV Host Committee VIP Party event which featured an auction to benefit The Buoniconti Fund to Cure Paralysis.

Media and Influencers are invited to the event to ensure wide-ranging coverage across all media channels.

## **ANALYSIS**

The Village's sponsorship of this event would consist of \$50,000 Sponsorship for 50% of the estimated Production Hard Costs (Staffing, Décor/Entertainment, Signage, Food & Beverage). Bal Harbour Shops will be contributing 50% of the Production Hard Costs as well as an additional \$40,000 for all Marketing, Logistics and Security production costs. Holtz Children's Hospital will be responsible for Production / Logistics / Staffing of Children's activity areas, staffing for check-in and management of ticket sales (previous events costs have been \$30-40,000 per event). The total amount of up to \$50,000 would be paid from the Resort Tax Operating Budget.

Section 19-41 of the Code of Bal Harbour Village states that Resort Tax funds collected by Bal Harbour Village shall:

*"be used for the promotion of the tourist industry, which shall include but not be limited to the following: publicity, advertising, news bureau, promotional events, convention bureau activities, capital improvements and the maintenance of all physical assets in connection therewith, and the restoration and preservation of the ocean beach in the Village, the continued existence of which is essential to the maintenance of all other tourist attractions in the Village."*

Using funds from the Resort Tax Fund Balance to sponsor this event is appropriate given the media impressions and positive public relations which shall be generated. Given that this event will be available to Bal Harbour Residents and Hotel Guests in addition to the general public to purchase tickets, a designated 'pre-sales' period will be offered to Bal Harbour residents to ensure tickets are available. As ticket sales are going towards charitable contributions, discounts on tickets are not being offered so as to not diminish the contributions to the charity. The up to \$50,000 Sponsorship will ensure all of the following benefits are attained:

- Bal Harbour Village Sponsorship / Logo will be featured prominently in all marketing and PR (including press release, BHS newsletter, placement on BHS Website, Step and Repeats for media photos, and emails) and Social Media placements;
- Limited Pre-Sale of tickets exclusive to Bal Harbour Residents and Guests;
- Early admittance to event exclusively for Bal Harbour Residents and Guests;
- 20 tickets for Ruth K. Broad K-8 Principal to award to deserving students; and
- Opportunity for a Village Hotel to activate the Kids Area.

This item was previously discussed at the Resort Tax Committee with the Committee supporting the event and recommending the funding of up to \$50,000 in the 2022-2023FY Resort Tax Fund Budget. This event is budgeted in this FY's budget.

**THE BAL HARBOUR EXPERIENCE**

The Ice Cream We Love event supports the *Bal Harbour Experience* by contributing to the Destination & Amenities and Unique & Elegant pillars by providing a special and unique event for our residents and guests to enjoy.

**CONCLUSION**

It is recommended that the Village Council adopt this Resolution which authorizes and approves the sponsorship of the 2023 Ice Cream We Love event to be held in Bal Harbour Village.

**RESOLUTION NO. 2023-**

**A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; AUTHORIZING AND APPROVING THE SPONSORSHIP OF UP TO \$50,000 FOR THE ICE CREAM WE LOVE EVENT AT THE BAL HARBOUR SHOPS TO BENEFIT THE HOLTZ CHILDREN'S HOSPITAL / UNIVERSITY OF MIAMI-JACKSON HEALTH SYSTEM; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Bal Harbour Village ("Village") has approved contributions in the past in the amount of \$100,000 from Resort Tax Funds for the 2007 and 2009 Destination Fashion events; \$125,000 for a 2016 event to directly support the Buoniconti Fund to Cure Paralysis and a \$50,000 sponsorship in 2020 for the Official Miami Super Bowl LIV Host Committee VIP auction and was a sponsor in the amount of \$50,000 for the 2022" Ice Cream We Love" event; and

**WHEREAS**, the Bal Harbour Shops (BHS), along with Holtz Children's Hospital / University of Miami-Jackson Health System, are inviting Bal Harbour Village to once again partner with, and co-sponsor the 5th annual "Ice Cream We Love" event on May 20-21, 2023 at the Bal Harbour Shops, with the net proceeds of the event going to benefit the Hospital; and

**WHEREAS**, the Village sponsorship will consist of up to \$50,000 Cash Sponsorship and will deliver the following benefits: the Village will be treated as an equal partner for the Event; the Village's Logo will be prominently displayed in all marketing materials and Social Media placements promoting the Event; and the Village will be allotted limited pre-sale tickets and early admission to the Event exclusive to Bal Harbour residents and guests; and

**WHEREAS**, the Village's Resort Tax Committee supports the 2023 event and recommends that the Village Council approve the expenditure of Resort Tax funds up to \$50,000 for this sponsorship; and

**WHEREAS**, the Village Council finds that contributing an amount not to exceed \$50,000 from Resort Tax Funds for this Event is in the best interest of the Village.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That the above stated recitals are hereby adopted and confirmed.

**Section 2. Sponsorship Authorized.** That the sponsorship up to \$50,000 is hereby authorized and approved and the source of funding is derived from available Fiscal Year 2022-23 Resort Tax funds.

**Section 3. Expenditure Approved.** That the expenditure of identified budgeted funds from the Resort Tax for this Event in an amount not to exceed \$50,000 is hereby approved.

**Section 4. Implementation.** That the Village Manager is hereby authorized to take all actions necessary to implement the Agreement and the purposes of this Resolution.

**Section 5. Effective Date.** That this Resolution shall take effect immediately upon the adoption hereof.

PASSED AND ADOPTED this 27<sup>th</sup> day of March, 2023.



\_\_\_\_\_  
Mayor Jeffrey P. Freimark

ATTEST:

\_\_\_\_\_  
Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Village Attorney  
Weiss Serota Helfman Cole & Bierman P.L.

# BAL HARBOUR

- VILLAGE -

## COUNCIL ITEM SUMMARY

### Condensed Title:

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE; APPROVING AN AGREEMENT WITH AAMUSICIANS FOR EVENT PRODUCTION IN AN AMOUNT NOT TO EXCEED \$45,000; APPROVING AN INITIAL TERM OF ONE YEAR WITH TWO ADDITIONAL ONE-YEAR RENEWAL OPTIONS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

### Issue:

Should the Village approve an agreement with AAMusicians for event and entertainment services for various Village events throughout the year?

### The Bal Harbour Experience:

Beautiful Environment     Safety     Modernized Public Facilities/Infrastructure  
 Destination & Amenities     Unique & Elegant     Resiliency & Sustainable Community

### Item Summary / Recommendation:

AAMusicians is an entertainment company, based in South Florida, that was established in 2007. The company provides various event services, including live entertainment. The company has established a reputation creating and executing successful events throughout South Florida and maintains a roster of local entertainment for hire that includes a variety of music genres.

Most recently, the Village contracted with AAMusicians to provide entertainment and sound for the January and February installments of our monthly music series. January featured well-known jazz artist, Wendy Pedersen. February featured flamenco music and included a showcase with two flamenco dancers. Both events were very well received, and the logistics and coordination provided by AAMusicians was excellent. They were professional, punctual, and delivered wonderful events.

AAMusicians also provides additional services such as Disc Jockeys, lighting, equipment rentals, activations, and food and beverage. For these reasons, we recommend entering into an agreement for five (5) concert installments for our monthly music series, as well as event support for our Spring Festival slated for April 2023.

Funding for these events is included in the Fiscal Year (FY) 2022-2023 Resort Tax Fund budget.

**THE ADMINISTRATION RECOMMENDS APPROVAL OF THIS RESOLUTION.**

### Financial Information:

	Amount	Account	Account #
1	\$45,000	Resort Tax - Special Events	10-72-504853

### Sign off:

Director Recreation, Arts & Culture	Chief Financial Officer	Village Manager
Sylvia Flores	Claudia Dixon	Jorge M. Gonzalez



# BAL HARBOUR

- VILLAGE -

## COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager



DATE: March 27, 2023

SUBJECT: **A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING AN AGREEMENT WITH AAMUSICIANS FOR EVENT PRODUCTION IN AN AMOUNT NOT TO EXCEED \$45,000; APPROVING AN INITIAL TERM OF ONE YEAR WITH TWO ADDITIONAL ONE-YEAR RENEWAL OPTIONS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

### **ADMINISTRATIVE RECOMMENDATION**

I am recommending approval of this Resolution.

### **BACKGROUND**

With the establishment of the Recreation, Arts & Culture Department, and the directive to further enhance Village events, with an emphasis on both residents and visitors, staff has been evaluating options for introducing various genres of music into the Village's monthly music series.

This music series, which began shortly after COVID, with the concept of pop-up concerts featuring the South Florida Symphony Orchestra, has been well-received. Our Recreation Survey, which was distributed from September 2022 through January 2023, had almost 250 responses. One of the questions specifically inquired about what type of community event the individual would enjoy attending, and the event that received the highest percentage of responses (76%), was concerts. Attendees have requested to expand the series to include different genres of music, to appeal to a variety of demographics in the community. The most popular genres on the survey included Jazz, Pop, Classical, and Latin.

With these survey results in mind, the Village contracted with AAMusicians to provide a jazz ensemble for our January 2023 concert and a flamenco group for our February 2023 concert. Both events were very well received, and we were very pleased with the vendor's professionalism and coordination. The event execution exceeded our expectations, and we received many compliments at both events as well as after the fact, via social media and phone calls.

### **ANALYSIS**

We have ten (10) concerts budgeted for FY 2022-2023, running every month with the exception of November 2022 and August 2023. We have maintained a contract with South



Florida Symphony Orchestra to fulfill four (4) concerts throughout the year. We requested a proposal from AAMusicians to provide entertainment and event services for five (5) installments of our music series, as well as the upcoming Spring Festival.

The proposal provided by AAMusicians breaks down as follows:

<b><u>Special Event</u></b>	<b><u>Cost</u></b>
Music Series (5 events)	\$37,500
Spring Festival	\$7,500
<b>TOTAL</b>	<b>\$45,000</b>

This funding is budgeted for and available in the Resort Tax Fund, Special Events account for Fiscal Year 2022-2023.

**THE BAL HARBOUR EXPERIENCE**

Delivering high-quality, well-produced events that appeal to a variety of interests, is a key component to creating unique and elegant experiences and destinations and amenities for our residents and visitors, as part of the *Bal Harbour Experience*.

**CONCLUSION**

The Village Council is asked to consider the benefit of contracting with an entertainment vendor that has access to a variety of live entertainment groups for various special events, as well as additional services, such as lighting, sound, activations, and more. I, therefore, recommend approval of this Resolution.

Attachments:

1. Agreement with AAMusicians

RESOLUTION NO. 2023-\_\_\_\_

**A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING AN AGREEMENT WITH AAMUSICIANS FOR EVENT PRODUCTION IN AN AMOUNT NOT TO EXCEED \$45,000; APPROVING AN INITIAL TERM OF ONE YEAR WITH TWO ADDITIONAL ONE-YEAR RENEWAL OPTIONS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, with the establishment of the Recreation, Arts & Culture Department, and the directive to further enhance Village events, with an emphasis on both residents and visitors, staff has been evaluating options for introducing various genres of music into the monthly music series; and

**WHEREAS**, a music series, which began shortly after COVID, with the concept of pop-up concerts featuring the South Florida Symphony Orchestra, has been well-received by Village residents and guests; and

**WHEREAS**, based on a survey of Village residents and visitors, Village staff expanded the type of concerts offered as part of the music series and contracted with AAMusicians to provide a jazz ensemble for a January 2023 concert and a flamenco group for a February 2023 concert, both which received extremely positive feedback;

**WHEREAS**, Village staff requested a proposal from AAMusicians, to provide entertainment and event services for five (5) installments of the Village's music series, as well as the upcoming Spring Festival;

**WHEREAS**, the Village staff recommends that the Village Council approve a one year agreement with AAMusicians, with the option of two additional one year terms, in an amount not to exceed \$45,000 annually for these concerts.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That the above stated recitals are hereby adopted and confirmed.

**Section 2. Funding for AAMusicians Concerts.** That the funding in an amount not to exceed \$45,000 from the Resort Tax Fund for these concerts is hereby approved.

**Section 3. Implementation.** That the Village Manager is hereby authorized to take all actions necessary to implement this Resolution.

**Section 4. Effective Date.** That this Resolution shall take effect immediately upon the adoption hereof.

PASSED AND ADOPTED this 27<sup>th</sup> day of March, 2023.



\_\_\_\_\_  
Mayor Jeffrey P. Freimark

ATTEST:

\_\_\_\_\_  
Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Village Attorney  
Weiss Serota Helfman Cole & Bierman P.L.

## **Professional Services Agreement with AAMUSICIANS.COM**

This Professional Services Agreement (the "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2023 (the "Effective Date") by and between Bal Harbour Village, a Florida municipality (the "Village") and AAMusicians, an independent contractor ("Contractor"), with each being referred to herein as a Party or collectively as the "Parties."

**WHEREAS**, the Village seeks professional event services for various Village events ("Event(s)");

**WHEREAS**, the Village desires to enter into an agreement with Contractor for the provision of these services.

**NOW, THEREFORE**, in consideration of the mutual terms, conditions, promises and covenants set forth below, the Village and Contractor agree as follows:

- I. SCOPE OF SERVICES.** Contractor shall provide the scope of services ("Services" or "Work"), attached and incorporated herein as Exhibit "A". Contractor will provide a proposal ("Proposal"), prior to each event, which will require the Village's review and approval. Approval will be provided with a fully executed Notice to Proceed (NTP). The Village shall not be responsible nor shall the Contractor submit bills for work or services rendered prior to the issuance of an NTP.
- II. TERM.** This Agreement shall be valid from Effective Date and shall continue for an initial term of one (1) year, unless otherwise terminated with or without cause, by the Village in accordance with the provisions of this Agreement. The Village shall have the option to renew this Agreement for an additional two (2), one (1) year terms.
- III. PAYMENT.** In consideration of Contractor's completion of the Services rendered hereunder, the Village shall pay to Contractor an amount not to exceed Forty-Five Thousand Dollars (\$45,000.00). A fifty percent (50%) deposit for each event will be paid after issuance of NTP. The final balance (50%) for each event will be paid at the completion of the event. Additional services shall not be provided without the Village's prior written approval.
- IV. LIABILITY FOR EXPENSES.** The Village recognizes that Contractor may incur certain incidental unexpected expenses in the provision of Contractor's services. However, the Village has no obligation to reimburse such expenses and

considers them as part of the overall fee. The Village reserves the right to reimburse, at its sole discretion, previously agreed upon expenses. For those expenses properly pre-approved for reimbursement, documentation and receipts will be required to be submitted for payment to be processed in the subsequent month's payment.

- V. MEDIA RELEASE.** The Contractor agrees that any photographs, pictures, slides, movies, or videos may be taken in connection with their participation in the event or activity without any compensation from the Village or their agents and employees and do hereby consent to the use of said photographs, pictures, slides, movies, or videos for any legal purpose.
- VI. FORCE MAJEURE.** Non-performance of Contractor or Village shall be excused to the extent that performance is rendered impossible or delayed by strike, fire, hurricane, flood, terrorism, governmental acts or orders or restrictions, or other similar reason where failure to perform is beyond the control of and not caused by the negligence of the non-performing Party ("Force Majeure"), provided that the non-conforming Party gives prompt notice of such conditions to the other Party and makes all reasonable efforts to perform. In the event of such cancellation under this Section, the Contractor agrees to reschedule the Event(s), in cooperation with the Village within a reasonable amount of time of the canceled Event(s). In the event the Contractor is unable to reschedule the canceled Event(s) within the term of this agreement, then Contractor shall be required to return any funds paid by the Village, including but not limited to, the initial deposit.
- VII. CANCELLATION.** The Village reserves the right to cancel the Event(s) by providing the Contractor at least 48 hours' notice, without incurring a penalty. If the Village cancels the Event(s) less than 48 hours prior to the event but at least 24 hours before the Event and the Parties are unable to reschedule the canceled Event(s) prior to the end of the contract term, the Village shall pay the Contractor a cancellation fee of Seven Hundred Dollars (\$700.00), and the remainder of the deposit should be returned. If the Village cancels the Event(s) and gives notice less than 24 hours before the Event and the Parties are unable to reschedule the Event(s) before the agreement expires, the Village is responsible for paying the full fee for the cancelled performance.
- VIII. TERMINATION FOR CAUSE.** If a Party fails to fulfill in a timely manner, or otherwise violates or defaults upon, any of the covenants, agreements, or stipulations material to this Agreement, the non-defaulting Party, shall

thereupon have the right to terminate this Agreement for cause. Prior to exercising its option to terminate for cause, the non-defaulting Party shall notify the defaulting Party of its violation of the particular term(s) of this Agreement, and shall grant the defaulting Party ten (10) business days to cure such default. If such default remains uncured after ten (10) business days, the non-defaulting Party may terminate this Agreement without further notice to defaulting Party. Upon termination, the non-defaulting Party shall be fully discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, the Agreement.

Notwithstanding the above, Contractor shall not be relieved of liability to the Village for damages sustained by the Village by virtue of any breach of the Agreement by the Contractor. The Village, at its sole option and discretion, shall be entitled to bring any and all legal or equitable actions that it deems to be in its best interest in order to enforce the Village's rights and remedies against Contractor. The Village shall be entitled to recover all costs of such actions, including reasonable attorney's fees.

**VII. TERMINATION FOR CONVENIENCE.** The Village may, through its Village Manager, and for its convenience and without cause, terminate the Agreement at any time during the Term by giving written notice to Contractor of such termination; which shall become effective thirty (30) days following receipt by Contractor of such notice. If the Village terminates the Agreement for convenience, Contractor shall only be paid for any Services satisfactorily performed up to the date of termination; following which the Village shall be discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement. In the event that the Village pays Contractor in advance, the Village shall be entitled to a refund of the prorated amount calculated from the date the contract is terminated through the date that the contract would have expired had the Village not exercised this clause, Contractor shall issue such refund within thirty (30) days of the effective date of termination of the Agreement.

**VIII. INSURANCE REQUIREMENTS.** Contractor shall maintain general commercial, automobile (where applicable), workers' compensation, and professional liability insurance in an amount acceptable to the Village.

Contractor shall maintain the following required types and minimum limits of insurance coverage during the term of this Agreement

	<u>Per Occurrence</u>	<u>Aggregate</u>
General Liability	\$1,000,000	\$2,000,000
Automobile Liability	\$1,000,000 combined single limit per accident	
Professional Liability	\$500,000	\$1,000,000
Workers' Compensation	Statutory Amount	

This Agreement shall not be deemed approved until the Contractor has obtained all insurance required under this section and has supplied the Village with evidence of such coverage in the form of a Certificate of Insurance and endorsement. The Village shall be named as an additional insured via a blanket endorsement in the endorsement for commercial and automobile liability coverage. The Village shall approve of such Certificates prior to the performance of any Services pursuant to this Agreement.

**CERTIFICATE HOLDER MUST READ**

Bal Harbour Village  
655 96<sup>th</sup> Street  
Bal Harbour, FL 33154

ALL INSURANCE COMPANIES PROVIDED SHALL: Be rated at least A VII per Best's Key Rating Guide and be licensed to do business in Florida. Contractor's liability insurance shall be primary to any liability insurance policies that may be carried by the Village. Contractor shall be responsible for all deductibles and self-insured retentions on their liability insurance policies.

Contractor agrees to provide at least thirty (30) calendar days written notice of cancellation, material change, or renewal refusal to the Village by certified mail, unless policies are renewed with equal or better coverage.

**IX. INDEMNIFICATION.** Contractor agrees to indemnify and hold harmless the Village and its officers, employees, agents, and contractors, from and against any and all third party actions (whether at law or in equity), claims, liabilities, losses, judgments, costs and expenses, including, but not limited to, attorneys' fees and costs (collectively, "Losses"), for personal or bodily injury, wrongful death, or loss of or damage to property, which may arise or be alleged to have arisen from the negligent acts, errors, omissions or willful or intentional conduct of the Contractor, its officers, employees, agents,

subcontractors, or any other person or entity acting under Contractor's control or supervision, arising out of the Contractor's performance of the Services pursuant to this Agreement. To that extent, the Contractor shall pay all such Losses, which may issue from any lawsuit arising from such claims, and shall pay all costs and attorneys' fees expended by the Village in the defense of such claims and losses, including appeals.

The parties agree that one percent (1%) of the total compensation to Contractor for performance of the Services under this Agreement is the specific consideration from the Village to the Contractor for the Contractor's indemnity agreement. The provisions of this Section and this indemnification shall survive termination or expiration of this Agreement as to claims arising during the term of this Agreement.

Nothing in this Agreement shall be deemed or treated as a waiver by the Village of any immunity to which it is entitled by law, including but not limited to the Village's sovereign immunity as set forth in Section 768.28, Florida Statutes.

**X. ENTIRE AGREEMENT.** This Agreement, Contractor's proposal, and any warranties shall constitute the entire Agreement. In the event of a conflict between the provisions of those documents and this Agreement, the provisions of this Agreement shall prevail. Any amendment to the terms of this Agreement shall be evidenced in writing and executed by both Parties.

**XI. WARRANTIES.** Contractor represents and warrants that Contractor is free to enter into the terms of this Agreement and that Contractor has no obligation to any third party or otherwise that are inconsistent with any of its provisions. Contractor further represents and warrants that Contractor has and shall maintain for the duration of this Agreement, all professional licenses required to be held by an individual or entity providing the Services by any and all federal, state or local law, rule or policy.

Contractor warrants that its services are to be performed within the limits prescribed by the Village and with the usual thoroughness and competence of the Contractor's profession.

**XII. NON-EXCLUSIVITY.** This Agreement is non-exclusive. The Village retains the right to engage the services of additional third-party Contractors to



provide the same or similar services provided by Contractor under this Agreement, and to assign work to such parties in its sole discretion.

**XIII. SEVERABILITY.** The Parties to this Agreement expressly agree that it is not their intention to violate any public policy, statutory or common law rules, regulations, or decisions of any governmental or regulatory body. If any provision of this Agreement is judicially or administratively interpreted or construed as being in violation of any such policy, rule, regulation, or decision, the provision, sections, sentence, word, clause, or combination thereof causing such violation will be inoperative (and in lieu thereof there will be inserted such provision, section, sentence, word, clause, or combination thereof as may be valid and consistent with the intent of the Parties under this Agreement) and the remainder of this Agreement, as amended, will remain binding upon the Parties, unless the inoperative provision would cause enforcement of the remainder of this Agreement to be inequitable under the circumstances.

**XIV. ANTI-DISCRIMINATION.** Contractor certifies that it does not discriminate in its membership or policies based on race, color, national origin, religion, sex, sexual orientation, familial status or handicap. Contractor further agrees that neither Contractor, nor any parent company, subsidiaries or affiliates of Contractor are currently engaged in, nor will engage in during the term of this Agreement, the boycott of a person or business based in or doing business with a member of the World Trade Organization or any country with which the United States has free trade.

**XV. SCRUTINIZED COMPANIES.** Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Village may immediately terminate this Agreement at its sole option if the Contractor or its subcontractors are found to have submitted a false certification; or if the Contractor, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

If this Agreement is for more than one million dollars, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Village may immediately terminate this Agreement at its sole option

if the Contractor , its affiliates, or its subcontractors are found to have submitted a false certification; or if the Contractor, its affiliates, or its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

**XVI. NOTICES.** All notices hereunder shall be given in writing by registered or certified mail, return receipt requested, postage prepaid, addressed to the Parties at the following respective addresses, or at such other address as may be designated in writing by either Party to the other, and shall be deemed delivered for all purposes hereunder upon deposit of same into the United States mail:

To Village:                   Jorge Gonzalez, Village Manager  
Bal Harbour Village  
655 96<sup>th</sup> Street  
Bal Harbour, FL 33154

Copies To:                   Dwight S. Danie, Village Clerk  
Bal Harbour Village  
655 96<sup>th</sup> Street  
Bal Harbour, FL 33154

Susan L. Trevarthen, Village Attorney  
Weiss Serota Helfman Cole & Bierman, P.L.  
200 E. Broward Blvd. Suite 1900  
Fort Lauderdale, FL 33312

To Contractor:             Alan Andai  
Manager  
AAMusicians  
8877 Collins Avenue, #605  
Surfside, FL 33154

- XVII. COMPLIANCE WITH LAWS.** Contractor agrees to comply with all laws, ordinances, rules, and regulations that are now or may become applicable to the Services covered by this Agreement, regardless of the applicable jurisdiction.
- XVIII. SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon the Parties and their respective successors, heirs and assigns. However, the Parties agree that nothing contained herein shall authorize the assignment of this Agreement or the delegation of any duties hereunder by either Party, unless previously set out in this Agreement, without the prior written consent of the other party.
- XIX. SURVIVAL OF TERMS.** Termination or expiration of this Agreement for any reason shall not release either Party from any liabilities or obligations set forth in this Agreement, which (a) the Parties have expressly agreed shall survive any such termination, or (b) remain to be performed and by their nature would be intended to be applicable following any such termination or expiration. Any liabilities, which have accrued prior to termination pursuant to the insurance and/or indemnification obligations set forth below, shall survive the termination of this Agreement.
- XX. GOVERNING LAWS.** This Agreement shall be governed by, construed in accordance with, the laws of the State of Florida. The venue for any dispute arising from this Agreement shall be the Circuit Court of Miami-Dade County, Florida. The Parties voluntarily waive any right to trial by jury in the event of litigation between the Parties, which arises out of this Agreement in any way.
- XXI. NO CONTINGENT FEES.** The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.
- XXII. WAIVER.** No delay or omission by either Party hereto, in the exercise of any right or remedy hereunder, shall impair such right or remedy or be construed to be a waiver thereof. Any waiver of any such right or remedy by any Party must be in writing and signed by the Party against which such waiver is sought. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a

waiver of any succeeding breach thereof or any other covenant herein contained. All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise.

**XXIII. INDEPENDENT CONTRACTOR.** Contractor has been procured and is being engaged to provide Services to the Village as an independent contractor, and not as an agent or employee of the Village. Accordingly, Contractor shall not attain nor be entitled to any rights or benefits of the Village, nor any rights generally afforded classified or unclassified employees of the Village. Contractor further understands that Florida Workers' Compensation benefits available to employees of the Village are not available to Contractor, and agrees to provide workers' compensation insurance for any employee or agent of Contractor rendering Services to the Village under this Agreement.

**XXIV. CONTRACTOR'S COMPLIANCE WITH FLORIDA PUBLIC RECORDS LAW**

Pursuant to Section 119.0701 of the Florida Statutes, Contractor agrees to:

- A.** Keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this agreement. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Village.
- B.** Upon request from the Village's custodian of public records, Contractor shall provide the Village with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- C.** Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Village. Notwithstanding, it is understood that at all times Contractor's work papers shall remain the sole property of Contractor, and are not subject to the terms of this Agreement.

- D. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of Contractor shall be delivered by Contractor to the Village Manager, at no cost to the Village, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Village in a format that is compatible with the Village's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, Contractor shall destroy any and all duplicate records that are exempt or confidential and exempt from public records disclosure requirements. Notwithstanding the terms of this Section, the Parties agree and it is understood that Contractor will maintain a copy of any information, confidential or otherwise, necessary to support its work product generated as a result of its engagement for services, solely for reference and archival purposes in accordance with all applicable professional standards, which will remain subject to the obligations of confidentiality herein.
- E. Any compensation due to Contractor shall be withheld until all records are received as provided herein.
- F. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Village.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-866-4633 [clerk@balharbourfl.gov](mailto:clerk@balharbourfl.gov) OR BY MAIL: Village of Bal Harbour - Village Clerk's Office, 655 96th Street, Bal Harbour, FL 33154.**

**XXV. E-VERIFY.** Effective January 1, 2021, public and private employers, contractors and subcontractors will begin required registration with, and use of, the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor acknowledges and agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of: a) All persons employed by Contractor to perform employment duties within Florida during the term of the contract; and b) All persons (including sub-vendors/subconsultants/subcontractors) assigned

by Contractor to perform work pursuant to the contract with the Village. The Contractor acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the Village of Bal Harbour.

Should Vendor become the successful Contractor awarded for the above-named project, by entering into this Agreement, the Contractor becomes obligated to comply with the provisions of § 448.095, FL. Statutes, as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees; and requiring all Subcontractors to provide an affidavit attesting that the Subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a Subcontractor knowingly violates the statute, the Subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract by the Village for a period of 1 year after the date of termination.

**[SIGNATURE PAGE TO FOLLOW]**

**IN WITNESS WHEREOF**, Contractor has signed and delivered this Agreement, and the Village has caused this Agreement to be signed and delivered by its duly authorized officer or representative, all as of the date first set forth above.

CONTRACTOR:  
Alan Andai, Manager  
AAMusicians  
8877 Collins Avenue, #605  
Surfside, FL 33154

VILLAGE:  
Bal Harbour Village  
655 Ninety-Sixth Street  
Bal Harbour, FL 33154

By: \_\_\_\_\_

By: \_\_\_\_\_

Jorge M. Gonzalez,  
Village Manager

Attest: \_\_\_\_\_

Dwight S. Danie  
Village Clerk

Approved as to form and legal sufficiency for the use and reliance of the Bal Harbour Village only.

By: \_\_\_\_\_

Village Attorney

## **AAMusicians - Exhibit A**

### **Scope of Services for Bal Harbour Village**

1. Development and Execution of five (5) concerts as part of the Village's Music Series.
  - Sunday, January 29, 2023
  - Sunday, February 19, 2023
  - Sunday, March 26, 2023
  - June Concert - Date TBD
  - September Concert - Date TBD
  - Cost - \$37,500
2. Development and Execution of one (1) Spring Festival.
  - Sunday, April 23, 2023 - \$7,500

Total - \$45,000

Dates, Times, and components to be determined and agreed upon by both parties, subject to availability.



**Professional Services Agreement with  
AAMUSICIANS.COM**

This Professional Services Agreement (the "Agreement") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2023 (the "Effective Date") by and between Bal Harbour Village, a Florida municipality (the "Village") and AAMusicians, an independent contractor ("Contractor"), with each being referred to herein as a Party or collectively as the "Parties."

**WHEREAS**, the Village seeks professional event services for various Village events ("Event(s)");

**WHEREAS**, the Village desires to enter into an agreement with Contractor for the provision of these services.

**NOW, THEREFORE**, in consideration of the mutual terms, conditions, promises and covenants set forth below, the Village and Contractor agree as follows:

- I. SCOPE OF SERVICES.** Contractor shall provide the scope of services ("Services" or "Work"), attached and incorporated herein as Exhibit "A". Contractor will provide a proposal ("Proposal"), prior to each event, which will require the Village's review and approval. Approval will be provided with a fully executed Notice to Proceed (NTP). The Village shall not be responsible nor shall the Contractor submit bills for work or services rendered prior to the issuance of an NTP.
- II. TERM.** This Agreement shall be valid from Effective Date and shall continue for an initial term of one (1) year, unless otherwise terminated with or without cause, by the Village in accordance with the provisions of this Agreement. The Village shall have the option to renew this Agreement for an additional two (2), one (1) year terms.
- III. PAYMENT.** In consideration of Contractor's completion of the Services rendered hereunder, the Village shall pay to Contractor an amount not to exceed Forty-Five Thousand Dollars (\$45,000.00). A fifty percent (50%) deposit for each event will be paid after issuance of NTP. The final balance (50%) for each event will be paid at the completion of the event. Additional services shall not be provided without the Village's prior written approval.
- IV. LIABILITY FOR EXPENSES.** The Village recognizes that Contractor may incur certain incidental unexpected expenses in the provision of Contractor's services. However, the Village has no obligation to reimburse such expenses and

considers them as part of the overall fee. The Village reserves the right to reimburse, at its sole discretion, previously agreed upon expenses. For those expenses properly pre-approved for reimbursement, documentation and receipts will be required to be submitted for payment to be processed in the subsequent month's payment.

- V. **MEDIA RELEASE.** The Contractor agrees that any photographs, pictures, slides, movies, or videos may be taken in connection with their participation in the event or activity without any compensation from the Village or their agents and employees and do hereby consent to the use of said photographs, pictures, slides, movies, or videos for any legal purpose.
  
- VI. **FORCE MAJEURE.** Non-performance of Contractor or Village shall be excused to the extent that performance is rendered impossible or delayed by strike, fire, hurricane, flood, terrorism, governmental acts or orders or restrictions, or other similar reason where failure to perform is beyond the control of and not caused by the negligence of the non-performing Party ("Force Majeure"), provided that the non-conforming Party gives prompt notice of such conditions to the other Party and makes all reasonable efforts to perform. In the event of such cancellation under this Section, the Contractor agrees to reschedule the Event(s), in cooperation with the Village within a reasonable amount of time of the canceled Event(s). In the event the Contractor is unable to reschedule the canceled Event(s) within the term of this agreement, then Contractor shall be required to return any funds paid by the Village, including but not limited to, the initial deposit.
  
- VII. **CANCELLATION.** The Village reserves the right to cancel the Event(s) by providing the Contractor at least 48 hours' notice, without incurring a penalty. If the Village cancels the Event(s) less than 48 hours prior to the event but at least 24 hours before the Event and the Parties are unable to reschedule the canceled Event(s) prior to the end of the contract term, the Village shall pay the Contractor a cancellation fee of Seven Hundred Dollars (\$700.00), and the remainder of the deposit should be returned. If the Village cancels the Event(s) and gives notice less than 24 hours before the Event and the Parties are unable to reschedule the Event(s) before the agreement expires, the Village is responsible for paying the full fee for the cancelled performance.
  
- VIII. **TERMINATION FOR CAUSE.** If a Party fails to fulfill in a timely manner, or otherwise violates or defaults upon, any of the covenants, agreements, or stipulations material to this Agreement, the non-defaulting Party, shall

thereupon have the right to terminate this Agreement for cause. Prior to exercising its option to terminate for cause, the non-defaulting Party shall notify the defaulting Party of its violation of the particular term(s) of this Agreement, and shall grant the defaulting Party ten (10) business days to cure such default. If such default remains uncured after ten (10) business days, the non-defaulting Party may terminate this Agreement without further notice to defaulting Party. Upon termination, the non-defaulting Party shall be fully discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, the Agreement.

Notwithstanding the above, Contractor shall not be relieved of liability to the Village for damages sustained by the Village by virtue of any breach of the Agreement by the Contractor. The Village, at its sole option and discretion, shall be entitled to bring any and all legal or equitable actions that it deems to be in its best interest in order to enforce the Village's rights and remedies against Contractor. The Village shall be entitled to recover all costs of such actions, including reasonable attorney's fees.

**VII. TERMINATION FOR CONVENIENCE.** The Village may, through its Village Manager, and for its convenience and without cause, terminate the Agreement at any time during the Term by giving written notice to Contractor of such termination; which shall become effective thirty (30) days following receipt by Contractor of such notice. If the Village terminates the Agreement for convenience, Contractor shall only be paid for any Services satisfactorily performed up to the date of termination; following which the Village shall be discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement. In the event that the Village pays Contractor in advance, the Village shall be entitled to a refund of the prorated amount calculated from the date the contract is terminated through the date that the contract would have expired had the Village not exercised this clause, Contractor shall issue such refund within thirty (30) days of the effective date of termination of the Agreement.

**VIII. INSURANCE REQUIREMENTS.** Contractor shall maintain general commercial, automobile (where applicable), workers' compensation, and professional liability insurance in an amount acceptable to the Village.

Contractor shall maintain the following required types and minimum limits of insurance coverage during the term of this Agreement

	<u>Per Occurrence</u>	<u>Aggregate</u>
General Liability	\$1,000,000	\$2,000,000
Automobile Liability	\$1,000,000 combined single limit per accident	
Professional Liability	\$500,000	\$1,000,000
Workers' Compensation	Statutory Amount	

This Agreement shall not be deemed approved until the Contractor has obtained all insurance required under this section and has supplied the Village with evidence of such coverage in the form of a Certificate of Insurance and endorsement. The Village shall be named as an additional insured via a blanket endorsement in the endorsement for commercial and automobile liability coverage. The Village shall approve of such Certificates prior to the performance of any Services pursuant to this Agreement.

**CERTIFICATE HOLDER MUST READ**

Bal Harbour Village  
655 96<sup>th</sup> Street  
Bal Harbour, FL 33154

ALL INSURANCE COMPANIES PROVIDED SHALL: Be rated at least A VII per Best's Key Rating Guide and be licensed to do business in Florida. Contractor's liability insurance shall be primary to any liability insurance policies that may be carried by the Village. Contractor shall be responsible for all deductibles and self-insured retentions on their liability insurance policies.

Contractor agrees to provide at least thirty (30) calendar days written notice of cancellation, material change, or renewal refusal to the Village by certified mail, unless policies are renewed with equal or better coverage.

- IX. INDEMNIFICATION.** Contractor agrees to indemnify and hold harmless the Village and its officers, employees, agents, and contractors, from and against any and all third party actions (whether at law or in equity), claims, liabilities, losses, judgments, costs and expenses, including, but not limited to, attorneys' fees and costs (collectively, "Losses"), for personal or bodily injury, wrongful death, or loss of or damage to property, which may arise or be alleged to have arisen from the negligent acts, errors, omissions or willful or intentional conduct of the Contractor, its officers, employees, agents,

subcontractors, or any other person or entity acting under Contractor's control or supervision, arising out of the Contractor's performance of the Services pursuant to this Agreement. To that extent, the Contractor shall pay all such Losses, which may issue from any lawsuit arising from such claims, and shall pay all costs and attorneys' fees expended by the Village in the defense of such claims and losses, including appeals.

The parties agree that one percent (1%) of the total compensation to Contractor for performance of the Services under this Agreement is the specific consideration from the Village to the Contractor for the Contractor's indemnity agreement. The provisions of this Section and this indemnification shall survive termination or expiration of this Agreement as to claims arising during the term of this Agreement.

Nothing in this Agreement shall be deemed or treated as a waiver by the Village of any immunity to which it is entitled by law, including but not limited to the Village's sovereign immunity as set forth in Section 768.28, Florida Statutes.

**X. ENTIRE AGREEMENT.** This Agreement, Contractor's proposal, and any warranties shall constitute the entire Agreement. In the event of a conflict between the provisions of those documents and this Agreement, the provisions of this Agreement shall prevail. Any amendment to the terms of this Agreement shall be evidenced in writing and executed by both Parties.

**XI. WARRANTIES.** Contractor represents and warrants that Contractor is free to enter into the terms of this Agreement and that Contractor has no obligation to any third party or otherwise that are inconsistent with any of its provisions. Contractor further represents and warrants that Contractor has and shall maintain for the duration of this Agreement, all professional licenses required to be held by an individual or entity providing the Services by any and all federal, state or local law, rule or policy.

Contractor warrants that its services are to be performed within the limits prescribed by the Village and with the usual thoroughness and competence of the Contractor's profession.

**XII. NON-EXCLUSIVITY.** This Agreement is non-exclusive. The Village retains the right to engage the services of additional third-party Contractors to

provide the same or similar services provided by Contractor under this Agreement, and to assign work to such parties in its sole discretion.

**XIII. SEVERABILITY.** The Parties to this Agreement expressly agree that it is not their intention to violate any public policy, statutory or common law rules, regulations, or decisions of any governmental or regulatory body. If any provision of this Agreement is judicially or administratively interpreted or construed as being in violation of any such policy, rule, regulation, or decision, the provision, sections, sentence, word, clause, or combination thereof causing such violation will be inoperative (and in lieu thereof there will be inserted such provision, section, sentence, word, clause, or combination thereof as may be valid and consistent with the intent of the Parties under this Agreement) and the remainder of this Agreement, as amended, will remain binding upon the Parties, unless the inoperative provision would cause enforcement of the remainder of this Agreement to be inequitable under the circumstances.

**XIV. ANTI-DISCRIMINATION.** Contractor certifies that it does not discriminate in its membership or policies based on race, color, national origin, religion, sex, sexual orientation, familial status or handicap. Contractor further agrees that neither Contractor, nor any parent company, subsidiaries or affiliates of Contractor are currently engaged in, nor will engage in during the term of this Agreement, the boycott of a person or business based in or doing business with a member of the World Trade Organization or any country with which the United States has free trade.

**XV. SCRUTINIZED COMPANIES.** Contractor certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List. Pursuant to Section 287.135, F.S., the Village may immediately terminate this Agreement at its sole option if the Contractor or its subcontractors are found to have submitted a false certification; or if the Contractor, or its subcontractors are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of the Agreement.

If this Agreement is for more than one million dollars, the Contractor certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria as identified in Section 287.135, F.S. Pursuant to Section 287.135, F.S., the Village may immediately terminate this Agreement at its sole option

if the Contractor , its affiliates, or its subcontractors are found to have submitted a false certification; or if the Contractor, its affiliates, or its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged with business operations in Cuba or Syria during the term of the Agreement.

The Contractor agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement. As provided in Subsection 287.135(8), F.S., if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

**XVI. NOTICES.** All notices hereunder shall be given in writing by registered or certified mail, return receipt requested, postage prepaid, addressed to the Parties at the following respective addresses, or at such other address as may be designated in writing by either Party to the other, and shall be deemed delivered for all purposes hereunder upon deposit of same into the United States mail:

To Village:                   Jorge Gonzalez, Village Manager  
Bal Harbour Village  
655 96<sup>th</sup> Street  
Bal Harbour, FL 33154

Copies To:                   Dwight S. Danie, Village Clerk  
Bal Harbour Village  
655 96<sup>th</sup> Street  
Bal Harbour, FL 33154

Susan L. Trevarthen, Village Attorney  
Weiss Serota Helfman Cole & Bierman, P.L.  
200 E. Broward Blvd. Suite 1900  
Fort Lauderdale, FL 33312

To Contractor:             Alan Andai  
Manager  
AAMusicians  
8877 Collins Avenue, #605  
Surfside, FL 33154

- XVII. COMPLIANCE WITH LAWS.** Contractor agrees to comply with all laws, ordinances, rules, and regulations that are now or may become applicable to the Services covered by this Agreement, regardless of the applicable jurisdiction.
- XVIII. SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon the Parties and their respective successors, heirs and assigns. However, the Parties agree that nothing contained herein shall authorize the assignment of this Agreement or the delegation of any duties hereunder by either Party, unless previously set out in this Agreement, without the prior written consent of the other party.
- XIX. SURVIVAL OF TERMS.** Termination or expiration of this Agreement for any reason shall not release either Party from any liabilities or obligations set forth in this Agreement, which (a) the Parties have expressly agreed shall survive any such termination, or (b) remain to be performed and by their nature would be intended to be applicable following any such termination or expiration. Any liabilities, which have accrued prior to termination pursuant to the insurance and/or indemnification obligations set forth below, shall survive the termination of this Agreement.
- XX. GOVERNING LAWS.** This Agreement shall be governed by, construed in accordance with, the laws of the State of Florida. The venue for any dispute arising from this Agreement shall be the Circuit Court of Miami-Dade County, Florida. The Parties voluntarily waive any right to trial by jury in the event of litigation between the Parties, which arises out of this Agreement in any way.
- XXI. NO CONTINGENT FEES.** The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement, and that it has not paid or agreed to pay any person(s), company, corporation, individual or firm, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.
- XXII. WAIVER.** No delay or omission by either Party hereto, in the exercise of any right or remedy hereunder, shall impair such right or remedy or be construed to be a waiver thereof. Any waiver of any such right or remedy by any Party must be in writing and signed by the Party against which such waiver is sought. A waiver by either of the Parties hereto of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a



waiver of any succeeding breach thereof or any other covenant herein contained. All remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either Party at law, in equity or otherwise.

**XXIII. INDEPENDENT CONTRACTOR.** Contractor has been procured and is being engaged to provide Services to the Village as an independent contractor, and not as an agent or employee of the Village. Accordingly, Contractor shall not attain nor be entitled to any rights or benefits of the Village, nor any rights generally afforded classified or unclassified employees of the Village. Contractor further understands that Florida Workers' Compensation benefits available to employees of the Village are not available to Contractor, and agrees to provide workers' compensation insurance for any employee or agent of Contractor rendering Services to the Village under this Agreement.

**XXIV. CONTRACTOR'S COMPLIANCE WITH FLORIDA PUBLIC RECORDS LAW**

Pursuant to Section 119.0701 of the Florida Statutes, Contractor agrees to:

- A.** Keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this agreement. Contractor shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Village.
- B.** Upon request from the Village's custodian of public records, Contractor shall provide the Village with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- C.** Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Village. Notwithstanding, it is understood that at all times Contractor's work papers shall remain the sole property of Contractor, and are not subject to the terms of this Agreement.

- D. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of Contractor shall be delivered by Contractor to the Village Manager, at no cost to the Village, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Village in a format that is compatible with the Village's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, Contractor shall destroy any and all duplicate records that are exempt or confidential and exempt from public records disclosure requirements. Notwithstanding the terms of this Section, the Parties agree and it is understood that Contractor will maintain a copy of any information, confidential or otherwise, necessary to support its work product generated as a result of its engagement for services, solely for reference and archival purposes in accordance with all applicable professional standards, which will remain subject to the obligations of confidentiality herein.
- E. Any compensation due to Contractor shall be withheld until all records are received as provided herein.
- F. Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Village.

**IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 305-866-4633 [clerk@balharbourfl.gov](mailto:clerk@balharbourfl.gov) OR BY MAIL: Village of Bal Harbour - Village Clerk's Office, 655 96th Street, Bal Harbour, FL 33154.**

**XXV. E-VERIFY.** Effective January 1, 2021, public and private employers, contractors and subcontractors will begin required registration with, and use of, the E-verify system in order to verify the work authorization status of all newly hired employees. Contractor acknowledges and agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of: a) All persons employed by Contractor to perform employment duties within Florida during the term of the contract; and b) All persons (including sub-vendors/subconsultants/subcontractors) assigned

by Contractor to perform work pursuant to the contract with the Village. The Contractor acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System during the term of the contract is a condition of the contract with the Village of Bal Harbour.

Should Vendor become the successful Contractor awarded for the above-named project, by entering into this Agreement, the Contractor becomes obligated to comply with the provisions of § 448.095, FL. Statutes, as amended from time to time. This includes but is not limited to utilization of the E-Verify System to verify the work authorization status of all newly hired employees; and requiring all Subcontractors to provide an affidavit attesting that the Subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. The Contractor shall maintain a copy of such affidavit for the duration of the contract. Failure to comply will lead to termination of this Contract, or if a Subcontractor knowingly violates the statute, the Subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If this contract is terminated for a violation of the statute by the Contractor, the Contractor may not be awarded a public contract by the Village for a period of 1 year after the date of termination.

**[SIGNATURE PAGE TO FOLLOW]**

**IN WITNESS WHEREOF**, Contractor has signed and delivered this Agreement, and the Village has caused this Agreement to be signed and delivered by its duly authorized officer or representative, all as of the date first set forth above.

CONTRACTOR:  
Alan Andai, Manager  
AAMusicians  
8877 Collins Avenue, #605  
Surfside, FL 33154

VILLAGE:  
Bal Harbour Village  
655 Ninety-Sixth Street  
Bal Harbour, FL 33154

By: \_\_\_\_\_

By: \_\_\_\_\_

Jorge M. Gonzalez,  
Village Manager

Attest: \_\_\_\_\_

Dwight S. Danie  
Village Clerk

Approved as to form and legal sufficiency for the use and reliance of the Bal Harbour Village only.

By: \_\_\_\_\_

Village Attorney

# BAL HARBOUR

- VILLAGE -

## COUNCIL ITEM SUMMARY

### Condensed Title:

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE; ACCEPTING A FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) "COUNTY INCENTIVE GRANT PROGRAM" (CIGP) GRANT AWARD FOR THE COLLINS AVENUE TRAFFIC STUDY PROJECT AND ENTERING INTO AN AGREEMENT FOR THE PROJECT ACTIVITIES, AS DETAILED WITHIN THE GRANT APPLICATION SUBMITTED DECEMBER OF 2021 IN THE ESTIMATED GRANT FUNDED AMOUNT OF TWENTY-FOUR THOUSAND NINE-HUNDRED DOLLARS (\$24,900).

### Issue:

Should the Village Council approve the acceptance of the FDOT CIGP grant and enter into an agreement for the project activities?

### The Bal Harbour Experience:

- Beautiful Environment     Safety     Modernized Public Facilities/Infrastructure  
 Destination & Amenities     Unique & Elegant     Resiliency & Sustainable Community

### Item Summary / Recommendation:

On December 8, 2021, Bal Harbour Village's Capital Programs team submitted to the Florida Department of Transportation (FDOT) a County Incentive Grant Program (CIGP) application. The County Incentive Program awards grants for the purpose of providing funds to counties, to improve transportation facilities located on the State Highway System or which relieves traffic congestion on the State Highway System. The grant application requires that the Village match the proposed project at 50% of the total costs to help offset a portion of the cost related to a necessary traffic study of the Collins Corridor.

In 2022, FDOT selected the Village Park project for the award and advised that it was preparing an agreement for the Village to execute to move forward with the project activities. FDOT has awarded the Village a total of twenty-four thousand nine-hundred dollars (\$24,900) towards the proposed project. The Village will cover all other related costs associated with the study and any additional scope.

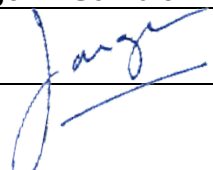
Given that there are several active Capital and Public Works projects occurring along the Collins Corridor and 96<sup>th</sup> Street that have or will impact traffic in the area, this traffic study will help the Village and FDOT be better informed on traffic flow and patterns in the area and have data and recommendations to help alleviate congestion.

**THE ADMINISTRATION RECOMMENDS APPROVAL OF THIS RESOLUTION.**

### Financial Information:

	Amount	Account	Account #
	X	X	X

### Sign off:

Capital Programs Director	Chief Financial Officer	Village Manager
Matilde E. Reyes	Claudia Dixon	Jorge M. Gonzalez
		

# BAL HARBOUR

- V I L L A G E -

## COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager

DATE: March 27, 2023

SUBJECT: **A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; ACCEPTING A FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) "COUNTY INCENTIVE GRANT PROGRAM" (CIGP) GRANT AWARD FOR THE COLLINS AVENUE TRAFFIC STUDY PROJECT AND ENTERING INTO AN AGREEMENT FOR THE PROJECT ACTIVITIES, AS DETAILED WITHIN THE GRANT APPLICATION SUBMITTED DECEMBER OF 2021 IN THE ESTIMATED GRANT FUNDED AMOUNT OF TWENTY-FOUR THOUSAND NINE-HUNDRED DOLLARS (\$24,900); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**



### **ADMINISTRATIVE RECOMMENDATION**

I am recommending approval of this Resolution.

### **BACKGROUND**

On December 8, 2021, the Bal Harbour Village's Capital Programs team submitted to the Florida Department of Transportation (FDOT) a County Incentive Grant Program (CIGP) application. The grant application requires that the Village match the grant at a minimum of twenty-four thousand nine-hundred dollars (\$24,900), a 50% contribution towards the grant proposed project. The funding would help offset a portion of the cost related to a necessary traffic study of the Collins Avenue Corridor.

The County Incentive Program provides grants for the purpose of providing funds to counties, to improve transportation facilities located on the State Highway System or which relieves traffic congestion on the State Highway System. The Village's project was eligible for consideration and moved forward in the selection process. Village staff and our consultants presented our proposed project to the FDOT selection committee in April, 2022.

Subsequently, FDOT selected our project for award and advised that it was preparing an agreement for the Village to execute to move forward with the project activities. FDOT has agreed to pay up to twenty-four thousand nine-hundred dollars (\$24,900). The Village will pay all additional costs associated with the study to ensure a comprehensive report.

### **ANALYSIS**

Given that there are several active Capital and Public Works projects occurring along the Collins Corridor and 96th Street that have or will impact traffic in the area, this traffic study

will help the Village and FDOT to be better informed on traffic flow and patterns in the area and have data and recommendations to possibly help alleviate congestion and future traffic impact such projects may cause.

The project is in Bal Harbour Village along Collins Avenue from the Haulover Inlet to 96<sup>th</sup> Street and encompasses an area of approximately one mile in length on the State Highway System.

Bal Harbour Village has been experiencing traffic congestion along Collins Avenue within the Village's boundaries. Between the Haulover Inlet and 96<sup>th</sup> Street, the Village has seen an increase in traffic activity over the past few years. The Village believes some of this is caused due to nearby street parking and lack of turning lanes, as well as several other reasons. Therefore, the Village is seeking to contract with an engineering firm to conduct a thorough traffic study.

The project scope will include the following:

- Corridor Study Traffic Analysis Methodology Memo - The selected traffic engineers will prepare a methodology memo for the preparation of a Corridor Study along State Road A1A and Collins Avenue between the Haulover Inlet Bridge and 96<sup>th</sup> Street. The memorandum will be submitted for review and approval by the Village, Miami-Dade County Department of Transportation and Public Works (DTPW), and the Florida Department of Transportation (FDOT).
- Traffic Data Collection - The traffic engineers will collect manual turning movement counts during the morning peak hours (7:00-9:00 AM) and afternoon peak hours (4:00-6:00 PM) at the major intersections within the corridor limits. The traffic engineers will also collect continuous bi-directional pneumatic tube counts (speed and volume) along State Road A1A and Collins Avenue.
- Crash Analysis - The traffic engineers will research the five-year crash history using Signal Four Analytics along the State Road A1A and Collins Avenue corridor between 96<sup>th</sup> Street and Haulover Inlet Bridge, which includes each intersection. Signal Four Analytics will be used to determine the number of crashes that occurred at the intersections and along the road segments.
- Traffic Analysis - The traffic engineers will provide intersection capacity analysis of the existing conditions for the subject intersections and road segments. A queueing analysis evaluation of the key turn lanes at each intersection will be documented.
- Corridor Study - The traffic engineers will summarize the traffic data collection, crash analysis, traffic analysis, and other related traffic engineering analysis into a technical memorandum with tables and figures. This scope of services includes one update based on one set of comprehensive traffic review comments by each key agency stakeholder.

The firm selected will facilitate at least two meetings with Bal Harbour Village, Miami-Dade County DTPW, and FDOT to discuss the State Road A1A and Collins Avenue Corridor study.

Upon completion of the project, the Village would then evaluate the recommendations provided and proceed with submitting future grants for design and construction. The Village is committed to finding solutions to the traffic congestion occurring along Collins Avenue.

### ***THE BAL HARBOUR EXPERIENCE***

The project activity will contribute to the overall vision for the Village to provide the highest quality life to its residents, improving the traffic outlook for the area and directly aligns to the goals of the *Bal Harbour Experience* of Modernized Public Facilities + Infrastructure and Safety. This project will inform future projects along the Collins Corridor and help foster a greater relationship with our state and local partners.

### **CONCLUSION**

The CIGP award will fund a portion of the project cost at an amount not to exceed \$24,900. The Village will match the grant award at a minimum of \$24,900 and will cover the costs of any additional expenses that may arise in relation to this service agreement. The project will include a traffic study of the Collins Corridor and 96<sup>th</sup> Street as described in the grant application and project scope listed above. Based on my review, I am seeking your approval of this Resolution which authorizes me to accept the grant award and execute a grant agreement and any future grant required amendments for this project with FDOT.

### **Attachments:**

1. Exhibit A - 2021 County Incentive Grant Program (CIGP) Application



RESOLUTION NO. 2023-\_\_\_\_

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; ACCEPTING A FLORIDA DEPARTMENT OF TRANSPORTATION (FDOT) "COUNTY INCENTIVE GRANT PROGRAM" (CIGP) GRANT AWARD FOR THE COLLINS AVENUE TRAFFIC STUDY PROJECT AND ENTERING INTO AN AGREEMENT FOR THE PROJECT ACTIVITIES, AS DETAILED WITHIN THE GRANT APPLICATION SUBMITTED DECEMBER OF 2021 IN THE ESTIMATED GRANT FUNDED AMOUNT OF TWENTY-FOUR THOUSAND NINE-HUNDRED DOLLARS (\$24,900); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, Bal Harbour Village has several active Capital and Public Works projects occurring along the Collins Corridor ("Corridor"); and

**WHEREAS**, the Village would like to prepare in advance for anticipated traffic impact and better understand the current traffic activity and congestion in the area; and

**WHEREAS**, the Florida Department of Transportation (FDOT) owns the State Highway System (SHS) and desires to assist the Village with this analysis and evaluation that will inform future activities along the Corridor; and

**WHEREAS**, in 2021 the Village applied for a County Incentive Grant Program (CIGP) for this project and the FDOT selected the Village as a recipient of the award in 2022; and

**WHEREAS**, the FDOT recently notified the Village that FDOT is preparing an agreement for the Village to execute and will need this Resolution as an exhibit to the agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That the above stated recitals are hereby adopted and confirmed.

**Section 2. Project Approved.** That the Village is in complete accord with the grant proposal and future executed agreements, and that it will carry out the Project in the manner described in the proposal and as needed to completed the traffic study needs of the Village, unless prior approval for any change has been received from the FDOT or the Village Manager.

**Section 3. Implementation.** That the Village has the ability and intention to finance its share of the cost of the project including any additional scopes of services related to the traffic study.

**Section 4. Financial Records.** That the Village will maintain adequate financial records on the proposed project to substantiate claims for reimbursement.

**Section 5. Effective Date.** That this Resolution shall take effect immediately upon the adoption hereof.

**AND, BE IT FURTHER RESOLVED,** that the Council authorizes the Village Manager or Manager's designee to execute any future grant award agreements, amendments and other documents FDOT and the grant require, as well as any documents related to the completion of the traffic study as a whole, following approval by the Village Attorney as to legal sufficiency; provided however that the Village Manager or Manager's designee are only delegated the authority to execute amendments that do not have an additional fiscal impact on the Village and that otherwise are for projects eligible under the FDOT, County Incentive Grant Program. The Council authorizes the Village Manager or Manager's designee to receive and expend all monies for the purposes described in the funding request for and on behalf of Bal Harbour Village, Florida.

PASSED AND ADOPTED this 27<sup>th</sup> day of March, 2023.



---

Mayor Jeffrey P. Freimark

ATTEST:

---

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

---

Village Attorney  
Weiss Serota Helfman Cole & Bierman P.L.



# FLORIDA DEPARTMENT OF TRANSPORTATION 2022 COUNTY INCENTIVE GRANT PROGRAM (CIGP) APPLICATION

## DISTRICT VI COUNTY INCENTIVE GRANT PROGRAM CYCLE – APPLICATION CHECKLIST

Dear Applicant:

Thank you for your interest in the 2022 County Incentive Grant Program cycle. The deadline to submit this application is **December 8, 2021**. Please use the checklist below to ensure you are including all information and attachments required to complete the application. Include the following required items:

- General Application Information
- Location Map (Aerial)
- Scope
- Project Schedule
- Typical Section (if applicable)
- Detailed Cost Estimate Spreadsheet prepared and signed by a Professional Engineer
- Financial Commitment Letter issued by the agency's Capital Improvement Department

## 2022 CIGP APPLICATION SUBMITTAL

The CIGP Application is accessed and submitted through the FDOT Grants Application Process (GAP). The application deadline is **December 8, 2021 at 5:00 pm**. NOTE: Late submittals will not be accepted. Once the deadline passes, the system will lock out applicants from uploading applications or making changes to their applications.

Applications will be evaluated and ranked through a two-tier process:

Tier 1 (one) is conducted by the Counties

**The County(s)** evaluates application submittals for eligibility. Eligible CIGP applications are sent to the Department by **February 8, 2022**, accompanied by a letter listing all applications received including eligible and non-eligible project.

Tier 2 (two) is conducted by the Department

**The Department** evaluates both Miami-Dade and Monroe County eligible projects. Applicants will participate in the project presentations to the District Scoping committee.

Local Programs staff will coordinate project presentations, tentatively scheduled for **April 6, 2022**. Project presentations are limited to 5- minutes of presentation time and a 10-minute question and answer session.

Miami Dade County municipalities can contact Rolando Jimenez at (305) 375-5681 with any questions or comments. Monroe County municipalities can contact Emily Schemper at (305) 289-2500 with any questions. Please contact Xiomara Nunez, District Local Programs Administrator at (305) 470-5404 or Alina Brito, Local Programs Coordinator at (305) 470-5141 with any questions for the Department.



**FLORIDA DEPARTMENT OF TRANSPORTATION  
2022 COUNTY INCENTIVE GRANT PROGRAM  
(CIGP) APPLICATION**

Note: Applicants awarded funds through this application process must be prepared to enter into a State Funded Grant Agreement with the Department prior to the commencement of work.

**APPLICANT INFORMATION**

**DATE:** 12/08/2021

**COUNTY NAME:** Miami-Dade County

**LOCAL MUNICIPALITY NAME (if not the county):** Bal Harbour Village

**CONTACT PERSON:** Matilde E. Reyes, RA

**TITLE:** Capital Programs Manager

**ADDRESS:** 655 96th St, Bal Harbour, FL 33154

**PHONE:** 305-993-7399

**EMAIL:** [mreyes@balharbourfl.gov](mailto:mreyes@balharbourfl.gov)

**PROJECT OVERVIEW INFORMATION**

**PROJECT PRIORITY (to be completed by the County):** *Click here to enter text.*

**BRIEF PROJECT DESCRIPTION AND LOCATION:** The project would be located in Bal Harbour Village along Collins Avenue from Haulover Inlet to 96th Street.

**PROJECT LENGTH (in miles):** .84 mile

**CHECK THE PROPOSED PROJECT (Check only one):**

- Repair or rehabilitating a transportation facility located on State Highway System (SHS)
- Project relieves traffic congestion on the State Highway System (SHS)
- Improvement to a transportation facility on the State Highway System (SHS)

**PROJECT ELIGIBILITY CRITERIA**

The County Incentive Program provides grants for the purpose of providing grants to counties, to improve transportation facilities located on the State Highway System or which relieves traffic congestion on the State Highway System. To be eligible for consideration, the project must be consistent, to the maximum extent feasible, with local metropolitan planning organization plans (Transportation Planning Organization (TPO) and local



## FLORIDA DEPARTMENT OF TRANSPORTATION 2022 COUNTY INCENTIVE GRANT PROGRAM (CIGP) APPLICATION

government comprehensive plans). Miami Dade County, Monroe County and the Department process shall consider, but are not limited to the following criteria for evaluation of projects for County Incentive Grant Program assistance. F.S. 339.2817.

<b>Criteria</b>	
1	Project Feasibility <b>(20 points)</b>
2	The extent to which the project includes transportation benefits for improving intermodalism and safety. <b>(10 Points)</b>
3	50% Match warranted in County Budget or Capital Improvement Program <b>(10 points)</b>
4	The extent to which the project uses new technologies, including intelligent transportation systems which enhance the efficiency of the project <b>(20 points)</b>
5	The extent to which the project helps to maintain or protect the environment <b>(10 points)</b>
6	The likelihood that assistance would enable the project to proceed at an earlier date than the project could otherwise proceed. <b>(10 points)</b>
7	The extent to which the project will encourage, enhance, or create economic benefits <b>(10 points)</b>
8	The extent to which assistance would foster innovative public-private partnerships and attract private debt or equity to investment <b>(10 points)</b>

### PROJECT INFORMATION

#### DESCRIBE THE SCOPE AND ANY SPECIAL CHARACTERISTICS OF THE PROJECT

*(i.e., Provide significant features of the project. Provide Typical Section drawings, if available)*

Bal Harbour Village has been experiencing significant traffic congestion along Collins Avenue within the Village's boundaries. Between the Haulover Inlet and 96th Street, the Village has seen an increase in traffic activity over the past few years. The Village believes some of this is caused due to nearby street parking and lack of turning lanes, amongst several other reasons. Thus, the Village is seeking to contract with an engineering firm to conduct a thorough traffic study. The project scope will include the following:

- Corridor Study Traffic Analysis Methodology Memo- The selected traffic engineers will prepare a methodology memo for the preparation of a Corridor Study along State Road A1A and Collins Avenue between the Haulover Inlet Bridge and 96th Street in Bal Harbour Village, Florida. The memorandum will be submitted for review and approval by the Village, Miami-Dade County Department of Transportation and Public Works (DTPW), and the Florida Department of Transportation (FDOT).



**FLORIDA DEPARTMENT OF TRANSPORTATION  
2022 COUNTY INCENTIVE GRANT PROGRAM  
(CIGP) APPLICATION**

- **Traffic Data Collection-** The traffic engineers will collect manual turning movement counts during the AM peak hour (7:00-9:00 AM) and PM peak hour (4:00-6:00 PM) at the following intersections within the corridor limits. The traffic engineers will collect continuous bidirectional pneumatic tube counts (speed and volume) along State Road A1A and Collins Avenue for 72 hours.
- **Crash Analysis -** The traffic engineers will research the five-year crash history using Signal Four Analytics along the State Road A1A and Collins Avenue corridor between 96th Street and Haulover Inlet Bridge in Bal Harbour Village, which includes each intersection. Signal Four Analytics will be used to determine the number of crashes that occurred at the intersections and along the road segments.
- **Traffic Analysis-** The traffic engineers will provide intersection capacity analysis of the existing conditions for the subject intersections and road segments. A queueing analysis evaluation of the key turn lanes at each intersection will be documented.
- **Corridor Study-** The traffic engineers will summarize the traffic data collection, crash analysis, traffic analysis, and other related traffic engineering analysis into a technical memorandum with tables and figures. This scope of services includes one update based on one set of comprehensive traffic review comments by each key agency stakeholder.
- The firm selected will facilitate at least two meetings with Bal Harbour Village, Miami-Dade County DTPW, and FDOT to discuss the State Road A1A and Collins Avenue Corridor study.

Upon completion of the project the Village would then evaluate the recommendations provided and proceed with submitting future grants for design and construction. The Village is committed to finding solutions to the traffic congestion occurring along Collins Avenue.

Just this year a tragic incident occurred where a young 14-year old child was the victim of fatal crash when taking his bicycle across a pedestrian walkway on Harbour Way and Collins Avenue in Bal Harbour Village. The tragedy has sparked even more desire to resolve the traffic issues along Collins Avenue. This funding is critically needed and the study would be the first phase of a larger project to resolve the traffic congestion on this SHS while also increasing pedestrian safety.

**PROJECT SCHEDULE ATTACHED (REQUIRED)**

Yes       No

**LOCATION MAP ATTACHED (REQUIRED)**

Yes       No



**FLORIDA DEPARTMENT OF TRANSPORTATION  
2022 COUNTY INCENTIVE GRANT PROGRAM  
(CIGP) APPLICATION**

**PROVIDE ADDITIONAL PROJECT SPECIFIC INFORMATION THAT SHOULD BE CONSIDERED.**

The current proposal we have received from the consultant that prepared the estimate does not include preparation of design plans or permitting of the intersection improvements. This will become a separate phase of this project.

**IS RIGHT-OF-WAY ACQUISITION PROPOSED?**

Yes       No

If yes, describe proposed acquisition including expected fund source, limitations on fund use or availability, and who will acquire and retain ownership of proposed right-of-way.

N/A

**DESCRIBE EXISTING RIGHT-OF-WAY OWNERSHIPS ALONG THE PROJECT**

*(Describe when the right-of-way was obtained and how ownership is documented, i.e., plats, deeds, prescriptions, easements):*

The Florida Department of Transportation owns the right-of-way along Collins Avenue / State Road A1A.

**PUBLIC INVOLVEMENT**

**HAS ANY PUBLIC INFORMATION, OR COMMUNITY MEETINGS BEEN HELD?**

Yes       No

Describe public, and private, support for the project. (Examples: Letters of support, public meetings, County Commission meeting, petitions, written endorsements, resolutions, etc.)

In 2019, 2020, and 2021, the Village Council has ranked the Collins Avenue project a top priority during the Council's annual retreat. Minutes from these meetings are available for public viewing.

**PROJECT COST ESTIMATE**

**PROVIDE A SUMMARY OF THE ESTIMATED COST FOR THE WORK BEING PROPOSED.**

*(Use whole numbers, and a detailed project cost estimate must be attached to this application.)*

Design Engineering & Plans Preparation:	\$49,800.00
Construction:	<i>Click here to enter text.</i>
Construction Engineering & Inspection Activities:	<i>Click here to enter text.</i>
<b>Total Estimated Cost:</b>	<b>\$49,800.00</b>



**FLORIDA DEPARTMENT OF TRANSPORTATION  
2022 COUNTY INCENTIVE GRANT PROGRAM  
(CIGP) APPLICATION**

**PROJECT FUNDING**

<b>CIGP FUNDS</b>	<b>LOCAL FUNDS</b>	<b>TOTAL</b>
\$24,900	\$24,900	\$49,800
50%	50 %	<b>100%</b>

Pursuant to F.S. 339.2817 (4), the Florida Department of Transportation shall provide 50 percent of project costs for eligible projects. **The county or local municipality (sponsoring entity) must fund at least 50 percent of the total project cost.**

**DETAILED FUNDING PLAN**

Describe in detail how the project will be funded (e.g., funding types and commitment of local funds). Include the funding year for each phase of the project:

The Village has received a proposal from the Corradino Group and it is estimated that the cost of this study will be about \$49,800.00. The Village will commit to using General Funds in FY 2023 to match this grant at 50%.





**FLORIDA DEPARTMENT OF TRANSPORTATION  
2022 COUNTY INCENTIVE GRANT PROGRAM  
(CIGP) APPLICATION**

**CERTIFICATION OF PROJECT SPONSOR**

I hereby certify that the proposed project herein described is supported by Bal Harbour Village  
(Enter Sponsoring entity) and that said entity:

- (1) Provides required matching funds;
- (2) Shall enter into an Agreement with the Florida Department of Transportation to perform the work;
- (3) Shall certify that no additional right of way is required to perform the work other than what is identified on page 4 of this application;
- (4) Has the legal right to construct the project within the identified right of way;
- (5) Shall acquire necessary permits required to construct the project;
- (6) Shall support other actions necessary to fully implement the proposed project.

I further certify that the estimated costs included herein are reasonable and that Bal Harbour Village  
(Sponsoring entity) will commit to the completion of the project once programmed in the District VI Florida  
Department of Transportation's Work Program.

Matilde E. Reyes

\_\_\_\_\_  
*Print Name*

Capital Programs Manager

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Signature*

12/8/2021

\_\_\_\_\_  
*Date*



**FLORIDA DEPARTMENT OF TRANSPORTATION  
COUNTY INCENTIVE GRANT PROGRAM (CIGP)  
2022 APPLICATION**

**Project Cost Estimate**

**Instructions:** Submit a detailed cost estimate prepared and signed by a professional engineer.

Sent via Email to [mreyes@balharbourfl.gov](mailto:mreyes@balharbourfl.gov)

December 8, 2021

Matilde E. Reyes, RA, LEED AP  
Capital Program Manager  
Bal Harbour Village  
655 96<sup>th</sup> Street  
Bal Harbour, FL 33154

Dear Ms. Reyes:

We understand that Bal Harbour Village has requested traffic engineering services related to the preparation of a Corridor Study along State Road A1A Collins Avenue between 96<sup>th</sup> Street and Haulover Inlet Bridge in the Village.

Enclosed, please find our scope of services proposal to prepare the State Road A1A Collins Avenue Corridor Study as recently discussed. The Corradino Group appreciates this opportunity to submit this proposal to Bal Harbour Village. We look forward to assisting you in providing the best traffic engineering services possible to the Village.

Sincerely,



Joseph M. Corradino, AICP  
President  
The Corradino Group, Inc.

## CONSULTING SERVICE AUTHORIZATION

### Statement of Work (SOW)

VILLAGE P.O. NO. \_\_\_\_\_ VILLAGE EXPENSE CODE \_\_\_\_\_

**TITLE: State Road A1A Collins Avenue Corridor Study**

#### **I. PROJECT DESCRIPTION:**

The Consultant will provide traffic engineering services related to the preparation of a Corridor Study along State Road A1A and Collins Avenue in Bal Harbour Village, Florida.

#### **II. SCOPE OF SERVICES:**

- Corridor Study Traffic Analysis Methodology Memo- Corradino traffic engineers will prepare a methodology memo for the preparation of a Corridor Study along State Road A1A and Collins Avenue between the Haulover Inlet Bridge and 96<sup>th</sup> Street in Bal Harbour Village, Florida. The memorandum will be submitted for review and approval by the Village, Miami-Dade County Department of Transportation and Public Works (DTPW), and the Florida Department of Transportation (FDOT). This scope of services includes the initial memo submittal to all agency stakeholders.
- Traffic Data Collection- Corradino traffic engineers will collect manual turning movement counts during the AM peak hour (7:00-9:00 AM) and PM peak hour (4:00-6:00 PM) at the following intersections within the corridor limits:
  - State Road A1A/Collins Avenue Northbound and 96<sup>th</sup> Street (signalized)
  - State Road A1A/Harding Avenue Southbound and 96<sup>th</sup> Street (signalized)
  - State Road A1A/Harding Avenue Southbound and Bal Harbour Shops (signalized)
  - State Road A1A/Bal Harbour Blvd and 9700 Block Bal Harbour Shops (signalized)
  - State Road A1A/Bal Harbour Blvd and 9800 Block/Bal Harbour Shops (signalized)
  - State Road A1A/Collins Avenue and Palace at Bal Harbour Driveway (non-signalized)
  - State Road A1A/Collins Avenue and Harbour Way East (signalized)
  - State Road A1A/Collins Avenue and Harbour Way West (signalized)

Corradino traffic engineers will collect continuous bidirectional pneumatic tube counts (speed and volume) at the following locations along State Road A1A and Collins Avenue for 72 hours:

- State Road A1A/Collins Avenue and north of Bal Cross Drive
- State Road A1A/Collins Avenue and north of Harbour Way
- Crash Analysis- Corradino traffic engineers will research the five-year crash history using Signal Four Analytics along the State Road A1A and Collins Avenue corridor between 96<sup>th</sup> Street and Haulover Inlet Bridge in Bal Harbour Village, which includes each intersection. Signal Four Analytics will be used to determine the number of crashes that occurred at the

intersections and along the road segments. Corradino traffic engineers will determine if there is a predominant crash pattern from the researched crash data. Corradino traffic engineers will provide a crash summary and heat map from Signal Four Analytics that documents the locations of each of the identified crashes within the most recent 5-year period.

- Traffic Analysis- Corradino traffic engineers will provide intersection capacity analysis of the existing conditions for the subject intersections and road segments. Corradino traffic engineers will utilize Synchro 11 software to evaluate the AM and PM peak hour traffic conditions of the signalized and non-signalized intersections. Corradino traffic engineers will evaluate the travel time and delay for the State Road A1A and Collins Avenue corridor limits. A queueing analysis evaluation of the key turn lanes at each intersection will be documented.
- Corridor Study- Corradino traffic engineers will summarize the traffic data collection, crash analysis, traffic analysis, and other related traffic engineering analysis into a technical memorandum with tables and figures. This scope of services includes one update based on one set of comprehensive traffic review comments by each key agency stakeholder.
- Meeting Attendance- This scope of services includes up to two meetings between Corradino, Bal Harbour Village, Miami-Dade County DTPW, and FDOT to discuss the State Road A1A and Collins Avenue Corridor study. This includes one pre-application meeting with Bal Harbour Village , Miami-Dade County DTPW and FDOT to discuss the methodology for the Corridor Study which will include the required traffic data collection. If additional meeting attendance is required, an additional service can be provided as an additional services agreement.
- Note: This scope of services does not include preparation of design plans or permitting of the intersection improvements. These services can be provided as an additional services agreement as necessary at the request of the Village .
- This scope of services does not include preparation of additional traffic analysis as requested by Bal Harbour Village, Miami-Dade County DTPW, and FDOT. These services can be provided as an additional service as requested by the Town of Surfside.

### **III. BUDGET:**

The Corradino Group staff will provide Bal Harbour Village with the basic services described in this scope of services for an initial lump sum budget of \$49,800.00.

**IV. ACCEPTANCE OF PROPOSAL**

**State Road A1A Collins Avenue Corridor Study**

Approved by:

**BAL HARBOUR VILLAGE**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
**Jorge M. Gonzalez, Village Manager**


\_\_\_\_\_  
(Witness)

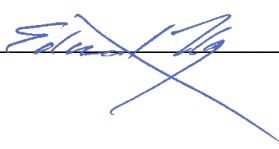
\_\_\_\_\_  
(Witness)

**THE CORRADINO GROUP, INC.**

Date: December 8, 2021

By: \_\_\_\_\_  
  
**Joseph M. Corradino, President**

\_\_\_\_\_  
  
(Witness)

\_\_\_\_\_  
  
(Witness)

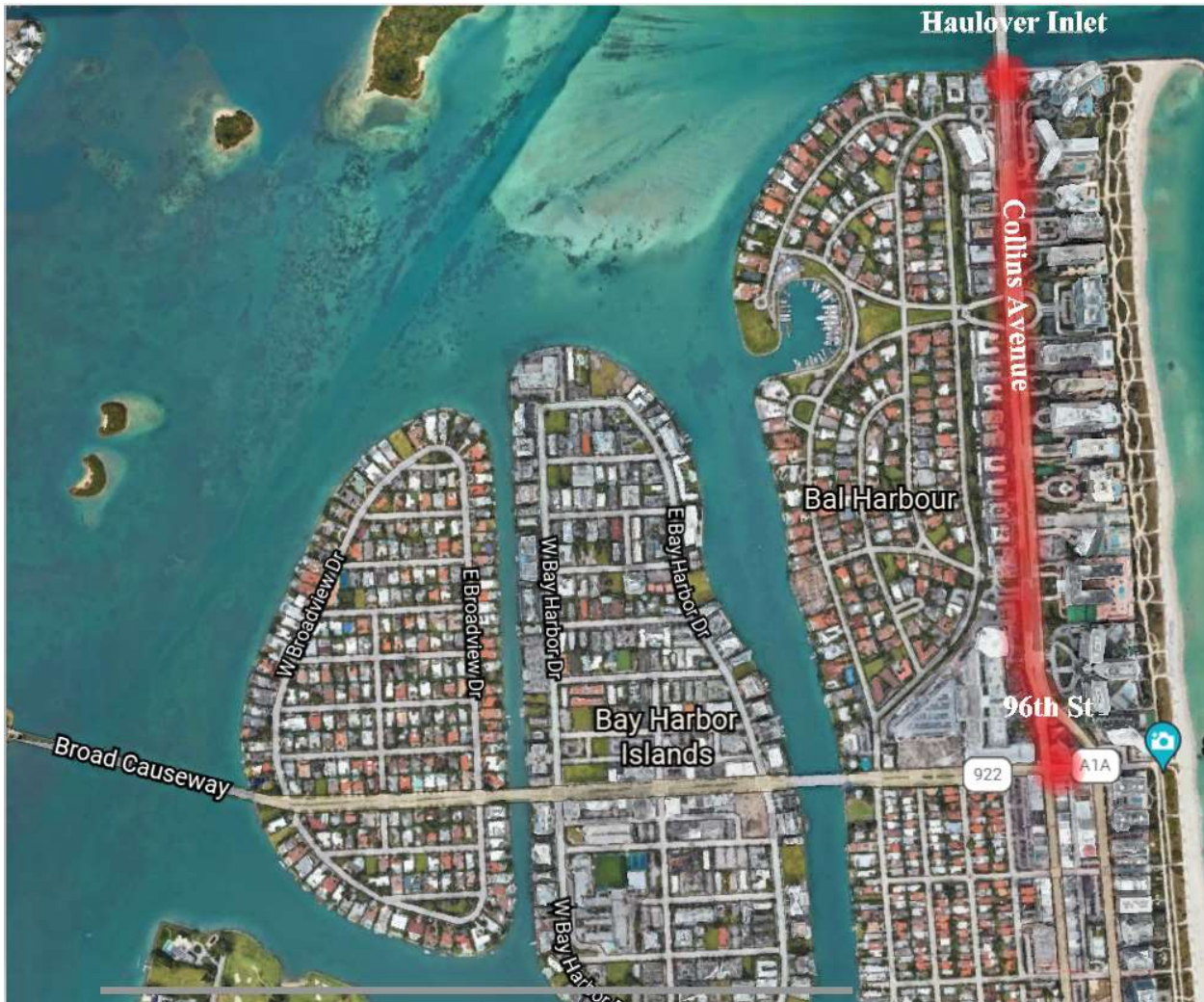


**FLORIDA DEPARTMENT OF TRANSPORTATION  
COUNTY INCENTIVE GRANT PROGRAM (CIGP)  
2022 APPLICATION**

**Location Map (Aerial)**

**Instructions:** Insert a location map (aerial). Outline the project limits in red in the map.

**0.84 mi**





**FLORIDA DEPARTMENT OF TRANSPORTATION  
COUNTY INCENTIVE GRANT PROGRAM (CIGP)  
2022 APPLICATION**

Typical Section (if not applicable submit with “not applicable to this project”)

**Instructions:** Submit a Typical Section for this project. If a typical section is not available submit this page noting “not available” or “not applicable” in the *enter text box* below.

Not applicable. This is a study.





**FLORIDA DEPARTMENT OF TRANSPORTATION  
COUNTY INCENTIVE GRANT PROGRAM (CIGP)  
2022 APPLICATION**

**Project Schedule**

**Instructions:** Submit a schedule for this project.

November to December 2022 - Execution of Agreement with Traffic Study Consultant

January to June 2022 - Study Completed

Dates are flexible depending on FDOT's preference for using funding between 2022 and 2023.

# BAL HARBOUR

- V I L L A G E -

CAPITAL PROGRAMS DIVISION

LETTER TO FDOT

To: Xiomara Nunez, MBA, PMP

From: Matilde E. Reyes, Capital Programs Manager *m.e. Reyes*

Date: December 7<sup>th</sup>, 2021

Subject: **Bal Harbour Village Collins Avenue Traffic Study CIGP Match**

The purpose of this letter is to provide, FDOT and Miami-Dade County, confirmation of the Village's intent to commit match funding in the amount of \$24,900.00, towards the Collins Avenue Traffic Study CIGP Project for FY 2023. The Village intends to use General Funds to meet the 50% match requirement. Below is a projection of typical General Funds available on a yearly basis:

### Capital Projects

The FY 2021-22 Final Operating and Capital Budget includes capital improvements Village wide, as summarized in the following table.

FUNDING SOURCE	Budget		
	Previous Years	FY 2022	Total
<b>General Fund:</b>			
Miami-Dade General Obligation Bond Fund	\$ 1,416,700	\$ 363,200	\$ 8,063,000
Developer Contributions - Ba Harbour Shops (PPS)	3,500,000	-	3,500,000
Developer Contributions - Ba Harbour Shops (Village Hall)	-	1,700,000	19,923,318
Developer Contributions - Ba Harbour Shops (Other)	1,000,000	1,000,000	2,500,000
Developer Contributions - Other	-	-	150,000
Suntrust Rent	920,000	701,145	4,532,486
Miscellaneous Revenue - Grants	300,000	2,921,000	3,221,000
Budget Allocation	2,196,597	(1,228,400)	2,144,597
Appropriation of Fund Balance/Carryover	8,379,570	(2,186,000)	8,790,970
Village 2011 Bond Escrow Funds	368,933	-	368,933
<b>Total General Fund</b>	<b>18,081,800</b>	<b>3,270,945</b>	<b>53,164,304</b>
<b>Resort Tax Fund:</b>			
Appropriation of Fund Balance/Carryover	-	1,000,000	2,500,000
<b>Total Resort Tax Fund</b>	<b>-</b>	<b>1,000,000</b>	<b>2,500,000</b>
<b>Utility Fund:</b>			
Miami-Dade General Obligation Bond Funds	6,500,000	-	6,500,000
Developer Contributions - Oceansa	950,000	-	950,000
Budget Allocation	2,221,800	-	2,221,800
Appropriation of Fund Balance/Carryover	1,267,700	-	1,267,700
Village 2011 Bond Escrow Funds	3,221,300	-	3,221,300
Village 2020 Utility Revenue Note	8,338,000	-	8,338,000
<b>Total Utility Fund</b>	<b>22,498,800</b>	<b>-</b>	<b>22,498,800</b>
<b>TBD</b>	<b>\$ -</b>	<b>\$ -</b>	<b>18,687,700</b>
<b>TOTAL FUNDING SOURCE</b>	<b>\$ 40,580,600</b>	<b>\$ 4,270,945</b>	<b>\$ 96,850,804</b>
<b>EXPENDITURE BY PROJECT</b>			
Parks and Public Spaces Operations Facility	\$ 2,972,000	\$ -	\$ 2,972,000
Waterfront Park (Phase I and II)	13,403,000	-	13,403,000
New Village Hall	-	1,700,000	19,923,318
Jetty/Cutwalk/96th Street Plaza	853,700	363,200	14,200,000
Collins Avenue Beautification	50,000	-	12,050,000
Waterfront Park (Phase III)	50,000	-	6,100,000
Utility Infrastructure - Sewer, Water and Stormwater Improvement	21,969,300	1,483,000	24,090,000
<b>TBD:</b>			
Use of Suntrust Funds	-	701,145	3,612,486
Use of Shop Funds	-	-	500,000
<b>TOTAL EXPENDITURE</b>	<b>\$ 39,298,000</b>	<b>\$ 4,247,345</b>	<b>\$ 96,850,804</b>



# BAL HARBOUR

- VILLAGE -

## COUNCIL ITEM SUMMARY

### Condensed Title:

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE; APPROVING AMENDMENTS TO PREVIOUSLY APPROVED CONTRACT AMOUNTS WITH ENGINEERING FIRMS ARDAMAN AND ASSOCIATES, INC. AND FACADE AND ENVELOPE ENGINEERING CONSULTANTS, LLC TO PROVIDE THE NECESSARY INSPECTION AND MATERIAL TESTING SERVICES FOR THE PARK PROJECT, IN THE AMOUNT OF TWO THOUSAND THREE HUNDRED NINETY DOLLARS (\$2,390) AND TWENTY-TWO THOUSAND SIX HUNDRED FORTY DOLLARS (\$22,640), RESPECTIVELY.

### Issue:

Should the Village Council approve the Resolution approving amendments to the contracts?

### Bal Harbour Experience:

Beautiful Environment       Safety       Modernized Public Facilities/Infrastructure  
 Destination & Amenities       Unique & Elegant       Resiliency & Sustainable Community

### Item Summary/Recommendation:

In accordance with the Florida Building Code, inspections and testing are required on all structural building components and for outdoor openings that have glazing. On April 11, 2022, the Council approved an agreement with Ardaman & Associates (Ardaman) for an amount of \$45,748 for the provisions of construction pile load testing, material testing, and inspections services for the Village Park Project (Project). On May 20, 2022, the Village signed a contract with Facade & Envelope Engineering Consultants (Facade) for an amount of \$19,240 for the provision of services for waterproofing inspections and testing for the Project.

On March 13, 2023, Ardaman submitted a proposal for a total amount of \$2,390 to test additional auger and helical piles required for the Project completion. The proposal maintains that all rates being charged to the Project will remain the same as the previous proposal approved in 2022. On February 10, 2023, Facade submitted a proposal for the total amount of \$3,400 to supplement the May 2022 proposal amount of \$19,240, which adds services to provide water and air infiltration testing of the glazing system. The total amount of the Facade waterproofing inspection services is now \$22,640.

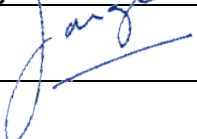
Based on the review of the proposals, approval of this Resolution authorizes the Village Manager to execute the additional services with Ardaman and Facade for the provision of material testing, waterproofing testing and inspection services in the amount of two thousand, three hundred ninety dollars (\$2,390) for Ardaman and twenty-two thousand, six hundred forty dollars (\$22,640) for Facade. **THE ADMINISTRATION RECOMMENDS APPROVAL OF THE RESOLUTION.**

### Financial Information:

	Amount	Account Name	Account #
1	\$2,390	Waterfront Park Project	01-73-506410
2	\$22,640	Waterfront Park Project	01-73-506410

### Sign off:

Capital Program Director	Chief Financial Officer	Village Manager
Matilde E. Reyes	Claudia Dixon	Jorge M. Gonzalez



# BAL HARBOUR

- V I L L A G E -

## COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager

DATE: March 27, 2023

SUBJECT: **A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING AMENDMENTS TO PREVIOUSLY APPROVED CONTRACT AMOUNTS WITH ENGINEERING FIRMS ARDAMAN AND ASSOCIATES, INC. AND FACADE AND ENVELOPE ENGINEERING CONSULTANTS, LLC TO PROVIDE THE NECESSARY INSPECTION AND MATERIAL TESTING SERVICES FOR THE VILLAGE PARK PROJECT, IN THE AMOUNT OF TWO THOUSAND THREE HUNDRED NINETY DOLLARS (\$2,390) AND TWENTY-TWO THOUSAND SIX HUNDRED FORTY DOLLARS (\$22,640), RESPECTIVELY; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**

### **ADMINISTRATIVE RECOMMENDATION**

I am recommending the approval of this Resolution.

### **BACKGROUND**

On April 11, 2022, the Village Council approved Resolution No. 2022-1448 for an additional service agreement with Ardaman and Associates, Inc. (Ardaman) in the total amount of \$45,748 for the provisions of construction pile load testing, material testing, and inspections services as it relates to the Village Waterfront Park Project (Project).

On March 13, 2023, Ardaman submitted a proposal for a total amount of \$2,390 for additional auger and helical piles tests required for the Project completion. The proposal maintains that all engineer hourly rates being charged to the Project will remain the same as the previous proposal approved in 2022.

On May 20, 2022, Bal Harbour Village signed the attached contract with Facade and Envelope Engineering Consultants, LLC (Facade) in the total amount of \$19,240 for the provision of services related to special waterproofing inspections and testing required for the Project.

On February 10, 2023, Facade submitted a proposal for the total amount of \$3,400 to supplement the May 2022 proposal amount of \$19,240 which adds services to provide water and air infiltration testing of the glazing system as it relates to the completion of the Project. The total amount of the Facade waterproofing inspection services is now \$22,640.

## **ANALYSIS**

In accordance with Florida Building Code and the permit plans and specifications, inspections and testing are required on all structural load bearing components of the building, which is not limited to foundation, masonry walls including erection, grouting and reinforcing structural steel and/or wood roof and floor framing and roof decking or sheathing, reinforced concrete columns, beams and slabs, curtain wall framing and storefront framing and glazing. Also, in accordance with the code, all outdoor openings that have waterproofing glazing need to be tested and inspected. Results of inspections will be detailed on reports submitted by a Florida Registered Professional Engineer.

The additional services to be provided by the engineering firms will ensure that the Village maintains compliance with all local, state, and federal codes and similarly, can effectively complete the Project on schedule. The original contracts with the firms were based on estimated costs for services to be provided, however, since then the Project has progressed well into its construction phase and minor additional services have been warranted. Hence, these proposals address the inspections and testing needed to allow close-out of the project and to receive the certificate of occupancy.

## **THE BAL HARBOUR EXPERIENCE**

This action is aligned with the Village's stated mission through the *Bal Harbour Experience*. The services required to complete the construction of the new Village Park and Community Center, corresponds directly to our goals for Modernized Public Facilities & Infrastructure, Safety, Resiliency and Sustainable Community, Beautiful Environment, Destination & Amenities and Unique & Elegant.

## **CONCLUSION**

Based on the review of the proposals, the team qualifications and their references, approval of this Resolution authorizes the Village Manager to execute the additional services with Ardaman & Associates, Inc. and Facade and Envelope Engineering Consultants, LLC for the provision of construction pile load testing, material testing, inspection services and the waterproofing testing and inspections at the new Village Waterfront Park Project in the amount of two thousand and three hundred ninety dollars (\$2,390) for Ardaman and twenty-two thousand six hundred forty dollars (\$22,640) for Facade.

### Attachments:

1. Ardaman & Associates, Inc. proposal
2. Facade & Envelope Engineering Consultants, LLC proposal
3. Resolution No. 2022-1448 approving Ardaman services
4. Facade & Envelope executed contract

RESOLUTION NO. 2023-\_\_\_\_

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING AMENDMENTS TO PREVIOUSLY APPROVED CONTRACT AMOUNTS WITH ENGINEERING FIRMS ARDAMAN AND ASSOCIATES, INC. AND FACADE AND ENVELOPE ENGINEERING CONSULTANTS, LLC TO PROVIDE THE NECESSARY INSPECTION AND MATERIAL TESTING SERVICES FOR THE VILLAGE PARK PROJECT, IN THE AMOUNT OF TWO THOUSAND THREE HUNDRED NINETY DOLLARS (\$2,390) AND TWENTY-TWO THOUSAND SIX HUNDRED FORTY DOLLARS (\$22,640), RESPECTIVELY; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, on April 11, 2022, the Council approved Resolution 2022-1448 for a service agreement with Ardaman and Associates, Inc. (Ardaman) in the total amount of \$45,748, for the provisions of construction pile load testing, material testing, and inspections services; and

**WHEREAS**, on March 13, 2023, Ardaman submitted a proposal for a total amount of \$2,390 to provide testing on the additional auger and helical piles installation and concrete testing required for the project completion; and

**WHEREAS**, on May 20, 2022, Bal Harbour Village signed a contract with Facade and Envelope (Facade) for the special waterproofing inspections and testing services required for the Waterfront Park project in the amount of \$19,240; and

**WHEREAS**, On February 10, 2023, Fa?ade submitted a proposal for the total amount of \$3,400 to supplement the May 2022 proposal amount of \$19,240 which adds services to provide water and air infiltration testing of the glazing system as it relates to the completion of the Project. The total amount of the Facade waterproofing inspection services is now \$22,640; and

**WHEREAS**, this Council finds the approval of the additional services between the Village and Ardaman for the provision of testing, and inspection services for the Village Park project to be in the best interest of the Village; and

**WHEREAS**, this Council finds the approval of the additional services between the Village and Facade for the provision of water pressure and air infiltration testing for the Village Park project to be in the best interest of the Village.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF  
BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That the above-stated recitals are hereby adopted and confirmed.

**Section 2. Agreement Approved.** That the agreement between the Village and Ardaman & Associates, Inc., for the provision of construction pile load testing, material testing, and inspection services, in the amount of Two Thousand Three Hundred Ninety Dollars (\$2,390) and Three Thousand Four Hundred Dollars (\$3,400) for the waterproofing testing and inspections services provided by Facade and Envelope which brings the total of their services to \$22,640, is hereby approved and the Village Manager is hereby authorized to execute the agreement on behalf of the Village.

**Section 3. Expenditure Approved.** That the expenditure of budgeted funds for the provision of inspection and material testing services is hereby approved.

**Section 4. Budget Amendment.** That the 2022-23 General Fund Capital Budget amendment in an amount not to exceed \$2,390 and \$22,640, respectively, is hereby approved.

**Section 5. Implementation.** That the Village Manager is hereby authorized to take all actions necessary to implement the Agreement and the purposes of this Resolution.

**Section 6. Effective Date.** That this Resolution shall take effect immediately upon the adoption hereof.

PASSED AND ADOPTED this 27<sup>th</sup> day of March, 2023.



\_\_\_\_\_  
Mayor Jeffrey P. Freimark

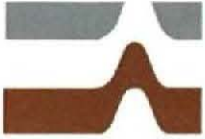
ATTEST:

\_\_\_\_\_  
Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Village Attorney  
Weiss Serota Helfman Cole & Bierman P.L.





Ms. Matilde Reyes  
Capital Program Manager  
Village of Bal Harbour  
655 96<sup>th</sup> Street  
Bal Harbour, Fl. 33154  
mreyes@balharbourfl.gov

March 13, 2023  
Proposal No: 23-0065  
AAI File No. 19-2613

**PROPOSAL FOR ADDITIONAL MATERIALS TESTING  
BAL HARBOUR VILLAGE PARK  
655 96<sup>TH</sup> STREET  
BAL HARBOUR, FL. 33154**

Dear Ms. Reyes:

We are most pleased to offer our inspection and testing services for the above referenced project. Ardaman & Associates, Inc. has assisted the construction industry for more than 50 years and we pride ourselves on fact, quality, and dependable service to help you complete your projects on time and within budget.

The Miami Branch laboratory facilities have been fully certified by the Construction Materials Engineering Council (CMEC), complying with ASTM standards for testing of construction materials.

Please see the fee schedule below for pricing on the estimated amounts of materials testing needed to complete the project. **The amount of testing may vary. You will only be billed for the actual work performed, at the unit pricing listed below. The totals provided are estimated totals only.**

Please feel free to contact us when we can be of service to you, or if you have any questions concerning our testing services. We look forward to assisting you on your project.

**ARDAMAN & ASSOCIATES, INC.**

Evelio Horta Jr. MSCE, P.E.  
Senior Project Engineer

**Bal Harbour Village Park  
655 96<sup>th</sup> Street  
Bal Harbour, Fl.**

**PILE WORK**

**Production Pile Installation – helical piles)**

We understand that the pile installation will consist of 146 auger cast piles and 338 helical piles. Our field technician will observe each pile through the entire installation process. At the completion of the field work, the data will be reviewed by our engineers. The pile capacities will be re-evaluated and a report will be sent to you. The report will include the field data and our estimated capacity for each pile. The production piles installation observations will be billed at the following rates:

Technician (includes 1 hour a day travel time) 5 hours a day x \$45/hr		\$225.00
Engineering		
Project Engineer	2 hours x \$125	\$250.00
Staff Engineer	1 hour x \$95	\$95.00
Principal Engineer	Final Pile Report	\$500.00
<b>Estimated total, helical pile installation</b>		<b>\$845.00</b>

Technician time above the defined hours will be charged at \$60.00 an hour.  
The total hours will depend on the actual time required by the contractor to install the production piles

**MATERIALS TESTING**

Concrete Testing, 4 cylinders per set 10 sets X \$90.00/each	\$900.00
Concrete Pick Up 5 pick ups x \$45/trip	\$225.00
Field Density Testing - Minimum charge 3 per trip 15 tests x \$28.00/each	\$420.00

\$1,545

## OVERTIME OR HOLIDAYS

Any holiday or weekend or overtime hours will be charged at 25% over the stated fee.

Please feel free to contact us when we can be of service to you, or if you have any questions concerning our testing services. We look forward to assisting you on your project.

**ARDAMAN & ASSOCIATES, INC.**



Evelio Horta Jr, MSCE. P.E.  
Senior Project Engineer

**PROJECT INFORMATION:**

**PROPOSAL/PROJECT ACCEPTANCE AND AGREEMENT**

**PROJECT INFORMATION:**

Project Name Bal Harbour Village Park  
Project Location 655 96<sup>th</sup> Street, Bal Harbour, Fl. 33154, Miami Dade County  
Proposal Number and Date 23-0065, March 13, 2023  
Description of Services materials testing to complete the project  
Estimated Fee **Additional Materials Testing estimated \$2,390.00**

**PROPERTY OWNER IDENTIFICATION:**

Name \_\_\_\_\_  
Property Identification Number \_\_\_\_\_  
Address \_\_\_\_\_  
City/State \_\_\_\_\_ Zip Code \_\_\_\_\_ Phone \_\_\_\_\_  
Attention \_\_\_\_\_ Title \_\_\_\_\_

**SPECIAL INSTRUCTIONS:**

**PAYMENT TERMS:**

Payment shall be due within 30 days after date of each periodic invoice. Interest at the rate of 18% per annum (or the highest rate allowable by law) shall accrue on all amounts not paid within 30 days after date of invoice. All attorney fees and expenses associated with collection of past due invoices will be paid by Client. Failure to timely pay any invoice shall constitute a waiver of any and all claims arising from or related to Ardaman & Associates, Inc.'s services, including but not limited to the services described in this Proposal.

**PROPOSAL ACCEPTANCE:**

By accepting this Proposal, the Terms and Conditions of this Proposal, including the Terms on this page, and Ardaman & Associates, Inc.'s General Conditions appearing on the following page of this Proposal, are incorporated herein by reference. In the event this Proposal Acceptance was received by facsimile, Client hereby confirms that the above described Proposal, the Terms and Conditions of this Proposal, including the Terms on this page, and Ardaman & Associates, Inc.'s General Conditions have been made available and are incorporated in this agreement.

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2023

\_\_\_\_\_  
(Print or type individual, firm or corporate body name)

\_\_\_\_\_  
(Signature of authorized representative)

\_\_\_\_\_  
(Print or type name of authorized representative and title)



## GENERAL CONDITIONS – FLORIDA

**Parties And Scope Of Work** – Ardaman & Associates, Inc. (hereinafter referred to as “A&A”) shall include said company, its division, subsidiary, parent or affiliate performing the Work. “Work” means the specific services to be performed by A&A as set forth in A&A’s proposal as well as any additional services requested or accepted by Client. “Client” refers to the person or business entity ordering the Work to be done by A&A. If the Client is ordering the Work on behalf of a third party, the Client represents and warrants that the Client is the duly authorized agent of said third party for the purpose of ordering and directing said Work. In the event Client is not the authorized agent of said third party, Client shall be individually liable hereunder. Further, Client shall disclose any such agency relationship to A&A in writing before the commencement of A&A’s Work hereunder. Client agrees that A&A’s professional duties are specifically limited to the Work as set forth in A&A’s proposal. The Client assumes sole responsibility for determining whether the quantity and the nature of the Work ordered by the Client is adequate and sufficient for the Client’s intended purpose. A&A’s Work is for the exclusive use of Client, and its properly disclosed principal. In no event shall A&A have any duty or obligation to any third party. Directing A&A to proceed with the Work shall constitute acceptance of the terms of A&A’s proposal and these General Conditions.

**On-Call Services** – In the event A&A is retained to perform construction materials testing (“CMT”), including but not limited to proctor and soil density tests, concrete tests, etc., on an On-Call basis such that A&A is not retained to perform continuous observations of construction, Client assumes sole responsibility for determining the location and frequency of sampling and testing. In such On-Call testing, A&A’s test results are only representative of conditions at the test location and elevation, and different conditions may exist at other locations and other elevations. Furthermore, in the event Client fails to properly determine the location or frequency of sampling and testing, under no circumstances will A&A assume that duty by performing its CMT services.

**Right-of-Entry** – Unless otherwise agreed, Client will furnish right-of-entry on the property for A&A to make the planned borings, surveys, and/or explorations. A&A will take reasonable precautions to minimize damage to the property caused by its equipment and sampling procedures, but the cost of restoration or damage which may result from the planned operations is not included in the contracted amount.

**Damage to Existing Man-made Objects** – It shall be the responsibility of the Client to disclose the presence and accurate location of all hidden or obscure man-made objects relative to field tests, sampling, or boring locations. Client waives any claim against A&A arising from any damage to existing man-made objects. In addition, Client shall defend, indemnify and hold A&A harmless from any third party claim arising from damage to existing man-made objects.

**Limitation of Liability** - A&A shall perform services for Client in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with the standards of competent consultants practicing in the same or a similar locality as the project. In the event any portion of the services fails to comply with this obligation and A&A is promptly notified in writing prior to one year after completion of such portion of the services, A&A will re-perform such portion of the services, or if re-performance is impracticable, A&A will refund the amount of compensation paid to A&A for such portion of the services. In no event shall A&A be liable for any special, indirect, incidental, or consequential damages. The remedies set forth herein are exclusive and the total liability of A&A whether in contract, tort (including negligence whether sole or concurrent), or otherwise arising out of, connected with or resulting from any and all services provided by A&A, including but not limited to the Work, shall not exceed the total fees paid by Client or \$50,000.00, whichever is greater. Client may, upon written request received within five days of Client’s acceptance hereof, increase the limit of A&A’s liability by agreeing to pay A&A an additional sum as agreed in writing prior to the commencement of A&A’s services. This charge is not to be construed as being a charge for insurance of any type, but is increased consideration for the greater liability involved. A&A’s individual professionals, employees, and agents are third party beneficiaries to these General Conditions,

**PURSUANT TO §558.0035, FLORIDA STATUTES, CONSULTANT’S INDIVIDUAL EMPLOYEES AND/OR AGENTS MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THEIR SERVICES PROVIDED PURSUANT TO THIS AGREEMENT.**

**Sampling or Testing Location** – Unless specifically stated to the contrary, the unit fees included in this proposal do not include costs associated with professional land surveying of the site or the accurate horizontal and vertical locations of tests. Field tests or boring locations described in our report or shown on our sketches are based on specific information furnished to us by others or estimates made in the field by our technicians. Such dimensions, depths or elevations should be considered as approximations unless otherwise stated in the report.

**Sample Handling and Retention** – Generally test samples or specimens are consumed and/or substantially altered during the conduct of tests and A&A, at its sole discretion, will dispose (subject to the following) of any remaining residue immediately upon completion of test unless required in writing by the Client to store or otherwise handle the samples. (a) NON HAZARDOUS SAMPLES: At Client’s written request, A&A will maintain preservable test samples and specimens or the residue therefrom for thirty (30) days after submission of A&A’s report to Client free of storage charges. After the initial 30 days and upon written request, A&A will retain test specimens or samples for a mutually acceptable storage charge and period of time. (b) HAZARDOUS OR POTENTIALLY HAZARDOUS SAMPLES: In the event that samples contain substances or constituents hazardous or detrimental to human health, safety or the environment as defined by federal, state or local statutes, regulations, or ordinances (“Hazardous Substances” and “Hazardous Constituents”, respectively), A&A will, after completion of testing and at Client’s expense: (i) return such samples to Client; (ii) using a manifest signed by Client as generator, will have such samples transported to a location selected by Client for final disposal. Client agrees to pay all costs associated with the storage, transport, and disposal of such samples. Client recognizes and agrees that A&A is acting as a bailee and at no time does A&A assume title of said waste.

**Discovery of Unanticipated Hazardous Materials** – Hazardous materials or certain types of hazardous materials may exist at a site where there is no reason to believe they could or should be present. A&A and Client agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. A&A and Client also agree that the discovery of unanticipated hazardous materials may make it necessary for A&A to take immediate measures to protect health and safety. A&A agrees to notify Client as soon as practicable should unanticipated hazardous materials or suspected hazardous materials be encountered. Client encourages A&A to take any and all measures that, in A&A’s professional opinion, are justified to preserve and protect the health and safety of A&A’s personnel and the public. Client agrees to compensate A&A for the additional cost of working to protect employees’ and the public’s health and safety. In addition, Client waives any claim against A&A arising from A&A’s discovery of unanticipated hazardous materials or suspected hazardous materials.

**Indemnification** – Client agrees to defend, indemnify and save harmless A&A from all claims, including negligence claims, suits, losses, personal injuries, death and property liability resulting from the actions or inactions of Client, Client’s contractors, representatives, agents and employees.

**Legal Jurisdiction** – The parties agree that any litigation shall only be brought in a court of competent jurisdiction located in Orlando, Orange County, Florida. All causes of action, including but not limited to actions for indemnification and contribution, arising out of A&A’s Work shall be deemed to have accrued and the applicable statutes of limitation shall commence to run not later than the date of issuance of A&A’s final invoice for the Work. Each of the parties hereto irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to this agreement.

**Force Majeure** – A&A shall not be held responsible for any delay or failure in performance caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, acts of God, act or omission of subcontractors, carrier, clients or other similar causes beyond its control.

**Drafting and Severability** – This Agreement has been drafted by all Parties hereto and shall not be construed against one Party or in favor of any other Party. In the event that any provision of this Agreement is held invalid, the remainder of this Agreement shall be fully enforceable.

## CHANGE ORDER No: 001

<b>Client: Matilde E Reyes</b> Bal Harbour Village 655 96 <sup>th</sup> St, Bal Harbour Fl 33154 Mreyes@balharbourfl.gov	<b>Project Name: Village Park Bal Harbour</b> <b>FEEC Project No.: 22047</b> <b>Date: February 10, 2023</b>
--	---


As requested by your office, Façade+Envelope hereby proposes this change order to our original contract for the revised scope of work as described below:

Item	Description	
	Provide equipment and manpower to conduct the following field tests:	
001	i. Water infiltration testing of glazing systems per ASTM E-1105.	\$1,700
002	ii. Air Infiltration testing of glazing systems per ASTM E-783.	\$1,700
		\$3,400

The Contract is changed as described below:

The original Contract sum was:	\$ 19,240
The net change by previously authorized Change Orders:	---
The Contract sum prior to this change order was:	\$ 19,240
The new contract sum will be increased with this change order in:	\$ 3,400
The new contract sum including this change order will be:	\$ 22,640

Client agrees to the Notes, Conditions and Exclusions, and Payment Policy included in our original contract dated May 20, 2022.

Accepted by:   
 Signature  
RAMIRO INGUANZO  
 Print Name

3/10/2023  
 Date  
ASST. VILLAGE MANAGER  
 Title



## RESOLUTION NO. 2022-1448

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING AN AGREEMENT WITH ARDAMAN AND ASSOCIATES, INC TO PROVIDE THE NECESSARY INSPECTION AND MATERIAL TESTING SERVICES FOR THE VILLAGE PARK PROJECT, IN THE AMOUNT OF THIRTY THOUSAND EIGHT HUNDRED THIRTY DOLLARS (\$30,830) AND ACCEPTING AN ALTERNATE FOR A NOT TO EXCEED AMOUNT OF FOURTEEN THOUSAND NINE HUNDRED EIGHTEEN DOLLARS (\$14,918); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, pursuant to the Florida Building Code (2007 Edition) and the permit construction plans and specifications, inspections and testing are required on all structural load bearing components of the building; and

**WHEREAS**, to comply with the code requirements for the required testing and inspection services for the Village Park project, proposals were requested from three (3) local firms: Wingerter Laboratories, Inc. (WLI), Ardaman & Associates, Inc. (Ardaman) and Professional Service Industries, Inc. (PSI-Intertek); and

**WHEREAS**, Ardaman submitted the lowest proposal in an amount of Thirty-Thousand Eight Hundred and Thirty Dollars (\$30,830), including an alternate in an amount not to exceed Fourteen Thousand Nine Hundred Eighteen Dollars (\$14,918) for the provision of construction pile load testing, material testing, and inspection services at the New Village Park project; and

**WHEREAS**, Ardaman will be providing all testing and inspections services for the pile installation scope of work and has included as an alternate for the inspections on all structural load bearing components of the building such as foundations, masonry walls including erection, grouting and reinforcing structural steel and/or wood roof and floor framing and roof decking or sheathing, reinforced concrete columns, beams and slabs, curtain wall framing and storefront framing and glazing; and

**WHEREAS**, this Council finds the approval of the agreement between the Village and Ardaman for the provision of construction pile load testing, material testing, and inspection services at the New Village Park project to be in the best interest of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:

**Section 1. Recitals Adopted.** That the above stated recitals are hereby adopted and confirmed.

**Section 2. Agreement Approved.** That the agreement between the Village and Ardaman & Associates, Inc., the provision of construction pile load testing, material testing, and inspection services, in the amount of Thirty Thousand Eight Hundred and Thirty Dollars (\$30,830) and accepting alternate in an amount not to exceed Fourteen Thousand Nine Hundred Eighteen Dollars (\$14,918), is hereby approved and the Village Manager is hereby authorized to execute the agreement on behalf of the Village.

**Section 3. Expenditure Approved.** That the expenditure of budgeted funds for the provision of inspection and material testing services is hereby approved.

**Section 4. Budget Amendment.** That the 2020-21 General Fund Capital Budget amendment in an amount not to exceed \$45,748 is hereby approved.

**Section 5. Implementation.** That the Village Manager is hereby authorized to take all actions necessary to implement the Agreement and the purposes of this Resolution.

**Section 6. Effective Date.** That this Resolution shall take effect immediately upon the adoption hereof.

PASSED AND ADOPTED this 11th day of April, 2022.




  
\_\_\_\_\_  
Mayor Gabriel Groisman

ATTEST:

  
\_\_\_\_\_  
Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

  
\_\_\_\_\_  
Village Attorney  
Weiss Serota Helfman Cole & Bierman P.L.



May 20, 2022

Attn.: **Ms. Matilde E Reyes**  
Bal Harbour Village  
655 96<sup>th</sup> St, Bal Harbour  
FL 33154  
mreyes@balharbourfl.gov

Subject: **Village Park Bal Harbour**  
**Building Envelope Inspection and Testing Proposal**

Page 1 of 10

Dear Ms. Reyes,

Façade and Envelope Engineering Consultants, LLC (Façade+Envelope) is pleased to submit the following proposal for Building Envelope Inspection and Testing services for the **Village Park Bal Harbour** project located in **Bal Harbour, FL** for your review and consideration. This proposal is based on the Architectural Drawings received from your office via email on May 20, 2022.

### **Building Envelope Components Included**

- I. **Waterproofing**
  - a. Balconies
  - b. Terrace
  - c. Eyebrows
  - d. Elevator Pit
  - e. Roof Decks
  - f. Exposed Mechanical Rooms
  - g. Canopy

### **Scope of Work**

- I. **PHASE I: Construction Phase: Building Envelope Inspections**
  - a. Attend a pre-construction meeting with general contractor and sub-contractors to go over and establish a schedule for inspections based on project sequencing, installation phases and our scope of services.
  - b. Visit the job periodically to monitor the installation of the building envelope components listed on page 1 for compliance with approved documents.
  - c. Document and report any noted deficiencies in the installation to all applicable parties.
  - d. Re-inspect the deficient components once they have been corrected by the sub-contractor and close the deficient item on our reports.
  - e. Upon completion of the project, and any deficient items having been corrected, provide a Statement of Inspection signed and sealed by a Florida Registered Professional Engineer stating that said components have been installed in compliance with the approved and permitted documents.



**II. PHASE II: Construction Phase: Witness Jobsite Field Testing**

- a. **Witness** the following field tests prepared by waterproofing subcontractors.
  - i. Water infiltration flood testing of horizontal waterproofing systems per ASTM D5957.
- b. Upon completion of testing, Façade+Envelope will provide a report signed and sealed by a Professional Engineer registered in the State of Florida.

Per ASTM D-5957: "ASTM D5957 illustrates a method for testing the water-tightness of waterproofing installations applied to horizontal surfaces having a slope of no greater than 20 mm/m (2% slope) (1/4" per ft)."

**Fee Schedule**

Description	Resource	Hours/ Units	Rate	Contract
<b>PHASE I: Waterproofing Special Inspections</b>				
Waterproofing Special Inspections				
	Inspector	156.0	\$ 90.00	\$ 14,040.00
	Project Manager	26.0	\$ 110.00	\$ 2,860.00
	Principal PE	13.0	\$ 180.00	\$ 2,340.00
<b>Contract Total</b>				<b>\$ 19,240.00</b>



The following services are NOT included but can be priced upon request.

**Building Envelope Components Included**

**I. Exterior Walls:**

- a. Joint Sealants
- b. Stucco
- c. Exterior Wall Coating
- d. Coatings Behind Exterior Cladding
- e. Wall Penetrations

**II. Glass and Glazing**

- a. Aluminum and Glass Windows and Doors
- b. Exterior Balcony Railings

**III. PHASE III: Construction Phase: Exterior Wall and Glass and Glazing Inspections**

- a. Attend a pre-construction meeting with general contractor and sub-contractors to go over and establish a schedule for inspections based on project sequencing, installation phases and our scope of services.
- b. Visit the job periodically to monitor the installation of the building envelope components listed on page 1 for compliance with approved documents.
- c. Document and report any noted deficiencies in the installation to all applicable parties.
- d. Re-inspect the deficient components once they have been corrected by the sub-contractor and close the deficient item on our reports.
- e. Upon completion of the project, and any deficient items having been corrected, provide a Statement of Inspection signed and sealed by a Florida Registered Professional Engineer stating that said components have been installed in compliance with the approved and permitted documents.

**IV. Phase IV: Jobsite Field Testing (Including preparation of Test Specimens)**

- a. Provide equipment and manpower to conduct the following field tests:
  - i. Water infiltration testing of glazing systems per ASTM E-1105.
- c. Upon completion of testing, Façade+Envelope will provide a report signed and sealed by a Professional Engineer registered in the State of Florida.

Per ASTM E1105: "This test method covers the determination of the resistance of installed exterior windows, curtain walls, skylights, and doors to water penetration when water is applied to the outdoor face exposed edges simultaneously with static air pressure at the outdoor face higher than the pressure at the indoor face."

**I. PHASE V: Jobsite Field Testing (Including preparation of Test Specimens)**

- a. Provide equipment and manpower to conduct the following field tests:
  - i. Flood testing of glazing systems per ASTM D-5957.
- b. Upon completion of testing, Façade+Envelope will provide a report signed and sealed by a Professional Engineer registered in the State of Florida.





Per ASTM D-5957: "ASTM D5957 illustrates a method for testing the water-tightness of waterproofing installations applied to horizontal surfaces having a slope of no greater than 20 mm/m (2% slope) (1/4" per ft)."

**General Notes:**

1. Quality Control Inspections as described in Fee Schedule above include periodic inspection of **representative locations and areas** to confirm the following:
  - a. Materials used
  - b. Surface preparation
  - c. Installation
  - d. Material thickness
  - e. Systems used
  - f. Anchorage
  - g. Perimeter Sealant
  - h. Tie down installation
  
2. Special Inspections as described in Fee Schedule above include inspection of **all accessible** exterior window, door and railing locations and will verify the following:
  - a. Systems used
  - b. Anchorage
  - c. Perimeter Sealant
  - d. Tie down installation
  
3. Visits of inspection includes six (6) hours of inspector time assigned to inspection, report writing and travel time.
  
4. It is understood that for the first few visits there may be the need for re-inspections while the different trades understand what is included in the inspections. But as the work progresses it is expected that all areas requested for inspection would be complete and correct prior to requesting the inspection as excessive re-inspections are not covered in our contract.
  
5. Façade+Envelope will keep track of hours spent on all phases of the project as well as initial inspection and re-inspection time. Façade+Envelope will notify client if contract budget falls behind estimated budget to complete our scope of work prior to exceeding contract budget.

**Conditions & Exclusions:**

1. **No additional work** beyond that listed above shall be performed **without express written approval by Client.** Any work requested and approved in writing by Client, and performed by Façade and Envelope in excess of the work listed above in "Scope of Work" shall be an additional charge that client agrees to pay at the hourly rates listed below:
  - a. Principal/PE: \$ 180.00 per hour
  - b. Consultant: \$ 160.00 per hour
  - c. Project Manager \$110.00 per hour
  - d. Inspector: \$ 90.00 per hour
  - e. Water Infiltration Test:
    - i. Individual Test: \$ 1,700.00 per test
    - ii. Same day re-test \$ 700.00 (of same specimen)
    - iii. Same day cancellation fee \$ 700.00
  - f. Project Engineer \$ 90.00 per hour
  - g. Drafter: \$ 60.00 per hour
2. The following items are **not** included in the scope of work:
  - a. CAD drafting services.
  - b. Conceptual or structural design of new glazing or railing systems.
  - c. Structural engineering services.
3. This Proposal is valid for a period of three (3) months from the date first stated above.
4. This Agreement shall be governed and construed under the laws of the State of Florida. Any controversy or claim shall first be presented by the Client or the Consultant in writing, with both parties agreeing to communicate about the matter within five (5) days of the date of such correspondence. If the parties are unable to resolve the matter, Client and Consultant agree to submit same to mediation before an impartial certified mediator jointly selected by the parties who shall equally share the mediator's fees and costs. If the matter is not resolved at mediation, then the controversy or claim will be submitted to a court of competent jurisdiction within Broward County, Florida which the parties agree shall be the exclusive venue for any dispute. The Client hereby agrees to pay for any and all costs and expenses associated with the enforcement of this Agreement including reasonable attorneys' fees and costs, whether incurred before suit, during suit, at mediation, at trial or on appeal, and Client is to pay those fees and costs incurred in litigating entitlement to legal fees and costs and the amount thereof.



5. The Client agrees that the standard of care for all of Consultant's professional engineering and related services performed under this Agreement shall be the care and skill ordinarily used by members of the Consultant's profession practicing under similar circumstances at the same time and in the same locality. CONSULTANT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT OR OTHERWISE IN CONNECTION WITH ITS SERVICES. Consultant may rely upon the correctness, accuracy and precision of all documents and information provided by the Client and/or its agents and employees as well as permitting, regulatory and other governmental agencies or entities. Consultant shall only be required to correct such deficiencies which are directly attributable to its work and it shall not be responsible for any special, incidental or consequential damages.
6. Any plans, drawings, reports, and other such supporting Documents, whether drafts or final versions, produced as part of this project remain the property of Consultant subject to timely payment in full of all invoices at the stated Agreement price. Consultant hereby grants to Client a limited, non-exclusive and non-transferrable or assignable contractual license to use said documents only as to the designated project at the designated location. Physical and electronic documents may not be altered or modified by Client without the prior express written consent of Consultant. No Copyright or other intellectual property right is granted by this Agreement.
7. It is acknowledged by both parties that Consultant's scope of services does not include any services related to any hazardous condition. In the event Consultant or any other party encounters a hazardous condition, Consultant may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Client: (i) retains appropriate specialty consultant(s) or contractor(s) to identify and , as appropriate, abate, remediate, or remove the hazardous condition; and (ii) warrants that the site is in full compliance with applicable laws or regulations.
8. Client shall indemnify and hold harmless Consultant, its officers, directors, partners, employees, and consultants from and against any and all claims, costs, liabilities, suits, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and dispute resolution costs) to the extent caused by or attributable to the wrongful, intentional or negligent acts or omissions of Client or Client's officers, directors, partners, employees, agents, contractors or consultants, or any third party.



9. Consultant's sole responsibilities to the Client are set forth in the Scope of Service section of this Agreement and the Scope of Service section may not be modified except in writing and signed by an authorized representative of Consultant. Consultant's Scope of Service shall not include advising Client of any life safety issue at the project or jobsite. Consultant is not the design professional of record on the subject project.
10. Consultant shall not be responsible for the means, methods or techniques of construction utilized by any general contractor or subcontractors or independent contractors on the Project. Client acknowledges that Consultant has no right to control the general contractor, subcontractors or independent contractors in the performance of their work. Consultant also shall not be responsible for establishing or monitoring safety precautions and procedures for the Project or the failure of the general contractor, subcontractors or independent contractors to carry out their work in accordance with their contract documents or any applicable building codes, governmental or customary requirements. Consultant has no duty to supervise any construction or design work of the general contractor, subcontractors, independent contractors or other design professionals and assumes no responsibility for any negligent acts or omissions of the general contractor, subcontractors, independent contractors or other design professionals.
11. To the fullest extent permitted by law, Client agrees that the **total liability**, in the aggregate, of Consultant and Consultant's officers, directors, employees, subcontractors or agents for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to Consultant's services, the project, or this Agreement from any cause, including but not limited to negligence, strict liability, error, breach of contract or breach of warranty shall not exceed the total compensation received by Consultant under this Agreement or the coverage provided by Consultant's applicable insurance in such instances, if any, whichever is greater.
12. It is intended by the parties to this agreement that the consultant's services in connection with the project shall not subject the consultant's individual employees, officers or directors to any personal legal exposure for the risks associated with this project. The Client agrees that as Clients' sole and executive remedy, any claim, demand or suit shall be directed and/or asserted only against the Consultant, a Florida corporation, and not against any of the Consultants' employees, officers or directors.
13. Included in the number of hours of work proposed are site and/or shop inspections, travel to and from the office to the inspection site, report preparation, Principal/PE review and certification, meetings, and consulting as requested.



14. Standard Fee Schedule rates are based upon provision of services during an eight (8) hour period between the hours of 7:00 am and 7:00 pm. Should Client request or should Façade+Envelope's work reasonably require work before or after said time period, overtime rates will apply and will be charged at the rate of one and one-half (1.5) times the Standard Fee Schedule rates. Weekend and holidays will similarly be charged at two (2) times the Standard Fee Schedule rates. Client agrees to pay the additional costs of overtime, weekend, and holiday work.

**15. Termination and Suspension**

- a. If the Client is past due on payments over sixty (60) days this may be considered cause for termination of contract. Façade+Envelope will also have the option to suspend services. Façade+Envelope will notify client in writing (via email or mail) seven (7) days prior to suspending services. In the event of suspension of services, Façade+Envelope shall have no liability to the Client for project delays or damage caused to Client because of such suspension of services. Before resuming services, Façade+Envelope shall be paid in full by Client for all past due payments.
- b. If the Owner suspends the Project or Façade+Envelope's services, Façade+Envelope shall be compensated for services performed prior to notice of such suspension.
- c. Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.
- d. The Owner may terminate this Agreement upon not less than seven days' written notice to Façade+Envelope for the Owner's convenience and without cause.
- e. In the case of Client termination of contract, any **retainer** payments made to Façade+Envelope shall be **non-refundable**. Any payment's owed to Façade+Envelope at the time of contract termination will be deducted from any remaining retainer funds and any balance exceeding these funds shall be paid in full by Client.

**16. PURSUANT TO SECTION 558.0035 FLORIDA STATUTES, THE CONSULTANT'S CORPORATION IS THE RESPONSIBLE PARTY FOR THE PROFESSIONAL SERVICES IT AGREES TO PROVIDE UNDER THIS AGREEMENT. NO INDIVIDUAL PROFESSIONAL EMPLOYEE, AGENT, DIRECTOR, OFFICER OR PRINCIPAL MAY BE INDIVIDUALLY LIABLE FOR NEGLIGENCE ARISING OUT OF THIS CONTRACT.**





17. This Agreement contains the entire agreement between the parties and supersedes and replaces any and all prior agreements, whether oral or written. This Agreement may only be amended or modified by a written agreement executed by all parties. Oral representations may not be relied on. The person signing this Agreement on behalf of the Client represents he/she is fully authorized to do so. Failure to enforce any of the terms or conditions of this Agreement shall not be interpreted as a waiver of their continuing effect.

### Payment Policy

1. Payment is due net 30 days after receipt of invoice. Submittal of payment to Façade and Envelope is not contingent on Client's receipt of payment from a third party.
2. A charge of 1.5% per month (18% per annum) will be charged on all past due accounts. Façade and Envelope reserves the right to suspend or terminate services if payment is not made within 15 days from the item due date.
3. Client must be current with payments and have no outstanding payments which are more than 30 days past due. No final letters, reports or documents will be released to Client if they are not current with payments within 30 days.
4. Remittance of payments to be made to:

**Façade and Envelope Engineers LLC**  
4350 Oakes Road, Suite 512  
Davie, FL 33314

**Commencement of Services**

We are prepared to commence work upon receipt of a signed copy of this proposal and project retainer in the amount of **10 % of selected contract total**. Invoices will be issued as services are rendered and per our payment terms above.


Should you require any additional information or have any questions regarding the above, please do not hesitate to call us. We look forward to working with you and your team on this project.

Respectfully submitted,

Manuel Morales, P.E.  
Principal  
Façade+Envelope

It is agreed that all Terms, Conditions and Exclusions listed above are agreed as stipulated and that all debts incurred are the responsibility of Client as authorized by the signature below.

If client is a corporation or other entity, the person signing this Proposal on behalf of client represents and warrants that he/she has full authority to do so and that this Proposal binds the corporation or entity.

Accepted by:   
Signature

RAMIRO INGUANZO  
Print Name

5/20/2022  
Date

ASST. VILLAGE MANAGER  
Title



# BAL HARBOUR

- VILLAGE -

## COUNCIL ITEM SUMMARY

### Condensed Title:

AN ORDINANCE OF BAL HARBOUR VILLAGE, COMPREHENSIVELY UPDATING AND AMENDING SECTION 14-6 OF CHAPTER 14 "PROVISIONS OF DRAINAGE AND STORMWATER MANAGEMENT" OF THE VILLAGE'S CODE BY CREATING SECTION 14-6(A), TO BE ENTITLED "WATER QUALITY" AND CREATING SECTION 14-6(B) TO BE ENTITLED "SEDIMENT AND EROSION CONTROL," AND CREATING SECTION 14-6 (C) TO BE ENTITLED, "ADOPTION OF SECTION D4, WATER CONTROL, OF PART 2-PUBLIC WORKS MANUAL OF MIAMI-DADE COUNTY, FLORIDA".

### Issue:

Should the Village Council approve the Ordinance updating and amending 14-6 of Chapter 14 of the Village Code as directed by the Florida Department of Environmental Protection (DEP)?

### The Bal Harbour Experience:

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Beautiful Environment   | <input type="checkbox"/> Safety           | <input type="checkbox"/> Modernized Public Facilities/Infrastructure   |
| <input type="checkbox"/> Destination & Amenities | <input type="checkbox"/> Unique & Elegant | <input checked="" type="checkbox"/> Resiliency & Sustainable Community |
| <input type="checkbox"/> Other: _____            |   |  |

### Item Summary / Recommendation:

During the February 21, 2023 Council meeting, there was a discussion item regarding stormwater management to maintain water quality. Consensus was reached by the Council to continue the process to develop the appropriate updates of our existing Code, using the Florida DEP-provided model, and to present the revised Ordinance for first reading at the March 2023 Council meeting. DEP later requested that the Village also include erosion control provisions in this Ordinance which establishes the Village's legal authority to require compliance with conditions in ordinances, permits, contracts, and orders regarding the stormwater system. It is intended to provide for the health, safety, and general welfare of the Village through the regulation of pollutant and illicit discharges to the storm drainage system to the maximum extent practicable as required by federal and state law, and through regulation to control sediment and erosion.

**THE ADMINISTRATION RECOMMENDS APPROVAL OF THIS ORDINANCE.**


### Advisory Board Recommendation:

N/A

### Financial Information:

	Amount	Account	Account #
	X	X	X

### Sign off:

<b>Director Public Works &amp; Beautification Department</b>	<b>Chief Financial Officer</b>	<b>Village Manager</b>
<b>John Oldenburg</b>	<b>Claudia Dixon</b>	<b>Jorge M. Gonzalez</b>
		

# BAL HARBOUR

- VILLAGE -

## COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager

DATE: March 27, 2023

SUBJECT: **AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, COMPREHENSIVELY UPDATING AND AMENDING SECTION 14-6 OF CHAPTER 14 "PROVISIONS OF DRAINAGE AND STORMWATER MANAGEMENT" OF THE VILLAGE'S CODE OF ORDINANCES BY CREATING SECTION 14-6(A), TO BE ENTITLED "WATER QUALITY," CREATING SECTION 14-6(B) TO BE ENTITLED "SEDIMENT AND EROSION CONTROL," AND CREATING SECTION 14-6(C) TO BE ENTITLED, "ADOPTION OF SECTION D4, WATER CONTROL, OF PART 2-PUBLIC WORKS MANUAL OF MIAMI-DADE COUNTY, FLORIDA"; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

### ADMINISTRATIVE RECOMMENDATION

I am recommending approval of this Ordinance.

### BACKGROUND

The Village, along with several other municipal co-permittees, is a party to the National Pollutant Discharge Elimination System (NPDES) Permit No. FLS000003 ("Phase I MS4 NPDES Permit"). We are also parties to an associated interlocal agreement that provides for identification and control of discharges from Municipal Storm Sewer Systems (MS4s). As a Permittee, the Village must periodically complete a Phase I MS4 permit reapplication review.

On November 3, 2022, the Village received correspondence from the Florida Department of Environmental Protection (DEP) informing the Village that, pursuant to Part III.A.7.a. of its Phase I MS4 NPDES Permit, the Village is required to strengthen its legal authority to conduct inspections and monitoring, and to control illicit discharges, illicit connections, illegal dumping, improper disposal and spills into the Village's stormwater system. The Village was also notified that our legal authority to require compliance with conditions in ordinances, permits, contracts, and orders regarding the stormwater system needs to be strengthened. Thereafter, the Village was further advised by the DEP that it also needed to address the issue of erosion and sediment control within the Village. Accordingly, the DEP is requiring the Village to develop and submit a draft ordinance or similar regulatory mechanism to comply.

To be clear, the Village is currently complying with all of its obligations pursuant to the Phase I MS4 NPDES Permit, but the notification from DEP requests that the legal authority for such efforts be strengthened by the codification of regulatory mechanisms in the Village's Code. Likewise, this is also the case for the erosion and sediment control component now requested by DEP. Towards that end, DEP has provided the Village with an extensively drafted "Model Illicit Discharge and Connection Stormwater Ordinance" and an "Erosion and Sediment Control Model Ordinance" (collectively, the "DEP Models") for use.

It should be noted that the Village was not alone in receiving these requests from DEP, and several other local municipalities were also asked to do the same. Some of these cities have even been placed under audit by the State and threatened with fines.

The Village Attorney has been working with staff from the Village's Public Works and Beautification, Building, and Police Departments, to review the Code of Ordinances, current Village practices and procedures, and prepare proposed revisions to the Village's Code to bring it into compliance with its permit obligations and the current demands of DEP. The Village has been in contact with DEP regarding our efforts and will continue to coordinate with them on this issue.

On February 21, 2023, the Village Council considered a discussion item on this issue, and agreed that the Village should proceed to comply with the DEP request and adopt an ordinance patterned after the DEP Models.

### **ANALYSIS**

The Village Attorney has prepared an Ordinance, patterned on the DEP models and reflecting the input of the Administration, for first reading. DEP staff has already informally reviewed a draft of this Ordinance and provided comments to the Administration.

This Ordinance is intended to provide for the health, safety and general welfare of the Village through the regulation of non-stormwater discharges to the storm drainage system. Additionally, it establishes methods for controlling the introduction of pollutants into the MS4 and establishing erosion and sediment control mechanisms in order to comply with the requirements of the NPDES. This Ordinance also establishes the Village's legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance. The information below summarizes the major Ordinance provisions:

#### Section 14-6. Water Quality

##### Applicability

The provisions contained within the Ordinance apply to all water entering the storm drain system generated on any developed and undeveloped lands, unless explicitly exempted by an authorized enforcement agency.

Responsibility for Administration

The Village, as an authorized enforcement agency, shall administer, implement, and enforce the provisions of this section. The Village staff that will be primarily tasked with responsibility for enforcement include those from the Police, Building, and Public Works & Beautification Departments.

Discharge Prohibitions

a) Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the Village's storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

b) *Exempt Discharges:*

1. water line flushing or other potable water sources;
2. landscape irrigation or lawn watering;
3. diverted stream flows;
4. rising ground water;
5. ground water infiltration to storm drains;
6. uncontaminated pumped ground water;
7. foundation or footing drains (not including active groundwater dewatering systems);
8. crawl space pumps;
9. air conditioning condensation;
10. springs;
11. non-commercial washing of vehicles;
12. natural riparian habitat or wetland flows;
13. swimming pools (if dechlorinated - typically less than one PPM chlorine);
14. discharges or flows from fire-fighting activities;
15. uncontaminated roof drains;
16. any other water source not containing Pollutants.

c) *Conditional exemptions:*

1. Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
2. Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.

3. Any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

#### Prohibition of Illicit Connections

- The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited;
- This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection; and
- A person is considered to be in violation of this section if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

#### Suspension of MS4 Access

- *Suspension Due to Illicit Discharges In Emergency Situations.*  
The Village may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the State. If the violator fails to comply with a suspension order issued in an emergency, the Village may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the State, or to minimize danger to persons;
- *Suspension Due to the Detection of Illicit Discharge;*
- Any person discharging to the MS4 is subject to losing their access to the stormwater system if such termination would abate or reduce an illicit discharge.

#### Industrial or Construction Activity Discharges

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Village prior to the allowing of discharges to the MS4.

#### Monitoring Discharges

The Village is permitted to enter and inspect facilities and to monitor to determine compliance and it shall be granted ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept pursuant to the NPDES permit.



### Notification of Spills

In the event of a known or suspected release of materials which are resulting from or may result in illegal discharges or pollutants into stormwater, the storm drain system, or water of the U.S., the person responsible for the facility or construction operation shall take all necessary steps to ensure the discovery, containment and cleanup for such release. Additionally, the Village is required to be notified in person or by phone or facsimile no later than the next business day.

### Enforcement

If a violation occurs, the Village Manager may initiate enforcement proceedings in accordance with Article IV of the Code.

#### a) Notice of Violation

Whenever the Village finds that a person has violated a prohibition or failed to meet a requirement of this section, the Village may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

1. The performance of monitoring, analyses, and reporting;
2. The elimination of illicit connections or discharges;
3. The requirement that the violating discharges, practices, or operations shall cease and desist;
4. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and
5. Payment of a fine to cover administrative and remediation costs; and
6. The implementation of source control or treatment Best Management Practices.

#### b) Appeal of Notice of Violation

Any person receiving a Notice of Violation may appeal the determination of the Village in accordance with Section 2-186 and 2-187 of the Code. The decision of the Village shall be final, and may be appealed to a court of competent jurisdiction as provided in Section 2-189 of the Code.

##### 1. Assessment of Penalty for Non-Compliance

Upon determination of a violation of this section, the Village may assess against the violator a penalty of \$250.00 per day and a penalty of \$500 per day for a repeat violation. Higher penalties may be imposed for irreparable or irreversible violations in accordance with F.S. §162.09(2)(a);

2. Additional fines, charges and costs against the violator may be assessed in an amount determined by the Village Manager or designee, depending on the extent of environmental damage, required mitigation, the cost of remediation, and enforcement;
3. The violator shall bear all costs incurred for clean-up, enforcement action, and remediation.

In addition to the enforcement processes and penalties provided above, any condition caused or permitted to exist in violation of any of the provisions of this section is a threat to public health, safety and welfare, and is declared and deemed a nuisance, pursuant to



§823.01, Florida Statutes, and any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and each day during which any such violation of any of the provisions of this section is committed, continued, or permitted, shall constitute a separate offense, punishable by a \$500.00 fine, pursuant to §775.083(1)(e), Florida Statutes. In addition to any other penalty authorized by this section, any person, partnership or corporation convicted of violating any of the provisions of this section shall be required to bear the expense of such restoration.

#### Abatement Following Failure to Correct

If a violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 15 calendar days of the decision of the authority upholding the Village's decision, then representatives of the Village shall enter upon the subject private property and are authorized to take measures necessary to abate the violation and/or restore the property.

#### Cost of Abatement

Within 30 calendar days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 20 calendar days. If the amount due is not paid within a timely manner as determined by the decision of the Village or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

#### 14-6(b) Erosion and Sediment Control.

This subsection of the Ordinance provides a local regulation to guide, regulate, and control the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth on land in the Village.

#### Permits

No person shall be granted a site development permit for land-disturbing activity without the approval of an Erosion and Sediment Control Plan (as further explained below) by the Village. Notwithstanding, no site development permit is required for any emergency activity that is immediately necessary for the protection of life, property or natural resources. Each permit application shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the Erosion and Sediment Control Plan and that a Certified Contractor shall be on site on all days when construction or grading activity takes place. Additionally, the applicant will be required to file with the Village a faithful performance bond, letter of credit, or other improvement security in an amount deemed sufficient by the Village to cover all costs of improvements, landscaping, maintenance, of improvements for such period as specified by the Village, and engineering and inspection costs to cover the cost of failure or repair improvements installed on the site.

### Review and Approval

The Village will review each application for a site development permit to determine its conformance with the provisions of this regulation. Within 30 calendar days after receiving an application, the Village will provide written notification of approval, approval subject to reasonable conditions, or disapproval.

### Erosion and Sediment Control Plan

The Erosion and Sediment Control Plan will include:

1. A natural resource map;
2. A sequence of construction of the development site, including stripping and clearing, rough grading, construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation;
3. All erosion and sediment control measures necessary to meet the objectives of this local regulation throughout all phases of construction and after completion of development on the site;
4. Seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of lime and fertilizer application, and kind and quantity of mulching for both temporary and permanent vegetative control measures; and
5. Provisions for maintenance of control facilities, including easements and estimates of the cost of maintenance.

### Design Requirements

Grading, erosion control practices, sediment control practices, and waterway crossings shall meet the design criteria set forth by either the State or County manual, whichever is more restrictive.

1. Erosion control requirements shall include: soil stabilization, establishment of seeding or another vegetative erosion control method, if used, special techniques meeting the design criteria for steep slopes or in drainage ways, stabilization of soil stockpiles at the end of each workday, use of either a heavy mulch layer or other method to control erosion, techniques to prevent the blowing of dust or sediment from the site, as well as to divert upland runoff past disturbed slopes;
2. Sediment control requirements shall include: settling basins, sediment traps, or take and perimeter controls, as well as protection for adjacent properties by use of a vegetated buffer strip in combination with perimeter controls;
3. Waterway and watercourse protection requirements shall include: a temporary stream crossing if a wet watercourse will be crossed regularly during construction, stabilization of the watercourse channel before, during and after any in-channel work, and stabilization adequate to prevent erosion located at the outlets of all pipes and paved channels;
4. Construction site access requirements shall include: temporary access road provided at all sites, and all measures required by the Village to ensure that sediment is not tracked onto public streets or washed into storm drains.

### Inspection

The Village will make regular inspections of all control measures per the Erosion and Sediment Control Plan submitted. Additionally, a permittee must notify the Village at least two business days before: the start of construction, installation of sediment and erosion measures, completion of site clearing, completion of final landscaping, and close of the construction permit.

### Enforcement

a) Stop-Work Order; Revocation of Permit.

In the event that any person holding a site development permit violates the terms of the permit or implements site development in such a manner as to materially adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or development site so as to be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood, the Village may suspend or revoke the site development permit.

b) Violation and Penalties

Assessment of Penalty for Non-Compliance.

The Village may assess against the violator a penalty of \$250.00 per day and a penalty of \$500 per day for a repeat violation. Higher penalties may be imposed for irreparable or irreversible violations in accordance with F.S. § 162.09(2)(a). Additional fines, charges and costs against the violator may be assessed depending on the extent of environmental damage, required mitigation, the cost of remediation, and enforcement. The violator shall bear all costs incurred for clean-up, enforcement action, and remediation.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this section is a threat to public health, safety and welfare, and is declared and deemed a nuisance, pursuant to §823.01, Florida Statutes. Accordingly, any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor punishable by a \$500.00 fine, pursuant to §775.083(1)(e), Florida Statutes. In addition to any other penalty authorized by this section, any person, partnership or corporation convicted of violating any of the provisions of this section shall be required to bear the expense of such restoration.

### 14-6(c) Adoption of section D4, Water Control, of Part 2–Public Works Manual of Miami-Dade County, Florida.

This provision already existed in this section of the Village's Code, but has been relocated within this Ordinance.

An initial draft of this Ordinance was sent to DEP for review on or about March 10, 2023. Based on DEP's review of that initial draft and the comments received, we anticipate that this Ordinance will be accepted by DEP and anticipate that it will bring the Village into compliance with the NPDES Permit, as requested by DEP.

**THE BAL HARBOUR EXPERIENCE**

This Ordinance addresses the *Bal Harbour Experience* by advancing the resilience and sustainability of the Village and is required in order to fully comply with State mandates.

**CONCLUSION**

The Village Attorney, working closely with the Administration, has prepared proposed revisions to Section 14-6 of the Village Code in order to (1) strengthen the legal authority of the Village to enforce its stormwater requirements, and (2) address erosion and sediment control measures, pursuant to the requirements of its Phase I MS4 NPDES Permit, to inspect, monitor, control illicit discharges, illicit connections, illegal dumping, improper disposal and spills into its stormwater system, and to strengthen its ability to require compliance with the law, permits, contractual obligation and orders relating to the same.

It is recommended that the Council adopt this Ordinance on first reading and schedule second reading of the Ordinance for the April 2023 Council meeting.

ORDINANCE NO. 2023-\_\_\_\_\_

**AN ORDINANCE OF BAL HARBOUR VILLAGE, FLORIDA, COMPREHENSIVELY UPDATING AND AMENDING SECTION 14-6 OF CHAPTER 14 "PROVISIONS OF DRAINAGE AND STORMWATER MANAGEMENT" OF THE VILLAGE'S CODE OF ORDINANCES BY CREATING SECTION 14-6(A), TO BE ENTITLED "WATER QUALITY," CREATING SECTION 14-6(B) TO BE ENTITLED "SEDIMENT AND EROSION CONTROL," AND CREATING SECTION 14-6(C) TO BE ENTITLED, "ADOPTION OF SECTION D4, WATER CONTROL, OF PART 2-PUBLIC WORKS MANUAL OF MIAMI-DADE COUNTY, FLORIDA"; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Bal Harbour Village (the "Village") is committed to environmental conscientiousness and is located along an interconnected system of waters that provide habitat for fish and wildlife, opportunities for recreation, and an enhanced quality of life; and

**WHEREAS**, the Village has determined that illicit discharges to the stormwater system result in the damage and loss of natural resources, including the degradation of water quality; and

**WHEREAS**, discharge of pollutants directly or via stormwater runoff into the surrounding waterways degrades water quality and poses a public health risk; and

**WHEREAS**, storm drains that overflow, or are not properly protected or maintained, can permit an accumulation of pollutants to enter the stormwater system and discharge into the Village's interconnected waterways; and

**WHEREAS**, as an operator of Municipal Separate Storm Sewer Systems ("MS4") and a co-permittee under the National Pollutant Discharge Elimination System ("NPDES") Permit No. FLS000003, the Village is required by the Florida Department of Environmental Protection to comply with certain requirements and in furtherance thereof has been provided model ordinance language for adoption in substantially the same form; and

**WHEREAS**, as an operator of MS4 and a co-permittee under the NPDES Permit No. FLS000003, the Village is required to prohibit illicit discharges, illicit connections, illegal

dumping, improper disposal and spills into the stormwater system, and is required to have the authority to enforce such prohibitions; and

**WHEREAS**, as an operator of MS4 and a co-permittee under the NPDES Permit No. FLS000003, the Village is required to provide for sediment and erosion control parameters; and

**WHEREAS**, the Village Council finds that this Ordinance is necessary for the preservation and improvement of the environment, and in the best interest of the public health, safety, and welfare of the Village's residents and visitors.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE MAYOR AND COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** That each of the above recitals are true and correct and incorporated herein by this reference.

**Section 2. Amending Chapter 14 of the Village Code.** That Chapter 14 of the code of ordinances of Bal Harbour Village, Florida, is hereby amended to read as set forth in Exhibit A, attached hereto and incorporated herein.

**Section 3. Severability.** That 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 4. Codification.** That it is the intention of the Village Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Village's Code of Ordinances, and that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions, and that the word Ordinance shall be changed to Section or other appropriate word.

**Section 5. Conflicts.** That all ordinances or parts of ordinances, resolutions or parts of resolutions, in conflict herewith, are repealed to the extent of such conflict.

**Section 6. Effective Date.** That this Ordinance shall become effective immediately upon adoption on second reading.

**PASSED ON FIRST READING** on the 27<sup>th</sup> day of March, 2023.

**PASSED AND ADOPTED ON SECOND READING** this \_ day of \_\_\_\_\_.



---

Mayor Jeffrey P. Friemark

ATTEST:

---

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

---

Village Attorney  
Weiss Serota Helfman Cole & Bierman P.L.

## Exhibit A<sup>1</sup>

### Chapter 14- Planning and Development

#### Sec. 14-6. Provisions of drainage and stormwater management

The purpose of this section is to safeguard persons, protect property, and prevent damage to the environment, the Village's surface waters, and Biscayne Bay through water control and the regulation of non-stormwater discharges and pollutants into the Village's municipal separate storm sewer system, Biscayne Bay, and surface waters, as well as through erosion and sediment control, to the maximum extent practicable as required by federal and state law.

##### **Sec. 14-6(a). Water Quality**

###### (1) Purpose and Intent

The purpose of this section is to provide for the health, safety, and general welfare of the citizens of the Village through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This section establishes methods for controlling the introduction of pollutants into the municipal separate sewer storm system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process, and otherwise assure the protection of the water quality of the Village. The objectives of this section are:

- a. To regulate the contribution of pollutants to the MS4 by stormwater discharges by any user;
- b. To prohibit Illicit Connections and Discharges to the MS4;
- c. To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this section.

###### (2) Definitions

For the purposes of this section, the following shall mean:

*Authorized Enforcement Agency.* Bal Harbour Village or any other agency having jurisdiction. All references herein to Village as the authorized enforcement agency shall be construed to also apply to any other agencies having jurisdiction.

*Best Management Practices ("BMPs").* Measures, practices, prohibition of practices, schedules or activities, general good housekeeping practices, maintenance procedures, educational practices, and/or devices which are generally accepted within an industry as being effective, to reduce erosion from occurring on a disturbed site, preventing sedimentation from occurring

---

<sup>1</sup> Coding: ~~Strikethrough words~~ are deletions to the existing words. Underlined words are additions to the existing words. Changes between first and second reading are indicated with ~~double-strikethrough~~ and double underline.



on an adjacent property or within a waterway, or preventing the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practice to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Clean Water Act. The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Construction Activity. Construction projects resulting in a land disturbance. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

Hazardous Materials. Any material, including any substance, waste or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal Discharge. Any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in subsection (7) of this section.

Illicit Connections. An illicit connection is defined as either of the following:

- a. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system, including, but not limited to, any conveyances that allow any non-storm water discharge, including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or
- b. Any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial Activity. Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26(b)(14), which includes commercial car washes among other activity.

MS4 means the Municipal Separate Storm Sewer System, which is the conveyance or system of conveyances that is owned and operated by the Village, and is designed or used to collect or convey stormwater (e.g. storm drains, pipes, and/or ditches).

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit. Means a permit issued by EPA (or by a State under

authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the State, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Storm Water Discharge. Any discharge to the storm drain system that is not composed entirely of Stormwater (as defined below).

Operator. Any party that has:

- a. Operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; and/or
- b. Day-to-day operational control of any activities that are necessary to ensure compliance with a Erosion and Sediment Control Plan (as defined in 14-6(b)) for the site or other permit conditions imposed by the Village.

Person. Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pollutant. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved, including adjacent sidewalks and parking strips.

Storm Drainage System. Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Stormwater. Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stormwater Pollution Prevention Plan. A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater,

Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

Wastewater. Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

(3) Applicability

This section shall apply to all water entering the storm drain system generated on any developed and undeveloped lands, unless explicitly exempted by an authorized enforcement agency.

(4) Responsibility for Administration

The Village, as an authorized enforcement agency, shall administer, implement, and enforce the provisions of this section. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing by the Village Manager to persons or entities acting in the beneficial interest of or in the employ of the Village.

(5) Severability

The provisions of this section are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this section or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this section.

(6) Ultimate Responsibility

The standards set forth herein and promulgated pursuant to this section are minimum standards; therefore this section does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

(7) Discharge Prohibitions

a. Prohibition of Illegal Discharges. No person shall discharge or cause to be discharged into the Village's storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows.

b. Exempt Discharges. The following discharges are exempt from discharge prohibitions established by this section:

1. water line flushing or other potable water sources;
2. landscape irrigation or lawn watering;
3. diverted stream flows;
4. rising ground water;

5. ground water infiltration to storm drains;
6. uncontaminated pumped ground water;
7. foundation or footing drains (not including active groundwater dewatering systems);
8. crawl space pumps;
9. air conditioning condensation;
10. springs;
11. non-commercial washing of vehicles;
12. natural riparian habitat or wetland flows;
13. swimming pools (if dechlorinated - typically less than one PPM chlorine);
14. discharges or flows from fire-fighting activities;
15. uncontaminated roof drains;
16. any other water source not containing Pollutants.

c. *Conditional exemptions.* The following discharges are exempt if in compliance with the conditions specified below.

1. Discharges specified in writing by the authorized enforcement agency as being necessary to protect public health and safety.
2. Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agency prior to the time of the test.
3. Any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

(8) *Prohibition of Illicit Connections*

- a. The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited.
- b. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- c. A person is considered to be in violation of this section if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(9) *Suspension of MS4 Access*

- a. Suspension Due to Illicit Discharges In Emergency Situations. The Village may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the State. If the violator fails to comply with a suspension order issued in an emergency, the Village may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the State, or to minimize danger to persons.
- b. Suspension Due to the Detection of Illicit Discharge. Any person discharging to the MS4 in violation of this section may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Village will notify a violator of the proposed termination of its MS4 access. The violator may petition the Village for a reconsideration and hearing.
- c. Reinstatement without a Permit. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this section, without prior approval of the Village.

(10) Industrial or Construction Activity Discharges

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Village prior to the allowing of discharges to the MS4.

(11) Monitoring of Discharges

- a. Applicability. This section applies to all facilities that have storm water discharges associated with industrial activity, including construction activity.
- b. Access to Facilities
  - 1. The Village shall be permitted to enter and inspect facilities subject to regulation under this section as often as may be necessary to determine compliance with this section. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the Village.
  - 2. Operators shall allow the Village ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge storm water.

and the performance of any additional duties as defined by state and federal law.

3. The Village shall have the right to set up on any permitted facility such devices as are necessary in its opinion to conduct monitoring and/or sampling of the facility's storm water discharge.
4. The Village has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
5. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Village and shall not be replaced. The costs of clearing such access shall be borne by the operator.
6. Unreasonable delays in allowing the Village access to a permitted facility is a violation of a storm water discharge permit and of this section. A person who is the operator of a facility with a NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies the Village reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this section.
7. If the Village has been refused access to any part of the premises from which stormwater is discharged, and has reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure or premises which condition would constitute a violation of this section, then the Village may seek issuance of an inspection warrant from any court of competent jurisdiction.

(12) Requirement to Prevent, Control, And Reduce Stormwater Pollutants By the Use of Best Management Practices

The Village has adopted requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of storm water, the storm drain system, or waters of the State. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's

expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4. An illicit discharge that occurs despite compliance with BMPs is a violation of this Section, except if such discharge is permitted under Section 14-6(a)(7). Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMPs shall be part of a stormwater pollution prevention plan as necessary for compliance with requirements of the NPDES permit.

(13) *Watercourse Protection*

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

(14) *Notification of Spills*

Notwithstanding other requirements of law, as soon as a person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or water of the U.S., said person shall take all necessary steps to ensure the discovery, containment, and cleanup for such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the Village in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Village within three business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

(15) *Enforcement*

It shall be the responsibility of the Village Manager or designee, to determine if a violation of this section exists, as based on the findings required in this section and applicable law. The Village Manager may initiate enforcement proceedings in accordance with Article IV of the Code. The remedies listed in this section are not exclusive of any other remedies available under any applicable federal, state

or local law and it is within the discretion of the Village seek cumulative remedies.

- a. Notice of Violation. Whenever the Village finds that a person has violated a prohibition or failed to meet a requirement of this section, the Village may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:
  1. The performance of monitoring, analyses, and reporting;
  2. The elimination of illicit connections or discharges;
  3. The requirement that the violating discharges, practices, or operations shall cease and desist;
  4. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and
  5. Payment of a fine to cover administrative and remediation costs; and
  6. The implementation of source control or treatment BMPs.
- b. Deadline. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.
- c. Appeal of Notice of Violation. Any person receiving a Notice of Violation may appeal the determination of the Village in accordance with Section 2-186 and 2-187 of the Code. The notice of appeal must be received within 20 calendar days from the date of service of the Notice of Violation. The decision of the Village or their designee shall be final, and may be appealed to a court of competent jurisdiction as provided in Section 2-189 of the Code.
- d. Assessment of Penalty for Non-Compliance.
  1. Upon determination of a violation of this section, the Village may assess against the violator a penalty of \$250.00 per day and a penalty of \$500 per day for a repeat violation. Higher penalties may be imposed for irreparable or irreversible violations in accordance with F.S. § 162.09(2)(a).
  2. Additional fines, charges and costs against the violator may be assessed in an amount determined by the Village Manager or designee, depending on the extent of environmental damage, required mitigation, the cost of remediation, and enforcement.



3. The violator shall bear all costs incurred for clean-up, enforcement action, and remediation.
4. In addition to the enforcement processes and penalties provided above, any condition caused or permitted to exist in violation of any of the provisions of this section is a threat to public health, safety and welfare, and is declared and deemed a nuisance, pursuant to §823.01, Florida Statutes. Accordingly, any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and each day during which any such violation of any of the provisions of this section is committed, continued, or permitted, shall constitute a separate offense, punishable by a \$500.00 fine, pursuant to §775.083(1)(e), Florida Statutes. In addition to any other penalty authorized by this section, any person, partnership or corporation convicted of violating any of the provisions of this section shall be required to bear the expense of such restoration.

(16) Abatement Following Failure to Correct

- a. Abatement of the Violation. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within 15 calendar days of the decision of the authority upholding the Village's decision, then representatives of the Village shall enter upon the subject private property and are authorized to take measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the Village or designated contractor to enter upon the premises for the purposes set forth above.
- b. Cost of Abatement. Within 30 calendar days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within 20 calendar days. If the amount due is not paid within a timely manner as determined by the decision of the Village or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this section shall become liable to the Village by reason of such violation. The liability shall be paid in not more than 12 equal payments. Interest at the rate of 8% per annum shall be assessed on the balance on the first day following the imposition of the lien. An assessment may be paid without interest at any time within 30 calendar days after the abatement has been completed and a resolution accepting the same has been adopted by the Village.

**Sec. 14-6(b). Erosion and Sediment Control**

(1) Purpose

- a. During the construction process, soil is highly vulnerable to erosion by wind and water. Eroded soil endangers water resources by reducing water quality and causing the siltation of aquatic habitat for fish and other desirable species. Eroded soil also necessitates repair of sewers and ditches and dredging of lakes. In addition, clearing and grading during construction cause the loss of native vegetation necessary for terrestrial and aquatic habitat.
- b. As a result, the purpose of this local regulation is to safeguard persons, protect property and prevent damage to the environment in the Village. This Section will also promote the public welfare by guiding, regulating, and controlling the design, construction, use, and maintenance of any development or other activity that disturbs or breaks the topsoil or results in the movement of earth on land in the Village.
- c. Development shall also comply with Section 6-201 of the Village Code, as appropriate.

(2) Definitions

Certified Contractor means a person who has received training and is licensed by the state or local environmental agency to inspect and maintain erosion and sediment control practices.

Clearing means any activity that removes the vegetative surface cover.

Development or development activity means:

- a. The construction, installation, demolition, or removal of a structure, building or improvement;
- b. Clearing, scraping, grubbing, killing or otherwise removing vegetation from a site; and/or
- c. Adding, removing, exposing, excavating, leveling, grading, digging, furrowing, dumping, piling, dredging, or otherwise significantly disturbing soil, mud, sand, or rock of a site.

Draining Way means any channel that conveys surface runoff throughout the site.

Erosion means the detachment, transport, and deposition of particulate matter by the action of wind, water, or gravity.

Erosion Control means a measure that prevents erosion.

Erosion and Sediment Control Agency means the Village or any other agency having jurisdiction, and is referred to as the Village.

Erosion and Sediment Control Manual means the guidelines established in the Florida Stormwater Erosion and Sedimentation

Control Inspector's Manual, published by the Florida Department of Environmental Protection, or Part 2–Public Works Manual, of Miami-Dade County, Florida, whichever is more restrictive.

Erosion and Sediment Control Plan means a set of plans prepared by or under the direction of a licensed professional engineer indicating the specific measures and sequencing to be used to control sediment and erosion on a development site during and after construction.

Grading means stripping, stockpiling, excavation or fill of material, or combination thereof, including the land in its excavated or filled condition and the resulting conditions thereof.

Perimeter Control(s) means a barrier that prevents sediment from leaving a site by filtering sediment-laden runoff or diverting it to a sediment trap or basin.

Phasing means clearing a parcel of land in distinct phases, with the stabilization of each phase completed before the clearing of the next.

Sediment means a solid material, whether organic or inorganic, that is in suspension, is being transported, or has been moved from its site of origin by wind, water, or gravity as a product of erosion.

Sediment Control means measures that prevent eroded sediment from leaving the site.

Site means a parcel of land or contiguous combination thereof, where grading work is performed as a single unified operation.

Site Development Permit means a permit issued by the municipality for the construction or alteration of ground improvements and structures for the control of erosion, runoff, and grading.

Stabilization means the use of practices that prevent exposed soil from eroding.

Start of Construction means the first land-disturbing activity associated with a development, including land preparation such as clearing, grading and filling; installation of streets and walkways; excavation for basements, footings, piers, or foundations; erection of temporary forms; and installation of accessory buildings such as garages.

Village means Bal Harbour Village and shall be construed to include any designated agent of the Village.

Watercourse means any body of water, including, but not limited to, lakes, ponds, rivers, streams, and bodies of water delineated by the Village.

Waterway means a channel that directs surface runoff to a watercourse or to the public storm drain.

(3) Permits

- a. No person shall be granted a site development permit for land-disturbing activity without the approval of an Erosion and Sediment Control Plan by the Village.
- b. No site development permit is required for the following activities:
  - 1. Any emergency activity that is immediately necessary for the protection of life, property or natural resources;
  - 2. Existing nursery and agricultural operations as permitted main or accessory use.
- c. Each application shall bear the names and addresses of the owner and developer of the site, and of any consulting firm retained by the applicant together with the name of the applicant's principal contact at such firm, and shall be accompanied by a filing fee.
- d. Each application shall include a statement that any land clearing, construction, or development involving the movement of earth shall be in accordance with the Erosion and Sediment Control Plan and that a Certified Contractor shall be on site on all days when construction or grading activity takes place.
- e. The applicant will be required to file with the Village a faithful performance bond, letter of credit, or other improvement security in an amount deemed sufficient by the Village to cover all costs of improvements, landscaping, maintenance, of improvements for such period as specified by the Village, and engineering and inspection costs to cover the cost of failure or repair improvements installed on the site.

(4) Review and Approval

The Village will review each application for a site development permit to determine its conformance with the provisions of this regulation. Within 30 calendar days after receiving an application, the Village shall, in writing:

- a. Approve the permit application;
- b. Approve the permit application subject to such reasonable conditions as may be necessary to secure substantially the objectives of this regulation, and issue the permit subject to these conditions;  
or
- c. Disapprove the permit application, indicating the reason(s) and procedure for submitting a revised application and/or submission.

(5) Erosion and Sediment Control Plan

- a. The Erosion and Sediment Control Plan shall include the following:
1. A natural resources map identifying soils, forest cover, and resources protected under other chapters of this code.
  2. A sequence of construction of the development site, including stripping and clearing, rough grading, construction of utilities, infrastructure, and buildings; and final grading and landscaping. Sequencing shall identify the expected date on which clearing will begin, the estimated duration of exposure of cleared areas, areas of clearing, installation of temporary erosion and sediment control measures, and establishment of permanent vegetation.
  3. All erosion and sediment control measures necessary to meet the objectives of this local regulation throughout all phases of construction and after completion of development on the site. Depending upon the complexity of the project, the drafting of immediate plans may be required at the close of each season.
  4. Seeding mixtures and rates, types of sod, method of seedbed preparation, expected seeding dates, type and rate of lime and fertilizer application, and kind and quantity of mulching for both temporary and permanent vegetative control measures.
  5. Provisions for maintenance of control facilities, including easements and estimates of the cost of maintenance.
- b. Modifications to the plan shall be processed and approved or disapproved in the same manner as those in Section 14-6(b)(4), may be authorized by the Village by written authorization to the permittee and shall include:
1. Major amendments of the erosion and sediment control plan submitted to the Village;
  2. Field modifications of a minor nature.

(6) Design Requirements

- a. Grading, erosion control practices, sediment control practices, and waterway crossings shall meet the design criteria set forth in the most recent version of Erosion and Sediment Control Manual, and shall be adequate to prevent transportation of sediment from the site to the satisfaction of the Village. Cut and fill slopes shall be no greater than 2:1, except as approved by the Village to meet other community or environmental objectives.

- b. Clearing and grading of natural resources, such as forest and wetlands, shall not be permitted, except when in compliance with all other chapters of this Code. Clearing techniques that retain natural vegetation and drainage patterns, as described in Erosion and Sediment Control Manual, shall be used to the satisfaction of the Village.
- c. Clearing, except that necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and have been stabilized.
- d. Phasing shall be required on all sites disturbing greater than 30 acres, with the size of each phase to be established at plan review and as approved by the Village.
- e. Erosion control requirements shall include the following:
  - 1. Soil stabilization shall be contemplated within five calendar days of clearing or inactivity in construction.
  - 2. If seeding or another vegetative erosion control method is used, it shall become established within two weeks or the Village may require the site to be reseeded or a nonvegetative option employed.
  - 3. Special techniques that meet the design criteria outlined in Erosion and Sediment Control Manual on steep slopes or in drainage ways shall be used to ensure stabilization.
  - 4. Soil stockpiles must be stabilized or covered at the end of each workday.
  - 5. The entire site must be stabilized, using a heavy mulch layer or another method that does not require germination to control erosion, at the close of the construction period.
  - 6. Techniques shall be employed to prevent the blowing of dust or sediment from the site.
  - 7. Techniques that divert upland runoff past disturbed slopes shall be employed.
- f. Sediment controls requirements shall include:
  - 1. Settling basins, sediment traps, or tank and perimeter controls.
  - 2. Settling basins that are designed in a manner that allows adaptation to provide long term stormwater management, if required by the Village.
  - 3. Protection for adjacent properties by the use of a vegetated buffer strip in combination with perimeter controls.
- g. Waterway and watercourse protection requirements shall include:

1. A temporary stream crossing installed and approved by (approving agency, e.g. Waterways Division, ESC agency) if a wet watercourse will be crossed regularly during construction.
  2. Stabilization of the watercourse channel before, during, and after any in-channel work.
  3. All on-site stormwater conveyance channels designed according to the criteria outlined in Erosion and Sediment Control Manual.
  4. Stabilization adequate to prevent erosion located at the outlets of all pipes and paved channels.
- h. Construction site access requirements shall include:
1. A temporary access road provided at all sites.
  2. All measures required by the Village in order to ensure that sediment is not tracked onto public streets by construction vehicles or washed into storm drains.

(7) Inspection

- a. The Village shall make inspections as hereinafter required and either shall approve that portion of the work completed or shall notify the permittee wherein the work fails to comply with the Erosion and Sediment Control Plan as approved. Plans for grading, stripping, excavating, and filling work bearing the stamp or approval of the Village shall be maintained at the site during the progress of work. To obtain inspections, the permittee shall notify the Village at least two business days before the following:
  1. Start of construction;
  2. Installation of sediment and erosion measures;
  3. Completion of site clearing;
  4. Completion of final landscaping;
  5. Close of the construction permit.
- b. The Village shall make regular inspections of all control measures in accordance with the inspection schedule outlined on the approved Erosion and Sediment Control Plan(s). The purpose of such inspections will be to determine the overall effectiveness of the control plan and the need for additional control measures. All inspections shall be performed and documented in written form by the Village at the time interval specified in the approved permit.
- c. The Village shall enter the property of the applicant as deemed necessary to make regular inspections to ensure the validity of the reports filed under the preceding subsection.

(8) Enforcement

- a. Stop-Work Order; Revocation of Permit. In the event that any person holding a site development permit pursuant to this section violates the terms of the permit or implements site development in such a manner as to materially adversely affect the health, welfare, or safety of persons residing or working in the neighborhood or development site so as to be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood, the Village may suspend or revoke the site development permit.
- b. Violation and Penalties. No person shall construct, enlarge, alter, repair, or maintain any grading, excavation, or fill, or cause the same to be done, contrary to or in violation of the terms of any of this section. The remedies listed in this section are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency seek cumulative remedies.
  1. Assessment of Penalty for Non-Compliance.
    - a) Upon determination of a violation of this section, the Village may assess against the violator a penalty of \$250.00 per day and a penalty of \$500 per day for a repeat violation. Higher penalties may be imposed for irreparable or irreversible violations in accordance with F.S. § 162.09(2)(a).
    - b) Additional fines, charges and costs against the violator may be assessed in an amount determined by the Village Manager or designee, depending on the extent of environmental damage, required mitigation, the cost of remediation, and enforcement.
    - c) The violator shall bear all costs incurred for clean-up, enforcement action, and remediation.
  2. In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this section is a threat to public health, safety and welfare, and is declared and deemed a nuisance, pursuant to §823.01, Florida Statutes. Accordingly, any person violating any of the provisions of this Section shall be deemed guilty of a misdemeanor punishable by a \$500.00 fine, pursuant to §775.083(1)(e), Florida Statutes. In addition to any other penalty authorized by this section, any person, partnership or corporation convicted of violating any of the provisions of this section shall be required to bear the expense of such restoration.



**Sec. 14-6(c). Adoption of section D4, Water Control, of Part 2–Public Works Manual of Miami-Dade County, Florida.**

Bal Harbour Village adopts by reference section D4, Water Control, of Part 2–Public Works Manual, of ~~Metropolitan~~ Miami-Dade County, Florida, as amended.

# BAL HARBOUR

- VILLAGE -

## COUNCIL ITEM SUMMARY

### Condensed Title:

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE; APPROVING THE EXPENDITURE OF \$169,934 TO PURCHASE A POLICE MARINE PATROL BOAT; APPROVING VESSEL-RELATED EXPENDITURES NOT TO EXCEED \$7,060 FOR THE PURCHASE OF POLICE RADIOS AND ANCILLARY ITEMS.

### Issue:

Shall the Village Council approve the purchase of a FLUID Watercraft 780 vessel for marine patrol purposes in the amount of \$169,934 of which \$75,000 is reimbursable to the Village via the FIND grant, as well as an expenditure not to exceed \$7,060 for ancillary items?

### The Bal Harbour Experience:

- Beautiful Environment     Safety     Modernized Public Facilities/Infrastructure  
 Destination & Amenities     Unique & Elegant     Resiliency & Sustainable Community  
 Other: \_\_\_\_\_

### Item Summary / Recommendation:

On June 17, 2022, the Village requested funding from the Florida Inland Navigation District (FIND) Commission to assist with the purchase of a second vessel that will increase marine patrol coverage in the area and ensure the existing vessel's lifespan is maximized. The Village proposed a twenty-six (26) foot FLUID Watercraft 780 Patrol vessel with Mercury engines. The Village was notified on September 23, 2022 that the Village was awarded funding through FIND's Assistance Program for the Marine Patrol Vessel Project.

A second vessel would alleviate the excessive use of the existing Sea Hunter vessel, while still covering the area during peak hours more frequently. Staff from the Police Department has negotiated with the manufacturer of the FLUID Watercraft 780 Patrol vessel and obtained pricing 5% below their offered government pricing. The manufacturer will be able to deliver the vessel within two (2) weeks of approval. The final price of the vessel is \$169,934, of which \$75,000 will be reimbursed by the FIND grant. In addition, approval for ancillary items for the vessel at a cost not to exceed \$7,060 is also needed.

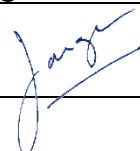
**THE ADMINISTRATION RECOMMENDS APPROVAL OF THIS RESOLUTION.**

### Financial Information:

Amount	Account	Account #
\$75,000.00	Machinery & Equipment - General Fund	01-21-506400
\$101,994.00	Machinery & Equipment - Resort Tax Fund	10-21-506400

### Sign off:

Chief of Police	Chief Financial Officer	Village Manager
Raleigh M. Flowers, Jr.	Claudia Dixon	Jorge M. Gonzalez



# BAL HARBOUR

- VILLAGE -

## COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager



DATE: March 27, 2023

SUBJECT: **A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE EXPENDITURE OF \$169,934 TO PURCHASE A POLICE MARINE PATROL BOAT; APPROVING VESSEL-RELATED EXPENDITURES NOT TO EXCEED \$7,060 FOR THE PURCHASE OF POLICE RADIOS AND ANCILLARY ITEMS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING AN EFFECTIVE DATE.**

### ADMINISTRATIVE RECOMMENDATION

I am recommending approval of this Resolution.

### BACKGROUND

On February 23, 2022, the Village contacted the Florida Inland Navigational District (FIND) Commissioner, T. Spencer Crowley III, to discuss the Village's viability for a FIND grant. Commissioner Crowley was very supportive and felt that the project would comply with the grant requirements. He also mentioned that this would be the best year to submit such a grant request as FIND had recently increased the amount allocated to this project category from thirty thousand dollars (\$30,000) to the amount of seventy-five thousand dollars (\$75,000).

On March 28, 2022, a Waterway Assistance Program (WAP) grant application was submitted to the Florida Inland Navigation District requesting funding in the amount of seventy-five thousand dollars (\$75,000) towards a new marine patrol vessel for the Village's Police Department. On April 11, 2022, the Village Council passed a resolution approving the application and the acceptance of the FIND Grant funds in the amount of \$75,000. In addition, this Resolution also granted the Village Manager the authority to enter into any agreements, amendments and other documents FIND and the grant required.

On June 17, 2022, Captain Escarra presented the Village's grant application at the FIND Commission Meeting. In order to continue to meet the community's waterway safety needs, the Village requested funding to assist with the purchase of a second vessel that will increase marine patrol coverage in the area and ensure the existing vessel's lifespan is maximized. The Village proposed a FLUID Watercraft 780 Patrol vessel with Mercury engines. The Village was notified on September 23, 2022 that out of the original 54 applications received by the FIND Commission in March, 49 projects were awarded

funding through FIND's Assistance Program, including the Bal Harbour Police Department Marine Patrol Vessel Project.

### **ANALYSIS**

A second vessel would alleviate the excessive use of the existing Sea Hunter vessel, while still covering the area during peak hours more frequently. The two marine patrol captains on staff will be able to utilize the two boats separately at times when two separate vessels on the water is warranted. In addition, several patrol officers are being cross trained in marine patrol operations, and could be utilized to operate this new vessel during the course of their patrol functions to either respond to after-hours marine patrol emergencies or increase maritime patrol presence when deemed necessary. This smaller sized vessel will provide greater flexibility in navigating the bay, especially between vessels at the Haulover Sandbar. Moreover, the inflatable tube construction on the vessel facilitates the Marine Patrol Captains' approach to smaller vessels or jet skis. We are currently exploring several different options for the dockage of this vessel. The preferred option would be to dock the vessel adjacent to the Village's new waterfront park.

This new vessel will increase patrolling within the waterways to seven (7) days a week providing support to the other vessel owned by the Village. The benefits include increased safety of people on the water, enforcement of waterway regulations and recovery. The Marine Patrol Unit can then effectively aid distressed vessels and swimmers. In addition, regulations will be enforced like maintaining order on the sandbar, patrolling the inlet, etc. Every year thousands of residents and tourists use the waterways within Bal Harbour Village's boundaries and often time they use watercrafts in the ICW and Atlantic. The need for patrolling the waterways and increasing safety and enforcement of regulations is important to the public's well-being. Hence, the impact is to all residents and tourists. Since the sand restoration project impacting the Haulover Sandbar, maritime traffic and anchoring vessels have moved southward closer to the Gated Residential Community, impacting the quality of life for residents with waterfront access. The makeup of the sandbar makes it more difficult for marine officers to utilize the department's larger vessel, due to shallow water. This new vessel would provide the ability to more efficiently patrol this area.

On December 5, 2022, the vessel manufacturer performed a sea trial with Chief Flowers, Captain Escarra, Marine Patrol Officer Waisman and myself. The vessel performed well and met the expectation of providing a more versatile marine asset. Additionally, the Aventura Police Department and most recently the Village of Key Biscayne Police Department are utilizing this same vessel. The feedback from both agencies regarding this vessel has been positive. The manufacturer offers a five (5) year warranty on both the hull and inflatable tubes. The Mercury engines will have a one (1) manufacturer warranty.

Staff from the Police Department has negotiated with the manufacturer of the FLUID Watercraft 780 Patrol vessel, and obtained pricing 5% below their offered government pricing. The manufacturer, which is based in Fort Lauderdale, will be able to deliver the

vessel within two (2) weeks of approval. The final price of the vessel is \$169,933.70, of which \$75,000 will be reimbursed to the Village by the FIND grant. Additionally, the vessel will require two police radios in order for the officer to monitor the required frequencies. The price quoted by the Miami-Dade County Information Technology Department Radio Communications Section is \$3,560.00. The installation of the radios will be performed by the vessel manufacturer and is included in their final price. The vessel will also require decals to identify it as a Bal Harbour Police vessel. The cost of decals is not expected to exceed \$1,500.00. The vessel will also require fenders, dock lines and a cooler. The cost of these items is not expected to exceed \$2,000.00. The total cost of these ancillary items required to fully outfit the vessel is \$7,060.00.

### **THE BAL HARBOUR EXPERIENCE**

The role and mission of the Marine Patrol Unit is to ensure the safety of our waterways, as well as protecting our natural environment and sea life. The ability to provide seven (7) day coverage of our waterways provides a level of service, which enhances the *Bal Harbour Experience* by ensuring the safety of visitors and residents alike. The purchase of the second marine patrol vessel will increase the safety of residents and tourists enjoying the waterways and beaches in our community. This additional vessel will provide a more versatile patrol and enforcement response to maritime emergencies.

### **CONCLUSION**

The Council is asked to consider the approval of an expenditure for \$169,934, of which \$75,000 will be reimbursed to the Village by the FIND grant, for the purchase of a FLUID Watercraft 780 marine vessel. Additionally, the Council is asked to approve an expenditure not to exceed \$7,060.00 to equip the vessel with police radios and ancillary items.

### **Attachments:**

1. FLUID Patrol 780 Vessel Specifications
2. Sirocco Marine Fluid Watercraft Quote #031323AP
3. Miami-Dade County ITD Radio Quote

**RESOLUTION NO. 2023-\_\_\_\_**

**A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE EXPENDITURE OF \$169,934 TO PURCHASE A POLICE MARINE PATROL BOAT; APPROVING VESSEL-RELATED EXPENDITURES NOT TO EXCEED \$7,060 FOR THE PURCHASE OF POLICE RADIOS AND ANCILLARY ITEMS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, on March 28, 2022, a Waterway Assistance Program (WAP) grant application was submitted to the Florida Inland Navigation District ("FIND") requesting funding in the amount of seventy-five thousand dollars (\$75,000) towards the purchase of a second marine patrol vessel for the Village's police department ("Police Department"); and

**WHEREAS**, on April 11, 2022, the Village Council passed a resolution approving the application and the acceptance of the FIND Grant funds in the amount of \$75,000; and

**WHEREAS**, on September 23, 2022, FIND notified the Village that the funding request in the amount of \$75,000 was approved; and

**WHEREAS**, the Police Department has negotiated with the manufacturer of the FLUID Watercraft 780 patrol vessel, and agreed on a price 5% below the vendor's offered government price, at a total cost to the Village of \$169,934, of which \$75,000 will be reimbursed to the Village by the FIND grant; and

**WHEREAS**, the vessel will require police radios and ancillary items at a cost not expected to exceed \$7,060 ; and

**WHEREAS**, this Council has determined in order to continue to meet the community's waterway safety needs, it is in the best interest of the Village to approve the purchase of a second marine patrol vessel in the amount of \$169,934 and ancillary items at a cost not to exceed \$7,060.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That the above-stated recitals are hereby adopted and confirmed.

**Section 2. Purchase Approved.** That the purchase of the FLUID Watercraft 780 patrol vessel for use by the Police Department at a total cost of \$169,933.70, of which \$75,000 will come from a FIND grant is hereby approved.

**Section 3. Appropriation Approved.** That the FY 2022-23 General Fund Budget is amended by \$75,000 and the Resort Tax Fund Budget is amended by \$101,994 for the purchase of the patrol vessel, police radios and ancillary items is hereby approved.

**Section 4. Implementation Approved.** That the Village Manager is hereby authorized to take all actions necessary to implement the purpose of this Resolution.

**Section 5. Effective Date.** That this Resolution shall take effect immediately upon the adoption hereof.

PASSED AND ADOPTED this 27<sup>th</sup> day of March 2023.



---

Mayor Jeffrey P. Freimark

ATTEST:

---

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

---

Village Attorney  
Weiss Serota Helfman Cole & Bierman P.L.



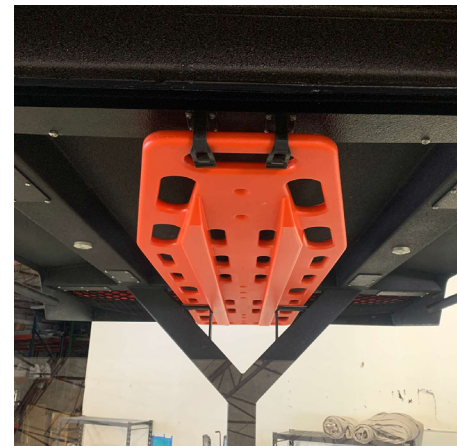


The Fluid Patrol 26 is a proven, professional-grade, rigid inflatable boat designed to offer exceptional durability and maneuverability. The Patrol 26 has a unique hull shape that makes it optimal for patrol, rescue and commercial applications alike.

Designed by Law Enforcement for Law Enforcement. Our professional-end users are positive proof of this 26-foot patrol boat's capabilities. With both strength and speed, this RIB is suitable for patrol, rescue and first responder.

## BENEFITS OF FLUID WATERCRAFT RIBS

- **ENHANCED SAFETY:** The Patrol 26's inflatable tubes sit in the water at rest, giving the boat a stable platform.
- **EASY MOVEMENT:** The Patrol 26's hull shape and light construction allow a pilot to maneuver the craft easily. It also provides the speed and control that dangerous missions require.
- **CREW COMFORT:** This inflatable patrol boat is designed to maximize crew comfort and minimize fatigue. It provides a softer riding experience to keep crew alert and ready to act even on longer rides.





## HULL (GREY)

---

### CONSTRUCTION

- Vacuum infused glass reinforced plastic
- Deck with all surface reinforcements
- Molded GRP stringer + backbone

### STORAGE

- Underdeck fuel tank cavity with removable deck cover and access hatch
- Bow box and anchor locker, molded with deck
- Transom motor well, with storage underneath
- 2" aluminum beaching shoe

### DRAINING

- Self-bailers, large flow, with stainless scuppers
- Electric bilge pump
- Hull drain

### LIFTING & TOWING

- Transom towing rings, stainless steel: 2
- Bow lifting rings on hull, stainless steel: 2
- Transom lifting rings, stainless steel: 2
- Bow mooring eye, stainless steel: 1

### FUEL SYSTEM

- Main fuel tank, epoxy coated aluminum: 130 gal
- Fuel sender & gauge
- Fuel fill and fuel vent



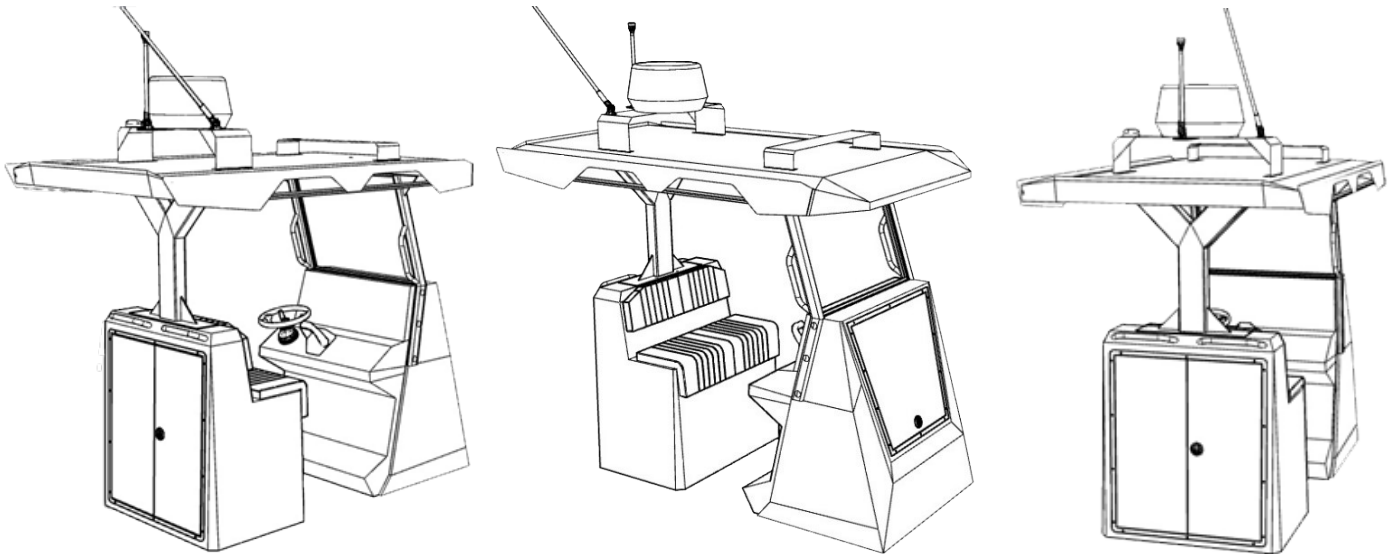
## TUBE (SLIDE ON)

### BUOYANCY TUBE - CONSTRUCTION

- Removable collar, bolt rope and bolted bow
- Buoyancy tube fabric: 1670 dtx Hypalon neoprene, neptune grey
- All around EPDM rubbing strake, black
- Additional bow rubbing strake horizontal, black
- Inflation pressure: 0.24 bar 3.4 P.S.I.

## CONSOLE / T-TOP / BOLSTER

- FRP Console with large access fwd hatch
- FRP two-person bolster with life cell, fire extinguisher, and long arm cabinet
- Aluminum T-Top, raptor coated, glass windshield, and spine board



## ACCESSORIES

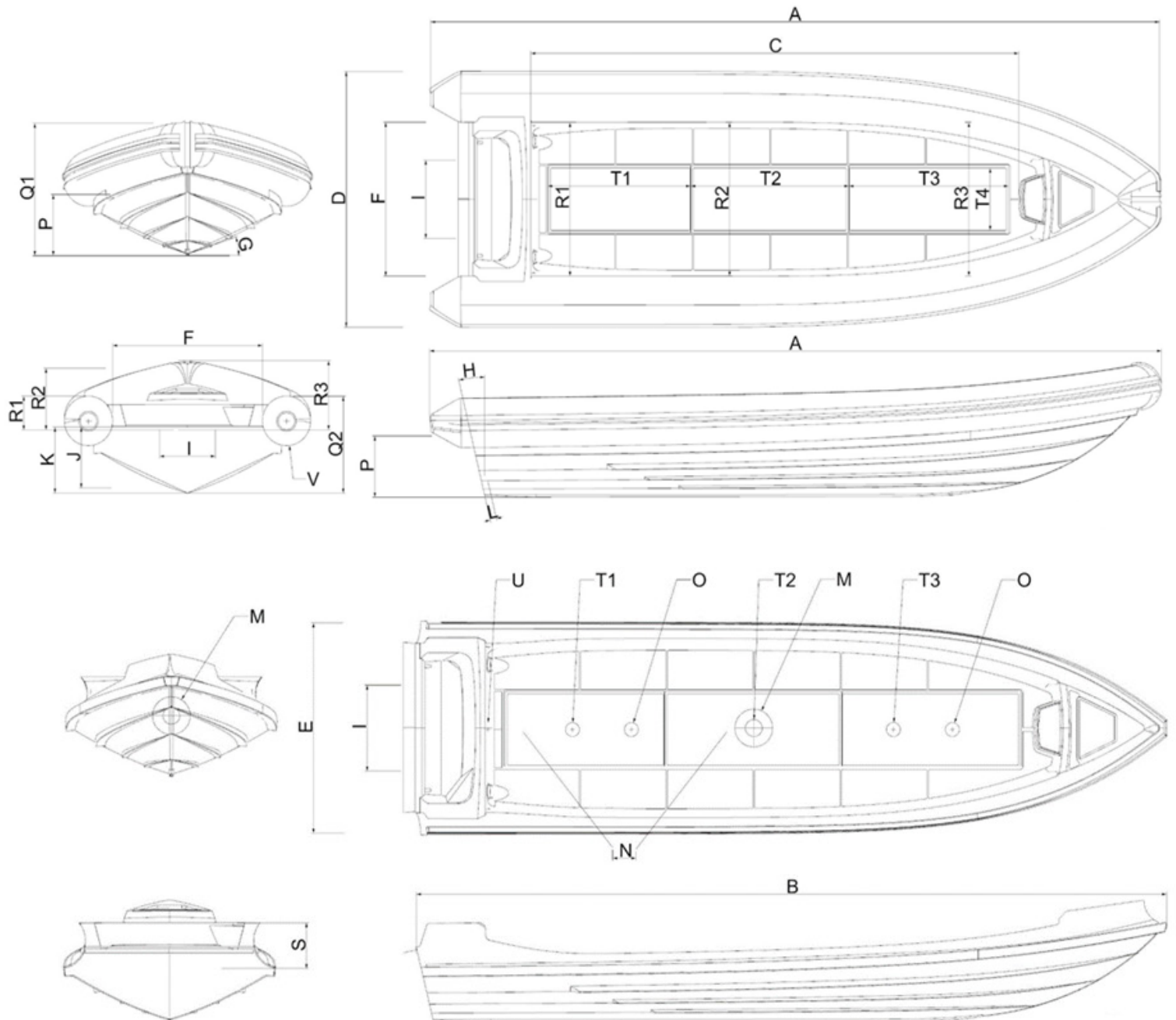
- Foot pump
- Repair kit
- Telescopic paddles



# PATROL 26

## TECHNICAL DATA SHEET | GENERAL INFORMATION

A	Length Overall	7800 mm	25'7"
B	Length of GRP hull	6880 mm	22'7"
C	Length of deck from behind anchor locker step to front of motor well	4670 mm	15'4"
D	Beam overall	2950 mm	9'8"
E	Beam of GRP hull at transom	2220 mm	7'4"
F	Internal beam - Maximum	1770 mm	5'10"
G	Dead Rise at Transom	24°	24°
H	Transom angle	13°	13°
I	Recommended C to C of engines	724 mm	2'5"
J	Height of transom at engine C to C - As Built	700 mm	2'4"
K	Height of transom at keel - As Built	800 mm	2'8"
L	Transom thickness	80 mm	3"
M	Factory recommended LCG	33% to 35%	33% to 35%
N	Max capacity below deck fuel tank	492 L	130 gals
O	Capacity of standard fuel tank	492 L	130 gals
P	Estimated Draft (Motors up / Motors Down)	500 / 820 mm	1'8" / 2'9"
Q1	Height from keel to highest point of inflated tube at Bow	1620 mm	5'4"
Q2	Height from keel to highest point of inflated tube at Stern	1165 mm	3'10"
R1	Gunwale height aft, facing Motor Well	710 mm	2'4"
R2	Gunwale height amidships	560 mm	1'10"
R3	Gunwale height bow if standing Anchor Locker	560 mm	1'10"
S	Height of engine well from the Deck	480 mm	1'7"
T1	Dimensions of deck hatch lids - Aft	1470 x 785 mm Wide	4'10" x 2'7"
T2	Dimensions of deck hatch lids - Middle	1475 x 785 mm Wide	4'10" x 2'7"
T3	Dimensions of deck hatch lids - Forward	1470 x 785 mm Wide	4'10" x 2'7"
T4	Dimensions of Hatch (Under deck hatch lids)	4355 x 725 mm	14'4" x 2'5"
U	Dimensions of access hatches in front face of engine well (2 off)	300 x 300mm	1' x 1'
V	Diameter of tube, average, approximate	580 mm	1'11"
1	Weight lightship - Estimate. (Hull, Deck, Tube, and Dry Fuel Tanks only)	1190 Kg's	2624 lbs
2	Max HP	298 KW	400Hp
3	Recommended	2 x 150 Hp	2 x 150 Hp
4	Max carry capacity	1790 Kg's	3947 lbs
5	Max permissible weight of engines	550 Kg's	1213 lbs
6	Total volume of permanent buoyant foam in hull in cubic meters	0.507 m <sup>3</sup>	18 ft <sup>3</sup>
7	Total buoyant volume of tube in cubic meters	3.6 m <sup>3</sup>	127 ft <sup>3</sup>
8	Number of tube compartments	7	7
9	Max number of Persons	16	16





**ITD - Radio Communications**

Rudy Rowe  
5680 SW 87 Ave  
Miami, FL 33173  
Ph: 305-275-7966

# Quote

**DATE:** 3/16/2023  
**Department** Bal Harbour PD  
Lt. Jack Young  
9700 Collins Ave. #280  
Bal Harbour, FL 33154  
(305) 866-5000 ext 120

Mobile M7300 Scan Trunk Mount Radio				
Description	Item#	Qty	Unit Price	Total
Mobile, M7300, 764-870 MHz,	MAMW-SDMXX	2	\$1,500.00	\$3,000.00
Control Unit, CH-721, Scan, Trunk Mount	MAMW-NCP9G	2	\$0.00	\$0.00
Accessories, M7300 Trunk Mount	MAMW-NZN6W	2	\$0.00	\$0.00
Microphone, Standard, CH-721 Control Unit	MAMW-NMC7Z	2	\$0.00	\$0.00
Antenna, Element, 700/800 2dB Low Profile	AN-225001-004	2	\$0.00	\$0.00
Antenna,Base,Standard Roof Mnt Low Loss	AN-125001-002	2	\$0.00	\$0.00
Installation Kit, M7300	INSTALL-KIT	2	\$280.00	\$560.00
Radio Programming	RS-PGM	2	\$0.00	\$0.00
<b>Mobile Radio Package Total</b>				<b>\$3,560.00</b>

**Quote is valid for 30 Days from date issued.**  
**Each unit has all the feature set required for Miami-Dade County P25 Radio System.**

# Sirocco Marine

3277 SE 14th Ave. Fort Lauderdale, FL 33316  
(954) 692-8333 / RFQ@fluidboats.com

Quote#: 031323AP  
Customer: Mauricio Escarra  
Dept: Bal Harbour Police Department  
Address:  
Email: [mescarra@balharbourfl.gov](mailto:mescarra@balharbourfl.gov)  
Phone:



[www.fluidboats.com](http://www.fluidboats.com)

Date: **3/13/2023**

Valid Until: **60 Days**

Description	Qty.	Price Per / USD	Price/USD
<b>Patrol 780</b>			
Fluid WaterCraft Patrol 780 Rigid Inflatable Boat (RHIB)	1	\$39,878.12	\$39,878.12
Tube Material: Orca 866 CMS / Hypalon 1670 Dtex	1	\$19,200.00	\$19,200.00
Tube Color: Neptune Grey	1	incl.	incl.
Gelcoat Color: Cloud Grey	1	incl.	incl.
Double EPDM Rubstrake	1	incl.	incl.
Extra bow rubstrake	1	\$640.00	\$640.00
Black rubber non skid pads	10	\$105.00	\$1,050.00
2" Aluminum keel guard	1	incl.	incl.
<b>Engines</b>			
Brand: Mercury			
Horse Power: 2 x 150hp	2	\$12,240.00	\$24,480.00
Prop: Stainless Steel	2	\$553.00	\$1,106.00
Engine pre-rig materials	1	\$1,950.00	\$1,950.00
<b>Console and Seating</b>			
Console with aluminum RAPTOR-lined T-top, Glass windshield	1	\$16,553.00	\$16,553.00
"POLICE" logo painted on T-Top	1	\$867.00	\$867.00
Windshield Wiper	1	\$655.00	\$655.00
Seat configuration: 2 person FRP bolster	1	\$4,750.00	\$4,750.00
Life Cell safety box with insert	1	\$1,200.00	\$1,200.00
Fire Extinguisher and insert	1	\$450.00	\$450.00
Storage Cabinet	1	\$2,000.00	\$2,000.00
Long Arms Cabinet with universal rack and timer lock	1	\$2,600.00	\$2,600.00
<b>Electronics</b>			
Simrad GO12 GPS with total scan transducer	1	\$3,995.00	\$3,995.00
Simrad RS20S VHF with Antenna	1	\$671.00	\$671.00
Simrad Radar	1	\$2,120.00	\$2,120.00
<b>LE Equipment</b>			
LE Lights and Siren system	1	\$4,950.00	\$4,950.00
Whelan WPA 112	1	incl.	incl.
Whelan WSSMSW3	1	incl.	incl.
Whelan 100 Watt Speaker	1	incl.	incl.
nROADS® blue strobe light	1	incl.	incl.
Lumitec overhead courtesy lights	2	incl.	incl.
SoundOff Signal blue/white side strobes	5	\$380.00	\$1,900.00
LE mount / platform	1	\$2,350.00	\$2,350.00
<b>Hardware</b>			

Description	Qty.	Price Per / USD	Price/USD
316 Stainless-Steel Samson Post - Reinforced	1	\$1,675.00	\$1,675.00
Aluminum engine rope guard	1	\$3,650.00	\$3,650.00
<b>Standard Equipment - Includes labor</b>			
Systems - Build - Prep	1	\$13,116.58	\$13,116.58
Aluminum 130 gal. EPA-compliant fuel tank	1	incl.	incl.
Fuel venting system	1	incl.	incl.
Repair kit - Foot pump	1	incl.	incl.
Group 24 Start Batteries	2	incl.	incl.
Group 27 House Battery	1	incl.	incl.
12 switch panel	1	\$729.00	\$729.00
Blue Seas VSR	1	incl.	incl.
LED Navigation lights (USCG 2nm)	1	\$670.00	\$670.00
800 gph Auto-Bilge pump	1	incl.	incl.
1500 gph Bilge pump	1	incl.	incl.
Pop-up console cleats	2	incl.	incl.
Spine Board	1	\$623.00	\$623.00
Hydraulic Steering 1.7L Cylinder	1	\$1,840.00	\$1,840.00
<b>Boat Specs</b>			
Length: 25' 7" (LOA)			
Beam: 9' 8"			
Tube Diameter: 23"			
Hull: Vacuum-infused GRP			
Gelcoat: ISO NPG			
Transom: 30" or 2 x 25"			
<b>Additional Options</b>			
Aluminium dual-axle trailer with brakes	1	\$8,500.00	\$8,500.00
Starboard swim ladder bracket with ladder	1	\$1,500.00	\$1,500.00
Rope lifeline across port and starboard	1	\$1,630.00	\$1,630.00
3-Bank Battery Charger	1	\$685.00	\$685.00
Rear tow post	1	\$1,950.00	\$1,950.00
Cupholders	2	incl.	incl.
<b>TOTAL QUOTE</b>			<b>\$169,933.70</b>

# BAL HARBOUR

- V I L L A G E -

## Price COUNCIL ITEM SUMMARY

### Condensed Title:

**A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE APPROVING SUPPLEMENTAL FUNDING TO THE NV2A CONSTRUCTION AGREEMENT OWNER'S CONTINGENCY FOR THE BAL HARBOUR VILLAGE PARK PROJECT IN THE AMOUNT OF NINE HUNDRED FIFTY THOUSAND DOLLARS (\$950,000) AND CONTINGENCY ALLOWANCE OF TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000).**

### Issue:

Should the Village Council authorize supplemental funding for the Village Park project?

### The Bal Harbour Experience:

- |   |  |   |
|---|--|---|
| <input checked="" type="checkbox"/> Beautiful Environment   | <input checked="" type="checkbox"/> Safety           | <input checked="" type="checkbox"/> Modernized Public Facilities/Infrastructure |
| <input checked="" type="checkbox"/> Destination & Amenities | <input checked="" type="checkbox"/> Unique & Elegant | <input checked="" type="checkbox"/> Resiliency & Sustainable Community          |

### Item Summary / Recommendation:

On September 13, 2021, the Village Council approved Resolution 2021-1408 for the construction services agreement between the Village and NV2A Construction, Inc. (NV2A), for the New Village Park and Community Center project in the amount not to exceed fourteen million eight hundred forty-eight thousand six hundred seventy dollars (\$14,848,670) for base bid. The approval also included an owner's contingency in the amount of one million four hundred eighty-four thousand eight hundred sixty-seven dollars (\$1,484,867) 10% of the construction cost.

New Construction Cost Index was forecasted at a 14.1% year-over-year increase in construction costs by year-end 2022 as labor and material costs continued to rise. This increase was not anticipated at year end 2021 when the construction contract was awarded. During the project life, concrete price escalation varied from 17-24% depending on the quarter. On July 14, 2022, NV2A issued a change order in the amount of \$371,809.34 for the price escalation of concrete, rebar, and masonry. Additional costs were incurred, as unforeseen conditions, errors & omissions, owner's and regulatory requests that were paid from the project contingency and drew down the funds at a greater cost because construction industry costs escalated at an unprecedented rate.

The Architect of Record, CGA and staff have reviewed the submittals from NV2A, Inc. and found them to be accurate. It is therefore appropriate to authorize approval of the supplemental funding to the project contingency in the amount of \$950,000 and an additional of \$250,000 contingency allowance for future /final closeout changes that may arise as project reached substantial completion.

**THE ADMINISTRATION RECOMMENDS APPROVAL OF THIS RESOLUTION.**

### Financial Information:

	Amount	Account	Account #
1	\$1,200,000	Waterfront Park Project	01-73-506410

### Sign off:

Capital Program Director	Chief Financial Officer	Village Manager
Matilde E. Reyes	Claudia Dixon	Jorge M. Gonzalez





# BAL HARBOUR

- V I L L A G E -

## COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager



DATE: March 27, 2023

SUBJECT: **A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE APPROVING SUPPLEMENTAL FUNDING TO THE NV2A CONSTRUCTION AGREEMENT OWNER'S CONTINGENCY FOR THE BAL HARBOUR VILLAGE PARK PROJECT IN THE AMOUNT OF NINE HUNDRED FIFTY THOUSAND DOLLARS (\$950,000) AND CONTINGENCY ALLOWANCE OF TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**

### ADMINISTRATIVE RECOMMENDATION

I am recommending approval of this Resolution.

### BACKGROUND

On September 13, 2021, the Village Council approved Resolution 2021-1408 for the construction services agreement between the Village and NV2A Construction, Inc. (NV2A), for the New Village Park and Community Center project in the amount not to exceed fourteen million eight hundred forty-eight thousand six hundred seventy dollars (\$14,848,670) for base bid. The approval also included an owner's contingency in the amount of one million four hundred eighty-four thousand eight hundred sixty-seven dollars (\$1,484,867).

### ANALYSIS

The approved owner's contingency of \$1,484,867 was proposed in April 2021 during the procurement phase of the project and reflected 10% of the construction cost. Since that time, the construction industry has undergone an escalation in material costs, labor prices as well as an increase in the consultants' fees. A confluence of events, including soaring construction demand, inflation, pandemic-related restrictions, supply chain disruptions, labor shortages, the war in Ukraine and the destruction caused by Hurricane Ian, contributed to the rising costs and uncertainty across the construction industry.

Owner's Contingency for construction projects are included in construction projects during procurement phase to address the project costs not included in the base bid. In typical projects, the owner's contingency funds are used for various change item categories, such as:

- *Errors and Omissions*, relate to change items due to the consultant's design errors and/or design omissions;

- *Code and Permit*, relate to change items that are generated due to jurisdictional inspection or permit related comments;
- *Design Modification*, relate to change items that address the consultants' final design where as the construction progresses the design may be modified and/or may require further detailing;
- *Owner's Request*, relate to change items that address modifications in the construction scope of work as required to fulfill the owner's needs; and
- *Unforeseen Conditions*, relates to any changes that were generated by site conditions that were not evident as the project was designed, bid and subsequently, during the construction progress, a conflict is encountered or correction of site condition is required to align with the design intent.

To date costs related to the above mentioned change items have exceeded the approved project contingency by an amount of \$944,161. This amount is sorted by the above categories and itemized into the specific construction divisions such as Sitework, Electrical, Plumbing etc. and is provided in the attached spreadsheet. This spreadsheet reflects the various change items that we have addressed throughout the life of the project. Currently, the owner's contingency requires supplemental funds to address change items to date. As we progress to substantial completion, we can expect other issues may arise. In order to not delay completion it is recommended that a \$250,00 allowance for contingency also be added to the project funding. Any excess will return to General Fund fund balance at the closeout of the project.

The Construction Cost Index forecasted a 14.1% year-over-year increase in construction costs by year-end 2022 as labor and material costs continually rose. This increase is far greater than what was historically anticipated at year end 2021 when the construction contract was awarded. The contingency for this project was predicated on the 2-4% escalation range on par with historical averages.

A major example of the impact of the market escalation is the cost of concrete and related structural materials. As such, during the project life, concrete escalation varied from 17-24% depending on the quarter. On July 14, 2022, NV2A issued a change order in the amount of three hundred seventy-one thousand eight hundred nine dollars and thirty-four cents (\$371,809.34) for the price escalation of concrete, rebar, and masonry. That price escalation was due to the continued disruption to the construction industry due to COVID-19 impacts on the shipping/trucking industry, shortage of materials and labor. This request was thoroughly analyzed by our outside cost estimator and deemed to be accurate and true. Other change items that have arisen throughout the more than 15 months of active construction period, have been addressed in a similar manner.

As you will recall, this project was bid as we were recovering from the impacts of COVID 19 pandemic. While every effort was made to ensure timely completion within budget, several market factors and other supply and labor shortages have affected the construction industry. Notwithstanding, this project has progressed in an expeditious manner and the quality of the work product has not been impacted. Our focus in managing this project remains to ensure progress as to not further affect the budget by delaying its completion.

At this time, the project requires supplemental funding in the amount of \$950,000 and an additional \$250,000 contingency allowance for future/final closeout changes that may arise as the project reaches substantial completion.

**THE BAL HARBOUR EXPERIENCE**

This action is aligned with the Village's stated mission through the *Bal Harbour Experience*. The services required to complete the Village Park and Community Center, corresponds directly to our goals for contributing to a Beautiful Environment, Destination & Amenities, Unique & Elegant, Modernized Public Facilities/Infrastructure, Safety, and Resiliency and Sustainable Community.

**CONCLUSION**

The Architect of Record, CGA and staff have reviewed the submittals from NV2A, Inc. and found them to be accurate. It is therefore appropriate to authorize approval of the supplemental funding to the project contingency in the amount of \$950,000 and an additional of \$250,000 contingency allowance for future /final closeout changes that may arise as project reaches substantial completion. Based on staff recommendation, the Village Manager is seeking Council approval of this Resolution which authorizes the approval of supplemental funds for the owner's contingency to complete the necessary work required prior to substantial completion.

Attachments:

1. Resolution No. 2021-1408
2. Village Park - Change Item Summary

RESOLUTION NO. 2023-\_\_\_\_

**A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE APPROVING SUPPLEMENTAL FUNDING TO THE NV2A CONSTRUCTION AGREEMENT OWNER'S CONTINGENCY FOR THE BAL HARBOUR VILLAGE PARK PROJECT IN THE AMOUNT OF NINE HUNDRED FIFTY THOUSAND DOLLARS (\$950,000) AND CONTINGENCY ALLOWANCE OF TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, NV2A Construction, Inc. (NV2A) submitted a base bid in the amount not to exceed fourteen million eight hundred forty-eight thousand six hundred seventy dollars (\$14,848,670) for the requested construction services for the new Village Park project; and

**WHEREAS**, the Village also included an owner's contingency of ten percent (10%) in the amount of one million four hundred eighty-four thousand eight hundred sixty-seven dollars (\$1,484,867); and

**WHEREAS**, the construction industry has undergone an escalation in material costs, and labor prices as well as increases in the consultants' fees due to construction demand, inflation, pandemic-related restrictions, supply chain disruptions, labor shortages, the war in Ukraine, and the destruction caused by Hurricane Ian; and

**WHEREAS**, the New Construction Cost Index was forecasted at a 14.1% year-over-year increase in construction costs by year-end 2022 as labor and material costs continued to rise, an increase of 17-24% was not anticipated at year-end 2021 when the construction contract was awarded; and

**WHEREAS**, this Council has determined that it is in the best interest of the Village to approve supplemental funding to the project contingency in the amount of \$950,000 and an additional amount of \$250,000 contingency allowance is required for future /final closeout changes that may arise as project reached substantial completion.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That the above-stated recitals are hereby adopted and confirmed.

**Section 2. Expenditure Approved.** That the expenditure of identified supplemental funds for the Village Park Project is hereby approved.

**Section 3. Appropriations Approved.** That the 2022-23 General Fund Budget is amended for the supplemental funding to the project contingency in the amount of \$950,000 and an additional of \$250,000 contingency allowance for future /final closeout changes that may arise as project reached substantial completion.

**Section 4. Implementation.** That the Village Manager is hereby authorized to take all actions necessary to implement the purposes of this Resolution.

**Section 5. Effective Date.** That this Resolution shall take effect immediately upon the adoption hereof.

PASSED AND ADOPTED this 27<sup>th</sup> day of March 2023.



---

Mayor Jeffrey P. Freimark

ATTEST:

---

Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

---

Village Attorney  
Weiss Serota Helfman Cole & Bierman P.L.

RESOLUTION NO. 2021-1408

A RESOLUTION APPROVING A CONSTRUCTION CONTRACT WITH NV2A GROUP LLC, FOR THE CONSTRUCTION OF THE NEW VILLAGE PARK AND COMMUNITY CENTER PROJECT IN THE AMOUNT NOT TO EXCEED FOURTEEN MILLION, EIGHT HUNDRED FORTY-EIGHT THOUSAND, SIX HUNDRED AND SEVENTY DOLLARS (\$14,848,670) BASE BID, PLUS AN OWNER CONTINGENCY OF ONE MILLION, FOUR HUNDRED EIGHTY-FOUR THOUSAND, EIGHT HUNDRED SIXTY-SEVEN DOLLARS (\$1,484,867) AND ACCEPTING AN ALTERNATE FOR THE FENCING ALONG THE SEAWALL IN AN AMOUNT NOT TO EXCEED SEVENTY-NINE THOUSAND, EIGHT HUNDRED DOLLARS (\$79,800) AND AMENDING THE 2021 CAPITAL BUDGET BY \$3,791,085 FOR THE CONTRACT AND \$1,484,867 FOR THE OWNER'S CONTINGENCY; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, Zyscovich Architects completed the construction documents for the Village Park project and an Invitation to Bid (ITB) was issued soliciting bids for the provision of the construction work; and

**WHEREAS**, on April 15th, 2021, the Village received bids on Request for Proposals (RFP) No. 2021-002 for the Village Park Landscape and Horticultural Construction Services which was issued a separate RFP in an effort to pre-qualify a quality landscape firm requiring specific performance measures including a team with 10 years minimum experience that included a Horticulturist; and

**WHEREAS**, on June 02, 2021, staff issued Invitation to Bid (ITB) No. 2021-005 which included Direct Purchasing Guidelines where the Village Manager may negotiate joint purchase agreements for services, supplies, and equipment which may be determined to be required from time to time by the Village and which the Council may otherwise lawfully purchase for itself, with governmental contracting units as may be appropriate in accordance with State law, Village policies, and sound purchasing procedures; and

**WHEREAS**, the Village Manager is authorized to exercise his authority to spend funds on this project by issuing a Purchase Order for services, supplies and/or equipment provided there is a savings from the price included in the contract and/or

a tax exemption can be realized without presenting each Purchase Order to the Village Council for approval; and

**WHEREAS**, staff issued ITB 2021-005 on June 2, 2021 and again advertised it on June 28, 2021 and received seven bid submissions; and

**WHEREAS**, NV2A Group LLC (NV2A) has submitted a bid in the amount not to exceed fourteen million, one hundred forty-nine thousand and forty-three dollars (\$14,149,043) base bid and a price as an alternate for the fencing along the new seawall in an amount of one hundred nineteen thousand dollars (\$ 119,000) for the requested construction services; and

**WHEREAS**, after staff's negotiation meeting for clarification of scope items, the bid price concluded in fourteen million, eight hundred forty-eight thousand, six hundred and seventy dollars (\$14,848,670) and a negotiated reduction of \$39,200 on the add/alternate proposals resulting in a cost of seventy-nine thousand, eight hundred dollars (\$79,800); and

**WHEREAS**, the Village will include an owner's contingency of ten percent (10%) in the amount of one million, four hundred eighty-four thousand, eight hundred sixty-seven dollars (\$1,484,867); and

**WHEREAS**, staff has reviewed the bid, qualifications and references for completeness and conformance to the Invitation to Bid (ITB) No. 2021-005 and the Contract Documents and has determined that NV2A has provided a responsive and responsible bid for the Project; and

**WHEREAS**, this Council has determined that it is in the best interest of the Village to enter into a construction contract with NV2A for the provision of construction services as detailed within the bid documents in the amount not to exceed fourteen million, eight hundred forty-eight thousand, six hundred and seventy dollars (\$14,848,670) base bid, and accepting an alternate for the fencing along the new seawall in an amount of seventy-nine thousand, eight hundred dollars (\$79,800), for the requested construction services.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That the above stated recitals are hereby adopted and confirmed.

**Section 2. Agreement Approved.** That the construction contract with NV2A in the amount not to exceed fourteen million, eight hundred forty-eight thousand, six hundred and seventy dollars (\$14,848,670) base bid, including an alternate for the fencing along the new seawall in an amount of seventy-nine thousand, eight hundred dollars (\$79,800), for the requested construction services as described in Invitation to Bid (ITB) No. 2021-005, is hereby approved and the Village Manager is hereby authorized to execute the construction contract on behalf of the Village.

**Section 3. Expenditure Approved.** That the expenditure of identified budgeted funds for the for the provision of construction services as detailed within the Village Park Project bid documents in the total amount not to exceed fourteen million, eight hundred forty-eight thousand, six hundred and seventy dollars (\$14,848,670) including an alternate for the fencing along the new seawall in an amount of seventy-nine thousand, eight hundred dollars (\$ 79,800) plus an owner's contingency of one million, four hundred eighty-four thousand, eight hundred sixty-seven dollars (\$1,484,867) is hereby approved.

**Section 4. Budget Amendment.** That the 2020-21 General Fund Capital Budget amendment in an amount not to exceed \$3,791,085 plus \$1,484,867 for an owner's contingency for the Village Park Project is hereby approved.

**Section 5. Direct Purchasing Purchases Approved.** That the Village Manager is hereby authorized to exercise his authority to spend funds on this project by issuing a Purchase Order for services, supplies and/or equipment provided there is a savings from the price included in the contract and/or a tax exemption can be realized without presenting each Purchase Order to the Village Council for approval.

**Section 6. Implementation.** That the Village Manager is hereby authorized to take all actions necessary to implement the purposes of this Resolution.



**Section 7. Effective Date.** That this Resolution shall take effect immediately upon the adoption hereof.

**PASSED AND ADOPTED this 13<sup>th</sup> day of September, 2021.**



ATTEST:

Dwight S. Danie, Village Clerk

Mayor Gabriel Groisman

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Village Attorney  
Weiss Serota Helfman Cole & Bierman P.L.

	Village Waterfront Park	<b>Original Contract Amount</b>	<b>\$ 14,848,670.00</b>						
	3/22/2023	<b>Contingency Amount</b>	<b>\$ 1,484,867.00</b>						
			CO TOTAL	E&O	Code/Permit	Design Mod	Owners Request	Unforeseen	
<b>Sitework Total</b>			<b>\$ 303,942.69</b>	<b>\$ 79,927.24</b>	<b>\$ 25,577.04</b>	<b>\$ 28,556.91</b>	<b>\$ 150,635.22</b>	<b>\$ 19,246.28</b>	
Existing Conditions, Demolition, Landscape/Hardscape, Sitework & Utilities									
<b>Structural Total</b>			<b>\$ 578,764.16</b>	<b>\$ 427,956.66</b>	<b>\$ 84,778.28</b>	<b>\$ 30,252.41</b>	<b>\$ (361,590.61)</b>	<b>\$ 397,367.41</b>	
Concrete & Reinforcing, Masonry, Structural Metal & Metal Fabrication									
<b>Specialties Total</b>			<b>\$ 761,943.50</b>	<b>\$ 281,871.66</b>	<b>\$ 65,388.20</b>	<b>\$ 109,609.97</b>	<b>\$ 305,071.42</b>	<b>\$ -</b>	
Thermal, Waterproofing, Roof, Fire/Smoke Protection, Openings, Finishes & Casework									
<b>Low Voltage, Security, CCTV Total</b>			<b>\$ 152,160.91</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 152,160.91</b>	<b>\$ -</b>	
Data, Voice, Audio-Visual, Card Access and Security									
<b>Plumbing Total</b>			<b>\$ 255,340.94</b>	<b>\$ 116,813.96</b>	<b>\$ 128,040.28</b>	<b>\$ -</b>	<b>\$ 10,491.74</b>	<b>\$ 5,366.46</b>	
Plumbing equipment & piping, Fixtures, Gas & Pool Equipment									
<b>Electrical Total</b>			<b>\$ 234,559.32</b>	<b>\$ 234,559.32</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	
Lighting, Distribution, Transmission, Equipment & Detection/Alarm									
<b>General Conditions Total</b>			<b>\$ 142,317.43</b>	<b>\$ 219,161.40</b>	<b>\$ 15,213.85</b>	<b>\$ -</b>	<b>\$ (100,000.00)</b>	<b>\$ 7,942.18</b>	
General Conditions, Temporary Facilities, Payment, Quality, Product Requirements & Closeout									
		<b>Subtotal</b>	<b>\$ 2,429,028.95</b>	<b>\$ 1,360,290.24</b>	<b>\$ 318,997.65</b>	<b>\$ 168,419.29</b>	<b>\$ 156,768.68</b>	<b>\$ 429,922.33</b>	
		<b>Less Contract Contingency</b>	<b>\$ 1,484,867.00</b>						
		<b>Supplemental Funding Needed</b>	<b>\$ 944,161.95</b>						
		<b>Additional Contingency Allowance</b>	<b>\$ 250,000.00</b>						



# BAL HARBOUR

- VILLAGE -

## COUNCIL ITEM SUMMARY

### Condensed Title:

**A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, ACCEPTING THE ANNUAL REPORT OF THE VILLAGE ATTORNEY AND APPROVING AN INCREASE IN COMPENSATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

### Issue:

Should the Village Council accept the Village Attorney's Annual Report, and approve an increase in compensation if the Village Council finds the performance to be satisfactory?

### The Bal Harbour Experience:

- |   |  |   |
|---|--|---|
| <input checked="" type="checkbox"/> Beautiful Environment   | <input checked="" type="checkbox"/> Safety           | <input checked="" type="checkbox"/> Modernized Public Facilities/Infrastructure |
| <input checked="" type="checkbox"/> Destination & Amenities | <input checked="" type="checkbox"/> Unique & Elegant | <input checked="" type="checkbox"/> Resiliency & Sustainable Community          |

### Item Summary / Recommendation:

It is recommended that the Village Council accept the Annual Report of the Village Attorney, and authorize an increase in compensation if the Village Council determines the performance to be satisfactory.

In July 2021, the Council expressed its satisfaction with Weiss Serota Helfman Cole & Bierman P.L.'s performance, and approved an amended engagement letter. The Village Attorney is required to submit an Annual Report so that the Council can review the performance each March, and determine whether to adjust the compensation. The performance of the Village Attorney was discussed at the February 2023 Council Retreat and the consensus was the Village Attorney's performance was satisfactory and worthy of an increase in compensation of 3%.

**THE ADMINISTRATION RECOMMENDS ACCEPTANCE OF THE REPORT AND THE RESOLUTION.**

### Advisory Board Recommendation:

N/A

### Financial Information:

	Amount	Account	Account #
	X	X	X

### Sign off:

<b>Village Attorney</b>	<b>Chief Financial Officer</b>	<b>Village Manager</b>
Susan Trevarthen	Claudia Dixon	Jorge M. Gonzalez
		

# BAL HARBOUR

- V I L L A G E -

## COUNCIL MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager

DATE: March 27, 2023

SUBJECT: **A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; ACCEPTING THE ANNUAL REPORT OF THE VILLAGE ATTORNEY AND APPROVING AN INCREASE IN COMPENSATION OF THREE PERCENT (3%); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**



### **ADMINISTRATIVE RECOMMENDATION**

It is recommended that the Village Council accept the Annual Report of the Village Attorney, and authorize an increase in compensation, if the Village Council determines the performance of the Village Attorney is satisfactory.

### **BACKGROUND**

The law firm of Weiss Serota Helfman Cole & Bierman, PL ("Weiss Serota") currently serves as Village Attorney for Bal Harbour Village, in accordance with Division 3, "Village Attorney", Article IV, "Officers and Employees" of Chapter 2, "Administration" of the Village Code of Ordinances.

At the July 2021 Village Council meeting, the Village Council expressed its satisfaction with the representation provided by Weiss Serota, approved an amendment to the agreement to serve as Village Attorney adjusting the review and evaluation process, and approved an increase in compensation representing three percent (3%) for each year of service from 2018 - 2021. The amended agreement provides for the Village Attorney to submit an Annual Report for Village Council consideration each March, and provides for an increase in compensation for each performance review in the amount deemed appropriate by the Village Council. At the March 2022 Village Council meeting, the Council authorized an increase in compensation of 5% in the hourly rate for attorneys, paralegals and the fixed fee for FY 2022-23.

### **ANALYSIS**

The Village Attorney has submitted the Annual Report and met with each member of the Village Council. At the February 2023 Council Retreat, the Council discussed its evaluation of the Village Attorney, and determined the performance was satisfactory and a three percent (3%) increase is justified

**THE BAL HARBOUR EXPERIENCE**

The Village Attorney supports the development and implementation of activities related to all aspects of the Village operations and therefore, this item supports all elements of the *Bal Harbour Experience*.

**CONCLUSION**

I recommend that Village Council accept the Annual Report of the Village Attorney, and authorize an increase in compensation if the Village Council determines the performance of the Village Attorney to be satisfactory.

Attachments:

1. 2023 Village Attorney Annual Report

RESOLUTION NO. 2023-\_\_\_\_

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; ACCEPTING THE ANNUAL REPORT OF THE VILLAGE ATTORNEY AND APPROVING AN INCREASE IN COMPENSATION OF THREE PERCENT (3%); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the law firm of Weiss Serota Helfman Cole & Bierman, PL ("Weiss Serota") currently serves as Village Attorney for Bal Harbour, in accordance with Division 3, "Village Attorney," Article IV, "Officers and Employees," of Chapter 2, "Administration" of the Village Code of Ordinances; and

**WHEREAS**, the Village entered into an Engagement Letter on March 20, 2018, to continue the firm's service as Village Attorney; and

**WHEREAS**, in July 2021, the Council expressed its satisfaction with Weiss Serota's performance, and approved an amended engagement letter, attached as Exhibit "A" to the Village Attorney Annual Report (the "Agreement"); and

**WHEREAS**, in accordance with the Agreement, the Village Attorney submitted the Annual Report and met with the members of the Village Council; and

**WHEREAS**, the Village Council continues to be satisfied with the firm's performance, and therefore accepts the Annual Report as provided therein and approves an increase in the compensation.

**NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That the above stated recitals are hereby adopted and confirmed.

**Section 2. Acceptance of Annual Report.** That the Village Council accepts the Village Attorney's annual report and determines that the firm's performance is satisfactory.

**Section 3. Increase in Compensation.** That the Village Council awards the Village Attorney a three percent (3%) increase in the hourly rate (from \$287 to \$296 for attorneys and from \$131 to \$135 for paralegals) and fixed fee amount (from \$34,421 to

\$35,454) in recognition of the continued satisfactory performance on behalf of the Village, effective April 1, 2023.

**Section 4. Implementation.** That the Village Manager is hereby authorized to take all actions necessary to implement the Agreement and the purposes of this Resolution.

**Section 5. Effective Date.** That this Resolution shall take effect immediately upon the adoption hereof.

PASSED AND ADOPTED this 27<sup>th</sup> day of March, 2023.



\_\_\_\_\_  
Mayor Jeffrey P. Freimark

ATTEST:

\_\_\_\_\_  
Dwight S. Danie, Village Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Village Attorney  
Weiss Serota Helfman Cole & Bierman, P.L.





**To:** Village Council, Bal Harbour Village

**Cc:** Village Manager Jorge M. Gonzalez

**From:** Susan L. Trevarthen, Village Attorney *SLT*

**Date:** January 31, 2023

**RE: Annual Report of Village Attorney**

In 2021, the Council established a process that I provide an annual report to them by the end of January, on a calendar year basis beginning in 2022. The purpose of this Report is to provide a framework for an evaluation of the Village Attorney in accordance with the Amended Engagement Letter dated 7.20.21, attached as **Exhibit 1**. Distribution of this Report will be followed by individual meetings with each Councilmember, and then the scheduling of a workshop.

### **The Village Attorney's Report for 2022 (January 1, 2022 – December 31, 2022)**

Our role as the Village Attorney is to advise and to assist the Village Council in achieving what is in the best interest of the Village. As such, the majority of what we do is in partnership with Village Administration to carry out the Council's vision and strategic plan. We have a productive relationship with the Administration and, in a real sense, our accomplishments are shared.

### **Litigation Matters**

In alignment with the Council's wishes, we have worked with your Administration to avoid litigation where possible, and to resolve it efficiently where it was unavoidable. While we remain ready and able to fight for the Village where the Council deems it necessary to do so, our first effort is always to find a way to accomplish Village goals in a less costly and antagonistic manner. A few notable developments are summarized below:

- In 2022, we filed two position statements in response to EEOC claims for discrimination related to personnel actions in the police department.
- A Village police officer was individually sued with a federal civil rights claim for an arrest on the Jetty tied to a violation of the State's Open Carry Law; the Village was not sued, and Village liability counsel with Florida Municipal Insurance Trust is defending the suit. We also assisted and coordinated with FMIT counsel on their defense of an action filed against the Village in relation to a FPL transformer, until the defense of that case was assumed by FPL counsel.
- At the end of the year, the Village received an order to show cause on a petition for certiorari challenging the Village Council's decision to deny an appeal and uphold the Architectural Review Board's decision to grant a Certificate of Appropriateness for the proposed redevelopment of the Carlton Terrace property. That petition was

primarily responded to by applicant's counsel, while we have reviewed and monitored developments and updated the Village Council and Administration in accordance with the advice received at the attorney-client session regarding this matter.

### **Non-Litigation Matters**

Another major goal is to maintain the quality of the Firm's longstanding representation of the Village, with a strong team of attorneys who are expert in the practices most important to the Village. We strive to work efficiently and effectively, while remaining attuned to the Village's organizational culture as well as its goals. Our results are the best evidence of having accomplished this goal. The Village's expense for its Village Attorney function has stabilized while supporting an ambitious and widespread agenda of improvement established by the Village Council and led by the Village Administration.<sup>1</sup>

### **Detailed Summary**

While the following does not capture everything we do for the Village and the vast majority of what we do is in partnership with the Village Administration as outlined in the Village Manager's Annual Report, our significant accomplishments have included the following, organized by department or topic:

#### Legislation and Advice to Administration

- Reviewed and provided input to Code amendments<sup>2</sup> drafted by pension counsel to create an early retirement incentive plan (ERIP)
- Reviewed and provided input to pension ordinance changes drafted by pension counsel for employee pension plan, including Council pensions.
- Advised the Council and Administration on compensation and reimbursement policies for elected officials in other Miami-Dade County municipalities for consideration by the Village Council
- Worked with the Village Manager and Village's Chief Financial Officer to create an Investment Policy for the Village
- Drafted amendments to the Village Code to create a section on commercial filming and photo activity on publicly owned, managed or controlled property, and drafted procedures to implement this ordinance
- Drafted Code amendment to establish expiration date of certificates of appropriateness
- Drafted Code amendment regulating E-Bikes and E-Scooters at certain locations in the Village (Ordinance failed)
- Advised the Council and the Administration on the revised County lobbying registration and reporting rules and the new constitutional amendments restricting

---

<sup>1</sup> **Exhibit 2** is an updated list of the Village Attorney Team. **Exhibit 3** is an evaluation form that may be used for written performance feedback. **Exhibit 4** to this Report includes background information on the duties of the office and the Firm's approach to providing those duties.

<sup>2</sup> All references to drafting ordinances to revise the Code refer to adopted ordinances. Where we drafted something that was not adopted during the timeframe of this Report, it will be so noted.

lobbying by elected officials while in office and after leaving public service Worked with the Administration regarding Jetty ownership issues

- Worked with the Administration to adopt website records retention and access policies for the new Village website
- Advised Building Department in relation to the assessment, compliance and recertification of the Village's older buildings Worked with the Police Department to review police officer discretion related to traffic stops and assisted in revising the Department's Traffic Enforcement Policies
- Advised the Administration on the enforcement of new regulations and the authority of Village magistrates to mitigate code enforcement liens
- Worked with the Police Department to revise the Department's credentials policy and evaluated potential liability issues for off-duty assignments
- Advised the Police Department on developments with open carry issues and mutual aid agreements and continued to work with the Police Department and Village Clerk concerning ongoing public records, including request for Internal Affairs files of Police Officers
- Handled grievances under the Collective Bargaining Agreement, and worked with the Administration on the implementation of the changes

#### Significant Agreements

- Drafted an agreement with FreeBee LLC for free on-demand transit services within the Village and a related interlocal agreement with Miami-Dade County in order to use CITT funding to provide such services
- Worked with the Administration on the very active capital improvements program underway, resulting in multiple agenda items and agreements at many Council meetings
  - Drafted a professional services agreement with Zyscovich for architectural services, engineering and administrative services for Village Hall in amount in excess of \$3 million, inclusive of the contingency
  - Drafted the assignment agreement between the Bal Harbour Shops and the Village for architectural design services for Village Park set forth in the Shops Development Agreement
  - Prepared the construction agreement for the Jetty entrance plaza, and advised on easement related issues
  - Revised the Waterfront Park agreement
- Negotiated contracts with several artists for Village branding activities, an outdoor concert series performed by the South Florida Symphony Orchestra, and second concert series with AAMusicians; contracts for two art exhibits – one with the Opera Gallery and another showcasing historical sports figures and events in South Florida amended the agreements with the domestic and foreign travel sales representatives
- Drafted new agreements for displays at Village events and celebrations including ones for fireworks and pyrotechnics, a drone show and holiday lighting

#### Gated Community Activities

- Worked with the Administration to address contracting authority of the BHCA with respect to the selection of a property manager reporting to the BHCA, and drafted a side letter.
- Worked on agreements and agenda items regarding the Security Systems Project and

advised the Administration on potential liability for the Village involving an agreement between BHCA and a private contractor for security services.

- Worked with the Administration on inquiries regarding the FPL easement, and completed our review of the latest *Graham* litigation and related expense reimbursements requested by the Civic Association
- Prepared agenda items for the annual security and landscape special assessment, and evaluated potential revisions to the method of assessment as requested by the Administration

#### State and County Legislation

- Reviewed Hurricane Ian Emergency Order and opined on Village's meeting procedures in case need arose to schedule emergency meetings
- Reviewing and analyzing state and county laws concerning revisions to NPDES permitting procedures, the adoption of an ordinance to enforce stormwater discharge violations by the Village and the execution of an interlocal agreement with Miami-Dade County
- Reviewed and analyzed Florida Legislature's adoption of an implementing statute clarifying the new lobbying restrictions set forth in the Florida Constitution and defining the enforcement authority of the Florida Commission on Ethics
- Reviewed amendments to Section 106.113, Florida Statutes, further restricting local government from spending funds to promote ballot questions
- Conferred with the Administration and the Building Department after analyzing the new state and county amendments regarding recertification of buildings, milestone inspections of condominiums and enforcement authority of local government
- Coordinated with the Florida League of Cities on ideas to respond to potentially harmful legislation in the 2022 Legislative Session

#### Litigation

- Analyzed a federal civil rights lawsuit against a Village officer for an arrest on the Jetty for violating the Open Carry Law, when Defendant arrested claimed to be fishing on the Jetty
- Petition for Certiorari was filed by Bellini challenging the decision of the Village Council to uphold the Certificate of Appropriateness issued by the Architectural Review Board to the Related Group for the redevelopment of the Carlton Terrace site
- We continued to work with the Village Manager to work proactively to resolve various controversies that could lead to litigation. This sometimes involves engaging Firm litigators to assist in resolving matters before the filing of any claim
- Analyzed the dismissal of the litigation over the park properties in the gated community and worked with the Civic Association's attorney to assure that the Village's interests were protected
- Where required, we will continue to provide regular email updates to Council on significant developments in any significant pending litigation, and schedule Council executive sessions if needed to manage litigation
- Supported police regarding employment actions
- Supported Village Clerk in records requests and maintenance activities re litigation matters.

## **The Review Process**

There are many examples of performance evaluations of municipal attorneys who are full-time employees of an individual local government, usually serving under a contract assuring them a defined term of service accompanied by benefits, pensions, and protections such as severance packages. Performance involves two main dimensions: what is accomplished, including the extent, efficiency and effectiveness of accomplishment of expectations, and how it is accomplished, including leadership skills, personal qualities, and other subjective factors that can be hard to define and measure.

Evaluations of municipal attorneys are usually conducted on a one-on-one basis with each Councilmember. Like any review process, these meetings should be candid but constructive and based on the overall performance, backed up by specific comments or examples as appropriate. The Council has indicated that, following such individual meetings, it will convene in a workshop to discuss the evaluation.

I have prepared an evaluation form that may be used, if desired, to structure each Councilmember's approach to the process. See **Exhibit 3**. Please recall that written information related to the review is subject to Sunshine Law. Alternatively, it is understood that the Councilmember may choose to forego use of the form, and only provide oral feedback through the one-on-one meeting and/or at the workshop.

## **Conclusion**

In conclusion, it is an honor and a privilege to continue to serve as the Village Attorney for Bal Harbour Village, and we look forward to receiving your feedback so that we can keep doing what is working well and learn where improvements or changes are needed.

## **Exhibits**

1. 7.20.21 Executed Amended Engagement Letter to Serve as Village Attorney
2. Updated Village Attorney Team 1.31.23
3. Optional Form for Evaluation of Village Attorney
4. Background Information on the Village Attorney



Susan L. Trevarthen, BCS, FAICP  
Member  
slt@wsh-law.com

July 20, 2021

Mayor Gabriel Groisman and Village Council  
Bal Harbour Village  
655 96th Street  
Bal Harbour Village, FL 33154

**RE: Amended Engagement Letter of Weiss Serota Helfman Cole & Bierman, P.L., to Serve as Village Attorney**

Dear Mayor Groisman and Council Members:

We are pleased that Bal Harbour Village wishes to continue to engage our Firm to provide legal services as the Village Attorney, and have prepared this amended engagement letter consistent with Village Council direction at the May 2021 retreat and June 2021 workshop and Council meeting. Our Firm is the preeminent full-service municipal law firm in Florida, serving as the "one-stop shop" law firm for municipalities seeking the expertise to handle virtually all municipal legal issues.

From our experience, we have found that clients appreciate a frank and open discussion and understanding of the services that we will perform, and the basis upon which they will be expected to pay for those services. This letter is intended to set forth our understanding as to the nature and scope of the legal services we have agreed to render for the Village, the amount of our fees for those services, the manner in which our fees for those services will be determined, and the terms upon which you will make payment.

1. **Nature of Legal Services.** You have engaged our Firm to serve as Village Attorney for Bal Harbour Village. Unless otherwise directed by the Village Council, we will act as the chief legal advisor for all Village matters and represent the Village in all legal proceedings in accordance with Section 2-127 of the Village Code, which requires the Village Attorney to perform all services as may be required by the Village Code, the Village Charter, and Florida Statutes.

2. **Personnel.** Susan L. Trevarthen will continue to serve as the designated Village Attorney, and will continue to be assisted by Robert Meyers and the team of attorneys currently serving the Village's needs, as listed in **Exhibit 1**. This list may be updated from time to time, by the Firm submitting an updated written list to the Village Council and Village Manager. On very rare occasions, a matter may arise which we cannot handle or for which we have a conflict; if so, we will assist the Village in retaining legal professionals with the relevant expertise to handle those matters. Currently, the Village's pension law needs are provided by Lewis Longman & Walker and Holland & Knight on an hourly basis, and it is anticipated that these services will continue to be provided in this manner or by another qualified law firm.

3. **Fees for Services.**

A. **Flat Fee Component:** The Firm will provide general Village Attorney services to the Village at a flat fee of \$32,782 monthly (totaling \$393,384 annually). The flat fee includes general Village Attorney services and excludes other specified services (Hourly Services) as set forth in **Exhibit 2**.

B. **Hourly Services:** The flat fee for general Village Attorney services will not include Hourly Services, which will instead be performed and billed by the Firm on an hourly basis at a blended, discounted

governmental rate of \$273.00 per hour for attorneys and \$125.00 per hour for paralegals. For Hourly Services, it is our practice to charge for actual time expended on your behalf, but not less than 2/10ths of an hour for each activity.

C. **Additional Flat Fees:** If mutually agreed by the Firm and the Village, matters involving Hourly Services may alternatively be provided at flat rates, to be individually negotiated as those matters arise.

D. **Amendments:** The parties may further amend this Agreement at any time as mutually agreed by the Firm and the Village.

E. **Evaluation:** The Village Attorney will submit a written report to the Village Council of the prior year's activities by February 1. The Village Council will evaluate the Village Attorney's performance and this Agreement on a calendar year basis, no later than March 31 of the following year. The Flat Fee and Hourly rates herein may be increased for each performance review in the amount deemed appropriate by the Village Council.

4. **Costs.** In addition to the fees discussed in paragraph 3, we anticipate that certain expenses may be incurred and advanced on your behalf. These expenses may include filing fees, recording costs, out-of-town travel expenses, delivery charges, long distance telephone charges, photocopies (xerox), special postage (express mail, certified mail and the like), computer research charges, court reporter expenses (including cost of transcript and court reporter's fee for attendance), court costs (such as filing fees, service of process, newspaper publication costs, subpoena costs, witness fees, recording fees, etc.), accounting and appraisal fees, fees and expenses of experts necessary to assist in the preparation and hearing of your case, investigation costs, word processing fees, computer charges and applicable lobbyist registration fees. In addition to our fees for legal services, you agree to pay us for such out-of-pocket expenditures. In the event unusually large costs or advances are anticipated, we reserve the right to require an additional cost deposit from you prior to undertaking the expenditures of funds on your behalf.

5. **Payment of Fees and Costs.** Our invoices are submitted to you on a monthly basis and each invoice is due and payable when rendered. The flat fee component will be billed as a single charge, without detailed time entries; any charges for Hourly Services will be accompanied by detailed time entries. You must understand that if any invoice remains unpaid for more than 30 days after it is rendered, we reserve the right, in our discretion, to cease to provide further legal services to you. You will, however, be liable to us for the payment of any fees earned and any costs incurred by us to the date of termination.

6. **Termination or Withdrawal of Representation.** We serve at the pleasure of the Village Council, and may be terminated at any time, with or without cause, with the Village only being liable for any fees and costs incurred through the date of termination. We, likewise, reserve the right to withdraw from representing the Village if you have misrepresented or failed to disclose material facts to us, or if we disagree about the course of action which should be pursued.

7. **Representation of Other Clients.** We are bound by rules of legal ethics not to represent any client if the representation of that client will be directly adverse to the interests of another client, unless each such client consents to such representation after consultation. Should such a situation arise, you will be immediately informed, and we will propose a method of addressing the conflict.

If this agreement is acceptable, please acknowledge your understanding and agreement by signing this letter and delivering it to us. We appreciate your confidence in our Firm and we assure you that we will continue to make every effort to perform our services in a prompt and efficient manner.

Sincerely,

WEISS SEROTA HELFMAN  
COLE & BIERMAN, P.L.

By:   
Susan L. Trevarthen



APPROVED BY VILLAGE COUNCIL

ON July 20, 2021

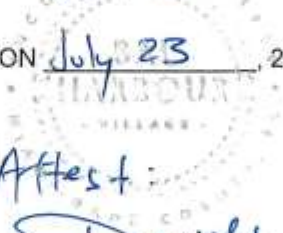
cc: Jorge Gonzalez, Village Manager  
Dwight S. Danie, Village Clerk

AGREED AND ACCEPTED

By:   
Jorge Gonzalez, Village Manager

ON July 23, 2021

Attest:  
  
Dwight Danie





## **Exhibit 1**

### **Updated Village Attorney Team**

Village Attorney: Susan L. Trevarthen  
Deputy Village Attorney: Robert Meyers

**Team:**

\*Jose L. Arango: Code enforcement, municipal  
Candice Balmori: Municipal  
Mitchell Burnstein: Eminent domain and real property litigation  
Milton R. Collins: Collective bargaining and labor/employment advice  
Elizabeth Coppolecchia: Litigation, construction agreements  
\*Maria Victoria Currais: Real estate, agreements  
Jeff DeCarlo: Public finance, bond  
Elen Gantner: Municipal  
Paul Gougelman: Municipal, land use  
\*Edward G. Guedes: Appellate, litigation  
Eric Hockman: IT, Litigation  
Sarah L. Johnston: Municipal  
\*Michael S. Kantor: Labor/employment claims  
\*Michael J. Kurzman: Construction  
\*Lori Smith-Lalla: Public finance, bond  
\*Matthew Mandel: Litigation, Police defense  
\*Aleida Martinez Molina: Bankruptcy, litigation  
\*Ed Martos: Environmental, Value Adjustment Board, Land Use  
\*Robert Meyers: Ethics, municipal  
\*Joseph Natiello: Police, litigation, municipal  
Matthew J. Pearl: Municipal  
Roger C. Pou: Municipal  
John J. Quick: Litigation, ADA  
Joseph H. Serota: Litigation  
\*Brett J. Schneider: Collective bargaining and labor/employment  
David N. Tolces: Municipal  
\*Peter Waldman: Eminent domain, utilities, litigation  
Richard Jay Weiss: Municipal, County issues  
Laura Wendell: Appellate, litigation  
James E. White: Land use, municipal  
David M. Wolpin: Municipal, finance  
\*Chanae Wood: Land use, telecommunications  
Samuel I. Zeskind: Litigation, public records

\*Key contact for practice area or pending matters

*Note: Litigation contact depends on the case. Ed Guedes and Matt Mandel lead the appellate and litigation practices*

**Exhibit 2**  
**Village Attorney Services**  
**Included in Flat Fee <sup>1</sup>**

- General Legal Counseling and advice as generally provided by a chief legal advisor.
- All in-person meetings, telephone calls, emails, teleconferences and video conferences with individual Village Councilpersons, the Village Manager, Village residents, and Village staff.
- Preparation or review and revision of ordinances and resolutions.
- Preparation of agenda memos and item summaries for agenda items for any Village Board or the Village Council originated by the Village Attorney or as discussed with Village Manager.
- Review, comment and revision of agenda materials originated by the Village Manager, Village staff, or Councilpersons for Village Council or other Village Board meetings.
- Preparation for and attendance at Village Council meetings, workshops and retreats.
- Preparation for and attendance at Architectural Review Board meetings.
- Preparation for and attendance at Resort Tax Committee meetings.
- Training of Village Council or Village Boards on request.
- Orientation of newly elected Councilpersons or Mayors.
- Legal research, analysis, and drafting of memos and correspondence responding to inquiries.
- Drafting, review and revision of contracts/agreements.
- Provide on site (Village Hall) office hours by an attorney listed on Exhibit 1 averaging one day a week or whatever alternative schedule is agreed between the Village Manager and Village Attorney. The intent is for the office hours to be productive time handling Village business, and they will be scheduled accordingly. As such, some weeks may involve multiple sessions while others may not have any scheduled office hour sessions, in response to the deadlines and demands of Village business.

---

<sup>1</sup> Any services listed below that relate to a matter not included in the Flat Fee, such as research/meeting/correspondence/drafting related to a lawsuit or a special project, will be billed as part of that separate matter.

## Exhibit 2

### Village Attorney Services Not Included in Flat Fee

- All services provided on **litigation** matters, including all adversarial proceedings before any administrative tribunals, courts, mediators, arbitrators and appellate tribunals.<sup>2</sup>
- All services provided on behalf of the **Residential Gated Community**, funded in through the residential gated special assessment.
- All services provided on **special projects**, such as but not limited to a rewrite of the Code of Ordinances or Land Development Regulations, collective bargaining with unions, development or substantial redevelopment application reviews and negotiations for ocean front properties and for projects greater than 1 acre (excluding a single family residential dwelling unit), an opinion of title, or a general obligation bond issue.

---

<sup>2</sup> The Village carries liability insurance, and insurance counsel currently defends covered matters. It is expected that this will continue to be the Village's preferred approach. On occasion, there may be a need for the Village Attorney to participate in the defense of such matters to protect the Village's interests. If provided, such services will be handled and billed as Hourly Services.

## Exhibit 2

# Updated Village Attorney Team

Village Attorney: Susan L. Trevarthen  
Deputy Village Attorney: Robert Meyers

Team:

\*Jose L. Arango: Code enforcement, municipal  
Candice Balmori: Municipal  
Mitchell Burnstein: Eminent domain and real property litigation  
Daniela Cimo: Municipal  
Milton R. Collins: Collective bargaining and labor/employment advice  
Elizabeth Coppolecchia: Litigation, construction agreements  
\*Maria Victoria Currais: Real estate, agreements  
Jeff DeCarlo: Public finance, bond  
Paul Gougelman: Municipal, land use  
\*Edward G. Guedes: Appellate, litigation  
Eric Hockman: IT, Litigation  
Amelia Jadoo: Municipal  
Narinah P. Jean-Baptiste: Municipal, land use  
Sarah L. Johnston: Municipal  
\*Michael S. Kantor: Labor/employment claims  
\*Michael J. Kurzman: Construction  
\*Lori Smith-Lalla: Public finance, bond  
\*Matthew Mandel: Litigation, Police defense  
\*Ed Martos: Environmental, Value Adjustment Board, Land Use  
\*Robert Meyers: Ethics, municipal  
\*Joseph Natiello: Police, litigation, municipal  
Matthew J. Pearl: Municipal  
Roger C. Pou: Municipal  
John J. Quick: Litigation, ADA  
Joseph H. Serota: Litigation  
\*Brett J. Schneider: Collective bargaining and labor/employment  
David N. Tolces: Municipal  
\*Peter Waldman: Eminent domain, utilities, litigation  
Richard Jay Weiss: Municipal, County issues  
Laura Wendell: Appellate, litigation  
James E. White: Land use, municipal  
David M. Wolpin: Municipal, finance  
\*Chanae Wood: Land use, telecommunications  
Samuel I. Zeskind: Litigation, public records

\*Key contact for practice area or pending matters

*Note: Litigation contact depends on the case. Ed Guedes and Matt Mandel lead the appellate and litigation practices*

## Exhibit 3

### Village Council Evaluation Form for Village Attorney

The purpose of the review is to strengthen the working relationship between the Council and the Village Attorney, identify performance objectives, and provide feedback regarding those aspects of the representation that are going well and those where improvement may be needed. This process recognizes that the Village Attorney is a private law firm retained by the Village Council.

The intent is that each Councilmember will review the Village Attorney's report, complete this form if desired, and meet one-on-one with the lead Village Attorney for the firm.

Please rate performance based on the following categories. References to the Village Attorney should be construed to refer to the Firm's team serving in this role. Where appropriate, detailed comments should mention which individual attorney is referenced.

- |   |  |  |
|---|--|--|
| 0 | <b>N/A:</b> No Opinion   | The evaluator lacks sufficient information to evaluate the criteria, or does not have an opinion on the criteria.  |
| 1 | <b>Poor:</b> Fails to meet most expectations                       | Performance is well below expectations in most areas of responsibility. Serious performance deficiencies that inhibit adequate performance in the position. Should be evaluated for termination.   |
| 2 | <b>Fair:</b> Meets most expectations                               | Often fails to meet performance expectations of the position. Performance is generally adequate but is deficient in one or more key areas and will require improvement.  |
| 3 | <b>Good:</b> Meets expectations                                    | Meets all expectations of the position and is competent in the performance of responsibilities.  |
| 4 | <b>Very Good:</b> Meets expectations and exceeds some expectations | Occasionally exceeds performance expectations of the position. Performs the most difficult parts of the job competently and thoroughly. Contributes significant results on their own initiative. Works with a high level of independence, initiative and concern for the quality of the service produced by and for the Village. |
| 5 | <b>Excellent:</b> Exceeds expectations                             | Overall skills and abilities consistently exceed the expectations of the position. Demonstrates strong expertise within key areas of responsibilities. Occasionally receives outstanding results beyond those contemplated in key areas of responsibility. Anticipates needs and executes plans.                                 |

**Quality and Competency:** Possesses and applies a comprehensive understanding and knowledge of the Village Charter, Code of Ordinances, County Code of Ethics and Florida Statutes. Possesses and provides an efficient and effective knowledge of and judgment concerning case law regarding municipal government and issues involving the Village. Has an extensive understanding of legal issues faced by local governments. Has the ability to effectively formulate and advance legal strategies that further the goals of the Village. Provides high caliber recommendations given all existing legal issues and their ramifications. Regularly provides the legal expertise necessary to meet the Village’s needs on legal and policy issues that arise, and proactively identifies potential issues of interest to the Village. Maintains the Council and the Administration’s confidence while informing them of risks that proposed actions may generate for the Village. Works proactively to avoid litigation, while applying effective litigation skills before trial and appellate level courts and administrative agencies where necessary.

5. Excellent	4. Very Good	3. Good
2. Fair	1. Poor	0. Not Applicable

Comments:

**Professionalism:** Deals effectively and appropriately with Village Administration, Village Council, and all stakeholders using common sense and judgment. Works to keep politics and personal perspectives out of the decision-making process. Follows Council direction impartially. Devotes sufficient time and energy to the job, and addresses questions and concerns in a timely manner in light of all of the priorities of the Village. Demonstrates high ethical standards in the organization. Stays active in professional organizations and stays abreast of current developments in the law applicable to the Village. Respected in the field of municipal law. Performs work in a positive and collegial manner. Understands the unique identity of the Village and tailors the representation appropriately.

5. Excellent	4. Very Good	3. Good
2. Fair	1. Poor	0. Not Applicable

Comments:

**Management:** Effective in the management, supervisory and interpersonal skills in the context of both the legal function and the Village, including the ability to establish and maintain effective working relationships with Village Manager, Village Council, Departments, boards and committees. Oriented to accomplishing the Village’s objectives rather than identifying obstacles. Seeks early engagement so that legal issues can be anticipated and avoided. Creates a collaborative, team-building environment. Recognizes the accomplishments of staff and other agencies working on behalf of the Village. Develops standard forms and approaches where appropriate to increase predictability, ensure uniform quality, and streamline work processes. Accepts full accountability for legal staff and the outcome of Village projects or decisions. Identifies organizational problems and takes remedial action.

5. Excellent	4. Very Good	3. Good
2. Fair	1. Poor	0. Not Applicable

Comments:

**Effectiveness in Working with Village Administration:** Demonstrates a positive legal consultative relationship with the Village Administration in the pursuit of meeting the goals and objectives of the Village. Responsive to the priorities of the Administration and Council. Respects the difference between legal and policy determinations, but provides relevant and helpful input in both areas where appropriate. Works collaboratively with the Administration and thinks creatively, with an orientation toward solving problems.

5. Excellent	4. Very Good	3. Good
2. Fair	1. Poor	0. Not Applicable

Comments:

**Communication:** Positive, courteous and open in communications. Effectively communicates (orally and in writing) complex issues to Village officials and stakeholders where diverse viewpoints and goals exist. Ensures that Councilmembers receive important information in a timely and effective manner. Maintains confidentiality. Presents the Council with clear and accurate written work product. Responds to correspondence, requests, and complaints quickly and appropriately in light of all obligations to the Village. Facilitates open two-way communication and encourages mutual honesty and respect with the Council, Village Manager, and staff.

5. Excellent	4. Very Good	3. Good
2. Fair	1. Poor	0. Not Applicable

Comments:

**Achievements:** Identify any particular achievements or strong points you have observed in the Village Attorney’s performance over the review period.

Comments:

**Objectives:** List two to three performance objectives that you feel are important for the Village Attorney to focus on in the coming year, whether as an improvement to performance or as additional tasks/goals.

Comments:

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



## Exhibit 4

### Background Information on Village Attorney

#### Duties of the Village Attorney

The Village Code defines the duties of the Village Attorney as follows:

The Village Attorney shall be the chief legal adviser of all offices and departments and of all officers and employees in matters relating to their official powers and duties. He shall represent the Village in all legal proceedings. It shall be his duty to perform all services incident to his position as may be required by statute, by the Village Charter or by ordinance. The compensation of the Village Attorney shall be fixed by the Council.

It also provides that the Village Attorney shall be appointed by and be responsible to the Village Council.

#### The Firm as Village Attorney

Similar to most other small municipalities, the Village has hired a law firm to serve as the Village Attorney for decades.<sup>1</sup> Weiss Serota Helfman currently serves in this role pursuant to the 2021 Engagement Letter agreement, attached as **Exhibit 1** to the Annual Report. That agreement specifies that I act as the lead attorney for the firm in this representation, and that my deputy is Robert Meyers.<sup>2</sup> The Firm serves as the Village Attorney using a team approach to the representation, and each member of that team also represents other municipal clients. This allows the Village to use only as much of a wide range of experience and expertise as it needs, just when it is needed. Experience with similar work performed for other municipal clients enhances the quality of the services that the Village receives from the Firm, and allows the Village to benefit from the experience of other communities. The updated team of attorneys serving the Village is attached as **Exhibit 2** to the Annual Report.

While we refer the Village to other counsel for areas outside of our core competencies, the Firm was created as and continues to be a one-stop shop for the vast majority of legal specialties and practices that a local government like the Village requires. In the timeframe covered by this evaluation, we have referred matters to outside pensions counsel related to revisions of the police and general employee pension ordinances. We have been able to handle the Village's other needs within the Firm.

Our Firm was founded over 30 years ago and is organized around the conviction that local governments deserve the same high-level professional legal services as for-profit businesses. We understand that the Village is a multi-million dollar entity with employees, complex regulatory systems, and demanding stakeholders, namely, the residents and

---

<sup>1</sup> The Village carries liability insurance with the Florida Municipal Insurance Trust, which assigns litigators to handle liability cases separately from the Firm's agreement.

<sup>2</sup> As far as I have been able to determine, I am the first woman to serve the Village in that capacity.

businesses within the community. There are few firms in Florida that can match our experience counseling local governments. We regularly advise local governments, elected officials, law enforcement personnel, and individual departments of local governments. The Firm’s “in the trenches” experience representing dozens of public sector clients, whether administratively or in litigation, gives us a unique insight that we leverage to your benefit.

As former and current city and county attorneys, our municipal lawyers understand how to provide top-level legal advice that is not clouded by political influences in an effective, cost-efficient, and clear manner. We efficiently draft and review a multitude of resolutions and ordinances each year. We strive to draft legislation that is both understandable to the general public and able to survive legal challenge.

We also serve as expert outside counsel to dozens of in-house city attorneys for their most important and, often times, sensitive matters. The following represents a small selection of our areas of expertise as special counsel:

Appellate	Election	Litigation	Real Estate	Ethics
Asset forfeiture	Eminent Domain	Land Use/Zoning	Solid Waste Management	Constitutional
Code Enforcement	Employment/Labor	Police Legal Advisor	Special Districts	Foreclosure
Community Redevelopment	Environmental	Procurement and Contracts	Sustainable Development	Construction

We keep abreast of the latest legislative and judicial developments in municipal law through a program of in-house training and continuing education. We monitor issues of home rule authority, which are of such importance to local government effectiveness. We are frequently requested to publish articles and make presentations to our peers, local state and national bar associations, related professional organizations, and the Florida League of Cities.

Most importantly, we understand our role is not to make policy, but to counsel and assist our clients by providing a legal framework for decision-making. Our services enable our local government clients to meet their responsibilities, and to earn and retain their constituents' confidence and trust.

# BAL HARBOUR

- V I L L A G E -

## DISCUSSION ITEM

TO: Jorge M. Gonzalez, Village Manager

FROM: Jeffrey P. Freimark, Mayor; Buzzy Sklar, Councilman

DATE: March 27, 2023

SUBJECT: **Discussion Regarding the Sargassum Seaweed Movement Toward Florida**

Please place an item on the April 20, 2022 Village Council Meeting Agenda for a discussion regarding the Sargassum Seaweed Movement Toward Florida.

Thank you.

# BAL HARBOUR

- VILLAGE -

## MEMORANDUM

TO: Honorable Mayor and Council

FROM: Dwight S. Danie, Village Clerk *OSD*

DATE: March 21, 2023

RE: Lobbyist Registration Report

---

Name of Lobbyist	Principal Represented	Date Registered
John Shubin	Mathew Whitman Lazenby	01/11/23
Ian DeMello	Mathew Whitman Lazenby	01/11/23
Carter McDowell	Carlton Terrace Owner, LLC	01/10/23
Keith Poliakoff	Bellini Condominium Association	01/17/23
Nicholas Noto	Carlton Terrace Owner, LLC	01/17/23
Richard Dewitt	Bellini Condominium Association	01/17/23
Mathew W. Lazenby	Bal Harbour Shops, LLC	01/31/23
Caroline Travis	Bal Harbour Shops, LLC	01/31/23
Ivor Nik Massey	Bal Harbour Shops, LLC	01/31/23
Sandy Goldfarb	Bal Harbour Civic Association	03/01/23
Neca Logan	Bal Harbour Civic Association	03/01/23

# BAL HARBOUR

- VILLAGE -

## MEMORANDUM

TO: Honorable Mayor and Council

FROM: Susan L. Trevarthen *SLT*

DATE: March 20, 2023

RE: Monthly Report of Village Attorney for February 2023 Activities

---

Here is the monthly report on the Village Attorney's activities. While we attend to Village business and confer with Village officials continuously, this report highlights specific tasks and projects for the month. Please contact me or Robert Meyers if you have any questions about this report.

### **Retainer Services**

Within the fixed fee retainer in February, we reviewed, advised and prepared documents for all agenda items for the February Council meeting. We conferred with staff on various matters, and we attended the February ARB meeting, weekly staff meetings, and the monthly agenda review and after action meetings. We prepared for and attended the 2023 Council Retreat. We began preparation for the March Council meeting.

Specific additional matters included:

- We met with Oceana representatives and staff regarding the Oceana development agreement.
- We continued extensive research, analysis and drafting of the DEP-requested erosion control and water quality ordinance, and met with staff.
- We conferred with staff regarding a Police Pension Board inquiry.
- We reviewed correspondence and conferred with the Police Department on the status of the Clearwater AI agreement.
- We reviewed correspondence from counsel concerning summary judgment in *Kuncas* case and prepared a response; reviewed and drafted an update regarding the final order.
- We reviewed a new case and conferred with staff concerning noticing issues when continuing Council meetings.
- We conducted research and reviewed prior resolutions concerning issues related to the approval of mutual aid agreements with police departments.
- We conferred with staff concerning enclosing balconies in OF, reviewed applicable code provisions and plans, and drafted correspondence regarding same.
- We reviewed applicable statutory provisions regarding construction and performance bonds for communication providers, and also reviewed Village code provisions concerning the same.
- We reviewed correspondence, conferred with staff, and drafted a response concerning proposed agreement with Indian Creek for use of boat dock.
- We reviewed state statute concerning restrictions on communications related to ballot questions and advised staff accordingly.

## **Additional Services**

On the *Bellini* matter, we reviewed correspondence regarding Bellini's motion to exceed page limits for its reply, reviewed the proposed and filed versions of the reply; drafted a summary analysis of reply; reviewed the notice of oral argument; and drafted related correspondence.

We worked on the gated community property manager resolution and agreement for the agenda item, including analysis of milestone agreement and side letter and conferences with staff.