

BAL HARBOUR

- V I L L A G E -

Mayor Jeffrey P. Freimark
Vice Mayor Seth E. Salver
Councilman Alejandro Levy
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 Meeting Agenda

March 18, 2025

At 6:30 PM

Bal Harbour Village Hall • Council Chamber • 655 96th Street • Bal Harbour • Florida 33154

This meeting will be conducted in person. The meeting will also be broadcast on our website at <https://balharbourfl.gov/government/village-clerk/minutes-and-agendas/>. Members of the public are also encouraged to participate by email (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** Proclamation Recognizing Women's History Month
- PA2** Proclamation Recognizing Colorectal Cancer Awareness Month
- PA3** Presentation on Transportation and Traffic by Miami-Dade County Commissioner Micky Steinberg and Interim Public Works Director Josiel Ferrer-Diaz
- PA4** Presentation by Whiting-Turner on Bal Harbour Shops Maintenance of Traffic (MOT)
[Collins & Harding Presentation ADA\[76\].pdf](#)
- PA5** Presentation of the Police Department Annual Report
[PD Council Year End Presentation ADA.pdf](#)

CONSENT AGENDA

C6 - COUNCIL MINUTES

- C6A** Approval of Minutes
[VillageCouncil-RegularCouncilMeetingMinutes_January13_2025.pdf](#)
[VillageCouncil-RegularCouncilMeetingMinutes_February24_2025.pdf](#)

C7 - RESOLUTIONS

R5 - ORDINANCES

- R5A** Ordinance Amending Zoning Regulations and Procedures in Response to State Preemption (First Reading)
AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING CHAPTER 8.5 "FLOOD DAMAGE PREVENTION", SECTION 8.5-2 "DEFINITIONS" OF THE CODE OF ORDINANCES; AMENDING CHAPTER 21 "ZONING", ARTICLES I - III TO AMEND DEFINITIONS, PROCEDURES, AND REGULATIONS RELATED TO HEIGHT; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, AND FOR AN EFFECTIVE DATE.

[Item Summary - Zoning by Referendum ADA.pdf](#)

[Memorandum - Zoning by Referendum ADA.pdf](#)

[Ordinance - Zoning by Referendum ADA.pdf](#)

[Attachment - Discussion January 13, 2025.pdf](#)

[Attachment - Village Attorney Analysis ADA.pdf](#)

R7 - RESOLUTIONS

- R7A** Approving Agreement with Wannemacher Jensen Architects for Architectural, Engineering, and Construction Administration Services for the New Bal Harbour Village Hall
A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH WJ ARCHITECTS IN COLLABORATION WITH WOLFBERG ALVAREZ & PARTNERS FOR THE PROVISION OF ARCHITECTURAL, ENGINEERING, AND CONSTRUCTION ADMINISTRATION SERVICES FOR THE DESIGN AND DEVELOPMENT OF THE NEW BAL HARBOUR VILLAGE HALL, IN AN AMOUNT NOT TO EXCEED FOUR MILLION THREE HUNDRED FIFTY-ONE THOUSAND SIX HUNDRED EIGHTY-SEVEN DOLLARS (\$4,351,687), WHICH INCLUDES AN OWNER'S DESIGN CONTINGENCY; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

[Item Summary - Architectural, Engineering, & Construction Administration Services For New Village Hall ADA.pdf](#)

[Memorandum - Architectural, Engineering, & Construction Administration Services For New Village Hall ADA.pdf](#)

[Resolution - Architectural Engineering, & Construction Administration Services For New Village Hall ADA.pdf](#)

[Attachment - WJ Architects Proposal ADA.pdf](#)

[Attachment - WJA Response Letter ADA.pdf](#)

- R7B** Accepting the Village Attorney's Annual Report and Approving Compensation Adjustment
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; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.
[Item Summary - 2025 Village Attorney Annual Review ADA.pdf](#)
[Memorandum - 2025 Village Attorney Annual Review ADA.pdf](#)
[Resolution - 2025 Village Attorney Annual Review ADA.pdf](#)
[Attachment - Village Attorney Annual Report ADA.pdf](#)

R9 - NEW BUSINESS AND COUNCIL DISCUSSION

R9A - PUBLIC COMMENT

R10 - VILLAGE MANAGER REPORT

R11 - VILLAGE CLERK REPORT

- R11A** Lobbyist Report
[R11A1_Lobbyist Registration Report as of March11_2025.pdf](#)

R12 - VILLAGE ATTORNEY REPORT

- R12A** Village Attorney Report
[Monthly Attorney Report February 2025 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.

BHS COLLINS & HARDING

Phase 1A Harding Ave. Widening



BHS COLLINS & HARDING

Phase 1A Harding Ave. Widening

LEGEND

- 1 Entrance Open
- 2 Lane Work
- 3 Fountain Demolition - Complete
- 4 New Curb Widening
- 5 New Lane Markings

BHS COLLINS & HARDING

Phase 1B SB Outside Lane Work

NEW BUS STOP CONSTRUCTION

PEDESTRIAN DETOUR

LEGEND

- 1 Lane Closure
- 2 Sidewalk Closed
- 3 Crosswalk Open
- 4 Crosswalk Closed
- 5 Water Wall Along Curb Line
- 6 Proposed Replacement Mast Arm
- 7 Mast Arm To Be Remove

BHS COLLINS & HARDING

Phase 1C SB Outside Lane Work



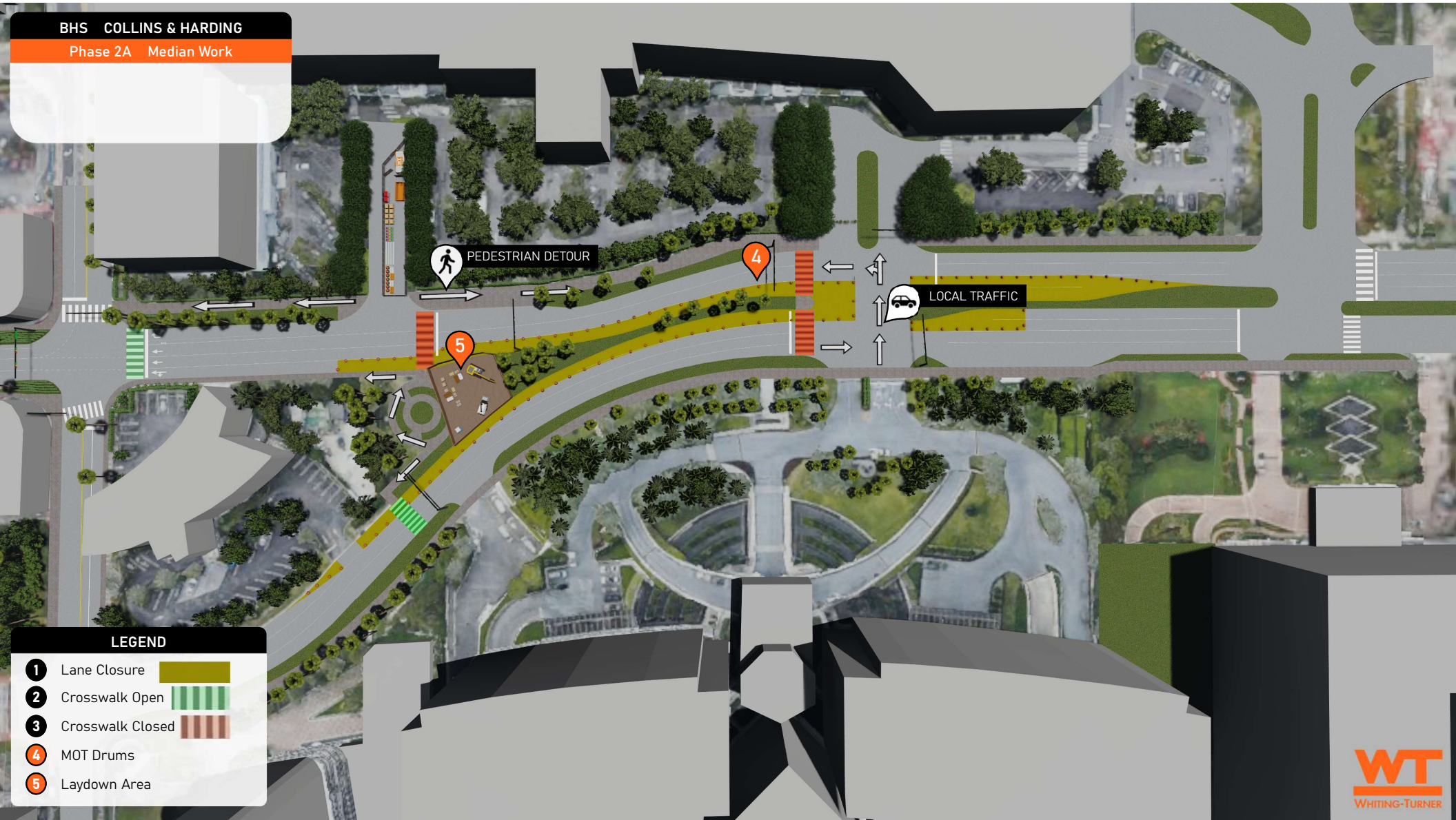
PEDESTRIAN DETOUR

LEGEND

- 1 Lane Closure
- 2 Sidewalk Closed
- 3 Crosswalk Open
- 4 Crosswalk Closed

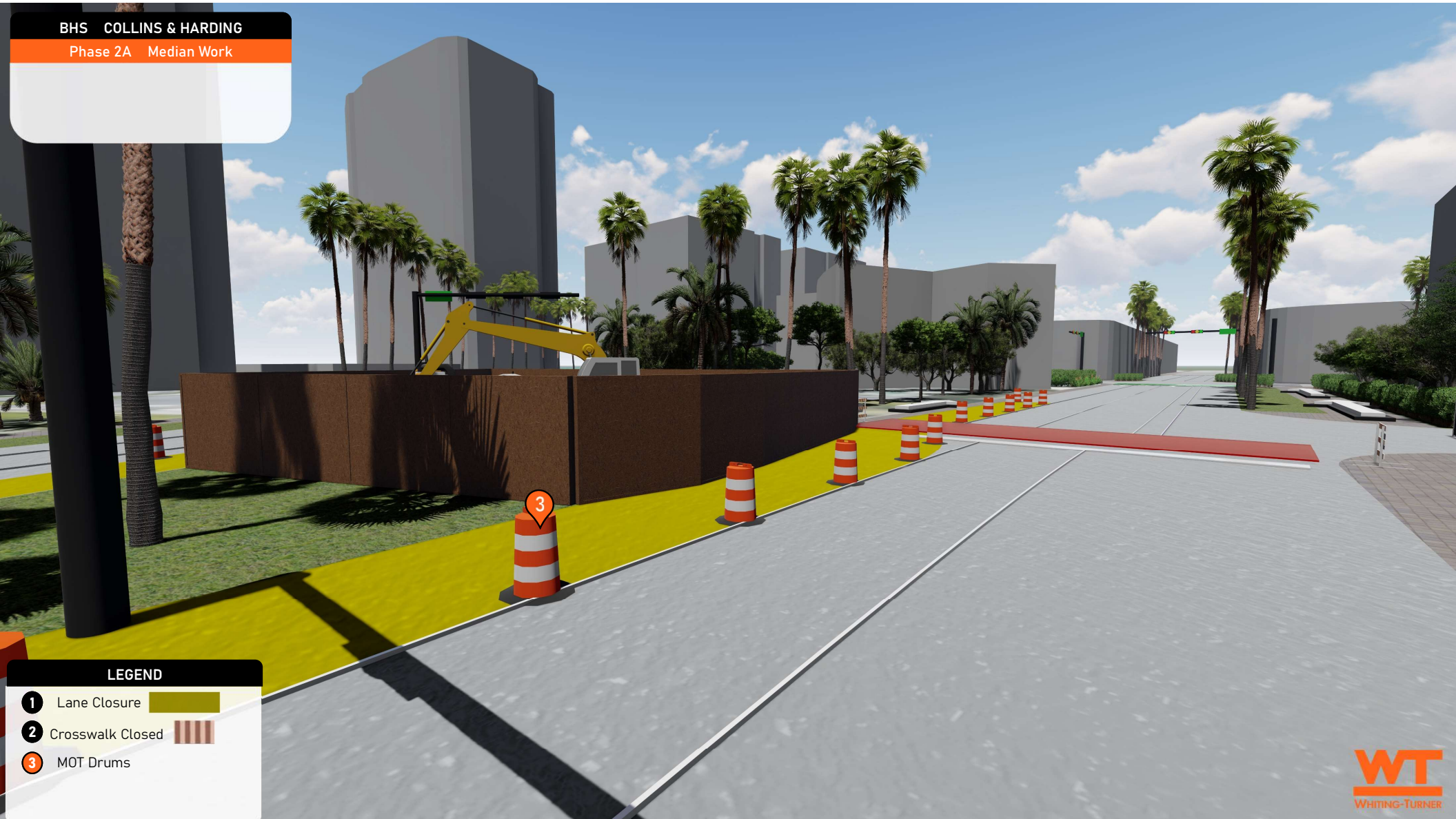
BHS COLLINS & HARDING

Phase 2A Median Work



BHS COLLINS & HARDING

Phase 2A Median Work



BHS COLLINS & HARDING

Phase 3 NB Outside Lane Work



PEDESTRIAN DETOUR

5

4

6



NEW CURB CONSTRUCTION



NEW SIDEWALK CONSTRUCTION



NEW ADA RAMP CONSTRUCTION

LEGEND

- 1 Lane Closure
- 2 Crosswalk Open
- 3 Crosswalk Closed
- 4 MOT Drums
- 5 Water Wall Along Curb Line
- 6 New Green Area & Sidewalk

BHS COLLINS & HARDING

Phase 3 NB Outside Lane Work



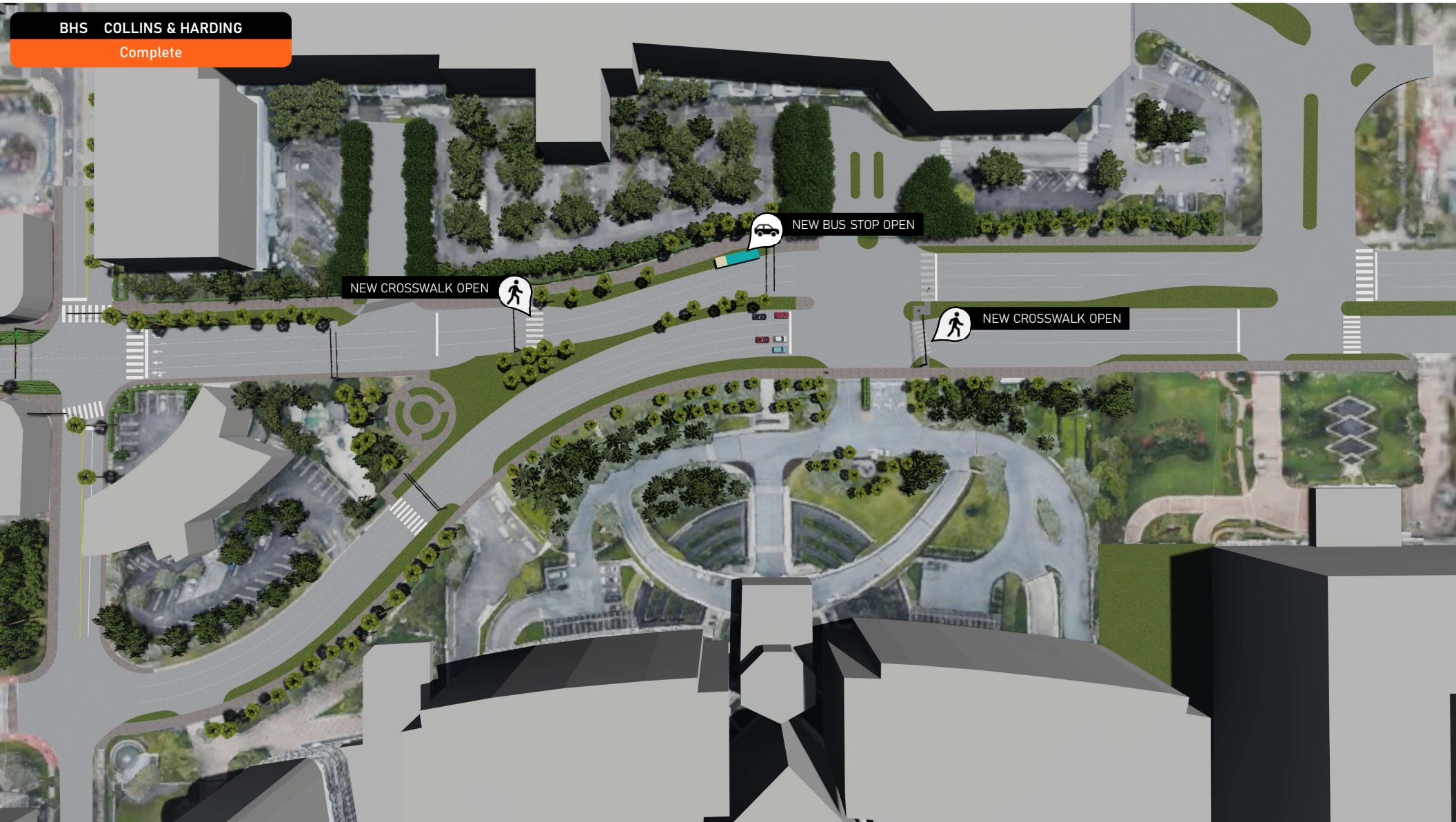
BHS COLLINS & HARDING

Phase 4 Mill & Final Lift

LEGEND

- 1 Mill and Re - Pave
- 2 Crosswalk Open

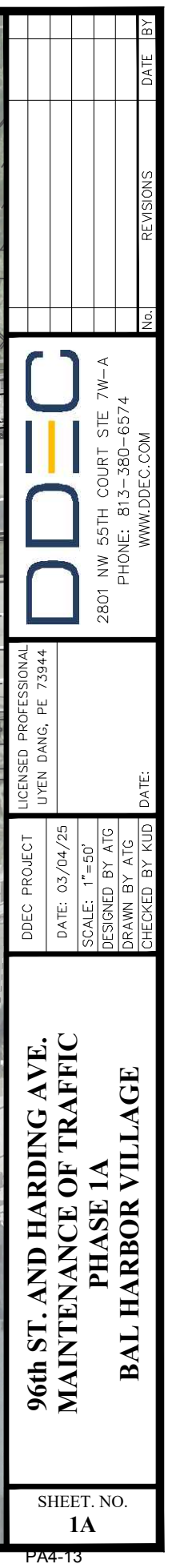
BHS COLLINS & HARDING
Complete

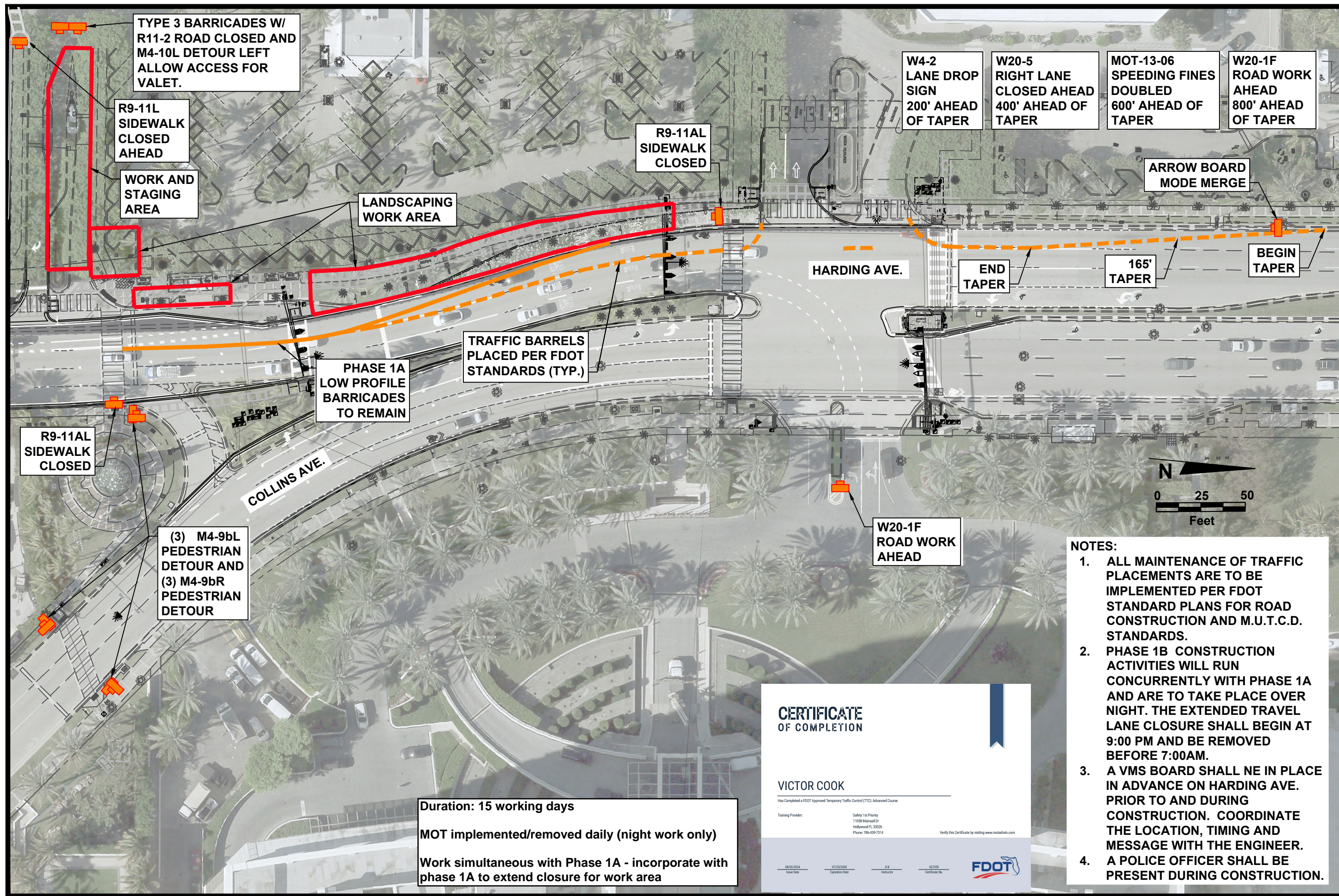


BHS COLLINS & HARDING

Complete







TYPE 3 BARRICADES W/
R11-2 ROAD CLOSED AND
M4-10L DETOUR LEFT
ALLOW ACCESS FOR
VALET.

R9-11L
SIDEWALK
CLOSED
AHEAD

WORK AND
STAGING
AREA

LANDSCAPING
WORK AREA

R9-11AL
SIDEWALK
CLOSED

W4-2
LANE DROP
SIGN
200' AHEAD
OF TAPER

W20-5
RIGHT LANE
CLOSED AHEAD
400' AHEAD OF
TAPER

MOT-13-06
SPEEDING FINES
DOUBLED
600' AHEAD OF
TAPER

W20-1F
ROAD WORK
AHEAD
800' AHEAD
OF TAPER

ARROW BOARD
MODE MERGE

BEGIN
TAPER

165'
TAPER

END
TAPER

HARDING AVE.

TRAFFIC BARRELS
PLACED PER FDOT
STANDARDS (TYP.)

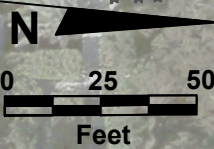
PHASE 1A
LOW PROFILE
BARRICADES
TO REMAIN

R9-11AL
SIDEWALK
CLOSED

COLLINS AVE.

(3) M4-9bL
PEDESTRIAN
DETOUR AND
(3) M4-9bR
PEDESTRIAN
DETOUR

W20-1F
ROAD WORK
AHEAD



- NOTES:
1. ALL MAINTENANCE OF TRAFFIC PLACEMENTS ARE TO BE IMPLEMENTED PER FDOT STANDARD PLANS FOR ROAD CONSTRUCTION AND M.U.T.C.D. STANDARDS.
 2. PHASE 1B CONSTRUCTION ACTIVITIES WILL RUN CONCURRENTLY WITH PHASE 1A AND ARE TO TAKE PLACE OVER NIGHT. THE EXTENDED TRAVEL LANE CLOSURE SHALL BEGIN AT 9:00 PM AND BE REMOVED BEFORE 7:00AM.
 3. A VMS BOARD SHALL NE IN PLACE IN ADVANCE ON HARDING AVE. PRIOR TO AND DURING CONSTRUCTION. COORDINATE THE LOCATION, TIMING AND MESSAGE WITH THE ENGINEER.
 4. A POLICE OFFICER SHALL BE PRESENT DURING CONSTRUCTION.

Duration: 15 working days

MOT implemented/removed daily (night work only)

Work simultaneous with Phase 1A - incorporate with phase 1A to extend closure for work area

**CERTIFICATE
OF COMPLETION**

VICTOR COOK

Has Completed a FDOT Approved Temporary Traffic Control (TTC) Advanced Course

Training Provider:

Safety 1st Priority
11058 Mainwell Dr
Hollywood FL 33026
Phone: 786-439-7314

Verify this Certificate by visiting www.motadmin.com

08/02/2024
Issue Date

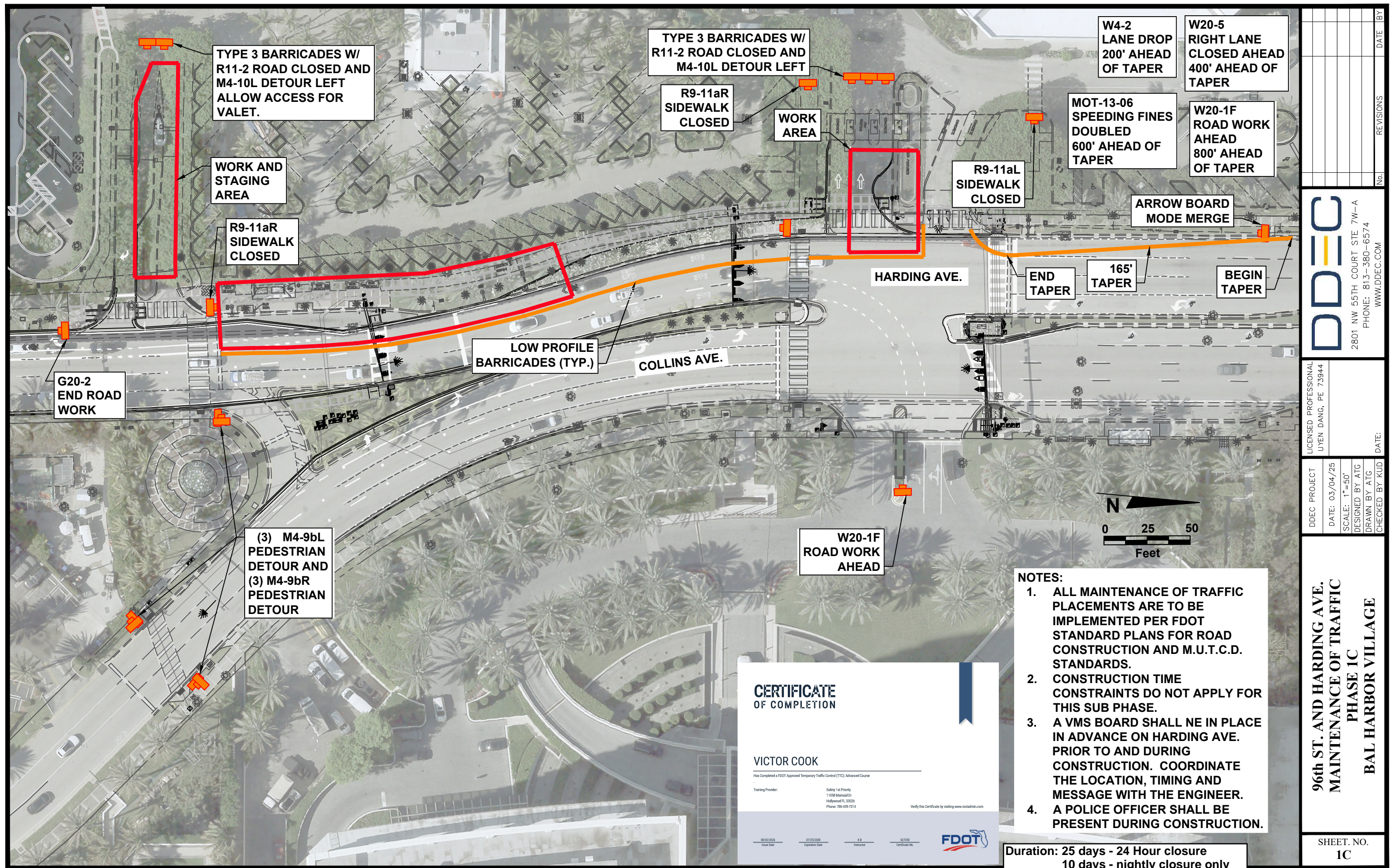
01/25/2028
Expiration Date

K.B
Instructor

017590
Certificate No.

FDOT

| | | | | | | | | | | | | | | | | | |
|-----------------------------|--|------------------------|--|---------------|--|-----------------------------|--|---------------------|--|------------------|--|-----------------------------|--|---------------------|--|--------------|--|
| DDEC PROJECT | | DATE: 03/04/25 | | SCALE: 1"=50' | | DESIGNED BY: ATG | | DRAWN BY: ATG | | CHECKED BY: KUD | | DATE: | | | | | |
| LICENSED PROFESSIONAL | | UYEN DANG, PE 73944 | | DDEC PROJECT | | DATE: 03/04/25 | | SCALE: 1"=50' | | DESIGNED BY: ATG | | DRAWN BY: ATG | | CHECKED BY: KUD | | DATE: | |
| 2801 NW 55TH COURT STE 7W-A | | PHONE: 813-380-6574 | | WWW.DDEC.COM | | 2801 NW 55TH COURT STE 7W-A | | PHONE: 813-380-6574 | | WWW.DDEC.COM | | 2801 NW 55TH COURT STE 7W-A | | PHONE: 813-380-6574 | | WWW.DDEC.COM | |
| REVISIONS | | No. | | DATE | | BY | | REVISIONS | | No. | | DATE | | BY | | REVISIONS | |
| 96th ST. AND HARDING AVE. | | MAINTENANCE OF TRAFFIC | | PHASE 1B | | BAL HARBOR VILLAGE | | SHEET. NO. | | 1B | | PA4-14 | | | | | |



TYPE 3 BARRICADES W/
R11-2 ROAD CLOSED AND
M4-10L DETOUR LEFT
ALLOW ACCESS FOR
VALET.

WORK AND
STAGING
AREA

R9-11aR
SIDEWALK
CLOSED

G20-2
END ROAD
WORK

(3) M4-9bL
PEDESTRIAN
DETOUR AND
(3) M4-9bR
PEDESTRIAN
DETOUR

TYPE 3 BARRICADES W/
R11-2 ROAD CLOSED AND
M4-10L DETOUR LEFT

R9-11aR
SIDEWALK
CLOSED

WORK
AREA

LOW PROFILE
BARRICADES (TYP.)

COLLINS AVE.

HARDING AVE.

W20-1F
ROAD WORK
AHEAD

W4-2
LANE DROP
200' AHEAD
OF TAPER

W20-5
RIGHT LANE
CLOSED AHEAD
400' AHEAD OF
TAPER

MOT-13-06
SPEEDING FINES
DOUBLED
600' AHEAD OF
TAPER

W20-1F
ROAD WORK
AHEAD
800' AHEAD
OF TAPER

ARROW BOARD
MODE MERGE

END TAPER

165'
TAPER

BEGIN TAPER

CERTIFICATE OF COMPLETION

VICTOR COOK

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Training Provider:

Safety 1st Priority
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Hollywood FL 33026
Phone: 786-439-7314

Verify this Certificate by visiting www.motadmin.com

08/02/2024
Issue Date

07/25/2028
Expiration Date

K.B
Instructor

02750
Certificate No.

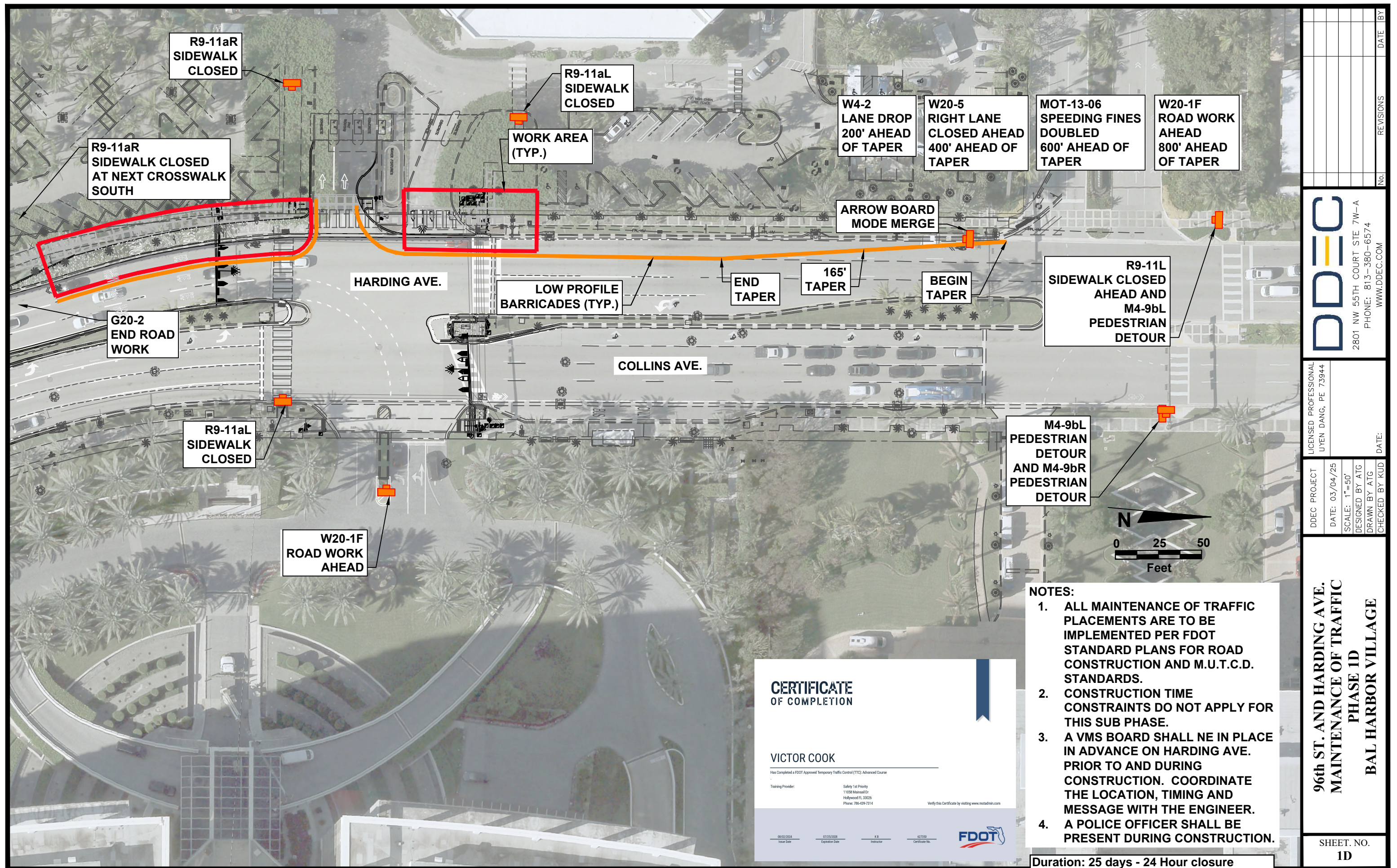


NOTES:

1. ALL MAINTENANCE OF TRAFFIC PLACEMENTS ARE TO BE IMPLEMENTED PER FDOT STANDARD PLANS FOR ROAD CONSTRUCTION AND M.U.T.C.D. STANDARDS.
2. CONSTRUCTION TIME CONSTRAINTS DO NOT APPLY FOR THIS SUB PHASE.
3. A VMS BOARD SHALL BE IN PLACE IN ADVANCE ON HARDING AVE. PRIOR TO AND DURING CONSTRUCTION. COORDINATE THE LOCATION, TIMING AND MESSAGE WITH THE ENGINEER.
4. A POLICE OFFICER SHALL BE PRESENT DURING CONSTRUCTION.

Duration: 25 days - 24 Hour closure
10 days - nightly closure only
TOTAL 35 working days

| | | | | | | | | | | | | | |
|---------------------------|--|------------------------|--|-----------------------------|--|---------------------|--|---------------|--|-----------------|--|-------|--|
| DDEC PROJECT | | DATE: 03/04/25 | | SCALE: 1"=50' | | DESIGNED BY: ATG | | DRAWN BY: ATG | | CHECKED BY: KUD | | DATE: | |
| LICENSED PROFESSIONAL | | UYEN DANG, PE 73944 | | 2801 NW 55TH COURT STE 7W-A | | PHONE: 813-380-6574 | | WWW.DDEC.COM | | REVISIONS | | DATE | |
| 96th ST. AND HARDING AVE. | | MAINTENANCE OF TRAFFIC | | PHASE 1C | | BAL HARBOR VILLAGE | | SHEET NO. 1C | | PA4-15 | | | |

[illegible]

2801 NW 55TH COURT STE 7W-A
 PHONE: 813-380-6574
WWW.DDEC.COM

| | |
|-----------------|-----------------------|
| DEC PROJECT | LICENSED PROFESSIONAL |
| | UYEN DANG, PE 73944 |
| DATE: 03/04/25 | |
| SCALE: 1"=50' | |
| DESIGNED BY ATG | |
| DRAWN BY ATG | |
| CHECKED BY KUD | DATE: |

**96th ST. AND HARDING AVE.
MAINTENANCE OF TRAFFIC
PHASE 1D
BAL HARBOR VILLAGE**

SHEET. NO.
1D

Duration: 25 days - 24 Hour closure
10 days - nightly closure only
TOTAL 35 working days

POLICE YEAR END REVIEW



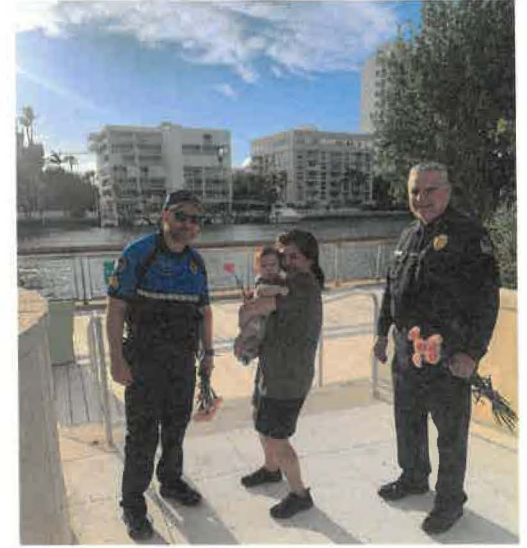
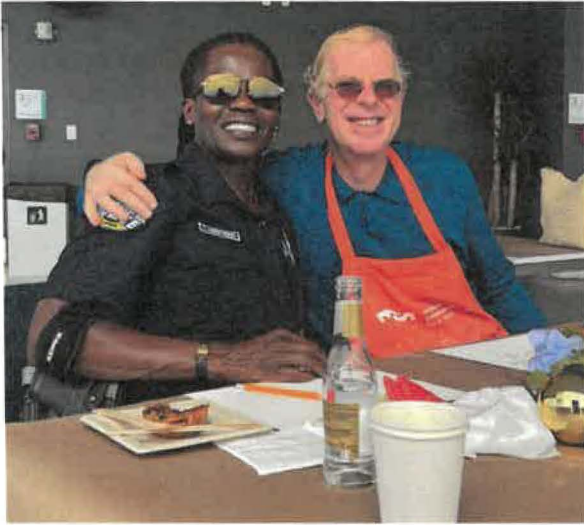
DEFINING PUBLIC SAFETY

- How do we know if our community is safe?
 - Public Perception
 - Anecdotal Evidence
 - Workload Measures
 - Crime Statistics

ANECDOTAL EVIDENCE

- During community events, residents and business owners share their observations and experiences with members of the department
- Receive email communication from residents and visitors relating to first-hand experiences with our officers
- Stakeholders many times visit the department to express their thanks in person

COMMUNITY EVENTS



ANECDOTAL EVIDENCE

From: Allison Lane <qhballi@gmail.com>
Sent: Wednesday, October 2, 2024 6:57 PM
To: Raleigh Flowers <rflowers@balharbourfl.gov>
Subject: Officer Castro

This Message Is From an Untrusted Sender

You have not previously corresponded with this sender.

Chief Flowers, I am a daughter of an elderly resident of Miami Beach, while I am in California. While I was on the phone with my dad today, your Officer Castro pulled him over for tag violations and ultimately, unbeknownst to him or me, a suspended DL. With my dad's consent, Officer Castro agreed to speak with me.

And wow — he handled the situation perfectly, both from my dad's perspective and that of a concerned, remote daughter. He was measured, kind, and empathetic, and took the time to make sure that I could get my dad home safely.

Officer Castro is a treasure! (He refused the pastry I told my dad to buy him at the cafe, so he is also upstanding.) He followed the law without favor, but also took care of the citizens.

Please let me know if you have any further questions.

Allison Lane

ANECDOTAL EVIDENCE

[NOTICE: This message originated outside of the Village of Bal Harbour – DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Good evening Chief Flowers,

I am writing to express my appreciation for the exceptional service provided by your department, particularly Marine Patrol Officer Cole.

Last week, I had the opportunity to take my two children out on a jet ski in the bay. Despite living in this area for over 13 years, it was my first time operating a watercraft in these waters. Unfamiliar with the rules, regulations, and intricate divisions within the bay, my actions caught the attention of Officer Cole from the Bal Harbour Police Marine division.

Encountering a police boat and being "pulled over" can be quite intimidating. However, Officer Cole displayed an exceptional level of professionalism, patience, and compassion throughout our interaction and in the execution of his duties.

The reputation of the Bal Harbour Police Department's officers for their professionalism has always preceded them, and I am delighted to affirm that Officer Cole exemplified all the commendable qualities for which your department is known.

I extend my gratitude for your dedicated service to our 33154 community.

Sincerely,

Shlomo Danzinger
Mayor

ANECDOTAL EVIDENCE

This Message Is From an External Sender

This message came from outside your organization.

Good evening, chief Flowers.

I'm writing to you because I witnessed this morning officer Armstrong doing a wonderful job.

The exit to the Balmoral Condominium was causing traffic along Collins avenue to stop because, there were trucks and cars trying to enter the garage and it was blocked.

She got out of her cruiser and handled a complicated situation quickly, respectfully and effectively, exercising her authority in a very positive manner.

Please extend my appreciation to her, she is a credit to your team.

Sincerely,

Cecilia Goldberger

Sent from my iPad

ANECDOTAL EVIDENCE



SHLOMO DANZINGER
Mayor

Monday, February 19, 2024

Chief of Police Raleigh M. Flowers, Jr.
Bai Harbour Village Police Department
655-96th Street
Bai Harbour, Florida 33154

Dear Chief Flowers,

I trust this letter finds you well. I am writing to express my heartfelt commendation for you and your exceptional team at the Bai Harbour Village Police Department for the outstanding job carried out on Friday, February 2nd, 2024.

Your meticulous planning and effective execution in mitigating traffic during the lane closures in preparation for the Bay Harbor Islands Art Festival played a crucial role in mitigating what could have been a. It is evident that your team's dedication and professionalism were key contributors to the smooth traffic flow and minimal disruptions experienced.

The positive feedback we received from the community underscores the significant impact of your department's endeavors on the overall satisfaction of those navigating through our communities during the festival. The ability of your team to handle logistical challenges with grace and effectiveness is a true testament not only to their skills but also to the strong leadership you provide.

Please convey my heartfelt gratitude to each member of your department who played a role in ensuring the success of this event. Their unwavering commitment to the safety and convenience of our community is truly commendable and deeply valued.

Warm regards,

Shlomo Danzinger
Mayor, Town of Surfside

ANECDOTAL EVIDENCE



 Liked by **ramiroandgina_inguanzo** and others

balharbourpd We want to thank this Bay Harbor Island's resident for stopping by to thank and commend Officer May Dorado for assisting her when her vehicle broke down. The resident expressed how grateful she was that Officer Dorado comforted her and remained by her side until a tow truck arrived.



Bal Harbour Police Department

Nov 28, 2024 · 🌐

[#thankyou](#) Councilmen Levy and Yonah from @hatzalahsouthflorida for bringing some delicious pizza and pies for our o... See more



  20

2 comments

POLICE PATROLS & SECURITY CHECKS

- BHPD conducts a number of patrols and checks throughout the Gated Community on a routine basis.
- Below is a summary of patrols and checks conducted in 2024:

| Details | 2024 Total |
|--|---------------|
| Area Checks & High Visibility Details | 2,389 |
| Ordinance Investigations, NPEDS Inspections, Warnings & Violations | 3,633 |
| Security Check | 1,673 |
| Code Area Check | 585 |
| Traffic Detail (i.e., Radar Details, 20 is Plenty, etc.) | 152 |
| Traffic Stops | 138 |

OFFENSES

In 2024, the following offenses were reported in the Gated Residential area:

| Type of Offense | Total |
|---------------------|-------|
| Fraud | 5 |
| Criminal Mischief | 2 |
| Petit Theft | 1 |
| Burglary to Vehicle | 1 |
| Auto Theft | 0 |

ENHANCEMENTS

- NPDES Code Officer (Spring 2024)
 - Resulted in 1,693 National Pollutant Discharge Elimination System (NPDES) inspections (4,672 hours)
 - Pre-construction Meetings

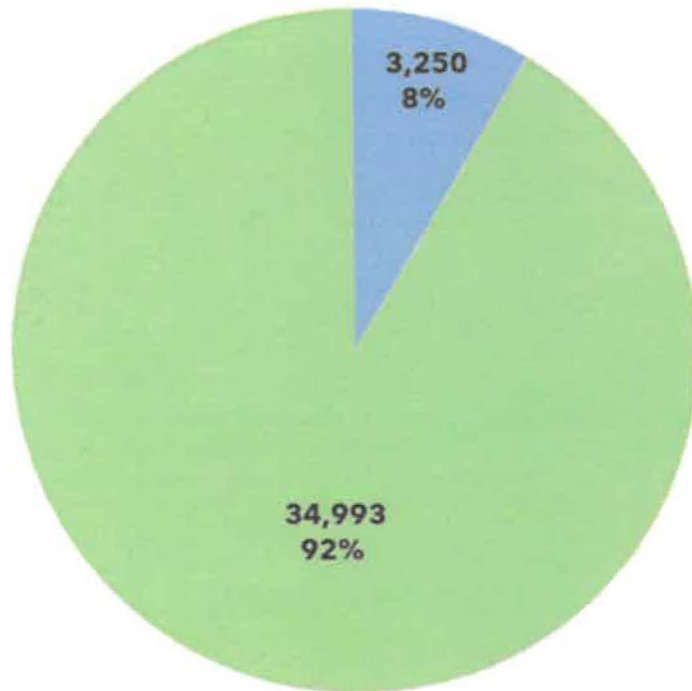
CALLS FOR SERVICE

2024

- Villagewide (all areas) Activity- 34,937
 - Self Initiated Activity - 31,951
 - Calls for Service - 2,986

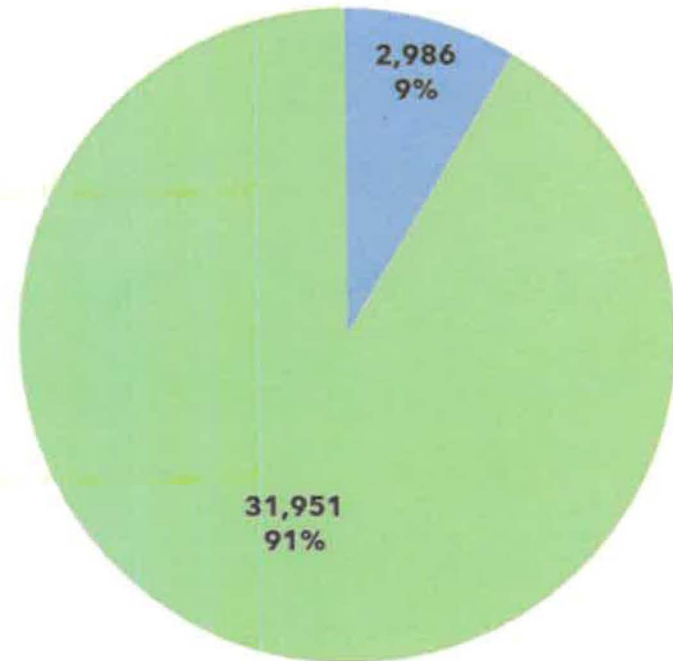
OVERALL POLICE ACTIVITY

2023 Overall Police Activity



■ Calls for Service ■ Self Initiated

2024 Overall Police Activity

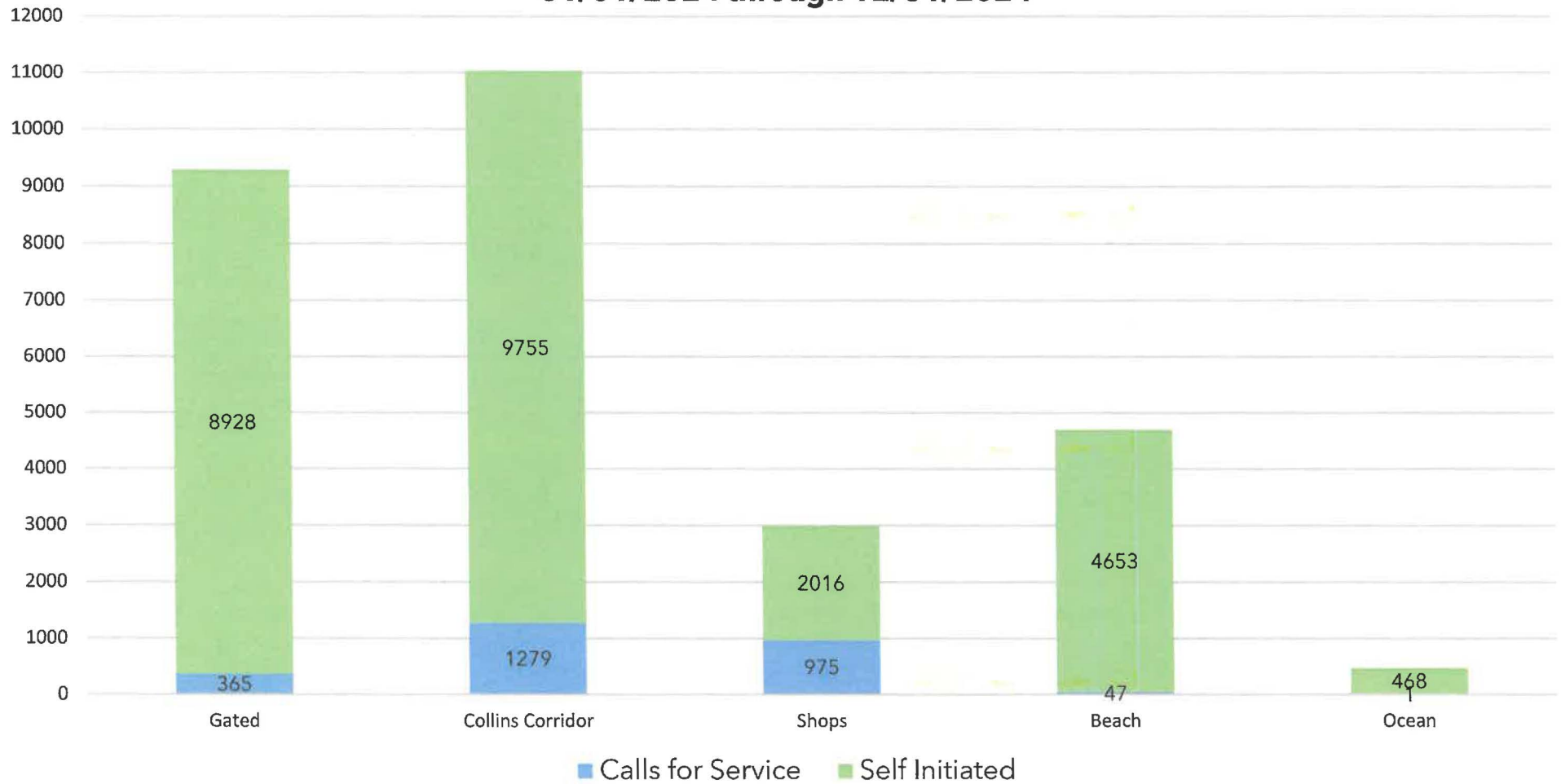


■ Calls for Service ■ Self Initiated

International City & County Managers Association (ICMA) - Staffing decisions must be based on actual workload (calls for service) and time available for self initiated activities.

CALLS FOR SERVICE

**Law Enforcement Activity
Calls for Service vs. Self Initiated Activity
01/01/2024 through 12/31/2024**



CRIME STATISTICS

(UCR Format)

- Violent Crimes remained static
- Overall Crime decreased by 20%

| Type of Crime | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 |
|-------------------------------------|------|------|------|------|------|------|------|------|------|------|------|
| Total Part 1 Violent Crimes | 2 | 1 | 2 | 2 | 3 | 0 | 1 | 3 | 1 | 2 | 2 |
| <i>BH Shops Related Crime*</i> | | | | | | | 60 | 81 | 125 | 168 | 121 |
| <i>Other Village-wide</i> | | | | | | | 32 | 40 | 29 | 21 | 30 |
| Total Part 1 Property Crimes | 106 | 94 | 93 | 81 | 73 | 98 | 92 | 121 | 154 | 189 | 151 |

CRIME STATISTICS

Arrests

| 2019 | 2020 | 2021 | 2022 | 2023 | 2024 | Difference from 2023 |
|------|------|------|------|------|-----------|----------------------|
| 68 | 61 | 70 | 65 | 85 | 93 | +9.4% |

Code Compliance

| | 2019 | 2020 | 2021 | 2022 | 2023 | 2024 |
|-------------------|------|------|------|------|------|------|
| Warnings | 46 | 147 | 172 | 141 | 191 | 124 |
| Violations | 33 | 34 | 37 | 24 | 48 | 48 |

Additional Code Compliance Workload Measures

- Ordinance Investigations - 2,178
- NPEDS Inspections - 1,719
- NPEDS Violations - 6
- Code Area Checks - 1,278

CRIME STATISTICS – FIBRS REPORTING

FIBRS Abstract Report for Bal Harbour Police Department
Data Range of Report: January 1, 2023 - December 31, 2023
Date of Report: February 7, 2024

| | |
|----------------------------------|---------|
| Agency Population for 2023: | 8,054 |
| Overall Crime Rate for 2023: | 7,107.2 |
| Overall Clearance Rate for 2023: | 25.2 |

| CRIMES AGAINST PERSONS | | | | | |
|---------------------------------------|----------------|--------------------------------|----------------------|-------------------------|----------------|
| Offense Type | Total Offenses | Crime Rate per 100,000 Persons | Clearances by Arrest | Clearances by Exception | Clearance Rate |
| All Crimes Against Persons | 32 | 400.7 | 5 | 2 | 37.5 |
| Assault Offenses | 12 | 149.0 | 4 | 1 | 58.3 |
| Aggravated Assault | 0 | 0.0 | 0 | 0 | -- |
| Simple Assault | 11 | 160.2 | 4 | 1 | 63.6 |
| Intimidation | 0 | 0.0 | 0 | 0 | -- |
| Stalking | 1 | 12.7 | 0 | 0 | 0.0 |
| Homicide Offenses | 0 | 0.0 | 0 | 0 | -- |
| Murder and Non-Negligent Manslaughter | 0 | 0.0 | 0 | 0 | -- |
| Negligent Manslaughter | 0 | 0.0 | 0 | 0 | -- |
| Human Trafficking Offenses | 0 | 0.0 | 0 | 0 | -- |
| Commercial Sex Acts | 0 | 0.0 | 0 | 0 | -- |
| Involuntary Servitude | 0 | 0.0 | 0 | 0 | -- |
| Kidnapping/Abduction | 0 | 0.0 | 0 | 0 | -- |
| Sex Offenses | 1 | 12.7 | 0 | 0 | 0.0 |
| Rape | 0 | 0.0 | 0 | 0 | -- |
| Sodomy | 0 | 0.0 | 0 | 0 | -- |
| Sexual Assault With An Object | 0 | 0.0 | 0 | 0 | -- |
| Fondling | 0 | 0.0 | 0 | 0 | -- |
| Incest | 0 | 0.0 | 0 | 0 | -- |
| Statutory Rape | 0 | 0.0 | 0 | 0 | -- |

Note: Source of population figure is Florida Estimates of Population, 2023, University of Florida, College of Liberal Arts and Sciences, Bureau of Business and Economic Research.

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FIBRS Abstract Report for Bal Harbour Village Police Department
Data Range of Report: January 1, 2024 - December 31, 2024
Date of Report: February 11, 2025

| | |
|-----------------------------|---------|
| Agency Population for 2024: | 8,010 |
| Overall Crime Rate: | 6,512.3 |
| Overall Clearance Rate: | 37.9 |

| CRIMES AGAINST PERSONS | | | | | |
|---------------------------------------|----------------|--------------------------------|----------------------|-------------------------|----------------|
| Offense Type | Total Offenses | Crime Rate per 100,000 Persons | Clearances by Arrest | Clearances by Exception | Clearance Rate |
| All Crimes Against Persons | 18 | 224.9 | 3 | 12 | 61.1 |
| Assault Offenses | 17 | 212.2 | 3 | 12 | 58.8 |
| Aggravated Assault | 0 | 0.0 | 0 | 0 | -- |
| Simple Assault | 16 | 201.8 | 2 | 12 | 57.5 |
| Intimidation | 1 | 12.7 | 1 | 0 | 100.0 |
| Stalking | 0 | 0.0 | 0 | 0 | -- |
| Homicide Offenses | 0 | 0.0 | 0 | 0 | -- |
| Murder and Non-Negligent Manslaughter | 0 | 0.0 | 0 | 0 | -- |
| Negligent Manslaughter | 0 | 0.0 | 0 | 0 | -- |
| Human Trafficking Offenses | 0 | 0.0 | 0 | 0 | -- |
| Commercial Sex Acts | 0 | 0.0 | 0 | 0 | -- |
| Involuntary Servitude | 0 | 0.0 | 0 | 0 | -- |
| Kidnapping/Abduction | 0 | 0.0 | 0 | 0 | -- |
| Sex Offenses | 1 | 12.7 | 0 | 0 | 0.0 |
| Rape | 0 | 0.0 | 0 | 0 | -- |
| Sodomy | 0 | 0.0 | 0 | 0 | -- |
| Sexual Assault With An Object | 0 | 0.0 | 0 | 0 | -- |
| Fondling | 0 | 0.0 | 0 | 0 | -- |
| Incest | 0 | 0.0 | 0 | 0 | -- |
| Statutory Rape | 0 | 0.0 | 0 | 0 | -- |

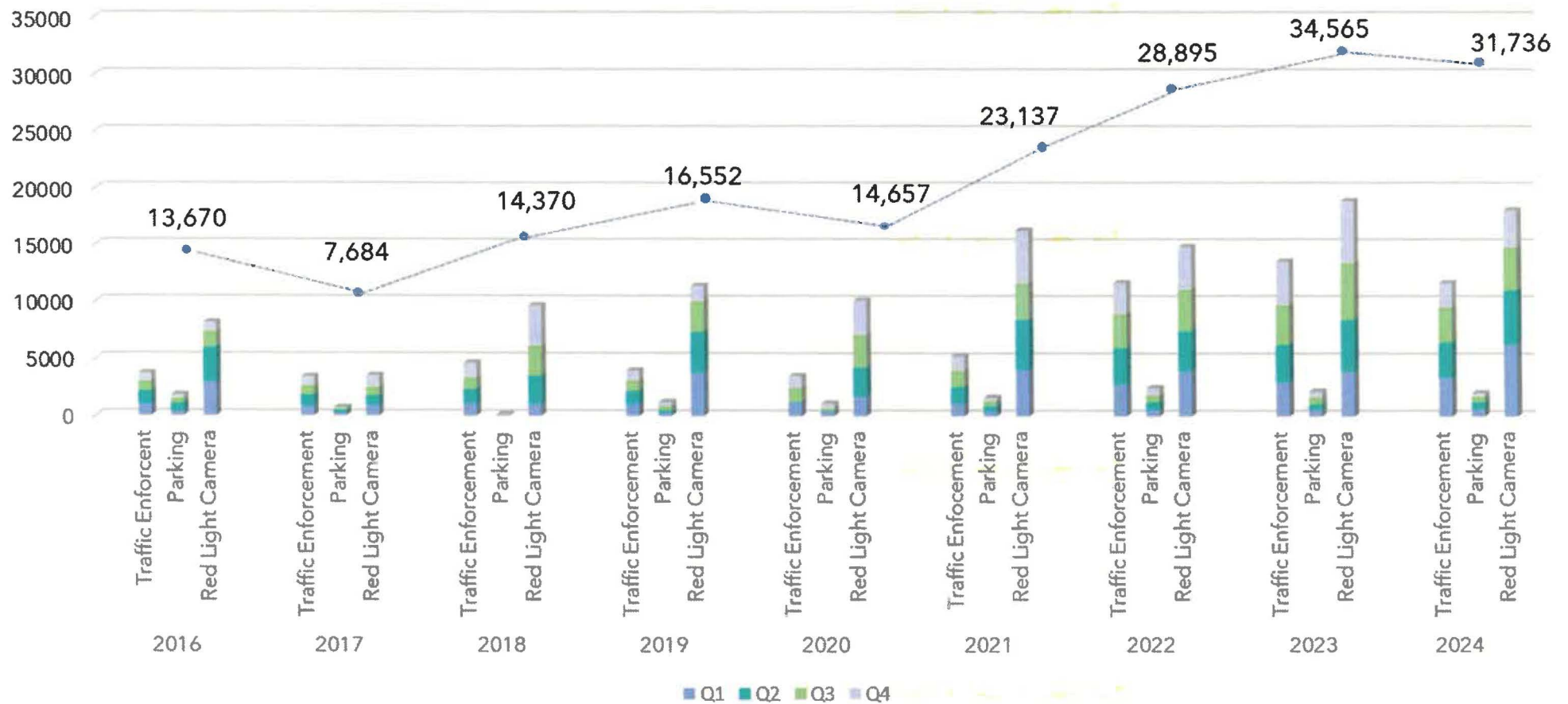
Note: Source of population figure is Florida Estimates of Population, 2024, University of Florida, College of Liberal Arts and Sciences, Bureau of Business and Economic Research.

Page 1 of 3

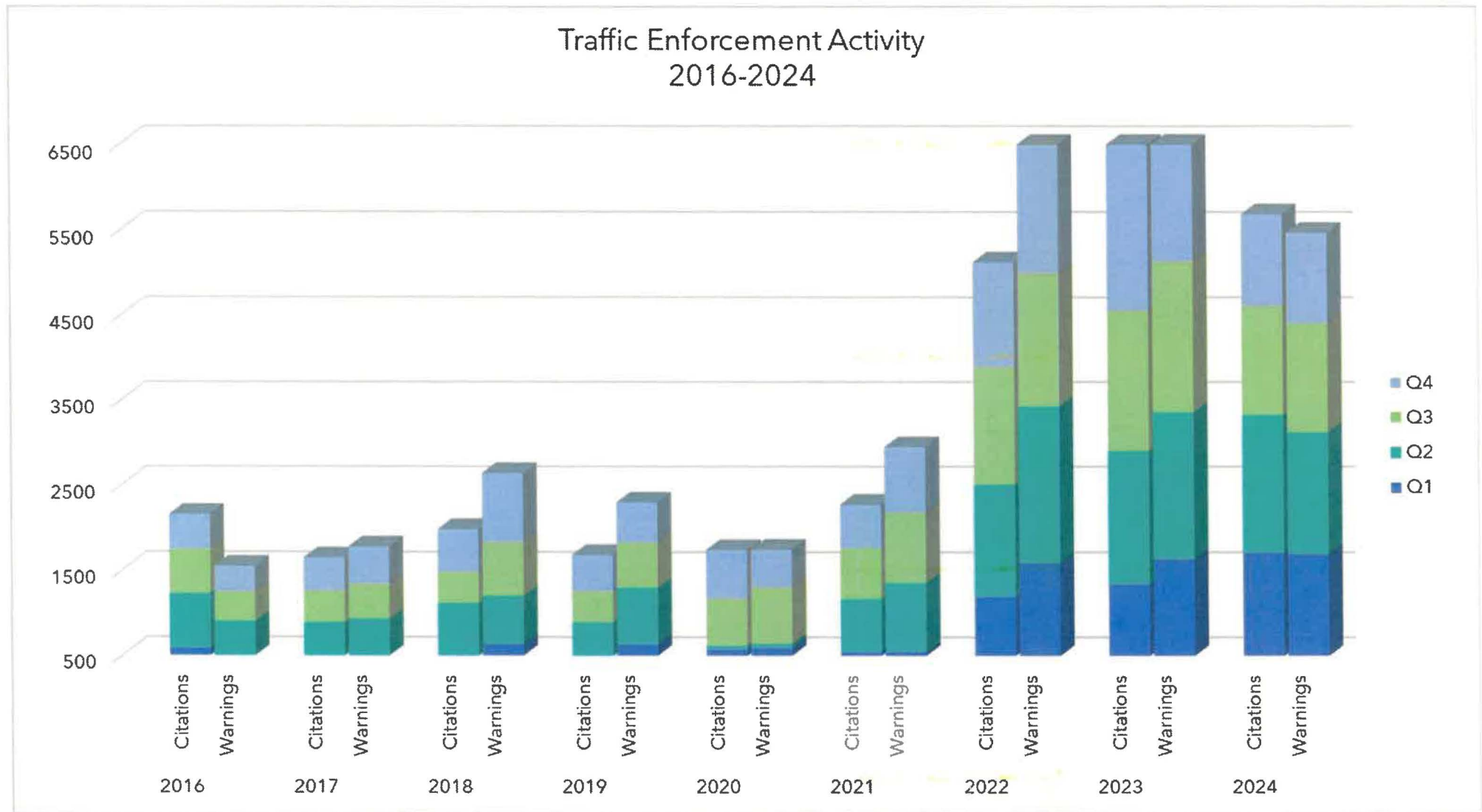
- Overall Crime decreased by 10%
- Overall Clearance Rate increased by 50%

SUMMARY

Summary of Traffic Enforcement Activity
2016-2024

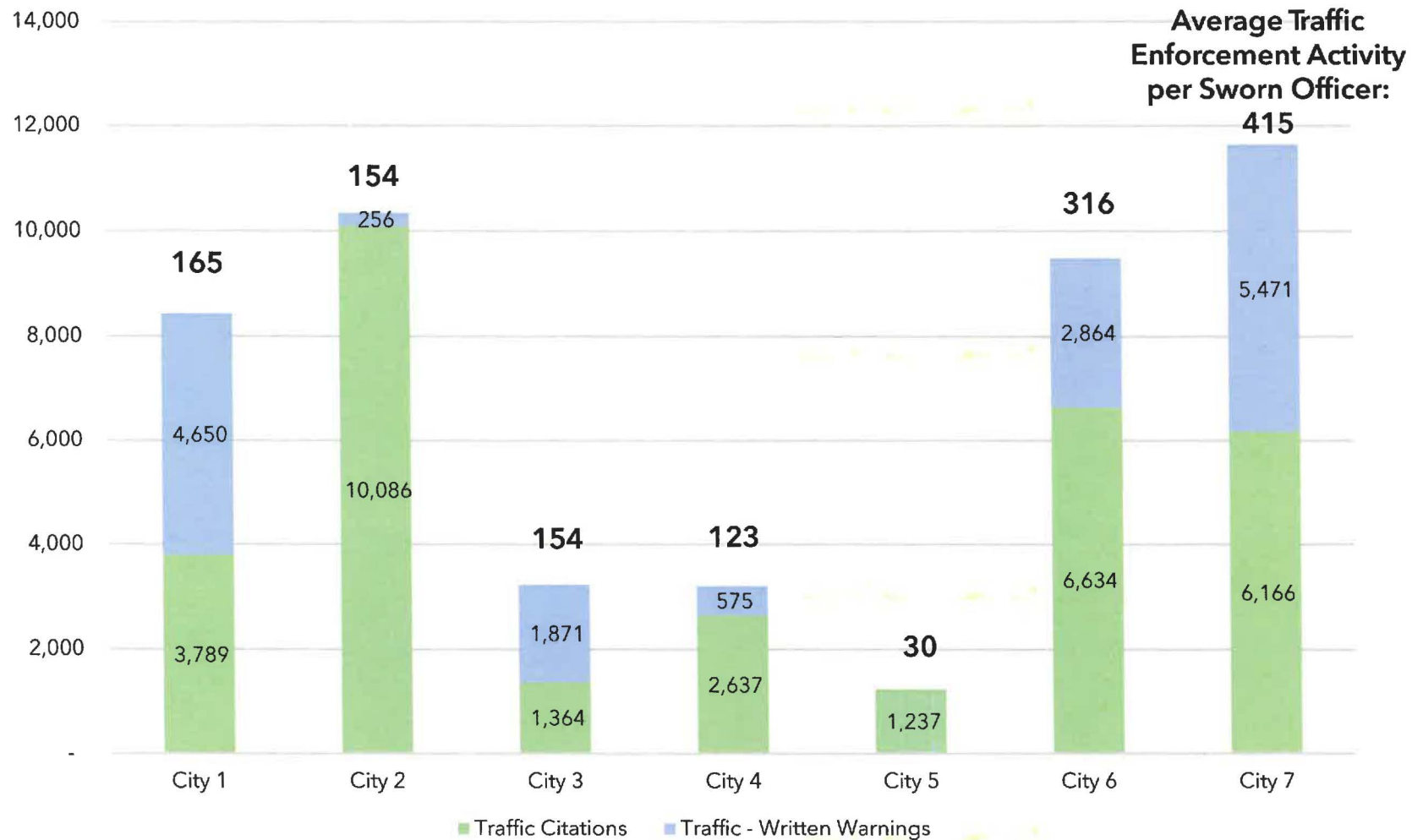


TRAFFIC ENFORCEMENT

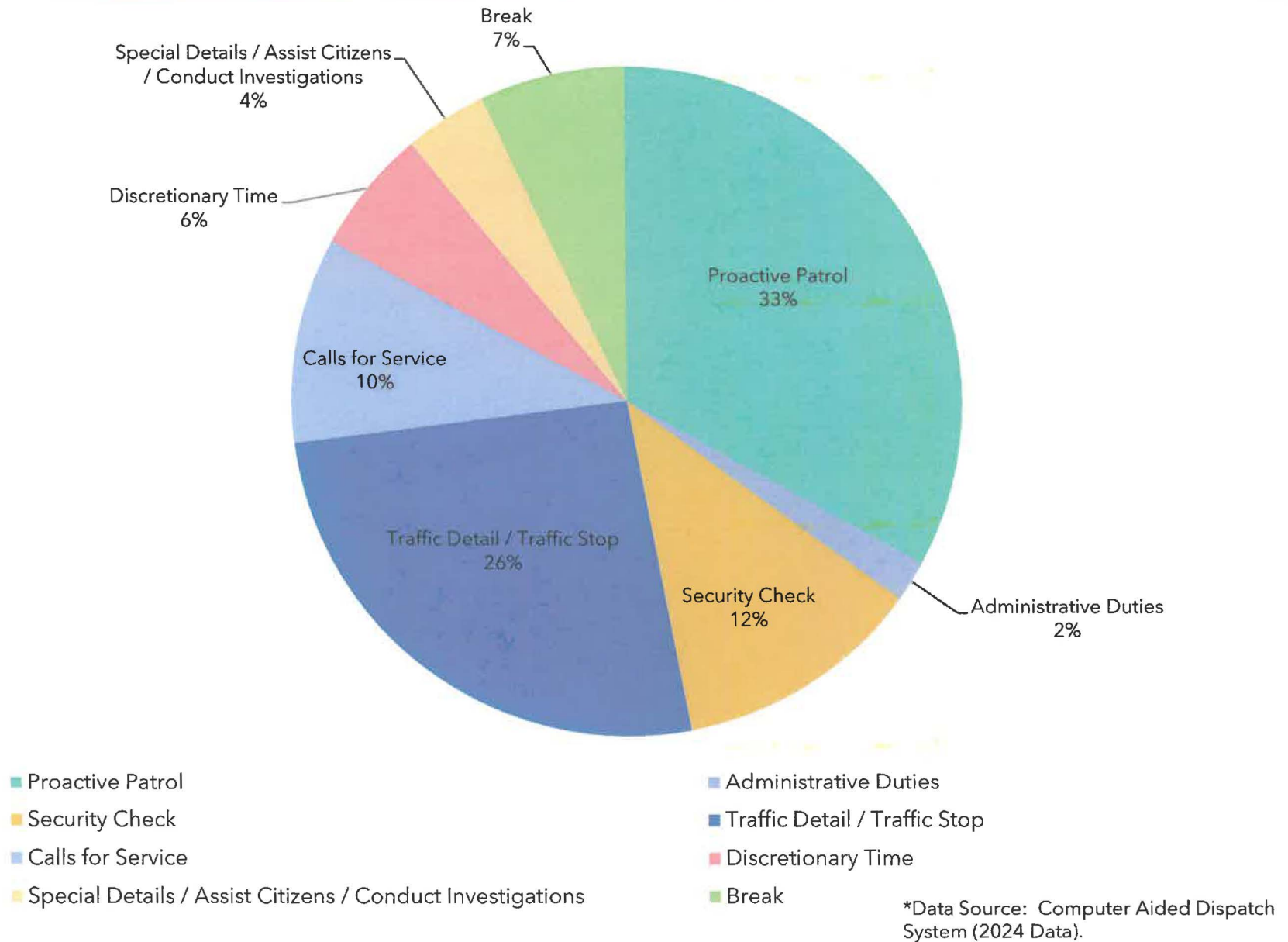


COMPARISONS

Traffic Enforcement 2024 Comparison Among Municipalities



ANNUAL AVERAGE - OFFICER ACTIVITY



OFFICER TRAINING

- **In 2024, officers attended a combined total of 247 days of training (2557 hours).**
- Training topics included:
 - Advanced Report Writing
 - Firearms Instructor
 - Line Supervision
 - SPI Command School
 - Marine Patrol Operator
 - Public Safety Telecommunicator
 - Internal Affairs
 - CIT
 - Women In Leadership
 - JTTF
 - Interview/Interrogation
 - Speed Measurement
 - Defensive Tactics Instructor
 - FBI LEEDA
 - Autism
 - Domestic Terrorism
 - Introduction to General Investigation
 - Case Preparation & Presentation

OFFICER TRAINING

- Co-founded the South Florida Police Leadership Academy



Bal Harbour Police Department is with @flowersraleigh. ...

Nov 15, 2024 • 🌐

Several of our employees attended a Crisis Communication and Leadership Solutions course as part of the South Florida Police Leadership Academy. This course was facilitated by Retired Chief of Police Jason Armstrong and was designed to provide advanced leadership training to law enforcement leaders and officers in small to mid-sized agencies.



MAJOR ACCOMPLISHMENTS

- The Bal Harbour Police Department has made significant strides over the last fiscal year. Below are some highlights:
 - Arrest Part I UCR Crimes increased by 31%
 - Spearheaded regional law enforcement conference calls with the Miami-Dade County Coastal Police Chiefs
 - Collaborated with the Bal Harbour Civic Association on security upgrades and enhancement in the residential gated community.
 - Fleet Enhancement - Ordering of high water vehicles and delivery of new patrol Interceptors

MAJOR ACCOMPLISHMENTS

- Implemented Tips411, an application aimed at providing residents and visitors with a simple way to report issues that may require police attention.
- Acquired Taser 10 - first agency in the region to do so - providing upgraded technology for officers.
- The department hosted the first community Women's Self Defense course
- Officers completed Narcan Training, in order to recognize the signs of opioid overdose and administer the opioid overdose reversal drug Naloxone.

MAJOR ACCOMPLISHMENTS

- Continued to invest in officer training and preparedness through participation in the following training courses, including:
 - Provided Marine Patrol Vessel Operation cross training for officers
 - One officer is assigned part-time to the FBI Joint Terrorism Taskforce.
 - Continued to conduct Autism Awareness Trainings for Law Enforcement professionals throughout the state of Florida. Over 40,000 Florida Law Enforcement Officers have participated in the training.

THANK YOU

- Questions / Feedback

BAL HARBOUR

- V I L L A G E -

Mayor Jeffrey P. Freimark
Vice Mayor Seth E. Salver
Councilman Alejandro Levy
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 Meeting Minutes

January 13, 2024

At 6:30 PM

Bal Harbour Village Hall • Council Chamber • 655 96th Street • Bal Harbour • Florida 33154

This meeting was conducted in person. The meeting was also broadcast on our website at <https://balharbourfl.gov/government/village-clerk/minutes-and-agendas/>. Members of the public were also encouraged to participate by email (meetings@balharbourfl.gov) or by telephone at 305-865-6449.

CALL TO ORDER/ PLEDGE OF ALLEGIANCE- Mayor Freimark called the meeting to order at 6:30 P.M.

The following were present:

Mayor Jeffrey P. Freimark
Vice Mayor Seth E. Salver
Councilman Alejandro Levy
Councilman Buzzy Sklar
Councilman David Wolf

Also present:

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

The Pledge of Allegiance was led by Mayor Freimark.

REQUESTS FOR ADDITIONS, WITHDRAWALS AND DEFERRAL - There were no requests.

PRESENTATIONS AND AWARDS

PA1 International Holocaust Remembrance Day - Proclamation

Mayor Freimark recognized Judith Osers Muller, chair of the South Florida committee of Yad Vashem USA Foundation then read a proclamation for International Holocaust Remembrance Day.

Ms. Osers Muller spoke about the importance of Yad Vashem in preserving Holocaust memory and education, sharing her personal connection as a descendant of Holocaust

survivors. She detailed its role in documenting the Holocaust, highlighting survivors' testimonies and the institution's formation in 1953 to honor victims and educate future generations. She also discussed genocide as a concept, explaining Raphael Lemkin's definition and identifying warning signs. She spoke about the role of education in preventing future atrocities and combating intolerance, and about Yad Vashem's efforts to expand Holocaust awareness through digital initiatives and local programming. She concluded by reinforcing the need to remember history and promote peace, tolerance, and coexistence.

PA2 Recognition of Outgoing Board and Committee Members

Mayor Freimark acknowledged and honored the outgoing Board and Committee members for their dedicated years of service to Bal Harbour Village. The Village Council expressed its gratitude and appreciation to Zushie Litkowski for his contributions to the Resort Tax Committee, Lissandra Almaguer for her commitment to the General Employees' Retirement Board, Raymond Slate for his work on the Budget Advisory Committee, and Elizabeth Camargo and David Koplowitz for their service on the Architectural Review Board.

PA3 Sand Renourishment and Vessel Exclusion Zone Presentation - Cummins Cederberg

Mayor Freimark introduced Leonard Barrera Allen, Cummins Cederberg, who provided an overview of the sand renourishment project and vessel exclusion zone. He said that the beach renourishment project was set to begin in early 2025, with 100% of the sand being truck-hauled instead of partially dredged and that the project, fully funded by the federal government, was expected to last eight months.

He provided information on the awarded contractor, upcoming safety briefings, and stakeholder meetings. He emphasized the urgency of the project due to significant beach erosion exposing groins that had not been visible in a decade.

He then discussed the potential vessel exclusion zone, explaining that the dredging of the north portion of the flood shoal had caused vessels to migrate to the southern portion, increasing usage dramatically. He said that three long-term solutions were proposed: dredging the area again, establishing a vessel exclusion zone, or creating a managed mooring field. He outlined challenges related to seagrass protection and regulatory approvals.

There was a general consensus that there was a need for stronger enforcement and collaboration with neighboring communities and the County.

CONSENT AGENDA

C6 - COUNCIL MINUTES

C6A Approval of Minutes

MOTION: A Motion to approve the Consent Agenda was moved by Mayor Jeffrey P. Freimark and seconded by Vice Mayor Seth E. Salver.

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

R5 - ORDINANCES

R5A AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING THE VILLAGE'S CODE OF ORDINANCES BY AMENDING SECTION 20-6 OF ARTICLE I, CHAPTER 20, ENTITLED "DEDICATION OF UTILITY EASEMENT IN RESIDENTIAL SECTION" TO AUTHORIZE AND REQUIRE EASEMENTS FOR THE INSTALLATION OF UTILITY FACILITIES IN THE FRONT OF RESIDENTIAL PROPERTIES; PROVIDING FOR CONFLICT, CODIFICATION, SEVERABILITY, AND FOR AN EFFECTIVE DATE.

Mr. Gonzalez introduced the item saying that the amendment aimed to authorize and require easements for the installation of utility facilities at the front of residential properties to facilitate the Florida Power & Light (FP&L) grid upgrade. He said that the request originated from the Bal Harbour Civic Association, which sought assistance in moving forward the long-discussed FP&L grid upgrade and that the project could not progress due to the lack of necessary easements for the placement of approximately 70-80 transformers throughout the community.

He said the Village had suggested that FP&L use a blanket easement issued years ago for infrastructure within the streets, but individual property easements were still required for transformers on private property and that FP&L was requiring direct homeowner agreements which made securing easements difficult.

He said the proposed ordinance aimed to require homeowners undergoing renovations triggering an Architectural Review Board (ARB) hearing or pulling electrical permits to provide the necessary easement to FP&L and that the ordinance was designed to capture as many easements as possible over time, adding that this approach would be a slow process and would not immediately bring the project to completion.

Mr. Gonzalez said that Staff and Legal had explored additional measures to accelerate the process, and that the Agenda item outlined proposed potential expansions of the ordinance, such as broadening the scope of construction projects that would trigger easement requirements. He said the ordinance could also mandate that all electrical utility connections be relocated to the front of properties, aligning with FP&L's goal of front-loaded electrical services and another consideration was whether the policy should extend beyond FP&L to include other utility providers.

Councilman Sklar asked whether every house needed to convert for the grid to work, to which Mr. Gonzalez said that FP&L would not run concurrent systems; once the front-loaded grid was in place, the rear system would be abandoned, necessitating full participation. He said that not every home required a transformer.

Vice Mayor Salver said that it was important to hear from residents, given the unusual number of attendees at the meeting.

Councilman Wolf noted that the Village had a broader responsibility beyond that of a condo association. He stressed that faulty wiring posed a critical safety issue, citing past fires in the neighborhood, and that the council had a duty to protect all residents.

Neca Logan, 64 Camden Drive and President of the Bal Harbour Civic Association, said that the Civic Association lacked authority over homeowners and could not enforce easements. She explained that in the past, FP&L had required some homeowners to install transformers preemptively, but the entire project had not yet been mapped out, and that some homeowners did not even know if they would need a transformer. She said that supported the ordinance for significant renovations but agreed that it should not apply to minor work.

Former Mayor Gabriel Groisman, 119 Bal Bay Drive, said that he was skeptical about FP&L's intentions and that he believed that FP&L did not genuinely want the project to move forward and had deliberately designed an impractical plan requiring numerous easements, ensuring that it would never be completed. He said that the proposed ordinance would impose hardships on homeowners and urged the Council to pressure FP&L into making necessary upgrades.

Rita Collins, 155 Biscay Drive and Bal Harbour Civic Association Board member, agreed that, adding that the grid was outdated and dangerous. She spoke about problems with internet and fiber optics services due to the lack of easements. She also noted that existing easements at the rear of properties were often inaccessible due to overgrown areas and cages placed around transformers.

Lauren Koplowitz, 177 Bal Cross Drive, expressed her concerns about electrical fires and inadequate infrastructure. She said that the Civic Association members were regular residents, not experts on easements or electrical systems, and should not be expected to manage the project. She said that existing ordinances already required underground utilities and that homeowners had been signing blanket easements for years adding that the burden should be on FP&L, not residents.

Mayor Freimark thanked residents for their input saying that his belief was that the ordinance would not meaningfully advance the project. He said he would be supportive of placing more pressure on FP&L instead.

There was a general consensus from Council to table the ordinance focus on direct engagement with FP&L asking the Administration to schedule a meeting with FP&L representatives and investigate legal strategies.

R7 - RESOLUTIONS

R7A A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; SELECTING ONE OF TWO RESIDENT LAYPERSONS TO APPOINT TO THE VILLAGE'S ARCHITECTURAL REVIEW BOARD (ARB); PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

Mr. Gonzalez introduced the item saying that due to a vacancy left by David Koplowitz, the names of two potential members had been nominated to serve as the ARB resident layperson member, Brett Schlacter and Luca de Felice. He said that both were residents and met the qualifications for the role, adding that Mr. Schlacter was a developer and attorney with extensive industry experience was an and that Mr. de Felice was and was a architect with international experience and a background in contemporary art.

Vice Mayor Salver said that it was important to have a layperson on the ARB who was not an architect for a more balanced perspective saying that architects rigorously analyze and debate color choices and aesthetic details.

Following a vote, Mr. Schlachter received 4 votes and Mr. de Felice received one vote.

MOTION: A Motion to approve the Resolution appointing Brett Schlacter to the ARB was moved by Mayor Jeffrey P. Freimark and seconded by Vice Mayor Seth E. Salver.

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

R9 - NEW BUSINESS AND COUNCIL DISCUSSION

R9A Discussion Item - Public Event Bollards - Councilman Buzzy Sklar

Councilman Sklar introduced the item saying that he had concerns regarding the safety at the farmers market on 96th Street stemming from recent news from New Orleans, where vehicles had driven through public events. He proposed installing concrete bollards at the end of 96th Street to protect the market area and requested that the Village explore the feasibility of installing protective measures.

Police Chief Raleigh Flowers thanked Councilman Sklar for raising the concern saying that he had coordinated the temporary placement of vehicles at the market entrance as a makeshift barrier. He said that he also reached out to the Surfside police chief for collaboration, given that the farmers market was a joint effort between Bal Harbour and

Surfside. He said that Surfside had agreed to assist with security at the entrance and that he had coordinated with Public Works to place a truck in the area to further secure the entrance, alongside a police vehicle.

Chief Flowers said that he supported the idea of exploring a more permanent solution, such as concrete bollards, to ensure the long-term safety of residents and market attendees.

R9B Discussion Item - Cars Loitering - Councilman Buzzy Sklar

Councilman Sklar introduced the item saying that he had concerns about the increasing issue of ride-share drivers waiting for calls, particularly on the west side of Collins, which he said created traffic congestion and an inconvenience for residents. He expressed concern that the responsibility of addressing the problem had largely fallen on the shoulders of valet and building management teams, putting them in difficult and potentially unsafe confrontations with drivers. He added that a more proactive approach was needed to ensure that the issue did not continue to escalate.

Chief Flowers said that his department patrolled these areas and had been proactive in dealing with loitering ride-share drivers, particularly on the west side, and had created a dedicated signal in their records system to track interactions with ride-share vehicles, allowing them to document enforcement efforts more effectively. He suggested that condominium building managers should first attempt to handle the issue by informing loitering drivers that they were on private property and asking them to leave, and if drivers refused, or became confrontational, they should immediately contact the police rather than engaging directly with the drivers.

There was a general consensus that the police should continue monitoring the situation, and the topic would be brought up again in future discussions to assess whether additional measures were necessary.

R9C Discussion - Impacts To The Village Charter Of State Preemptions (Zoning By Referendum)

Mr. Gonzalez introduced the item explaining that recent State legislation had significantly limited local authority over zoning and land development regulations, specifically preempting local governments from requiring a public vote on zoning changes and land development regulations, or "zoning by referendum." He said this preemption affected the Village's Charter which currently requires that any changes to height regulations be subject to voter approval.

Ms. Trevarthen said that the Charter effectively freezes zoning regulations as they existed in 2006, with any modifications requiring voter consent, however, the State's new law rendered voter referendums on zoning matters unenforceable.

She said that height regulations are categorized as land development regulations, making them subject to the preemption and that moving forward, the Village would not be able to hold a public vote to change height restrictions, and instead, those decisions would have to be made legislatively by the Village Council.

Mr. Gonzalez proposed alternative approaches, such as implementing additional procedural safeguards to ensure that any changes to height regulations or other zoning matters would undergo rigorous scrutiny. He offered suggestions including requiring supermajority votes for zoning amendments, extensive public notice and hearings, and aligning height measurement methodologies across different zoning districts to prevent inconsistencies.

There was a general consensus from the Council to direct staff to draft an ordinance that incorporates procedural safeguards while complying with state law. Mayor Freimark emphasized the importance of transparency and community involvement.

R9D- PUBLIC COMMENT

Neca Logan, 64 Camden Drive, said that despite Florida Department of Transportation improvements, traffic congestion had significantly increased. She said that part of the problem was due to the vehicles dropping off and picking up children at the Surfside shul, causing backups on Collins and Harding Avenues. She suggested requesting FDOT to change the traffic light cycle to an "all-walk" system, allowing pedestrians to cross in all directions simultaneously before allowing vehicular traffic to proceed.

She then said that the 2006 height restrictions imposed by the Village were originally implemented due to public dissatisfaction with Council decisions at that time. She emphasized the importance of public forums where residents could voice their opinions comfortably, ensuring that decision-making remained transparent and representative of the community's evolving needs.

Mayor Freimark said that the newly installed crosswalk was a demand from the Surfside community, and its inclusion was non-negotiable. He acknowledged that the crosswalk had extended traffic signal cycles and added further delays to an already congested area.

Chief Flowers said that the new crosswalk added approximately 10 to 17 seconds to the traffic cycle, and new signage now prohibited right turns at specific intersections, which had previously allowed some traffic to flow more smoothly. He said the Police Department was collaborating with Miami-Dade traffic control to adjust the traffic light timing along 96th Street, Harding Avenue, and Byron Avenue to improve traffic flow.

Deputy Chief Mauricio Escarra said that traffic sensors at the Bal Harbour Shops entrance had malfunctioned, causing unnecessary signal changes and further delays, and a radar-based detection system had been approved to replace the faulty sensors, which would ensure that traffic signals would only change when vehicles were actually present.

Rita Collins, 155 Biscay Drive, raised concerns about upcoming construction projects at Bal Harbour Shops, which would involve roadwork on Collins Avenue. She asked whether the village had required nighttime work to mitigate traffic disruptions, to which Mr. Gonzalez responded that the project's phasing plan spanned approximately 14 months, and while some work would occur during the day, any activities that would significantly impact traffic would be scheduled at night.

Beth Berkowitz, 10160 Collins Avenue, said she had concerns about utility access issues for buildings on the west side of Collins Avenue. She explained that water meters for some buildings, including the Admiralty, were located behind the Gated Community's wall, which made it difficult for residents to detect leaks, monitor water usage, or address shut-offs in a timely manner.

Mr. Gonzalez said that ongoing infrastructure upgrades in the gated community did not yet include modifications to address the West side's utility concerns, but he assured that the matter would be reviewed for potential solutions.

R10 - VILLAGE MANAGER REPORT

R11 - VILLAGE CLERK REPORT

R11A Lobbyist Report

R12 - VILLAGE ATTORNEY REPORT

END OF REGULAR AGENDA

ADJOURNMENT- The meeting was adjourned at 8:35 PM.

Mayor Jeffrey P. Freimark



Attest:

Dwight S. Danie, Village Clerk

BAL HARBOUR

- V I L L A G E -

Mayor Jeffrey P. Freimark
Vice Mayor Seth E. Salver
Councilman Alejandro Levy
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 Meeting Minutes

February 24, 2025

At 6:30 PM

Bal Harbour Village Hall • Council Chamber • 655 96th Street • Bal Harbour • Florida 33154

This meeting was conducted in person. The meeting was also broadcast on our website at <https://balharbourfl.gov/government/village-clerk/minutes-and-agendas/>. Members of the public were also encouraged to participate by email (meetings@balharbourfl.gov) or by telephone at 305-865-6449.

CALL TO ORDER/ PLEDGE OF ALLEGIANCE- Mayor Freimark called the meeting to order at 6:49 following the General Employees' Retirement Board meeting.

The following were present:

Mayor Jeffrey P. Freimark
Vice Mayor Seth E. Salver
Councilman Alejandro Levy
Councilman Buzzy Sklar
Councilman David Wolf

Also present:

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

The Pledge of Allegiance was led by Mayor Freimark.

REQUESTS FOR ADDITIONS, WITHDRAWALS AND DEFERRALS

Vice Mayor Salver requested that a discussion item be added to the Agenda regarding membership on the Resort Tax Committee.

PRESENTATIONS AND AWARDS

PA1 Proclamation Recognizing Black History Month

Mayor Freimark recognized February 2025 as Black History Month highlighting this year's theme, "African Americans in the Pursuit of Excellence."

PA2 Proclamation Recognizing Colorectal Cancer Awareness Month

This item was deferred until March 18, 2025.

PA3 Legislative Update: Senator Shevrin Jones & Representative Fabian Basabe

Mr. Gonzalez introduced Kai Garel, Legislative Aide to Florida State Senator Shevrin Jones and Florida State Representative Fabian Basabe. Mayor Freimark thanked both for attending and acknowledged their strong relationships between the Village.

Mr. Garel thanked the Council for inviting Senator Jones and expressed his appreciation for the ongoing collaboration with the Village. He described the Senator's work on several bills including:

- SB 268 which would create a public records exemption for public officials; and
- SB 204 which would require active shooter and mass casualty training and certification for teachers, and
- SB 236 which would create a Community Violence Task Force within the Florida Department of Law Enforcement.

He then reviewed other bills that were yet to be filed that would address health club contracts and the elimination of hidden fees in pricing structures.

Mr. Garel noted that the total proposed State budget reflected a \$3 billion decrease from the current fiscal year, while the proposed increase in general revenue is \$383 million. He assured the Council that his office would continue working closely with the Village and its lobbying team to advance its appropriations for the Cutwalk/Fire Access Restoration and Stormwater Pump Station projects

Councilman Sklar asked about a recent statement from Governor DeSantis regarding the potential elimination of property taxes. Mr. Garel said that he had only recently seen the proposal and he could provide an answer once he had more information.

Representative Basabe then addressed the Council, thanking the Village for being one of the easiest municipalities to work with. He praised the Village's management and commended their lobbyists for their effectiveness in securing funding. He noted that since his election, record amounts of funding had been secured for the district, including hundreds of millions of dollars for resiliency efforts, wastewater management grants, and other infrastructure initiatives.

He described key pieces of legislation that he was sponsoring, including:

- HB 923 which would address Florida's housing affordability crisis by incentivizing mixed-use and multi-family developments; and
- HB 913, which focused on modernizing condominium governance to improve financial stability and transparency; and
- HB 867, sought to improve transportation infrastructure by linking Miami-Dade, Broward, and Palm Beach counties.

Representative Basabe talked about the need for better regional planning to address growing traffic congestion adding that local governments had tools available to regulate development through zoning and setbacks. In regard to noise and behavior issues along the Intracoastal Waterway, he suggested that State laws regarding disturbing the peace should be enforced more strictly and that local and County authorities needed to collaborate to address the issue.

PA4 Florida Power & Light Presentation

This item was considered at 7:24 P.M. following Agenda Item R7A. Mayor Freimark introduced the item, saying that the ongoing issues with the electrical power infrastructure in the Gated Community and ongoing power reliability issues in the gated community were of significant concern to residents..

Mr. Gonzalez introduced FP&L representative Chealsea Lunn newly-assigned to the Village, replacing Addys Kuryla who was also present.

Armando Fernandez, Director of External Affairs for FP&L in Miami-Dade County, introduced himself and his team, including Ms. Lunn, Ms. Kuryla, Javier Palma, and engineering lead Diego Piñedo. He affirmed FP&L's commitment to working with the Village which, he added, presented unique challenges compared to traditional FP&L systems. He listed three options: repairing the existing equipment, replacing it with modern equipment in its present location, or upgrading and relocating the equipment to the front of the properties. He added that the last option would require 100% participation from affected residents, particularly for easements allowing equipment relocation to front yards. He then said that he and his team were available to answer questions.

Councilman Wolf said that this issue had been ongoing for many years and that he was pleased to hear that FP&L now wanted to move forward, but pointed out that past conversations had indicated reluctance from FP&L. He said he believed this was why the Civic Association had hired legal counsel to push the project forward. He said that the infrastructure was over 50 years old, was failing, and had even caused fires and that residents were frustrated and expected progress.

Councilman Sklar said that residents were tired of “happy talk” and demanded action or ongoing power outages, brownouts, and even fires, which created unsafe living conditions. Mr. Fernandez said that FP&L had been called to a fire in 2023 and that it was determined by the fire marshal that FP&L was not responsible. Councilman Sklar then said that he was disappointed that FP&L arrived without a concrete plan, saying that residents need clear answers on costs, easements and timelines.

Ms. Kuryla said that FP&L had conducted town hall meetings, engineering sessions and presentations with maps and had repeatedly informed residents of the necessary easements. She said that she had not received the required permissions for the project to proceed.

Councilman Wolf said that the project had stalled when FP&L removed the budget for it and asked if the budget had been reinstated, to which Mr. Palma said the original plan included shared costs

Babak Raheb, 128 Balfour Drive, said that FP&L had a contractual obligation to provide electricity without requiring residents to cover costs. He said he would not pay for hookup and expressed his concern for FP&L increasing rates after hurricanes and other events while failing to invest in infrastructure improvements.

Neca Logan, 64 Camden Drive noted that the Blachars had a non-functioning “dog house” in their backyard. She asked for transparency about the state of the electrical grid, saying that residents had never received clear answers. She said that in 2018, FP&L had stated that all new construction would require transformers, but this had not been enforced.

Rita Collins, 55 Biscay Drive, said that that nothing had changed in over 22 years. She said that FP&L has strung residents along and failed to take action despite repeated meetings. She said that some residents had paid out of pocket to get upgrades, which she said contradicted FP&L’s insistence on needing 100% participation.

Mayor Freimark urged FP&L to develop a new approach, stating that repeating the same ineffective strategy was pointless. He said that he would like FP&L to return with an actual plan and a clear answer regarding funding.

CONSENT AGENDA

C6 - COUNCIL MINUTES

C6A January 13, 2025 Village Council Minutes

R7 - RESOLUTIONS

R7A A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE BAL HARBOUR VILLAGE LEGISLATIVE AGENDA FOR THE 2025 FLORIDA LEGISLATIVE SESSION; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

This item was considered at 7:16 P.M. immediately following Agenda Item PA3. Mr. Gonzalez introduced the item saying that the Village, over the past few years, has focused primarily on grant submissions and projected requests. He said the Village would be seeking a grant for the Village Cut Walk and Fire Access element of the Harbourfront Jetty Park project and an allocation of \$670,000 for a stormwater grant. He said that Vice Mayor Salver had also proposed adding a request for funding for a traffic study along A1A, from Golden Beach to Miami Beach.

Vice Mayor Salver said that the recent installation of a single crosswalk on 96th Street had caused significant congestion, highlighting the need for a comprehensive traffic analysis. He added that traffic issues affected everyone, including commuters, schoolchildren, and emergency responders, and that a coordinated effort was needed to ensure better flow along the corridor.

Representative Basabe expressed his support for the proposal and stated that he would reach out to the Florida Department of Transportation (FDOT) to discuss potential solutions. He said that there was a County official, Frank, who could address the timing of traffic lights to improve traffic flow.

Mayor Freimark added that Miami-Dade County Commissioner Micky Steinberg needed to ensure that Miami-Dade County was represented at meetings regarding traffic flow.

There was a general consensus for to have the Village Manager request the attendance of County officials at a future meeting in regard to traffic flow.

MOTION: A Motion to add a request for funding for an A1A traffic study to the list of legislative priorities was moved by Vice Mayor Seth E. Salver and seconded by Mayor Jeffrey P. Freimark.

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

MOTION: A Motion to approve the Resolution was moved by Vice Mayor Seth E. Salver and seconded by Mayor Jeffrey P. Freimark.

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

R7B A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING THE AGREEMENT BETWEEN THE VILLAGE AND ORNA SECURITY, FOR THE PROVISION OF SECURITY GUARD SERVICES WITHIN THE GATED RESIDENTIAL COMMUNITY; AT ESTABLISHED RATES, IN THE AMOUNT NOT TO EXCEED ANNUAL BUDGETARY ALLOCATIONS FOR ALL LABOR, EQUIPMENT AND RELATED SERVICES AS DEFINED WITHIN THE AGREEMENT; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

This item was considered at 7:55 P.M following Agenda Item PA4. Mr. Gonzalez introduced the item saying that an RFP had been issued and a new security firm, Orna Security, had been recommended for approval. He said that selection process was driven by feedback from members of the Civic Association

John Oldenburg, Director of Public Works and Beautification, provided an overview of the RRP process saying that five firms had submitted proposals with Orna Security as the preferred choice. He said that the evaluation committee had prioritized methodology, service quality and responsiveness when making their recommendation. He said that Orna Security demonstrated a superior understanding of the community's needs and was highly rated in all evaluation categories.

Neca Logan, the past president of the BHCA and member of the Committee, said that the residents had pushed for this process because they wanted to explore better security options. She said the committee unanimously agreed that Orna Security was the best choice due to its professionalism, technology-driven approach, and ability to tailor services to the needs of the community.

Councilman Sklar expressed his concern that security guards at the Collins Avenue entrance were not efficiently processing vehicles, which he said resulted in traffic congestion and backups on Collins. Mr. Oldenburg said that the contract with Orna Security included specific performance requirements to improve gate efficiency.

Councilman Wolf asked whether the transition between firms would be handled smoothly to avoid any security lapses, to which Mr. Oldenburg said that a transition plan was built into the contract, requiring the new security team to undergo training and onboarding before fully taking over operations, and that the new firm would phase in gradually over the next 45 days to ensure continuity of service.

Anna Chavarria, BHCA Property Manager, described a new visitor management system adding that homeowners and construction project managers will need to pre-register guests and workers.

Babak Raheb, 128 Balfour Drive, suggested requiring contractors to park outside the community and be shuttled in.

MOTION: A Motion to approve the Resolution was moved by Mayor Jeffrey P. Freimark and seconded by Councilman David Wolf.

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

R7C A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH WJ ARCHITECTS IN COLLABORATION WITH WOLFBERG ALVAREZ & PARTNERS FOR THE PROVISION OF ARCHITECTURAL, ENGINEERING, AND CONSTRUCTION ADMINISTRATION SERVICES FOR THE DESIGN AND DEVELOPMENT OF THE NEW BAL HARBOUR VILLAGE HALL, IN AN AMOUNT NOT TO EXCEED FOUR MILLION THREE HUNDRED FIFTY-ONE THOUSAND SIX HUNDRED EIGHTY-SEVEN DOLLARS (\$4,351,687), WHICH INCLUDES AN OWNER'S DESIGN CONTINGENCY; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

Mr. Gonzalez introduced the item saying that the new Village Hall was to be constructed on the old Fairfield site pursuant to the Development Agreement with the Bal Harbour Shops. He said that the design work for the project was originally awarded to Zyscovitch Architects, but the process was halted and a new RFQ was issued, with Wannemacher Jensen (WJ) Architects, Inc. in collaboration with Wolfberg Alvarez and Partners being selected. He said that the fee structure was lower and the contract included both basic and specialty services with not-to-exceed costs.

Matilde Reyes, Capital Planning Director, provided an overview of the negotiation process saying that the agreement covered all necessary aspects while maintaining cost efficiency. She noted that while the specialty services included in the agreement had been assigned estimated costs, those amounts were not final and could be adjusted if better pricing was found. She said that all specialty service costs were capped, meaning that even if additional services were required, the final cost would not exceed the stated budgeted amount unless separately approved.

Mayor Freimark said that he recalled that during the initial presentations, he was assured that the contract would not include any change orders and asked why that specific clause had not been included in the contract language. He added that he already knew the likely response but stated that he still needed to ask the question for the record.

Harold Somarriba, WJ Architects, said that change orders were a natural part of any project, particularly for unforeseen conditions or changes requested by the owner. He said that while they aimed to minimize change orders as much as possible, they could not absolutely guarantee that none would occur.

Councilman Sklar asked if there were errors or omissions in the architectural plans that resulted in additional costs to the general contractor (GC), would WJ cover those costs, or would the Village be responsible, to which Mr. Somarriba said that he would need to consult with their legal counsel before answering definitively.

Ms. Reyes said that she would work to ensure that the agreement included language specifying that the firm would be responsible for design errors.

There was a general consensus from the Council have the contract language regarding errors and omissions formally reviewed and to postpone the final approval of the contract until the next Council meeting

Mr. Gonzalez said that a delay of three to four weeks would not significantly impact the project timeline and that it was better to ensure the correct language was included in the contract rather than rush approval.

R7D A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AUTHORIZING THE EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH KIMLEY-HORN AND ASSOCIATES, INC. AS THE ENGINEER OF RECORD (EOR) AND PRIME CONSULTANT FOR THE HARBOURFRONT PARK, JETTY, AND CUTWALK PROJECT; REALLOCATING SIX HUNDRED TEN THOUSAND, SEVEN HUNDRED THIRTY-SEVEN DOLLARS AND THIRTY-FIVE CENTS (\$610,737.35) IN PREVIOUSLY AUTHORIZED FUNDS TO COVER THE AGREEMENT AND ASSOCIATED SUBCONSULTANT SERVICES; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

Mr. Gonzalez introduced the item saying that within a few months, the Village was expected to break ground on the Harbourfront Park Jetty and Cut Walk Project and that this resolution would restructure the project's design team and appoint Kimley-Horn as the new engineer of record. He said that this change was necessary to ensure efficiency and meet critical grant deadlines associated with the project.

He said that original engineering team lacked the necessary resources, leading to a restructuring that brought in Kimley-Horn, a firm with experience in similar projects, and that Kimley-Horn could provide in-house services for civil engineering, landscape architecture, and MEP engineering, streamlining the process and preventing delays. He added that the transition required no new funding, only a reallocation of previously approved funds.

He said that the project was partially funded by multiple grants, including a \$2 million grant from the Florida Inland Navigation District (FIND) which had a strict expenditure deadline of September 2025 for which the project need to advance quickly into

construction. He highlighted a cost savings from the restructuring of approximately \$70,000. He said the \$610,737.35 allocation for Kimley-Horn's services was not new spending but a reallocation of existing funds and he recommended keeping the \$70,000 in savings as a contingency due to the complexity of the project and the potential for unforeseen costs.

Councilman Sklar asked about the specific project timeline and whether the Village was still on track to begin construction in the coming months. Mr. Gonzalez responded that the project was on schedule, adding that meeting the grant funding deadlines required finalizing the Guaranteed Maximum Price (GMP) agreement with the construction team as soon as possible.

Councilman Sklar asked if any delays were anticipated, to which Mr. Gonzalez said that although the project was complex, he was confident that Kimley-Horn's involvement would help accelerate the final pre-construction steps.

Councilman Wolf asked whether the Village had a clear plan to ensure that enough funds were expended before the deadline to meet FIND's requirements, to which Mr. Gonzalez said that a grant compliance strategy was in place.

MOTION: A Motion to approve the Resolution was moved by Vice Mayor Seth E. Salver and seconded by Mayor Jeffrey P. Freimark.

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

R9 - NEW BUSINESS AND COUNCIL DISCUSSION

R9A- PUBLIC COMMENT

Babak Raheb, 128 Balfour Drive, expressed his concerns about traffic congestion and the impact of Surfside's crosswalk installation, and construction worker oversight in the Gated Community.

Neca Logan, 64 Camden Drive, expressed her concern about the large crane being used at the Bal Harbour Shops construction site.

Mr. Gonzalez said that the Village passed an ordinance last year amending construction noise and work hours for Bal Harbour Shops, but enforcement was put on hold due to a lawsuit filed under a new state statute. He said that in regard to crane operations, legal research determined that state regulations govern their use, not local or county rules and that while the Village has no authority over the matter, the Civic Association may negotiate air easements with the involved parties.

R9B- Discussion regarding membership on Resort Tax Committee.

This item was added to the Agenda at the beginning of the meeting. Vice Mayor Salver introduced the item saying that a Resort Tax Committee member was involved in a publicized incident, leading to their possible suspension by their employer and since committee members must be employed by businesses that collect the resort tax, their termination would make them ineligible to serve. Ms. Trevarthen Section 249 of the Village Code, which allows removal for misconduct or failure to attend meetings. There was a general consensus from the Council that there was a need to verify the termination, but serving on a committee is a privilege, and even the appearance of impropriety matters, and they agreed to begin seeking nominations for a replacement.

R10 - VILLAGE MANAGER REPORT

R11 - VILLAGE CLERK REPORT

R11A Lobbyist Report

R12 - VILLAGE ATTORNEY REPORT

R1A Village Attorney Report

Mr. Trevarthen announced that pursuant to section 286.011(8) she would be scheduling an attorney client session to to seek advice from the Council on pending litigation in the following matters.

- a. BAL HARBOUR SHOPS, LLC v. VILLAGE OF BAL HARBOUR, Case No. 2024-010142-CA-01.
- b. BAL HARBOUR SHOPS, LLC v. VILLAGE OF BAL HARBOUR, Case No. 2024-001246-CA-01.
- c. BAL HARBOUR SHOPS, LLC v. VILLAGE OF BAL HARBOUR, Case No. 2025-002494-CA-01.

END OF REGULAR AGENDA

ADJOURNMENT- The meeting was adjourned at 8:43 PM.

Mayor Jeffrey P. Freimark



Attest:

Dwight S. Danie, Village Clerk

BAL HARBOUR

- VILLAGE -

COUNCIL ITEM SUMMARY

Condensed Title:

AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING CHAPTER 8.5 "FLOOD DAMAGE PREVENTION", SECTION 8.5-2 "DEFINITIONS" OF THE CODE OF ORDINANCES; AMENDING CHAPTER 21 "ZONING", ARTICLES I - III TO AMEND DEFINITIONS, PROCEDURES, AND REGULATIONS RELATED TO HEIGHT;

Issue:

Should the Village Council amend Chapter 8.5 of the code of ordinances regarding building heights in the Village?

The Bal Harbour Experience:

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

Item Summary / Recommendation:

The proposed Ordinance addresses conflicts between the Village Charter and newly enacted state laws by amending Bal Harbour Village's height regulations and procedures. Due to recent legislative changes that preempt the Village's ability to require voter referendums for land development regulation amendments, this Ordinance establishes alternative safeguards to ensure transparency, public participation, and thorough scrutiny in future height regulation changes. The Ordinance introduces several key provisions, including requiring that any proposed changes to height regulations be presented as a discussion item at a regularly scheduled Village Council meeting before initiating the statutory adoption process, ensuring that the public has an opportunity to provide input. Additionally, it mandates that the Local Planning Agency (LPA) hold a public hearing on any proposed height modifications prior to the first reading by the Village Council. To further strengthen oversight, the ordinance establishes a requirement for a supermajority (4/5) vote of the Village Council to approve any height regulation changes at both first and second readings.

Furthermore, the Ordinance revises the methodology for measuring building height, aligning it with the highest minimum elevation required by county, state, or federal law. This adjustment accounts for Base Flood Elevation and incorporates voluntary Freeboard allowances, promoting resiliency and compliance with evolving floodplain regulations. Lastly, the ordinance establishes a uniform maximum height limit of 56 feet for municipal buildings, regardless of their zoning district or location.

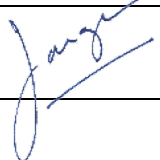
THE ADMINISTRATION RECOMMENDS APPROVAL OF THIS ORDINANCE.

Financial Information:

| | Amount | Account | Account # |
|--|--------|---------|-----------|
| | X | X | X |

Sign off:

| | | |
|------------------|-------------------------|-------------------|
| Village Attorney | Chief Financial Officer | Village Manager |
| Susan Trevarthen | Claudia Dixon | Jorge M. Gonzalez |



BAL HARBOUR

- V I L L A G E -

MEMORANDUM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager

DATE: March 18, 2025

SUBJECT: **AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING CHAPTER 8.5 "FLOOD DAMAGE PREVENTION", SECTION 8.5-2 "DEFINITIONS" OF THE CODE OF ORDINANCES; AMENDING CHAPTER 21 "ZONING", ARTICLES I - III TO AMEND DEFINITIONS, PROCEDURES, AND REGULATIONS RELATED TO HEIGHT; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, AND FOR AN EFFECTIVE DATE. (Zoning By Referendum)**

ADMINISTRATIVE RECOMMENDATION

I am recommending approval of this Ordinance.

BACKGROUND

In recent sessions, the Florida State Legislature has enacted certain laws which have the effect of limiting or preempting local governments' land development regulation powers. Among the various laws, one specifically has the effect of preempting requirements for initiative or referendum in regard to land development regulations. In the past this has been described as "Zoning by Referendum." The attached analysis by the Bal Harbour Village Attorney examines the argument that the new law prevents the Village from seeking voter approval of future changes to the Village's height regulations in accordance with Section 80 of the Village Charter. The issue was discussed at the January 13, 2025 Council meeting, and the Administration identified that the legal analysis identifies an apparent conflict, and recommended that the conflict can and should be proactively resolved by Council action.

In light of the Village Attorney's analysis and the argument that Village Charter Section 80 conflicts with and therefore has been preempted by state law, the Village Council was recommended to consider amending its height regulations and definitions to provide greater protections that could substitute for the referendum requirement that has been preempted, and adopting an ordinance that creates a process for how it will consider requests for future changes to the height standards of the zoning districts in the Code moving forward, which would provide clarity and certainty of process as follows:

1. Establish extraordinary measures requiring greater scrutiny and consideration before any future change to height regulations is approved. These may include:

- o Require a Discussion Item be placed and considered at a regularly scheduled Village Council meeting on any future such request before proceeding with the statutory process of adoption,
 - Require that the Discussion Item allow for public comment?
 - o Require that the legal public hearing by the Local Planning Agency (LPA) be held before the first reading by the Village Council,
 - o Require a supermajority (4/5) vote of the Village Council to successfully enact any such legislation:
 - Only at Second Hearing? or
 - Both First and Second Hearing?
2. Harmonize the method of measuring height with the minimum required elevation for finished floors to be consistent village wide, allowing for current and future FEMA flood map or other State and Federal requirements. (i.e. FEMA, Building Code, or other Base Flood Elevation standards, etc.)
3. Provide for a voluntary freeboard allowance of some specified maximum amount,
 - o During the 2024 legislative session, the Florida Legislature considered a law mandating minimum floodplain requirements and for additional voluntary freeboard requirements adopted locally up to 10 feet. It is expected that this legislation will be considered again during the 2025 session with a good chance of success.
4. Establish a universal height limit for municipal or institutional buildings, regardless of zoning district or location,

The Council discussed these recommendations at the January 13, 2025, Council Meeting and directed the Village Manager and Village Attorney to draft proposed text amendments for all of these proposed actions for consideration at a future Council meeting. The Council further discussed and refined its proposed course of action at the Village Council retreat in February 2025.

ANALYSIS

This Ordinance has been drafted reflecting the input received at the January 13, 2025 Council meeting and at the Council Retreat, and is provided for Council consideration on first reading. The Local Planning Agency review of the ordinance will be scheduled prior to second reading.

The Ordinance amends Chapter 8.5 "Flood Damage Prevention" to provide for a maximum voluntary freeboard allowance at the level required by applicable county, state, or federal law, and implements this definition in Chapter 21 as follows:

Sec. 8.5-2. - Definitions.

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

* * *

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed. Freeboard results in significantly lower flood insurance rates due to lower flood risk. The Village's maximum voluntary freeboard is the amount required by applicable county, state, or federal law.

Sec. 21-1. - Definitions and rules of construction.

(c) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

Height of a Building or Structure means the vertical distance from the highest minimum elevation provided by county, state, or federal law; the Base Flood Elevation plus any additional Freeboard, as defined in section 8.5-2. of the Village Code, average Street Grade to the highest point of the coping of a flat roof or to the average height of the highest gable of a pitch or hip roof. ~~Notwithstanding the foregoing, the height of Single-Family Dwellings may be measured from the highest minimum elevation provided by state or federal law; the Base Flood Elevation plus any additional Freeboard, as defined in section 8.5-2. of the Village Code.~~ Penthouses shall be considered in determining both the Height and the number of Stories of a Building. When a parapet wall is provided, the vertical distance shall be measured from the highest minimum elevation provided by county, state, or federal law; the Base Flood Elevation plus any additional Freeboard, as defined in section 8.5-2. of the Village Code, average Street Grade to the highest point of its parapet wall. Parapet walls shall not exceed four feet in height as measured from the highest point of the roof to the highest point of the parapet wall.

It also amends Chapter 21 "Zoning", Article II "Administration" to establish extraordinary measures requiring greater public scrutiny and Council consensus before any future change to height regulations is approved, including the placement of a discussion item on an agenda of a regular Council meeting prior to starting the statutory adoption process for such changes, open to public comment; requiring that the Local Planning Agency (LPA) public hearing for such changes be held before the first reading by the Village Council; and requiring a supermajority of the Council (4/5 vote) to approve first and second reading of any such legislation, as follows:

Sec. 21-56. Procedures for Amendments to the Village Code that Increase Developable Height. The following extraordinary measures, to ensure greater public scrutiny and deliberation, shall be followed whenever the Village Council proposes to amend the Village Code or take other action that increases the height limit in any zoning district in the Village:

(a) A discussion item must be placed on an agenda of a regular Village Council meeting prior to starting the statutory notice and adoption process for such proposal, and the discussion item must include public comment;

(b) The Local Planning Agency (LPA) public hearing for such a proposal must be held before the first reading by the Village Council; and

(c) A supermajority of the Village Council (4/5 vote) is required to approve both first and second readings of any such legislation or action.

Finally, the Ordinance sets a maximum height limit for municipal buildings regardless of their location or zoning district, as follows:

Sec. 21-79. Height Limit for Municipal Buildings. A height limit of 56 feet applies to municipal buildings, regardless of their zoning district or location.

THE BAL HARBOUR EXPERIENCE

The Ordinance provides for a maximum level of voluntary freeboard, and allows for all uses to measure their height from the highest minimum elevation provided by county, state, or federal law, which supports the goal of Resiliency & Sustainable Community. It sets a maximum height for municipal structures, which supports the goal of Modernized Public Facilities/Infrastructure and Safety.

CONCLUSION

The proposed Ordinance was drafted as requested by the Village Council, to resolve the conflict presented by the new statute that arguably prevents the Village from seeking voter approval of future changes to the Village's height regulations in accordance with Section 80 of the Village Charter.

The Ordinance amends the Village's height regulations and definitions to provide greater protections to substitute for the referendum requirement that has been preempted, and creates a process for how it will consider requests for future changes to the height standards of the zoning districts in the Code moving forward, which will provide clarity and certainty of process. It also sets a maximum height for municipal buildings. It is recommended that the Village Council adopt the proposed Ordinance on First Reading.

Attachments:

1. Discussion Item - January 13, 2025
2. Village Attorney Analysis

ORDINANCE NO. 2025____

AN ORDINANCE OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA, AMENDING CHAPTER 8.5 "FLOOD DAMAGE PREVENTION", SECTION 8.5-2 "DEFINITIONS" OF THE CODE OF ORDINANCES; AMENDING CHAPTER 21 "ZONING", ARTICLES I - III TO AMEND DEFINITIONS, PROCEDURES, AND REGULATIONS RELATED TO HEIGHT; PROVIDING FOR CONFLICTS, SEVERABILITY, INCLUSION IN THE CODE, AND FOR AN EFFECTIVE DATE.

WHEREAS, the Bal Harbour Village (the "Village") Council finds it periodically necessary to amend its Code of Ordinances (the "Village Code") in order to update regulations and procedures to implement municipal goals and objectives; and

WHEREAS, current Village regulations address the measurement of height, and for uses other than single family, require the measurement to begin from the average street grade of the adjacent road; and

WHEREAS, because the highest minimum elevation provided by applicable law is increasing with sea level rise and the related increase in the levels of groundwater in the Village, the practically available height for development is diminished by this method of measurement; and

WHEREAS, changing this approach to measurement of height in the Village and clarifying the maximum level of freeboard will increase the sustainability of development now and into the future, and allow reasonable developable use of the current height limits; and

WHEREAS, the Village Council seeks to amend Chapter 8.5 "Flood Damage Prevention" to provide for a maximum freeboard allowance at the level required by applicable county, state, or federal law; and

WHEREAS, the Village further seeks to amend Chapter 21 "Zoning", Article I "In General", Section 21-1 "Definitions and Rules of Construction" to amend the definitions and regulations applicable to the measurement of height of uses other than single family residential; and

WHEREAS, the Village Council further seeks to amend Chapter 21 “Zoning”, Article II “Administration” to establish extraordinary measures requiring greater public scrutiny and Council consensus before any future change to height regulations is approved, including the placement of a discussion item on an agenda of a regular Council meeting prior to starting the statutory adoption process for such changes, open to public comment; requiring that the Local Planning Agency (LPA) public hearing for such changes be held before the first reading by the Village Council; and requiring a supermajority of the Council (4/5 vote) to approve first and second reading of any such legislation; and

WHEREAS, the Village Council further seeks to amend Chapter 21 “Zoning”, Article III “District Regulations” to establish a height limit for municipal buildings that will apply to property regardless of zoning district or location; and

WHEREAS, the Administration recommended approval of this Ordinance in its report for the March 18, 2025 Village Council meeting; and

WHEREAS, the Village Council, sitting as the Local Planning Agency, has reviewed this Ordinance at a duly noticed public hearing in accordance with law on April __, 2025, determined that this Ordinance is consistent with the Village’s Comprehensive Plan, and recommended approval; and

WHEREAS, the Village Council conducted a first and second reading of this Ordinance at duly noticed public hearings, as required by law, and after having received input from and participation by interested members of the public and staff, the Village Council has determined that this Ordinance is consistent with the Village’s Comprehensive Plan and in the best interest of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED 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. Village Code Amended - Chapter 8.5. That Chapter 8.5 “Flood Damage Prevention” of the Code of Bal Harbour Village, Florida, is hereby amended to

read as follows:¹

CHAPTER 8-5. - FLOOD DAMAGE PREVENTION

* * *

Sec. 8.5-2. - Definitions.

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

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

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

* * *

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed. Freeboard results in significantly lower flood insurance rates due to lower flood risk. The Village's maximum voluntary freeboard is the amount required by applicable county, state, or federal law.

* * *

Section 3. Village Code Amended - Chapter 21. That Chapter 21 "Zoning" of the Code of Bal Harbour Village, Florida, is hereby amended to read as follows:

CHAPTER 21. - ZONING

ARTICLE I. - IN GENERAL.

Sec. 21-1. - Definitions and rules of construction.

(a) For the purpose of this chapter, which shall be known as the Zoning Ordinance of Bal Harbour Village, Florida, words used in the present tense include the future; the singular number includes the plural, and the plural the singular; the words "used for" include the

¹ Additions to existing Village Code text are shown by underline; deletions from existing Village Code text are shown by ~~striketrough~~. Any changes between first and second reading are shown by highlighted double underline and ~~double striketrough~~ font.

meaning "designed for"; the word "structure" includes the word "building"; the word "shall" is mandatory and not directory; and the word "lot" includes the words "plot" and "tract".

(b) Words and terms not defined in this section shall be interpreted in accord with their normal dictionary meaning and customary usage.

(c) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

Height of a Building or Structure means the vertical distance from the highest minimum elevation provided by county, state, or federal law; the Base Flood Elevation plus any additional Freeboard, as defined in section 8.5-2. of the Village Code, average Street Grade to the highest point of the coping of a flat roof or to the average height of the highest gable of a pitch or hip roof. ~~Notwithstanding the foregoing, the height of Single Family Dwellings may be measured from the highest minimum elevation provided by state or federal law; the Base Flood Elevation plus any additional Freeboard, as defined in section 8.5-2. of the Village Code.~~ Penthouses shall be considered in determining both the Height and the number of Stories of a Building. When a parapet wall is provided, the vertical distance shall be measured from the highest minimum elevation provided by county, state, or federal law; the Base Flood Elevation plus any additional Freeboard, as defined in section 8.5-2. of the Village Code, average Street Grade to the highest point of its parapet wall. Parapet walls shall not exceed four feet in height as measured from the highest point of the roof to the highest point of the parapet wall.

* * *

ARTICLE II. ADMINISTRATION

* * *

DIVISION 2. - AMENDMENTS; ZONING CHANGES; VARIANCES

Sec. 21-56. Procedures for Amendments to the Village Code that Increase Developable Height. The following extraordinary measures, to ensure greater public scrutiny and deliberation, shall be followed whenever the Village Council proposes to amend the Village Code or take other action that increases the height limit in any zoning district in the Village:

(a) A discussion item must be placed on an agenda of a regular Village Council meeting prior to starting the statutory notice and adoption process for such proposal, and the discussion item must include public comment;

(b) The Local Planning Agency (LPA) public hearing for such a proposal must be held before the first reading by the Village Council; and

(c) A supermajority of the Village Council (4/5 vote) is required to approve both first and second readings of any such legislation or action.

Secs. 21-~~567~~–21-75. - Reserved.

* * *

ARTICLE III. DISTRICT REGULATIONS

* * *

Sec. 21-79. Height Limit for Municipal Buildings. A height limit of 56 feet applies to municipal buildings, regardless of their zoning district or location.

Secs. 21-~~7980~~–21-95. - Reserved.

Section 4. 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 and they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion in the Code. That it is the intention of the Village Council, and it is hereby ordained that this Ordinance shall become and be made a part of the Bal Harbour Village Code; that the sections of this Ordinance may be renumbered or relettered to accomplish such intention; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Conflict. That all Sections or parts of Sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions, or parts of resolutions, in conflict with this Ordinance are repealed to the extent of such conflict.

Section 7. **Effective Date.** That this Ordinance shall become effective upon adoption on second reading. This Ordinance shall apply only to building permits for which a process number is issued after the effective date of this Ordinance.

PASSED AND ADOPTED on first reading this 18th day of March, 2025.

PASSED AND ADOPTED on second reading this ____ day of _____, 2025.



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

- V I L L A G E -

DISCUSSION ITEM

TO: Honorable Mayor and Village Council

FROM: Jorge M. Gonzalez, Village Manager

DATE: January 13, 2025

SUBJECT: **Discussion Regarding Impacts To The Village Charter Of State Preemptions (Zoning By Referendum)**

In recent sessions, the State Legislature has enacted certain laws which have the effect of limiting or preempting local governments' land development regulation powers. Among the various laws, one specifically has the effect of preempting requirements for initiative or referendum in regard to land development regulations. In the past this has been described as "Zoning by Referendum." The attached analysis by the Village Attorney examines the argument that the new law prevents the Village from seeking voter approval of future changes to the Village's height regulations in accordance with Section 80 of the Village Charter.

You will recall that this issue was previously discussed during the 2024 Village Council Retreat. At that time, we informed you of the legislation and our preliminary assessment of its impact on the Village charter. After some discussion and deliberation, the consensus of the council was to instruct the Village Attorney to further review the issue and provide a legal analysis of how the legislation specifically affects Bal Harbour Village.

In the intervening period, the Village also received correspondence from counsel for the Bal Harbour Shops, asserting arguments regarding the impact of this legislation on the Village Charter. Lastly, we have also conferred with counsel for other Bal Harbour Village property owners considering their property uses and the impacts of this legislation on their development plans.

The Village Attorney's research and analysis on this issue is attached for your review. The analysis identifies an apparent conflict that can and should be proactively resolved by Council action. This discussion item is presented to provide an opportunity for the Council to discuss the Village Attorney's analysis, ask pertinent questions and develop a consensus on a strategic path to move forward and give direction on the next appropriate steps to remedy the issues that have been identified.

Issues to Consider:

In light of the Village Attorney's analysis and the argument that Village Charter Section 80 conflicts with and therefore has been preempted by state law, the Village Council may wish to consider amending its height regulations and definitions to provide greater protections that could substitute for the referendum requirement that has been preempted. The Council may wish to consider adopting an ordinance that creates a process for how it will

consider requests for future changes to the height standards moving forward, which would provide clarity and certainty of process.

It should be noted that a host of other land development regulations are currently under the Village Council control, subject to any superseding County, State or Federal requirements. In addition, prior to the enactment of Section 80 of the Village Charter in 2006, matters relating to building height were also under the purview and control of the Village Council. Given the preemption, the Council is now (again) the body that should rightly assert control over all land development regulations.

Given this new legislative preemption and in consideration that building height in the past received an additional level of review, it is prudent for the Council to consider an Ordinance to establish its intention and procedures moving forward. In doing so, and in addition to establishing a process, there are other height related items that the Council may wish to consider and codify as part of this deliberation:

1. Establish extraordinary measures requiring greater scrutiny and consideration before any future change to height regulations is approved. These may include:
 - o Require a Discussion Item be placed and considered at a regularly scheduled Village Council meeting on any future such request before proceeding with the statutory process of adoption,
 - Require that the Discussion Item allow for public comment?
 - o Require that the legal public hearing by the Local Planning Agency (LPA) be held before the first reading by the Village Council,
 - o Require a supermajority (4/5) vote of the Village Council to successfully enact any such legislation,
 - Only at Second Hearing? or
 - Both First and Second Hearing?
2. Harmonize the method of measuring height with the minimum required elevation for finished floors to be consistent village wide, allowing for current and future FEMA flood map or other State and Federal requirements. (I.e. FEMA, Building Code, or other Base Flood Elevation standards, etc.)
3. Provide for a voluntary freeboard allowance of some specified maximum amount,
 - o During the 2024 legislative session, the Florida Legislature considered a law mandating minimum floodplain requirements and for additional voluntary freeboard requirements adopted locally up to 10 feet. It is expected that this legislation will be considered again during the 2025 session with a good chance of success.
4. Establish a universal height limit for municipal or institutional buildings, regardless of zoning district or location,

It is recommended that the Council discuss this matter and give instruction to the Village Manager and Village Attorney to draft proposed text amendments consistent with your guidance for Council consideration at a future Village Council meeting.

Attachments: Village Attorney Analysis

BAL HARBOUR

- V I L L A G E -

TO: Honorable Mayor and Village Council
Jorge Gonzalez, Village Manager

FROM: Susan L. Trevarthen, Village Attorney *SLT*

DATE: January 13, 2025

SUBJECT: **Legal Analysis of Village Charter Requirements Regarding Building Height**

This memo analyzes the question of the height limits applicable to development in the Village. This issue was discussed by the Village Council at its 2024 Retreat, as it related to recent state legislation prohibiting voter referenda on land development regulations. The Village also received correspondence from counsel for the Bal Harbour Shops, asserting arguments regarding the impact of this legislation on the Village Charter. And the Village has also conferred with counsel for other property owners about this issue. The Village Manager will present his recommendations for action on this issue in a discussion item for the January 13, 2025 meeting.

In brief, this analysis concludes that there is a reasonable argument that Section 80 of the Village Charter conflicts with recent state legislation, and therefore can no longer be enforced. The memo sets forth the history of this charter section and of the state law surrounding such provisions, describes and responds to the analysis received, and provides guidance on how the Village might read this section going forward. In a separate memo, the Village Manager presents options for how to respond to this analysis.

BACKGROUND

Village Charter Provisions re Height

Adopted in 2006 by a referendum vote of the Village electors (and amended by the voters in 2020 to address the measurement of height for Single Family Dwellings), Section 80 of the Village Charter establishes the height limits in the Village as follows:

Building height allowed on any property shall not exceed the permitted height for that property set forth in the Village's comprehensive plan¹ or municipal code, in effect the date this amendment is approved, whichever provisions are most restrictive. Notwithstanding the foregoing, the height of single family dwellings may be measured from the highest minimum elevation provided by state or federal law. Unless otherwise specified in the comprehensive plan or municipal code in effect the date this amendment is approved, each building "story" shall mean 11 feet in height.

Village Charter, § 80.

Attempts to further amend this section were rejected by the voters, including one in 2021 brought forward by petition that provided greater height for the Bal Harbour Shops property, and one in 2023

¹ The Village Comprehensive Plan does not regulate the height of development in the Village.

advanced by the Village Council to provide greater height for structures used for municipal purposes. See **Exhibit A**, Rejected Charter Amendments to Section 80.

What is the impact of having Section 80 in the Charter? Charters are created by vote of the electors, and may only be amended by similar vote of the electors. The Village Council lacks the power to directly amend the Charter without obtaining voter approval. See Section 166.031, Florida Statutes, in **Exhibit B**. Therefore, Village changes to Section 80, or to the 2006 height standards that Section 80 freezes in place, can only be accomplished with the approval of the electors.

All municipal charters are subject to the requirements of general law, which means that state statutes can override municipal charter requirements.²

Land Development Regulations re Height

Part II of Chapter 163, Florida Statutes, the Community Planning Act, requires local governments to adopt comprehensive plans by ordinance, and to adopt implementing land development regulations into their local codes of ordinances. The statute generally defines land development regulations as “ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land, except that this definition does not apply in s. 163.3213.”³ Ordinances regulating height are components of local zoning codes that regulate development, and are therefore land development regulations.

² **Section 166.021. Powers.**

(1) As provided in s. 2(b), Art. VIII of the State Constitution, **municipalities** shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and **may exercise any power for municipal purposes, except when expressly prohibited by law.**

(2) “Municipal purpose” means any activity or power which may be exercised by the state or its political subdivisions.

(3) The Legislature recognizes that pursuant to the grant of power set forth in s. 2(b), Art. VIII of the State Constitution, **the legislative body of each municipality has the power to enact legislation concerning any subject matter upon which the state Legislature may act, except:**

(a) The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution;

(b) Any subject expressly prohibited by the constitution;

(c) **Any subject expressly preempted to state or county government by the constitution or by general law; and**

(d) Any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3, and 6(e), Art. VIII of the State Constitution.

(4) The provisions of this section shall be so construed as to secure for municipalities the **broad exercise** of home rule powers granted by the constitution. It is the further intent of the Legislature to extend to municipalities **the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited** by the constitution, general or special law, or county charter and **to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited.** . . .

³ For purposes of substantially affected persons maintaining administrative actions to assure that land development regulations implement and are consistent with the local comprehensive plan, a land development regulation is defined in Section 163.3213(2)(b) as “an ordinance enacted by a local governing body for the regulation of any aspect of development, including a subdivision, building construction, landscaping, tree protection, or sign regulation or any other regulation concerning the development of land. This term shall include a general zoning code, but shall not include a zoning map, an action which results in zoning or rezoning of land, or any building construction standard adopted pursuant to and in compliance with the provisions of chapter 553 [Florida Building Code].

The Village Code of Ordinances, Chapter 21 “Zoning”, is the source of the Village’s height regulations, as limited by the Charter.

First, the Code supplies relevant definitions, as follows:

Sec. 21-1. - Definitions and rules of construction.

- (a) For the purpose of this chapter, which shall be known as the Zoning Ordinance of Bal Harbour Village, Florida, words used in the present tense include the future; the singular number includes the plural, and the plural the singular; the words "used for" include the meaning "designed for"; the word "structure" includes the word "building"; the word "shall" is mandatory and not directory; and the word "lot" includes the words "plot" and "tract".
- (b) Words and terms not defined in this section shall be interpreted in accord with their normal dictionary meaning and customary usage.
- (c) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

* * *

Height of a Building or Structure means the vertical distance **from the average Street Grade** to the highest point of the coping of a flat roof or to the average height of the highest gable of a pitch or hip roof. Notwithstanding the foregoing, the height of Single-Family Dwellings may be measured from the highest minimum elevation provided by state or federal law; the Base Flood Elevation plus any additional Freeboard, as defined in section 8.5-2. of the Village Code.⁴ Penthouses shall be considered in determining both the Height and the number of Stories of a Building. When a parapet wall is provided, the vertical distance shall be measured from the average Street Grade to the highest point of its parapet wall. Parapet walls shall not exceed four feet in height as measured from the highest point of the roof to the highest point of the parapet wall.

* * *

Penthouse means any Structure above the main roof of a Building used for living, professional or business purposes. Penthouses may also be used for housing elevator machinery and water storage tanks. Penthouses, except when used for machinery or storage of water, are considered as an additional Story to the height of a Building and shall be considered in Height measurement.

* * *

Story means that portion of a Building included between the upper surface of any floor and the upper surface of the floor next above, except that the topmost Story shall be that portion of a Building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement is more than six feet above Grade, such basement shall be considered a Story. For the purposes of Section 80 of the Village Charter, it is hereby specified that there shall be no limitation on the height of a building "story," so long as the overall height limits specified within this Code are not exceeded. It is the specific intent of the Village Council that the 11 foot story height limitation contained in Section 80 of the Charter shall not be applicable in any zoning district as it is the intention of the Council that the height of a story

⁴ This sentence was added to implement the 2020 Charter amendment, which added the following sentence to Section 80: “Notwithstanding the foregoing, the height of single family dwellings may be measured from the highest minimum elevation provided by state or federal law.”

shall be specified as "unlimited" so as to allow freedom of design for lofts, mezzanines, vaulted ceilings, lobbies, assembly areas, mechanical rooms or spaces, multi-story units or clerestory areas.

Street means a thoroughfare which affords the principal means of access to abutting Property.

Street Grade means the average elevation of the centerline of the abutting Street as measured at the crown of the road.

* * *

It is important to note that the definition of Story in the Code was amended by the Village Council prior to the effectiveness of Section 80 of the Charter, and overrode the 11-foot story height limitation in Section 80.

Therefore, as frozen by the Charter, the Code provides that height on properties (that are not single family) must be measured from average street grade. Calculations of whether the standards for height and number of stories are met must include any penthouses, and an additional four feet is allowed for parapet walls. The height of stories is not limited to 11 feet, and is measured from the upper level of each floor to the upper level of the next floor. Basements are considered stories if the finished floor of the story above the basement level is more than 6 feet above grade. The height and story limits on development other than single family are as follows:

| Zoning Category | Height Limit (Feet) | Stories |
|-------------------------|---|---|
| PC Private Club | 35 | 2 |
| RM-1 MF Residential | 30 | 2 |
| RM-2 MF Residential | 30 | 2 |
| RM-3 MF Residential | 30 | 2 |
| RM-4 MF Residential | 35 | 2 |
| RM-5 MF Residential | 45 | 3 |
| OF Ocean Front District | 275 (25 more for nonhabitable roof features) | 17 – additional stories controlled by front setback |
| B Business District | 56 | 3 |
| | Parking structures measured from surface parking level: 36 feet or 3 stories, or 56 feet or 5 stories with public hearing. Garage stories limited to 11.5 feet. | |
| | Up to 42,600 sq .ft. with a public hearing: 69 feet. | |
| | Stories limited to 19 feet | |

The Bal Harbour Shops and Height

This 16-acre property is designated Commercial COM on the Future Land Use Map of the Village's Comprehensive Plan. As noted above, the Plan does not regulate the height.

The property is zoned B Business, and therefore is limited by Section 21-318 of the Village Code to 56 feet in height and 5 stories with a public hearing, with a maximum story height of 19 feet, special height rules for parking garages, and the ability for up to 42,600 square feet to reach 69 feet with a public hearing.

In 2020, the Future of Bal Harbour committee collected petitions and qualified to place on a January 2021 ballot a proposal to change the height limits applicable to the Bal Harbour Shops property (the Special Business Improvement Area). The Shops indicated that the additional height was necessary to pursue a hotel and other development on their property, and the question proposed that the height limit for their property be set by the Village Council following a public hearing. The Village electors rejected this proposal. See **Exhibit A**. In January 2024, the Shops filed their Live Local Act development application, and

indicated that a key consideration in doing so was that this statute provides qualifying projects additional height for their property without approval of the Village electors or Village Council.

The Village amended the B District height requirement to acknowledge that it will follow the Live Local Act's height preemption for qualifying projects. Based on the Oceanfront OF zoning district, the only high-rise district in the Village Code, the height for such projects is limited to 275 feet with 25 additional feet available for nonhabitable roof features. The achievable height in stories is governed by the front setback; for each story over 17 stories, the setback from Collins Avenue must be increased. However, the Village denied the Live Local Act application, and found that it was not a qualifying project pursuant to state law. Litigation is pending regarding this issue.

Policy Issues with Inability of Village Council to Amend Height Regulations

As the Village identified in its early efforts to develop a program for the new Village Hall, the fact that that the Village's height regulations require measurement from street grade rather than the highest minimum elevation pursuant to state or federal law poses a growing challenge to development in this era of sea level rise. As the minimum elevation rises while the street grade and maximum height standards remain fixed, the developable height effectively shrinks. Preliminary studies show that Village Hall could not have the programmatically required space and meet the Code height limitations. If the height were measured from the highest minimum elevation, the professional architects indicated that they could design a Village Hall that met the Village's program requirements. However, when this issue was presented to the electors in May 2023 by the Village Council (prior to the statute becoming effective July 1, 2023), they rejected the use of the highest minimum elevation to measure the height of structures used for municipal purposes. See **Exhibit A**.

More recently, another property owner has inquired about this height limit and how it impacts redevelopment of a parcel on the west side of Collins Avenue. All development in the Village that is not single family faces this measurement challenge under the Code's height measurement.

Letter from Bal Harbour Shops

The Village received a letter from the attorneys for the Bal Harbour Shops, asserting that Village Charter Section 80 is no longer enforceable or valid because of the adoption of a statute by the Florida Legislature in 2023. See **Exhibit C**. Effective July 1, 2023, the new law created Section 163.3167(8)(b): "An initiative or referendum process in regard to any land development regulation is prohibited."

The letter argues that Section 80 conflicts with this statute by requiring voter approval to change the Village's height regulations in the Village Code, and therefore cannot be given effect. It further argues that the statute is retroactive in its effect and applies not just to prevent the adoption of future Charter requirements of this kind, but also to existing Charter provisions such as Section 80 of the Village Charter.

ANALYSIS

Statutory Prohibitions of Various Land Use and Zoning Decisions by the Voters

Chapter 2023-305, Laws of Florida, amended Section 163.3167's several prohibitions of voter approval requirements in relation to development to also prohibit "an initiative or referendum process in regard

to any land development regulation.”⁵ Section 163.3167(8)(b) broadened the existing prohibitions of local referenda and initiatives regarding comprehensive plan amendments and development orders.

It is not possible to generalize the impact of this statute on all charters in the state; most of them are unique in their wording. If the charters specifically call for voter approval of zoning ordinances, that is more clearly prohibited by Section 163.3167(8)(b). The Village has interpreted the Charter very conservatively, and has chosen to go to the electors for approval of any change that even arguably impacted Section 80.

More specifically, the Village has interpreted Section 80 of the Charter not to require elector approval of changes to **the Code**. Rather, as demonstrated by the Village’s implementation of the 2020 amendment to the method of measuring height of single family structures, the electors were asked to approve an amendment to Section 80 authorizing this change. After the voters approved the amendment to Section 80, the Village Council then used its legislative powers to amend the Code consistent with the amended Section 80.

In contrast, Miami Beach has charter provisions that require voter approval prior to any increase to the "zoned floor area ratio" of any property within the City, and prior to enacting any Ordinance that reduces the powers and duties of the Historic Preservation Board, or creates less stringent historic preservation standards or regulations. See Miami Beach Charter Sections 1.03(c)⁶ and 1.06⁷. Miami Beach concluded

⁵ Section 163.3167, Florida Statutes, provides in relevant part:

(8)(a) An initiative or referendum process in regard to any development order is prohibited.

(b) **An initiative or referendum process in regard to any land development regulation is prohibited.**

(c) An initiative or referendum process in regard to any local comprehensive plan amendment or map amendment is prohibited unless it is expressly authorized by specific language in a local government charter that was lawful and in effect on June 1, 2011. A general local government charter provision for an initiative or referendum process is not sufficient.

(d) A citizen-led county charter amendment that is not required to be approved by the board of county commissioners preempting any development order, land development regulation, comprehensive plan, or voluntary annexation is prohibited unless expressly authorized in a county charter that was lawful and in effect on January 1, 2024.

(e) It is the intent of the Legislature that initiative and referendum be prohibited in regard to any development order or land development regulation. It is the intent of the Legislature that initiative and referendum be prohibited in regard to any local comprehensive plan amendment or map amendment, except as specifically and narrowly allowed by paragraph (c). Therefore, **the prohibition on initiative and referendum stated in paragraphs (a) and (c) is remedial in nature and applies retroactively** to any initiative or referendum process commenced after June 1, 2011, and any such initiative or referendum process commenced or completed thereafter is deemed null and void and of no legal force and effect.

⁶ “The floor area ratio of any property or street end within the City of Miami Beach shall not be increased by zoning, transfer, or any other means from its current zoned floor area ratio as it exists on the date of adoption of this Charter Amendment [November 7, 2001], including any limitations on floor area ratios which are in effect by virtue of development agreements through the full term of such agreements, unless any such increase in zoned floor area ratio for any such property shall first be approved by a vote of the electors of the City of Miami Beach.” In the June 30, 2023 memo, this provision was characterized as requiring a voter referendum prior to any **legislative** action that would result in an increase to a property’s zoned FAR as it existed on November 7, 2001. Examples of such legislative action were given, included Miami Beach seeking voter approval of the adoption of an ordinance creating an overlay zone with greater FAR, or of an amendment to the Code creating FAR incentives for properties meeting certain geographic or use criteria, rather than voter approval of changes to the Charter followed by City Commission enactment of ordinances to amend the Code.

⁷ As characterized in the June 30, 2023 memo, Charter Section 1.06 requires voter approval prior to the adoption of any Ordinance which “reduces the powers and duties of the City’s Historic Preservation Board, or creates less stringent historic preservation standards or regulations” The memo noted that the City had never attempted to exercise this clause, and questions whether an amendment to the powers or duties of a land use board would satisfy the statutory definition of a “land development

that Section 163.3167(8)(b) prohibits certain portions of their charter requirements related to development and land use.⁸ See Miami Beach City Attorney memo dated June 30, 2023, **Exhibit D**, correctly observing that “[t]he City Charter is not absolute, and a local ordinance or charter provision may not be construed in a manner that would conflict with State law. See *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 888 (Fla. 2010); see also *City of Miami Beach v. Rocio Corp.*, 404 So. 2d 1066, 1069 (Fla. 3d DCA 1981).” The memo also recognizes that the City could implement alternative protections related to FAR increases, by adopting a supermajority voting requirement when such increases are considered by the City Commission.

Shops Arguments on Impact of Statute

Shops’ counsel argued that the Village Charter Section 80 was preempted by the adoption of Section 163.3167(8)(b). Counsel also argues that Section 163.3167(8)(b) is retroactive in its impact. Counsel points to the lack of a savings clause, while ignoring that Section 163.3167(8)(e) itself specifies that it is only retroactive as to subsections (a) and (c).

Characterizing the Shops’ goal as the construction of a hotel with a height in excess of that allowed by the B Business District, counsel correctly notes that “a referendum is required to amend or repeal the Charter Height Prohibition. See § 166.031(2), Fla. Stat. (charter amendments subject to a referendum of the electors).” They then conclude that “The practical and legal effect of the Charter Height Prohibition is to illegally require a referendum to amend the Charter for any land development regulation proposed to exceed the height limits set forth in the Charter Height Prohibition.”

Counsel continues:

As a result, the Charter Height Prohibition conflicts with the Referendum Prohibition and is invalid under Article VII, § 2(b) of the Florida Constitution, because, as the Florida Supreme Court has stated:

The critical phrase of article VIII, section 2(b)—“except as otherwise provided by law”—establishes the constitutional superiority of the Legislature’s power over municipal power. Accordingly, “[m]unicipal ordinances are inferior to laws of the state and must not conflict with any controlling provision of a statute.” *Thomas*, 614 So. 2d at 470. When a municipal “ordinance flies in the face of state law”—that is, cannot be reconciled with state law—the ordinance “cannot be sustained.” *Barragan*, 545 So. 2d at 255. Such “conflict preemption” comes into play “where the local enactment irreconcilably conflicts with or stands as an obstacle to the execution of the full purposes of the statute.” 5 McQuillin Mun. Corp. § 15:16 (3d ed. 2012).

City of Palm Bay v. Wells Fargo Bank, N.A., 114 So. 3d 924, 928 (Fla. 2013). Under this doctrine, “an ordinance which supplements a statute’s restriction of rights may coexist with that statute, whereas an ordinance which countermands rights provided by statute must fail.” *Miami Beach v.*

regulation.” In other words, the memo correctly recognizes that Section 163.3167(8)(b) only applies to land development regulations, not to all local enactments.

⁸ The June 30, 2023 memo also concluded that other portions of the Charter requiring voter approval of zoning map amendments that were previously grandfathered by the statute based on their adoption prior to 2011 were **not** prohibited by Section 163.3167(8)(b): “Given that the New Law broadly prohibits a referendum on the adoption of a land development regulation, the foregoing interpretation as to map amendments may be subject to challenge. Any such challenge is one we would take on in good faith, as we will continue to give effect to the City Charter to the fullest extent permitted under State law.”

Rocio Corp., 404 So. 2d 1066, 1070 (Fla. 3d DCA 1981) (internal citations omitted). “When the controlling law directs how a thing shall be done that is, in effect, a prohibition against its being done in any other way.” *Alsop v. Pierce*, 155 Fla. 185, 196, 19 So. 2d 799, 805-06 (1944). Moreover, a “city should not be permitted to do indirectly that which it cannot do directly.” *Barragan v. Miami*, 545 So. 2d 252, 255 (Fla. 1989) (Erllich, J., concurring).

The arguments based on *Palm Bay* can be distinguished, because a charter provision adopted by the voters is not a land development regulation adopted by the local governing body. See *Cocoa Beach*, below.

Alsop and *Barragan* are arguably more on point. While it predates home rule and the comprehensive planning statutes, one could argue under *Alsop* that Section 163.3167(8)(b) dictates how land development regulations must always be done, and is therefore effectively a prohibition on Charter provisions restricting the governing body from being able to amend its land development regulations by ordinance, without the vote of the people. And under *Barragan*, a worker compensation case, one could argue that Section 80 is accomplishing indirectly what cannot be achieved directly under Section 163.3167(8)(b).

Counsel attempts to address the distinction between a charter and a land development regulation by noting that general law can override municipal charters, a principle which is undoubtedly true. However, the argument ignores the substantive distinction between them, to conclude that the Charter provision violates Section 163.3167(8)(b) without actually demonstrating that the statute applies to Charter provisions:

“A local ordinance or charter provision that interferes with the operation of a statute “cannot coexist” with that statute.” *Emerson v. Hillsborough County*, 312 So. 3d 451, 457 (Fla. 2021) “A municipality may not adopt a law, whether a Charter section or an ordinance, that conflicts with a state statute.” *Mullen v. Bal Harbour Vill.*, 241 So. 3d 949, 956 (Fla. 3d DCA 2018) (proposed charter amendment conflict with the § 163.3167(8), Fla. Stat., prohibiting referenda for development orders and was therefore illegal).⁹

Counsel concludes that Section 80 is therefore void and unenforceable like the provisions of the Miami Beach charter, without analyzing the distinctions between the two charters.

Counsel also makes a larger argument that Section 80 violates not just Section 163.3167(8)(b), but also the overall Community Planning Act which, in their view, prohibits the implementation of comprehensive plans and the regulation of land use through local charters. They base this argument on the intent of the statute as well as the various statutory requirements to adopt comprehensive plans and implementing land development regulations, and infer that the statutory scheme cannot coexist with charter provisions addressing the topics of land development regulations.

First, § 163.3201, Fla. Stat., states:

⁹ In *Mullen*, the petitioners sought to amend the Village Charter in direct violation of a different provision of Section 163.3167(8), which clearly prohibits requirements for voter approval of development orders. The petitioners’ question called for a vote to be held before a development order could be approved by the Village Council, and did not add a substantive standard to the Charter like Section 80:

Sec. 82. - Large scale commercial expansion. Any proposed development plan for an existing commercial property that increases the existing commercial retail space by more than thirty (30) percent of the current amount of retail space, **must be submitted for approval to the electors in Bal Harbour Village and approved by a vote of at least sixty (60) percent of the Village electors voting on such referendum.**

It is the intent of this act that adopted comprehensive plans or elements thereof shall be implemented, in part, by the adoption and enforcement of appropriate local regulations on the development of lands and waters within an area. It is the intent of this act that the adoption and enforcement by a governing body of regulations for the development of land or the adoption and enforcement by a governing body of a land development code for an area shall be based on, be related to, and be a means of implementation for an adopted comprehensive plan as required by this act.

Second, pursuant to § 163.3167(1)(c), Fla. Stat., cities and counties must “implement adopted or amended comprehensive plans by the adoption of appropriate land development regulations or elements thereof.” In addition, § 163.3202, Fla. Stat., identifies the substantive requirements for land development regulations, which include “specific and detailed provisions necessary or desirable to implement the comprehensive plan.” Finally, § 163.3194(2), Fla. Stat., sets out procedures for adopting land development regulations and substantive standards to ensure they are consistent with the comprehensive plan.

If this were true, it begs the question of why the Florida Legislature felt it was necessary to continue amending Section 163.3167 over the past 15 years to gradually increase the scope of its prohibition of local referendum requirements. If the Community Planning Act preempted the field and provided the exclusive method of addressing comprehensive planning and land use regulations, there would be no need for these multiple, precise amendments. Moreover, if this were the case, why did the Shops themselves choose to go via petition to the electors for approval of an amendment to Section 80 in 2021, rather than arguing that Section 80 was preempted by the Community Planning Act?

Counsel also notes the existence of *Cocoa Beach*, but fails to explain why it does not require a conclusion that charter provisions are not land development regulations and therefore fall outside the scope of Section 163.3167(8)(b). Counsel recognizes that the case does not address their point, but then simply asserts that their view is correct:

Together, these statutes require the implementation of comprehensive plans through land development regulations. A charter provision is not a land development regulation. See *City of Cocoa Beach v. Vacation Beach, Inc.*, 852 So. 2d 358, 360 (Fla. 5th DCA 2003). In *Vacation Beach*, the court held that the failure to follow the statutory procedures in § 163.3194(2) did not render a charter amendment regulating land uses invalid. However, *Vacation Beach* did not address the larger question of whether regulating land use by charter conflicts with - and therefore violates - the intent, purpose, and requirements of §§ 163.3167, 163.3201, and 163.3194 that the comprehensive plan be implemented through land development regulations, to the exclusion of other regulatory mechanisms, including city and county charters. **The answer is clearly yes: the Community Planning Act leaves no room for regulating land use or implementing comprehensive plans through charters.** (emphasis added)

Is Section 80 void because it is in conflict with state law?

The legal question is whether the unique wording of Section 80 of the Village Charter will be construed by a reviewing court to be in conflict with and therefore prohibited by Section 163.3167(8)(b). This is a novel question that has not been addressed by any reviewing court. If charters contain substantive regulations of land development, and do not create a referendum requirement to enact ordinances to amend the land development regulations in the zoning code, there is an argument that they are not directly addressed by Section 163.3167(8)(b). See *Cocoa Beach v. Vacation Beach, Inc.*, 852 So.2d 358, 360 (Fla.

5th DCA 2003) (“City is correct that neither charter amendment is a ‘land development regulation,’ which is defined as ‘an ordinance enacted by a local governing body”).¹⁰

The Village Charter does not direct the method of adoption of land development regulations, like some other charters do, but rather specifically sets the permissible height at the standards established in the zoning code as they existed at the time the Charter amendment was adopted, in 2006. In other words, it does not call for a vote of the electors before an ordinance can be enacted to implement a change to the zoning code. Rather, the standard exists in the Charter until the voters agree to amend the Charter. If such a Charter amendment is adopted, then the Village Council acts by ordinance to legislatively implement that change into the Village’s land development regulations in Chapter 21 of the Code of Ordinances, as was done in 2020.

An issue is whether Section 80 even limits the method of measuring the height limit, or if it only limits the numerical standards for height (e.g. “35 feet”) in the Code. Since the creation of Section 80, the Village has only changed its Code provisions regarding and definitions of height to acknowledge the clear preemption established by the Live Local Act for qualifying projects. The Village has not specifically considered whether only the numerical standards for floors, stories, penthouses, and other aspects of development are affected by Section 80, leaving the definitions of height open to Council action by ordinance without voter approval.

Another consideration is that the Council specifically asked the electors in 2020 and 2023 whether to alter the method of measurement for specific uses. In 2020, the electors agreed that single family development could base height measurements on flood elevation. But in 2023, the electors rejected applying a similar principle to municipal structures with a 55-foot cap. See **Exhibit A**.

1. Does Section 163.3167(8)(b) apply to Section 80?

It can be argued that the prohibition in Section 163.3167(8)(b) reaches charter provisions as well as ordinances. First, Section 163.3167(8)(b) does not qualify the terms “initiative or referendum,” so these terms arguably encompass referenda that are used to approve charter provisions, as specifically provided by Section 166.031, Florida Statutes. Moreover, the language used in Section 163.3167(8)(b), “**in regard to any land development regulation,**” is broadening.¹¹ Thus, if a charter amendment relates to “any land development regulation,” then it falls within the scope of Section 163.3167(8)(b). Here, Section 80 on its face relates to “any land development regulation,” since it expressly addresses permitted height as “set forth in the Village’s . . . municipal code” in effect at the time of its adoption.

¹⁰ In *Cocoa Beach*, the court considered whether a charter amendment relating to maximum density and height, which provided that contrary ordinances were repealed, violated the procedural requirements in Section 163.3194(2), Florida Statutes, which required that “no land development regulation, land development code, or amendment thereto **shall be adopted by the governing body** until such regulation, code or amendment has been referred either to the local planning agency or to a separate land development regulation commission created pursuant to local ordinance.” 852 So. 2d at 359-60 (emphasis added). The court held that the requirement of referral to the LPA did not apply to the charter amendment at issue: while the charter amendment referenced land development regulations because it repealed (and, therefore, “amended”) contrary ones, because the charter amendment was adopted by referendum, it was not “adopted by the governing body.” *Id.* at 360.

¹¹ See *Ham v. Portfolio Recovery*, 308 So. 3d 942, 948 (Fla. 2020) (construing the term “with respect to” in Section 57.105, F.S., recognizing that it means “**with regard to or relation to,**” and that such terms are “**necessarily broader** than terms such as “based on,” “under” or “pursuant to,” and citing *Lamar, Archer & Confrin, LLP v. Appling*, 138 S. Ct. 1752, 1760 (2018) for the proposition that “[u]se of word ‘respecting’ in a legal context **generally has a broadening effect, ensuring that the scope of the provision covers not only its subject but also matters relating to that subject.**”) (emphasis added).

2. Does Section 163.3167(8)(b) apply only to future votes of the electors to amend or repeal Section 80, or does it apply retroactively to Section 80 as it currently stands?

Under Florida law, in the absence of clear intent to apply retroactively, statutes are presumed to apply prospectively only.¹² (On retroactivity, see below). Prospective application of Section 163.3167(8)(b) means that the Village electors cannot now modify or repeal Section 80; this creates a quandary because under Florida law, only the electors have the power to do so. See §166.031(1), Fla. Stat.¹³

There is some question, however, whether Section 163.3167(8)(b) reaches the existing Section 80 because, under ordinary rules of statutory construction, Chapter 2023-305, Laws of Florida, did not give Section 163.3167(8)(b) retroactive effect.¹⁴ Unlike the prohibitions against initiatives and referenda “in regard to development orders” or “in regard to comprehensive plan or map amendments” in Section 163.3167(8)(a) and (c), Chapter 2023-305 did not expressly deem the results of past initiatives or referenda “in regard to any land development regulation” “null and void and of no legal force and effect.” Because the Legislature could have, but did not give retroactive effect to Section 163.3167(8)(b), the prohibition against initiatives and referenda “in regard to any land development regulation” would appear to apply prospectively only.¹⁵

If the Section 163.3167(8) prohibition has only a prospective effect, then the Legislature has permanently frozen Section 80, even though the electors would have understood in 2006 (and later, by their action in

¹² See, e.g., *Young v. Altenhaus*, 472 So. 2d 1152, 1154 (Fla. 1985) (“In the absence of explicit legislative expression to the contrary, a substantive law is to be construed as having prospective effect only.”); see also *Old Port Cove Holdings, Inc. v. Old Port Condo. Ass’n, Inc.*, 986 So. 2d 1279, 1284 (Fla. 2008) (when considering whether a statute applies retroactively, courts apply a two-factor test: “(1) whether the statute itself expresses an intent that it apply retroactively; and, if so, (2) whether retroactive application is constitutional”).

¹³ “Charters or charter provisions adopted or readopted subsequent to the adoption of the Municipal Home Rule Powers Act in 1973 ... may only be amended as provided in section 166.031, Florida Statutes.” FL AGO 2003-36 (Fla. A.G.), 2003 WL 21788973 (City charter could not be amended to provide that future amendments to the charter may be made by the city commission without referendum). However, see §166.031(5), Fla. Stat. (“A municipality may, by unanimous vote of the governing body, abolish municipal departments provided for in the municipal charter **and amend provisions or language out of the charter which has been judicially construed, either by judgment or by binding legal precedent from a decision of a court of last resort, to be contrary to either the State Constitution or Federal Constitution.**”) (emphasis added).

¹⁴ Analysis of the legislative history further supports this conclusion. House Bill 41 eventually was laid on the table, and the companion Senate Bill 718 was adopted. The original HB 41 legislation included the prohibition in regard to land development regulations in subsection (8)(a), which would have made the new language subject to retroactivity. However, HB 41 was specifically amended in a strikethrough amendment to create the new subsection (8)(b), and a subsequent amendment eliminated the LDR prohibition from the retroactivity provision in (8)(e). SB 718 was then amended to include the new language from HB 41. See links below, which show the clear legislative intent:

<https://www.flsenate.gov/Session/Bill/2023/41/BillText/Filed/PDF>

<https://www.flsenate.gov/Session/Bill/2023/41/Amendment/424083/PDF> (strike all amendment)

<https://www.flsenate.gov/Session/Bill/2023/41/Amendment/828419/PDF> (amendment eliminating the LDR language from the retroactive provisions)

<https://www.flsenate.gov/Session/Bill/2023/718/Amendment/951112/PDF> (SB 718 amendment to be consistent with the new HB 41 language)

¹⁵ See *Hassan v. State Farm Mutual Auto. Ins. Co.*, 674 So. 2d 106, 109 (Fla. 1996) (concerning retroactive application of legislation, where the legislature clearly expressed its intent that its amendment to subsection (10) of the statute was remedial and applied retroactively, and did not express that intention with respect to its amendment of subsection (6), subsection (6) had no retroactive application: “We agree with the district court that if the legislature had intended subsection (6) to apply retroactively, it would have so stated, as it did in connection with subsection (10).”)

2020) that they were voting for a freeze on height that they could modify by subsequent initiative or referendum vote in the future. Now, because of the action of the Florida Legislature adopting Section 163.3167(8)(b), they cannot do so.

3. Does the existing Section 80 conflict with Section 163.3167(8)(b)?

Where state law has not preempted the field completely, which is the case with land use and zoning regulation, cases focus on whether the local regulation and the state statute can coexist. In other words, does compliance with one require violation of the other? As stated in *Jass Properties, LLC v. City of N. Lauderdale*, 101 So. 3d 400, 402 (Fla. 4th DCA 2012):

“It is well settled that a municipality may not enact a local ordinance that conflicts with a state statute. See, e.g., *City of Kissimmee v. Fla. Retail Fed’n, Inc.*, 915 So.2d 205, 209 (Fla. 5th DCA 2005). To determine whether a conflict exists, a court must examine whether the two legislative enactments can coexist or “whether one must violate one provision in order to comply with the other.” *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 888 (Fla. 2010) (quoting *Laborers’ Int’l Union of N. Am., Local 478 v. Burroughs*, 541 So.2d 1160, 1161 (Fla. 1989)); see also *City of Kissimmee*, 915 So.2d at 209. “Courts are therefore concerned with whether compliance with a [municipal] ordinance [r]equires a violation of a state statute or renders compliance with a state statute impossible.” *Jordan Chapel Freewill Baptist Church v. Dade Cnty.*, 334 So.2d 661, 664 (Fla. 3d DCA 1976). If so, then the type of direct conflict exists that invalidates the ordinance.”¹⁶

Conflict preemption has been broadly formulated by the Florida courts. As explained in *Masone v. City of Aventura*, 147 So. 3d 492, 495 (Fla. 2014):

Even “where concurrent state and municipal regulation is permitted because the state has not preemptively occupied a regulatory field, ‘a municipality’s concurrent legislation must not conflict with state law.’” *City of Palm Bay*, 114 So.3d at 928 (quoting *Thomas v. State*, 614 So.2d 468, 470 (Fla. 1993)). “Such ‘conflict preemption’ comes into play ‘where the local enactment irreconcilably conflicts with **or stands as an obstacle to the execution of the full purposes of the statute.**” *Id.* (quoting 5 McQuillin Mun. Corp. § 15:16 (3d ed. 2012)).

(Emphasis added). See also *City of Palm Bay v. Wells Fargo Bank*, 114 So. 3d 924 (Fla. 2013) (“When a municipal ‘ordinance flies in the face of state law’ – that is, cannot be reconciled with state law — the ordinance ‘cannot be sustained.’”)

Here, existing Section 80 arguably stands as an obstacle to “the execution of the full purposes” of Chapter 2023-305, the law that created Section 163.3167(8)(b). Although the Legislature specifically omitted Section 163.3167(8)(b) from its explicit statement of retroactivity in Chapter 2023-305, it nevertheless added the prohibition in (8)(b) to the statutory statement of legislative intent: “It is the intent of the Legislature that initiative and referendum be prohibited in regard to any development order **or land development regulation.**” (emphasis in original reflecting addition to statute); §163.3167(8)(e). The express and full purpose of Chapter 2023-305, to prohibit initiative and referendum control of land

¹⁶ See also *Mullen v. Bal Harbour Village*, 241 So. 3d 949, 956 (Fla. 3d DCA 2018) (citing *City of Palm Bay v. Wells Fargo Bank, N.A.*, 114 So. 3d 924, 929 (Fla. 2013); “A municipality may not adopt a law, whether a Charter section or an ordinance, that conflicts with a state statute,” and *Emerson v. Hillsborough Co.*, 312 So. 3d 451, 457 (Fla. 2021) (in the context of a county charter provision conflicting with a statute, stating: “A local ordinance or charter provision that interferes with the operation of a statute ‘cannot coexist’ with that statute.”)

development regulations, would be defeated if existing Section 80 were thought to have continued efficacy even though it is now frozen from future action by the electors by Section 163.3167(8)(b).

Finally and furthermore, it is arguably reasonable to conclude that Chapter 2023-305 frees the Village Council from the constraints of Section 80. If Section 80 were to remain in effect, the result might be unconstitutional. By Florida Constitution and statute, the Village's governing body enjoys broad municipal home rule powers. Art. VIII, § 2(b), Fla. Const.; §166.021, Fla. Stat.¹⁷ These powers include power to legislate zoning.¹⁸ Because the electorate may no longer adopt amendments to land development regulations by initiative or referendum, were the Village Council to be precluded from doing so using its legislative powers, the Village's municipal home rule power would be thwarted.

In addition, there can be no real debate that the Legislature otherwise **requires** municipalities to adopt zoning regulations. Section 163.3167(8)(b) and (e) should be read in harmony with a different provision of the same statute, Section 163.3167(1)(c), which provides that "[t]he several municipalities ... shall have the power and responsibility ... to implement adopted or amended comprehensive plans by the adoption of appropriate **land development regulations** or elements thereof." And, elsewhere of course, the Legislature recognizes the role of the Village Council, as the governing body of the municipality, to so legislate. See §163.3201, Fla. Stat. ("It is the intent of this act that the adoption and enforcement by a governing body of regulations for the development of land or the adoption and enforcement by a governing body of a land development code for an area shall be based on, be related to, and be a means of implementation for an adopted comprehensive plan as required by this act.")¹⁹

Conclusion

For the reasons set forth above, there is a reasonable argument that Section 80 of the Village Charter conflicts with recent state legislation, and therefore can no longer be enforced. In a separate memo, the Village Manager presents options for how to respond to this analysis.

Exhibits:

- A. Rejected Charter Amendments to Section 80
- B. Section 166.031, Florida Statutes
- C. Letter from Bal Harbour Shops Attorneys re Bal Harbour Charter Height Limit
- D. Miami Beach City Attorney Memo re Impact of Florida Senate Bill 718 on Referendum Requirements in City Charter

¹⁷ See §166.021(1), Fla. Stat. ("As provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law."); §166.021(4), Fla. Stat. ("The provisions of this section shall be so construed as to secure for municipalities the broad exercise of home rule powers granted by the constitution. It is the further intent of the Legislature to extend to municipalities the exercise of powers for municipal governmental, corporate, or proprietary purposes not expressly prohibited by the constitution, general or special law, or county charter and to remove any limitations, judicially imposed or otherwise, on the exercise of home rule powers other than those so expressly prohibited.")

¹⁸ See, e.g., *Gulf & Eastern Dev. Corp. v. City of Fort Lauderdale*, 354 So. 2d 57 (Fla. 1978) ("Zoning is a legislative function which reposes ultimately in the governing authority of a municipality"); *S.A. Healy Co. v. Town of Highland Beach*, 355 So. 2d 813 (Fla. 4th DCA 1978) ("Florida courts have consistently upheld the police power of a municipality to adopt zoning regulations....")

¹⁹ See also, e.g., §163.3202, Fla. Stat. (governing "land development regulations," requiring their adoption and enforcement (1), and specifying the role of "local governing body" and "local governing authority" and "local government" regarding the procedures).

Exhibit A
Rejected Charter Amendments to Section 80
Bal Harbour Village Charter

January 26, 2021 vote on petition re Special Business Improvement Area

The ballot question posed by the petition of the Future of Bal Harbour committee to the voters on January 26, 2021 was rejected by a vote of 703 against and 82 for the question, out of a total 2,139 registered voters:

Charter Amendment to Section 80 Exempting Special Business Improvement Area (Council to Determine Building Height)

The Village Charter was amended in 2006 prohibiting building height for any property from exceeding the permitted height set forth in the Village's comprehensive plan or municipal code as of November 7, 2006. Shall Section 80 of the Charter be amended, only as to the Special Business Improvement Area, to allow building height to exceed permitted height for that Area (currently 56' or 5 stories), subject to Council approval at public hearings?

The rejected Charter Amendment would have read as follows:

Sec. 80 Building Height

Building Height allowed on any property shall not exceed the permitted height for that property set forth in the Village's comprehensive plan or municipal code, in effect ~~the date this amendment is approved~~ on November 7, 2006 whichever provisions are most restrictive, except that the height of buildings or structures on property in the Special Business Improvement Area may exceed the permitted height set forth in the Village's comprehensive plan or municipal code subject to the Village Council approval at public hearings. Unless otherwise specified in the comprehensive plan or municipal code in effect ~~the date this amendment is approved~~ on November 7, 2006, each building "story" shall mean 11 feet in height.

May 3, 2023 vote on Council question re municipal purposes

The ballot question posed by the Village Council to the voters on May 3, 2023 was rejected by a vote of 149 against and 121 for the question, out of a total 2,019 registered voters:

Measure Height of Single Family Dwellings from Base Flood Elevation

Shall the Charter be amended to allow the height of structures that are used for municipal purposes to be measured from the highest minimum elevation required by state or federal law, not to exceed 55 feet?

The rejected Charter Amendment would have read as follows:

Sec. 80. Building Height

Building height allowed on any property shall not exceed the permitted height for that property set forth in the Village's comprehensive plan or municipal code, in effect the date this amendment is approved, whichever provisions are most restrictive Notwithstanding the foregoing:-

(a) the height of single family dwellings may be measured from the highest minimum elevation provided by state or federal law-, and

(b) the height of structures that are used for municipal purposes may be measured from the highest minimum elevation provided by state or federal law.

Unless otherwise specified in the comprehensive plan or municipal code in effect the date this amendment is approved, each building "story" shall mean 11 feet in height.

Exhibit B
Charter Amendment Statute

166.031 Charter amendments.—

(1) The governing body of a municipality may, by ordinance, or the electors of a municipality may, by petition signed by 10 percent of the registered electors as of the last preceding municipal general election, submit to the electors of said municipality a proposed amendment to its charter, which amendment may be to any part or to all of said charter except that part describing the boundaries of such municipality. The governing body of the municipality shall place the proposed amendment contained in the ordinance or petition to a vote of the electors at the next general election held within the municipality or at a special election called for such purpose.

(2) Upon adoption of an amendment to the charter of a municipality by a majority of the electors voting in a referendum upon such amendment, the governing body of said municipality shall have the amendment incorporated into the charter and shall file the revised charter with the Department of State. All such amendments are effective on the date specified therein or as otherwise provided in the charter.

(3) A municipality may amend its charter pursuant to this section notwithstanding any charter provisions to the contrary. This section shall be supplemental to the provisions of all other laws relating to the amendment of municipal charters and is not intended to diminish any substantive or procedural power vested in any municipality by present law. A municipality may, by ordinance and without referendum, redefine its boundaries to include only those lands previously annexed and shall file said redefinition with the Department of State pursuant to the provisions of subsection (2).

(4) There shall be no restrictions by the municipality on any employee's or employee group's political activity, while not working, in any referendum changing employee rights.

(5) A municipality may, by unanimous vote of the governing body, abolish municipal departments provided for in the municipal charter and amend provisions or language out of the charter which has been judicially construed, either by judgment or by binding legal precedent from a decision of a court of last resort, to be contrary to either the State Constitution or Federal Constitution.

(6) Each municipality shall, by ordinance or charter provision, provide procedures for filling a vacancy in office caused by death, resignation, or removal from office. Such ordinance or charter provision shall also provide procedures for filling a vacancy in candidacy caused by death, withdrawal, or removal from the ballot of a qualified candidate following the end of the qualifying period which leaves fewer than two candidates for an office.

History.—s. 1, ch. 73-129; s. 1, ch. 86-95; s. 1, ch. 90-106; s. 43, ch. 90-315; s. 45, ch. 94-136.

September 10, 2024

VIA HAND DELIVERY AND EMAIL

The Honorable Mayor Jeffrey Freimark
Jorge M. Gonzelez, Village Manager
Susan Trevarthen, Village Attorney
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Bal Harbour Village
655 96th Street
Bal Harbour, FL 33154

Re: Village Charter Section 80 is Invalid and Unenforceable Under Florida Law

Dear Mayor Freimark, Mr. Gonzalez, and Ms. Trevarthen:

On behalf of our client, Whitman Family Development, LLC (“WFD”), the owner and operator of Bal Harbour Shops, we write to notify you of our position that § 80 of the Bal Harbour Village Charter (the “Charter Height Prohibition”) conflicts with Florida law and is therefore invalid and unenforceable because it subjects to a voter referendum any amendment to Village Code § 21-218 seeking an increase in building height.

The Charter Height Prohibition purports to prohibit amendments to the Village’s comprehensive plan and municipal code that would increase building height. Adopted in 2006 by a referendum vote of the Village electors, the Charter Height Prohibition states as follows:

Building height allowed on any property shall not exceed the permitted height for that property set forth in the Village's comprehensive plan or municipal code, in effect the date this amendment is approved, whichever provisions are most restrictive. Unless otherwise specified in the comprehensive plan or municipal code in effect the date this amendment is approved, each building "story" shall mean 11 feet in height.

Village Charter, § 80.

The Bal Harbour Shops property is designated “COM” in the Village Comprehensive Plan, or “Commercial” on the Village’s Future Land Use Map. The Village Comprehensive Plan does not impose a height limit on land designated Commercial.

Bal Harbour Shops is in the “B” zoning district established by the Village Code. The “municipal code” governing height in the “B” district in effect in 2006 stated:

Except as set forth herein, no Building or Structure in the B Business District shall exceed 56 feet or three Stories in Height, whichever is less. No Parking Structure shall exceed 56 feet or five Stories above the surface parking level in Height, whichever is less. Any Parking Structure which exceeds 36 feet or three Stories shall require a public hearing in accordance with the procedures set forth in Sections 21-51 and 21-52 and the standards set forth in Section 21-53(a). Notwithstanding any other limitation herein, for any assemblage of contiguous Lots now or hereafter owned by the same owner in the Business District which contains five or more contiguous acres, an area not to exceed 42,600 square feet thereof may, after a public hearing in accordance with the procedures set forth in Sections 21-51 and 21-52 and the standards set forth in Section 21-53(a), contain Structures not to exceed 69 feet in Height. Except as provided below, when a parapet wall is provided, the vertical distance shall be measured from the highest point of any street bounding the property to the highest point of the parapet wall. Parapet walls shall not exceed four feet in Height as measured from the highest point of the roof to the highest point of the parapet wall. Except as otherwise provided herein, a "Story" of a Structure shall be considered to be no greater than 19 feet in Height and a "Story" of a Parking Structure shall be considered to be no greater than 11 feet six inches in Height.

Code § 21-318 (2006).¹ Village Code § 21-318 constitutes a “land development regulation” as defined in § 163.3164, Florida Statutes.

In 2023, the Florida Legislature adopted Chapter 2023-305, a statute prohibiting referenda on land development regulations (the “Referendum Prohibition”). The Referendum Prohibition states:

An initiative or referendum process in regard to any land development regulation is prohibited.

§ 163.3167(8)(b), Fla. Stat. The Referendum Prohibition aligns with similar provisions in § 163.3167(8), Fla. Stat., that prohibit initiatives or referenda on development orders and comprehensive plan amendments “Whenever the legislature acts to supersede a local government's authority to enforce its ordinances, the effect is immediate and applies to both future and pending proceedings and present and past offenses.” *Metro. Dade County v. Chase Fed. Hous. Corp.*, 737 So. 2d 494, 504 (Fla. 1999). The Referendum Prohibition contains no “savings clause” for initiatives or referenda on land development regulations and therefore applies both prospectively and retroactively.

As you know, WFD wants to apply to amend Village Code § 1-318 for a hotel that exceeds the Charter Height Prohibition’s restrictions. Under Florida Law, a referendum is required to amend or repeal the Charter Height Prohibition. *See* § 166.031(2), Fla. Stat. (charter amendments

¹A 2024 amendment to Code § 21-318 applies to projects proposed under the “Live Local Act.”

subject to a referendum of the electors). The practical and legal effect of the Charter Height Prohibition is to illegally require a referendum to amend the Charter for any land development regulation proposed to exceed the height limits set forth in the Charter Height Prohibition.

As a result, the Charter Height Prohibition conflicts with the Referendum Prohibition and is invalid under Article VII, § 2(b) of the Florida Constitution, because, as the Florida Supreme Court has stated:

The critical phrase of article VIII, section 2(b)—"except as otherwise provided by law"—establishes the constitutional superiority of the Legislature's power over municipal power. Accordingly, "[m]unicipal ordinances are inferior to laws of the state and must not conflict with any controlling provision of a statute." *Thomas*, 614 So. 2d at 470. When a municipal "ordinance flies in the face of state law"—that is, cannot be reconciled with state law—the ordinance "cannot be sustained." *Barragan*, 545 So. 2d at 255. Such "conflict preemption" comes into play "where the local enactment irreconcilably conflicts with or stands as an obstacle to the execution of the full purposes of the statute." 5 McQuillin Mun. Corp. § 15:16 (3d ed. 2012).

City of Palm Bay v. Wells Fargo Bank, N.A., 114 So. 3d 924, 928 (Fla. 2013). Under this doctrine, "an ordinance which supplements a statute's restriction of rights may coexist with that statute, whereas an ordinance which countermands rights provided by statute must fail." *Miami Beach v. Rocio Corp.*, 404 So. 2d 1066, 1070 (Fla. 3d DCA 1981) (internal citations omitted). "When the controlling law directs how a thing shall be done that is, in effect, a prohibition against its being done in any other way." *Alsop v. Pierce*, 155 Fla. 185, 196, 19 So. 2d 799, 805-06 (1944). Moreover, a "city should not be permitted to do indirectly that which it cannot do directly." *Barragan v. Miami*, 545 So. 2d 252, 255 (Fla. 1989) (Erllich, J., concurring).

The above doctrine applies to Charter provisions, including the Charter Height Prohibition: "A local ordinance or charter provision that interferes with the operation of a statute "cannot coexist" with that statute." *Emerson v. Hillsborough County*, 312 So. 3d 451, 457 (Fla. 2021) "A municipality may not adopt a law, whether a Charter section or an ordinance, that conflicts with a state statute. *Mullen v. Bal Harbour Vill.*, 241 So. 3d 949, 956 (Fla. 3d DCA 2018) (proposed charter amendment conflict with the § 163.3167(8), Fla. Stat., prohibiting referenda for development orders and was therefore illegal).

Here, the Charter Height Prohibition directly countermands WFD's rights under the Referendum Prohibition because it directly conflicts with the Referendum Prohibition's plainly stated proscription against referenda for land development regulations. The Charter Height Prohibition is therefore void and unenforceable. The City of Miami Beach has reached the same conclusion regarding provisions of its charter purporting to require a referendum before amending zoning regulations to increase FAR.

Furthermore, the Charter Height Prohibition also conflicts with multiple provisions of the Community Planning Act, which, read together, prohibit the implementation of comprehensive plans and the regulation of land use through city or county charters.

First, § 163.3201, Fla. Stat., states:

It is the intent of this act that adopted comprehensive plans or elements thereof shall be implemented, in part, by the adoption and enforcement of appropriate local regulations on the development of lands and waters within an area. It is the intent of this act that the adoption and enforcement by a governing body of regulations for the development of land or the adoption and enforcement by a governing body of a land development code for an area shall be based on, be related to, and be a means of implementation for an adopted comprehensive plan as required by this act.

Second, pursuant to § 163.3167(1)(c), Fla. Stat., cities and counties must “implement adopted or amended comprehensive plans by the adoption of appropriate land development regulations or elements thereof.” In addition, § 163.3202, Fla. Stat., identifies the substantive requirements for land development regulations, which include “specific and detailed provisions necessary or desirable to implement the comprehensive plan.” Finally, § 163.3194(2), Fla. Stat., sets out procedures for adopting land development regulations and substantive standards to ensure they are consistent with the comprehensive plan.

Together, these statutes require the implementation of comprehensive plans through land development regulations. A charter provision is not a land development regulation. See *City of Cocoa Beach v. Vacation Beach, Inc.*, 852 So. 2d 358, 360 (Fla. 5th DCA 2003). In *Vacation Beach*, the court held that the failure to follow the statutory procedures in § 163.3194(2) did not render a charter amendment regulating land uses invalid. However, *Vacation Beach* did not address the larger question of whether regulating land use by charter conflicts with - and therefore violates - the intent, purpose, and requirements of §§ 163.3167, 163.3201, and 163.3194 that the comprehensive plan be implemented through land development regulations, to the exclusion of other regulatory mechanisms, including city and county charters. The answer is clearly yes: the Community Planning Act leaves no room for regulating land use or implementing comprehensive plans through charters.

We request the Village’s prompt response stating whether it agrees or disagrees with our position and legal analysis. We ask the Village to tell us if it will assert that the Charter Height Prohibition is valid and remains in effect should WFD apply to amend the current B district height limits.

Sincerely,



John K. Shubin, Esq.
Ian E. DeMello, Esq.
Robert K. Lincoln, Esq.
For the firm

cc: Dwight Danie, Village Clerk, ddanie@balharbourfl.gov
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MIAMI BEACH

OFFICE OF THE CITY ATTORNEY

LTC# 300-2023

LETTER TO COMMISSION

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Rafael A. Paz, City Attorney 

DATE: June 30, 2023

SUBJECT: Impact of Florida Senate Bill 718 on the Referendum Requirements in City Charter Sections 1.03(c) and 1.06

The purpose of this Letter to Commission ("LTC") is to advise the City Commission of the impact of Senate Bill 718, which Governor Ron DeSantis signed into law on June 28, 2023 (the "New Law"). A copy of the New Law, which takes effect on July 1, 2023, is attached to this LTC. The New Law impacts the referendum requirements in the following City Charter provisions:

- (1) Charter Section 1.03(c), which requires voter approval prior to any increase to the "zoned floor area ratio" of any property within the City, and
- (2) Charter Section 1.06, which requires voter approval prior to enacting any Ordinance that reduces the powers and duties of the Historic Preservation Board, or creates less stringent historic preservation standards or regulations.

The New Law, which, in pertinent part, comes down to a single sentence, is plain and unambiguous in its simplicity:

An initiative or referendum process in regard to any land development regulation is prohibited.

See Sec. 163.3167(b), Fla. Stat. (2023).

Under what circumstances is a referendum now prohibited?

- As explained in this LTC, the New Law, as applied to the City, broadly prohibits a referendum process on any land development regulation that results in an FAR increase (except for a map amendment, i.e., rezoning), or creates a less stringent historic preservation standard or regulation. A referendum on a comprehensive plan amendment that increases FAR would also be prohibited under existing State law, as the City Charter contains no such requirement.

Which referendum requirements in the City Charter remain enforceable?

- Under State law, and given that Charter Section 1.03(c) was adopted prior to June 1, 2011, referendum approval is still required for any map amendment (or rezoning) that increases FAR.
- The New Law has no impact whatsoever on City Charter provisions requiring voter referendum approval for the sale or lease of certain City-owned property, including the referendum requirements set forth in Sections 1.03(b), 1.03(d), or 1.03(e) of the City Charter.¹
- The New Law will also have no impact on the referendum requirement, approved by the voters in August 2022, for any vacation of a right-of-way that results in the aggregation of floor area across unified abutting parcels.

As the sale or lease of City property, or a vacation of a City right-of-way, is not accomplished via adoption of a land development regulation, the above-referenced Charter provisions, which involve the City's proprietary decisions regarding the *disposition* of City-owned property, are not impacted by the New Law, and remain fully enforceable.

I. SUMMARY OF EXISTING LAW

A. City Charter Section 1.03(c), Requiring Voter Approval to Increase FAR

Floor area ratio ("FAR") is the measure used by the City to regulate the overall size of a building. Floor area ratio is defined in the City's Resiliency Code as "the floor area of the building or buildings on any lot divided by the area of the lot." Generally speaking, the term "floor area" is defined as "the sum of the gross horizontal areas of the floors of a building or buildings . . .," subject to a list of enumerated exceptions. The Resiliency Code establishes a maximum FAR for each zoning district in Miami Beach.

In 1997, following a petition drive by an advocacy group known as "Save Miami Beach," the City's voters approved an amendment to the City Charter, requiring voter approval for future FAR increases—specifically, for any property "adjacent to the waterfront." See Resolution No. 97-22413. In 2003, the City's residents voted to expand the referendum requirement to include **all** property within the City's limits. See Resolution No. 2003-25441.

The current text of Charter Section 1.03(c) reads, in pertinent part, as follows:

The floor area ratio of any property or street end within the City of Miami Beach shall not be increased by zoning, transfer, or any other means from its current zoned floor area ratio as it exists on the date

¹ For the sale or lease of 10 years or longer of any City property not specifically subject to a referendum requirement, the Charter, at Section 1.03(b)(4), requires approval by 4/7ths of the Planning Board and 6/7ths of the City Commission. This provision is also not impacted by the New Law.

Also not impacted is Charter Sec. 1.03(f), which requires 4/7ths approval of the Planning Board and 6/7ths approval of the City Commission for a management agreement or concession agreement, for a term of 10 years or longer, relating to City property.

of adoption of this Charter Amendment [November 7, 2001], including any limitations on floor area ratios which are in effect by virtue of development agreements through the full term of such agreements, unless any such increase in zoned floor area ratio for any such property shall first be approved by a vote of the electors of the City of Miami Beach.

Section 1.03(c) requires a voter referendum prior to any legislative action that would result in an increase to a property's zoned FAR as it existed on November 7, 2001. Since the initial adoption of the referendum requirement in 1997, the City has submitted a total of 12 proposed FAR increases to the voters. A summary of these measures is as follows:

- November 2022: Increase FAR to allow conversion of existing hotels in RPS-4 District in the South of Fifth neighborhood to residential use (approved by the voters)
- November 2022: Increase FAR to incentivize office/residential in the First Street Overlay, along 1st Street and Washington Avenue (approved by the voters)
- November 2022: Increase FAR for North Beach Oceanside Resort Overlay area (Deauville Hotel) (rejected by the voters)
- August 2022: Increase FAR to incentivize conversion of apartment hotels to residential use in RPS-1 and RPS-2 Districts in the South of Fifth neighborhood (approved by the voters)
- August 2022: Increase FAR in Alton Road Gateway Overlay to facilitate community health center (approved by the voters)
- November 2020: Increase FAR by allowing reconstruction of original floorplates in historic buildings (approved by the voters)
- November 2020: Increase FAR for Wolfsonian Arts District (approved by the voters)
- November 2020: Increase FAR by excluding certain areas of building from calculation of floor area (approved by the voters)
- November 2019: Increase FAR for CD-2 zoning districts along Washington Avenue and Alton Road (rejected by the voters)
- November 2019: Allow new floor area within historic buildings for adaptive reuse (rejected by the voters)
- November 2017: Increase FAR as part of rezoning the North Beach Town Center (approved by the voters)
- November 2015: Increase FAR for Ocean Terrace Overlay (rejected by the voters)

B. The Community Planning Act (Chapter 163, Florida Statutes)

The Community Planning Act, formerly known as the Growth Management Act, governs the field of comprehensive planning and land development regulation by cities and counties throughout Florida. Among these provisions are certain restrictions on local initiatives or referenda concerning specified land use matters (also known as “zoning by referendum”). See Sec. 163.3167(8), Fla. Stat.

The City Charter is not absolute, and a local ordinance or charter provision may not be construed in a manner that would conflict with State law. See *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 888 (Fla. 2010); see also *City of Miami Beach v. Rocio Corp.*, 404 So. 2d 1066, 1069 (Fla. 3d DCA 1981). As City Attorneys have advised since at least 1997, the “zoning by referendum” provisions of the Community Planning Act restrict the application of the referendum requirement in Miami Beach Charter Section 1.03(c). The City may not call a referendum ostensibly required by the City Charter if the referendum would be prohibited by State law.

1. Initiative or Referendum on a Development Order

Even before the adoption of SB 718 this year, the “zoning by referendum” provisions of the Community Planning Act have limited the City’s authority to submit proposed FAR increases to the voters. Section 163.3167(8)(a), Florida Statutes, broadly prohibits “[a]n initiative or referendum process in regard to any development order.”² As applied to the City, a “development order” includes a building permit, design review approval (for properties outside of historic districts), Certificate of Appropriateness (for properties within local historic districts or individually designated historic sites), lot split approval, variance, Board of Adjustment order, or site-specific rezoning. **To hold a referendum on the City’s issuance on any of these approvals is strictly prohibited under existing provisions of the Community Planning Act.**

2. Initiative or Referendum on a Comprehensive Plan Amendment or Map Amendments (i.e. Rezoning)

The Community Planning Act also prohibits an initiative or referendum process “in regard to any local comprehensive plan amendment or map amendment.” However, the Act exempts, and specifically permits, a referendum process on a “local comprehensive plan amendment or map amendment” that is “expressly authorized by specific language in a local government charter that was lawful and in effect on June 1, 2011.” See Sec. 163.3167(8)(b), Fla. Stat.

The City Charter does not qualify for the exception as to comprehensive plan amendments, because the Charter does not contain any language requiring referendum approval for a comprehensive plan amendment. Therefore, the City is prohibited, under State law, from submitting a comprehensive plan amendment to the voters.

² State law defines a “[d]evelopment order” as “any order granting, denying, or granting with conditions an application for a development permit.” “Development permit” is defined as “any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.” Sec. 163.3164(15) and (16), Florida Statutes.

However, the City Charter does qualify for the exception as to **map amendments**. Charter Section 1.03(c) requires voter approval to increase FAR by “zoning” (i.e. by adoption of a map amendment or rezoning). By way of example, a map amendment to rezone a defined area of the City from RM-1 (with an FAR of 1.25) to RM-2 (with an FAR of 2.0) would require voter approval.

This particular provision has been in place since November 7, 2001, i.e. prior to the June 1, 2011 cutoff date in the statute. **Accordingly, Charter Section 1.03(c) qualifies for the exception in Section 163.3167(8)(b) and, therefore, the City’s referendum requirement remains enforceable, but solely as to map amendments or rezonings involving an increase in FAR.**

C. City Charter Section 1.06, relating to the Historic Preservation Board and the City’s Historic Preservation Ordinance

Charter Section 1.06 requires voter approval prior to the adoption of any Ordinance which “reduces the powers and duties of the City’s Historic Preservation Board, or creates less stringent historic preservation standards or regulations” This provision was approved by the City’s voters on November 6, 2012, by a vote of 61.29%.

In the nearly 11 years since the adoption of this section, no measure has been submitted to the voters which would reduce the powers and duties of the HPB or create a less stringent historic preservation standard or regulation.

II. EFFECT OF SENATE BILL 718 ON THE CITY CHARTER

A. Impact on Charter Section 1.03(c), relating to FAR Increases

The New Law amends the Community Planning Act to provide that “[a]n initiative or referendum process in regard to any land development regulation is prohibited.”

“Land development regulations” are defined in Section 163.3164, Florida Statutes, as “ordinances enacted by governing bodies for the regulation of any aspect of development and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations or any other regulations controlling the development of land,”

As summarized in Section I.A of this LTC, the vast majority of FAR increases submitted to the City’s voters since the adoption of Charter Sec. 1.03(c) have involved the enactment of a land development regulation (sometimes referred to informally as a “text amendment,” as opposed to a map amendment or rezoning).

1. Overlays

One example of an FAR increase effectuated through a land development regulation is the creation of an overlay. An overlay involves adopting narrowly tailored development standards for a defined geographic area, without changing the underlying zoning district classification, and accordingly, without changing any of the other requirements or allowances that apply to the zoning district. Examples include FAR incentives for the First Street Overlay (adopted in November 2022), the Alton Road Gateway Overlay (August 2022), and the Wolfsonian Arts District (adopted in November 2020). A referendum on the adoption of an overlay is now prohibited.

In contrast, a rezoning to a district with a greater FAR would generally permit more intense uses, increased density (regulated as dwelling units per acre) and increased building height. As explained in this LTC, a referendum on a rezoning that increases FAR remains required.

2. Specific, targeted incentives for specific uses, or developments meeting defined benchmarks

FAR increases implemented as land development regulations also include incentives for properties meeting certain geographic or use criteria (e.g., incentive for the conversion of existing hotels in the RPS-4 district to residential use, or conversion of apartment hotels in RPS-1 and RPS-2 to residential use).

To the extent that these overlays or targeted incentives have been effectuated as amendments to the City's land development regulations, the New Law, which prohibits a "referendum process in regard to any land development regulation," would now bar the City from submitting these measures, or any future similar measure, to the voters by referendum.

3. Map amendments or rezonings

However, the New Law leaves intact the exception for local charter provisions which, as of June 1, 2011, contain express language as to "map amendments." Therefore, to the extent a proposed map amendment would result in an FAR increase, the referendum requirement in Charter Section 1.03(c) would continue to apply.

As noted above, a rezoning to a more intense district classification not only involves an increase in FAR, but also an increase in intensity (including additional allowable uses) and density (regulated as dwelling units per acre). For instance, in 2017, the City's voters approved an FAR increase for the North Beach Town Center, which was effectuated as a rezoning of TC-1, TC-2, and TC-3 districts to the newly created TC-C, "Town Center Core" district. Because this measure was effectuated as a "map amendment," even after the adoption of SB 718, referendum approval would still be required for a similar measure.

Given that the New Law broadly prohibits a referendum on the adoption of a land development regulation, the foregoing interpretation as to map amendments may be subject to challenge. Any such challenge is one we would take on in good faith, as we will continue to give effect to the City Charter to the fullest extent permitted under State law. Specifically, based on the statutory exception set forth in Section 163.3167(8)(c), it is our opinion that the new provision in Section 163.3167(8)(b) does not preempt Charter Section 1.03(c) in its entirety, as the new prohibition in subsection 8(b) must be read *in pari materia* with the existing provisions of subsection (8)(c), which expressly permit a "referendum process in regard to any . . . map amendment" that is "expressly authorized by specific language in a local government charter that was lawful and in effect on June 1, 2011." The City Charter was adopted prior to 2011 and qualifies for this exception, and accordingly, referendum approval remains intact, but solely for any **map amendment** that would result in an increase to a property's zoned FAR.

B. Impact on Charter Section 1.06, relating to Historic Preservation

As the City's historic preservation standards and regulations meet the definition of "land development regulations" in Chapter 163, a referendum to adopt a less stringent amendment is now prohibited. However, with respect to the "powers and duties" of the HPB, the City Attorney's Office would need to carefully review any future amendment to determine whether a referendum

would be required, as an amendment to the powers or duties of a land use board is unlikely to satisfy the statutory definition of a “land development regulation.” To this end, it must be noted that not a single amendment to reduce the powers and duties of the HPB or create a less stringent historic preservation standard or regulation has been presented to the voters for consideration since this Charter requirement was adopted nearly 11 years ago. Accordingly, we will evaluate this issue further if the City Commission ever desires to enact any such ordinance.

At the request of Commissioner Steven Meiner and Commissioner Alex Fernandez, the City Commission has recently referred items to the Land Use and Sustainability Committee, Planning Board, and Charter Review Board to consider amending the Resiliency Code to require a 6/7ths vote prior to any future FAR increase. In light of these referrals, the City Commission may also wish to consider adopting a 6/7ths voting requirement for any Ordinance that would reduce the powers and duties of the HPB, or enact a less stringent historic preservation standard or regulation.

III. CONCLUSION

The New Law further limits the City's authority to call a referendum on land use or zoning matters beyond existing provisions of the Community Planning Act, which prohibit an initiative or referendum on a development order and, as applied to the City, on a comprehensive plan amendment.

Effective July 1, 2023, and except as specified herein, the City is barred from calling a referendum on any land development regulation, including a land development regulation that increases a property's FAR or creates a less stringent historic preservation standard or regulation.

The New Law **does not**, however, render invalid the entirety of Sections 1.03(c) or 1.06 of the City Charter. Because Charter Section 1.03(c) has been in place since before June 1, 2011, referendum approval is **still required** for any map amendment (or rezoning) that would result in an increase to a property's zoned FAR. In addition, to the extent an amendment to the powers and duties of the HPB is not a land development regulation, then Charter Sec. 1.06 would still require voter approval. However, except in these two limited circumstances, the City Charter must yield to State law, and a referendum process in regard to a land development regulation is otherwise prohibited.

CHAPTER 2023-305

Committee Substitute for Committee Substitute for Senate Bill No. 718

An act relating to local government; amending s. 163.3167, F.S.; prohibiting an initiative or referendum process in regard to any land development regulation; reordering and amending s. 171.031, F.S.; defining the term “feasibility study”; amending s. 171.0413, F.S.; specifying the measurement of land during annexation procedures; amending s. 171.042, F.S.; replacing the term “report” with the term “feasibility study”; amending s. 171.051, F.S.; revising contraction procedures when qualified voters desire to be excluded from municipal boundaries; prohibiting contraction under certain circumstances; providing construction and applicability; amending s. 171.204, F.S.; conforming a cross-reference; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (8) of section 163.3167, Florida Statutes, is amended to read:

163.3167 Scope of act.—

(8)(a) An initiative or referendum process in regard to any development order is prohibited.

(b) An initiative or referendum process in regard to any land development regulation is prohibited.

(c)(b) An initiative or referendum process in regard to any local comprehensive plan amendment or map amendment is prohibited unless it is expressly authorized by specific language in a local government charter that was lawful and in effect on June 1, 2011. A general local government charter provision for an initiative or referendum process is not sufficient.

(d)(e) It is the intent of the Legislature that initiative and referendum be prohibited in regard to any development order or land development regulation. It is the intent of the Legislature that initiative and referendum be prohibited in regard to any local comprehensive plan amendment or map amendment, except as specifically and narrowly allowed by paragraph (c) ~~(b)~~. Therefore, the prohibition on initiative and referendum stated in paragraphs (a) and (c) ~~(b)~~ is remedial in nature and applies retroactively to any initiative or referendum process commenced after June 1, 2011, and any such initiative or referendum process commenced or completed thereafter is deemed null and void and of no legal force and effect.

Section 2. Section 171.031, Florida Statutes, is reordered and amended to read:

171.031 Definitions.—As used in this chapter, the following words and terms have the following meanings unless some other meaning is plainly indicated:

(1) “Annexation” means the adding of real property to the boundaries of an incorporated municipality, such addition making such real property in every way a part of the municipality.

~~(4)~~(2) “Contraction” means the reversion of real property within municipal boundaries to an unincorporated status.

~~(7)~~(3) “Municipality” means a municipality created pursuant to general or special law authorized or recognized pursuant to s. 2 or s. 6, Art. VIII of the State Constitution.

~~(8)~~(4) “Newspaper of general circulation” means a newspaper printed in the language most commonly spoken in the area within which it circulates, which is readily available for purchase by all inhabitants in its area of circulation, but does not include a newspaper intended primarily for members of a particular professional or occupational group, a newspaper whose primary function is to carry legal notices, or a newspaper that is given away primarily to distribute advertising.

~~(9)~~(5) “Parties affected” means any persons or firms owning property in, or residing in, either a municipality proposing annexation or contraction or owning property that is proposed for annexation to a municipality or any governmental unit with jurisdiction over such area.

(6) “Feasibility study” means an analysis conducted by qualified staff or consultants of the economic, market, technical, financial, and management feasibility of the proposed annexation or contraction, as applicable.

~~(10)~~ “Qualified voter” means any person registered to vote in accordance with law.

~~(11)~~(7) “Sufficiency of petition” means the verification of the signatures and addresses of all signers of a petition with the voting list maintained by the county supervisor of elections and certification that the number of valid signatures represents the required percentage of the total number of qualified voters in the area affected by a proposed annexation.

~~(12)~~(8) “Urban in character” means an area used intensively for residential, urban recreational or conservation parklands, commercial, industrial, institutional, or governmental purposes or an area undergoing development for any of these purposes.

~~(14)~~(9) “Urban services” means any services offered by a municipality, either directly or by contract, to any of its present residents.

~~(13)~~(10) “Urban purposes” means that land is used intensively for residential, commercial, industrial, institutional, and governmental

purposes, including any parcels of land retained in their natural state or kept free of development as dedicated greenbelt areas.

(3)(11) “Contiguous” means that a substantial part of a boundary of the territory sought to be annexed by a municipality is coterminous with a part of the boundary of the municipality. The separation of the territory sought to be annexed from the annexing municipality by a publicly owned county park; a right-of-way for a highway, road, railroad, canal, or utility; or a body of water, watercourse, or other minor geographical division of a similar nature, running parallel with and between the territory sought to be annexed and the annexing municipality, ~~may shall~~ not prevent annexation under this act, provided the presence of such a division does not, as a practical matter, prevent the territory sought to be annexed and the annexing municipality from becoming a unified whole with respect to municipal services or prevent their inhabitants from fully associating and trading with each other, socially and economically. However, nothing in this subsection may herein shall be construed to allow local rights-of-way, utility easements, railroad rights-of-way, or like entities to be annexed in a corridor fashion to gain contiguity; and when any provision ~~or provisions of any special law prohibits or laws prohibit~~ the annexation of territory that is separated from the annexing municipality by a body of water or watercourse, then that law shall prevent annexation under this act.

(2)(12) “Compactness” means concentration of a piece of property in a single area and precludes any action which would create enclaves, pockets, or finger areas in serpentine patterns. Any annexation proceeding in any county in ~~this the state~~ must shall be designed in such a manner as to ensure that the area will be reasonably compact.

(5)(13) “Enclave” means:

(a) Any unincorporated improved or developed area that is enclosed within and bounded on all sides by a single municipality; or

(b) Any unincorporated improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality.

Section 3. Subsection (5) of section 171.0413, Florida Statutes, is amended to read:

171.0413 Annexation procedures.—Any municipality may annex contiguous, compact, unincorporated territory in the following manner:

(5) If more than 70 percent of the acres of land in an area proposed to be annexed is owned by individuals, corporations, or legal entities which are not registered electors of such area, such area may shall not be annexed unless the owners of more than 50 percent of the acres of land in such area consent to such annexation. Such consent must shall be obtained by the

parties proposing the annexation before ~~prior to~~ the referendum to be held on the annexation.

Section 4. Subsections (1) and (2) of section 171.042, Florida Statutes, are amended to read:

171.042 Prerequisites to annexation.—

(1) ~~Before~~ ~~Prior to~~ commencing the annexation procedures under s. 171.0413, the governing body of the municipality shall prepare a feasibility study report setting forth the plans to provide urban services to any area to be annexed, and the feasibility study must report ~~shall~~ include the following:

(a) A map or maps of the municipality and adjacent territory showing the present and proposed municipal boundaries, the present major trunk water mains and sewer interceptors and outfalls, the proposed extensions of such mains and outfalls, as required in paragraph (c), and the general land use pattern in the area to be annexed.

(b) A statement certifying that the area to be annexed meets the criteria in s. 171.043.

(c) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans must ~~shall~~:

1. Provide for extending urban services except as otherwise provided in this subsection ~~herein~~ to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality before ~~prior to~~ annexation.

2. Provide for the extension of existing municipal water and sewer services into the area to be annexed so that, when such services are provided, property owners in the area to be annexed will be able to secure public water and sewer service according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions.

3. If extension of major trunk water mains and sewer mains into the area to be annexed is necessary, set forth a proposed timetable for construction of such mains as soon as possible following the effective date of annexation.

4. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.

(2) Not fewer than 15 days before ~~prior to~~ commencing the annexation procedures under s. 171.0413, the governing body of the municipality shall file a copy of the feasibility study report required by this section with the board of county commissioners of the county in which ~~wherein~~ the municipality is located. Failure to timely file the feasibility study report as required in this subsection may be the basis for a cause of action to invalidate ~~invalidating~~ the annexation.

Section 5. Subsections (2) and (4) of section 171.051, Florida Statutes, are amended, and subsection (11) is added to that section, to read:

171.051 Contraction procedures.—Any municipality may initiate the contraction of municipal boundaries in the following manner:

(2) A petition of 15 percent of the qualified voters in an area desiring to be excluded from the municipal boundaries, filed with the clerk of the municipal governing body, may propose such an ordinance. The municipality to which such petition is directed shall immediately undertake a feasibility study of the feasibility of such proposal and the governing body shall, within 6 months, evaluate the feasibility study of such proposal and either initiate proceedings under subsection (1) by introducing a contraction ordinance or reject the petition as a legislative decision, specifically stating the facts upon which the rejection is based.

(4) If, at the meeting held for the such purpose of considering the contraction ordinance introduced by the governing body, a petition is filed and signed by at least 15 percent of the qualified voters resident in the area proposed for contraction requesting a referendum on the question, the governing body shall, upon verification, paid for by the municipality, of the sufficiency of the petition, and before passing such ordinance, submit the question of contraction to a vote of the qualified voters of the area proposed for contraction, or the governing body may vote not to contract the municipal boundaries.

(11) If more than 70 percent of the acres of land in an area proposed to be contracted is owned by individuals, corporations, or legal entities that are not registered electors of such area, such area may not be contracted unless the owners of more than 50 percent of the acres of land in such area consent to such contraction.

Section 6. The amendments made by this act to s. 171.051, Florida Statutes, are intended to be prospective in nature and apply only to petitions filed on or after July 1, 2023.

Section 7. Section 171.204, Florida Statutes, is amended to read:

171.204 Prerequisites to annexation under this part.—The interlocal service boundary agreement may describe the character of land that may be annexed under this part and may provide that the restrictions on the character of land that may be annexed pursuant to part I are not restrictions on land that may be annexed pursuant to this part. As determined in the interlocal service boundary agreement, any character of land may be annexed, including, but not limited to, an annexation of land not contiguous to the boundaries of the annexing municipality, an annexation that creates an enclave, or an annexation where the annexed area is not reasonably compact; however, such area must be “urban in character” as defined in s. 171.031 ~~s. 171.031~~(8). The interlocal service boundary agreement may not allow for annexation of land within a municipality that is not a party to the

agreement or of land that is within another county. Before annexation of land that is not contiguous to the boundaries of the annexing municipality, an annexation that creates an enclave, or an annexation of land that is not currently served by water or sewer utilities, one of the following options must be followed:

(1) The municipality shall transmit a comprehensive plan amendment that proposes specific amendments relating to the property anticipated for annexation to the Department of Economic Opportunity for review under chapter 163. After considering the department's review, the municipality may approve the annexation and comprehensive plan amendment concurrently. The local government must adopt the annexation and the comprehensive plan amendment as separate and distinct actions but may take such actions at a single public hearing; or

(2) A municipality and county shall enter into a joint planning agreement under s. 163.3171, which is adopted into the municipal comprehensive plan. The joint planning agreement must identify the geographic areas anticipated for annexation, the future land uses that the municipality would seek to establish, necessary public facilities and services, including transportation and school facilities and how they will be provided, and natural resources, including surface water and groundwater resources, and how they will be protected. An amendment to the future land use map of a comprehensive plan which is consistent with the joint planning agreement must be considered a small scale amendment.

Section 8. This act shall take effect July 1, 2023.

Approved by the Governor June 28, 2023.

Filed in Office Secretary of State June 28, 2023.

BAL HARBOUR

- V I L L A G E -

COUNCIL ITEM SUMMARY

Condensed Title:

A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH WJ ARCHITECTS IN COLLABORATION WITH WOLFBURG ALVAREZ & PARTNERS FOR THE PROVISION OF ARCHITECTURAL, ENGINEERING, AND CONSTRUCTION ADMINISTRATION SERVICES FOR THE DESIGN AND DEVELOPMENT OF THE NEW BAL HARBOUR VILLAGE HALL, IN AN AMOUNT NOT TO EXCEED FOUR MILLION THREE HUNDRED FIFTY-ONE THOUSAND SIX HUNDRED EIGHTY-SEVEN DOLLARS (\$4,351,687), WHICH INCLUDES AN OWNER'S DESIGN CONTINGENCY.

Issue:

Should the Village Council approve the authorization for Bal Harbour Village to execute a Professional Services Agreement with WJ Architects in collaboration with Wolfberg Alvarez & Partners for the new Bal Harbour Village Hall?

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:

This item requests Council approval to execute a Professional Services Agreement with WJ Architects in collaboration with Wolfberg Alvarez & Partners for architectural, engineering, and construction administration services for the new Bal Harbour Village Hall. The agreement includes programming, schematic design, construction documents, permitting assistance, and specialty consulting services necessary for project completion. At the February 24, 2025 Council Meeting, the Village Council requested that WJ Architects address cost guarantees related to any future change orders due to errors and omissions. Following that meeting, WJ Architects submitted a letter on March 4, 2025, outlining their proposed measures, including enhanced quality-control processes and increased Errors and Omissions coverage.


The basic services fee of \$2,737,655 (LS) is 9% of the \$30,000,000 construction budget, and with the added specialty consultants' fees in the amount of \$1,354,032 (NTE) for an overall total fee of \$4,351,687 which includes reimbursable expenses in the amount of \$60,000 and owner's contingency in the amount of \$200,000. The total fee is 13.8% of \$30 million. This authorization also permits the Village Manager to take all necessary actions to implement the agreement. Approval of this item will advance the design and construction of the new Village Hall while maintaining financial oversight and project efficiency. It is recommended that the Council approve this resolution to facilitate the successful execution of this essential municipal project.

THE ADMINISTRATION RECOMMENDS THE APPROVAL OF THIS RESOLUTION.

Financial Information:

| | Amount | Account | Account # |
|--|-------------|--|--------------|
| | \$4,351,687 | General Fund - Village Hall Capital Outlay | 01-73-506415 |

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 18, 2025

SUBJECT: **A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH WJ ARCHITECTS IN COLLABORATION WITH WOLFBURG ALVAREZ & PARTNERS FOR THE PROVISION OF ARCHITECTURAL, ENGINEERING, AND CONSTRUCTION ADMINISTRATION SERVICES FOR THE DESIGN AND DEVELOPMENT OF THE NEW BAL HARBOUR VILLAGE HALL, IN AN AMOUNT NOT TO EXCEED FOUR MILLION THREE HUNDRED FIFTY-ONE THOUSAND SIX HUNDRED EIGHTY-SEVEN DOLLARS (\$4,351,687), WHICH INCLUDES AN OWNER'S DESIGN CONTINGENCY; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.**

ADMINISTRATIVE RECOMMENDATION

I am recommending approval of this Resolution.

BACKGROUND

Pursuant to the February 24, 2025 Council meeting, WJ Architects (WJA) submitted a response to the Council's request to guarantee cost due to change orders resulting from Errors and Omissions. WJA submitted a letter on March 4, 2025, outlining all their services that address this issue (Attached).

As part of their services, WJA has included an internal Quality Control system where the firm has two staff members dedicated strictly to quality control reviews. They have provided an envelope consultant to review specifications and details for all exterior conditions such as the roof, cladding, and glazing. Their services also include a Life safety consultant to review all Florida Building Code and Fire Prevention code requirements.

The firm has a Construction Management team that has reviews for constructability and cost control at each design phase. In addition, their construction documents for the project will be prepared on a Shared 3D BIM cloud model and information sharing software where all consultants will have real time information on all design development. WJA staff has been extremely thorough in reviewing the scope of services for the team and its consultants for the Village's benefit.

The Village contract has multiple avenues of remedy to offset claims including a statement for Indemnification, Standard of Care, and Warranties and WJA has not requested any exception or revision to those requirements. The Village Professional Service agreement requires Consultants to maintain General Liability insurance, in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate during the contract term and WJA has provided extra Liability Error and Omission insurance of \$5,000,000 per occurrence which exceeds the Village requirements.

As part of the December 2017 Development Agreement between Bal Harbour Village and Bal Harbour Shops, the Village committed to the planning, design, and construction of a new Village Hall at 9800 Collins Avenue. The new Village Hall will serve as a centralized facility for Village Administration, the Village Council Chambers, the Bal Harbour Police Department, and other essential municipal and emergency operations functions.

To advance the project, the Village issued RFQ No. 2024-005 to solicit proposals from qualified firms for architectural, engineering, and construction administration services. At the October 29th, 2024, Bal Harbour Village Council meeting, the Council authorized negotiations with WJ Architects (WJA), in collaboration with Wolfberg Alvarez & Partners (WAP), to provide these services. Following successful negotiations, this resolution seeks Council approval of a Professional Services Agreement (PSA) with WJ Architects to proceed with the design and development of the new Village Hall.

ANALYSIS

Following the October 29, 2024, Bal Harbour Village Council meeting, the Village engaged in negotiations with WJA in collaboration with WAP for architectural, engineering, and construction administration services related to the new Bal Harbour Village Hall Project. The final proposal was received in February 2025 after an extensive negotiation process that began in November 2024.

The following information summarizes the proposed scope of work included in the agreement:

I. Professional Services & Project Scope

WJA and WAP will provide a comprehensive range of architectural and engineering services, including:

- Programming & Conceptual Design - Development of a project-specific programming document, conceptual site plans, and floor plan options based on existing conditions and stakeholder input.
- Schematic Design - Preparation of schematic design documents, including site plans, building layouts, and architectural renderings for Village review and approval.

- Design Development - Refinement of schematic designs into detailed building plans, elevations, and materials selection while incorporating sustainability and resiliency strategies.
- Construction Documents & Permitting - Production of technical drawings and specifications necessary for permitting, bidding, and construction.
- Bidding Assistance - Support during the contractor selection process, including bid review and clarifications.
- Construction Administration - Oversight during the construction phase, including periodic site visits, submittal reviews, and contractor coordination to ensure compliance with the approved design and contract documents.
- Specialized Services - Inclusion of key engineering disciplines such as structural, mechanical, electrical, plumbing (MEP), life safety, landscape architecture, civil engineering, parking design, and environmental considerations.
- Public Engagement & Approvals - Facilitation of public meetings, presentations to the Village's Architectural Review Board (ARB), and coordination with regulatory agencies for approvals and permitting.
- Sustainability & Resiliency Integration - Design considerations for LEED Silver certification, stormwater management, sea-level rise adaptation, and energy-efficient building systems.

II. Consultant Qualifications and Experience

WJA, founded in 1992, has extensive experience in municipal and community-centered design, with a strong presence in Florida. The firm specializes in innovative and resilient civic spaces, operating across six Florida offices. WAP, with over 45 years of architectural and engineering expertise, brings a proven track record in designing governmental and public safety facilities in South Florida.

Together, they have designed the nearby North Bay Village Hall and Public Safety Complex, a project soon to be built, demonstrating their ability to develop civic projects that align with Bal Harbour Village's vision and operational needs. The team includes 117 professionals offering a multi-disciplinary approach, ensuring that all aspects of the project—from architectural design to engineering and sustainability—are seamlessly integrated.

III. Project Budget & Delivery

The proposed estimated construction budget for the new Village Hall is \$25 to \$30 million. The scope of services outlined in the agreement ensures that all necessary design, engineering, and construction administration components are covered to support project delivery within this budget range.

IV. Project Milestones & Schedule

The anticipated project timeline for the design and development of the new Bal Harbour Village Hall is structured across multiple phases, ensuring a methodical and efficient

progression from pre-design through construction administration. The proposed schedule includes key milestones that will guide the project's development while remaining subject to approval processes and necessary adjustments.

Key Milestones:

- Pre-Design & Programming / Concept Development
- Schematic Design & Basis of Design Report (BODR)
- Architectural Review Board (ARB) Submission
- Design Development
- Construction Document Preparation
- 30% Completion
- 60% Completion
- 90% Completion
- 100% Completion
- Bidding & Award Assistance
- Construction Administration
- Close-out & Warranty Phase Services

Schedule Considerations:

While the project schedule has been structured to facilitate an efficient and streamlined process, it remains subject to external factors such as regulatory approvals, Village reviews, and potential scope modifications. Timely responses and coordination with the Village will be critical to maintaining the projected timeline.

V. Fee Comparison & Cost Considerations

The table below provides a direct comparison of the fees proposed by WJ Architects in collaboration with Wolfberg Alvarez & Partners and the previous proposal from Zyscovich Architects, who were originally selected before the Village rescinded their agreement in 2024.

| | Task Number | Task Description | WJA's Fees | Zyscovich Fees |
|----------------------------|-------------|---|------------------------|---------------------------|
| Basic Services | Task 1 | Programming / Conceptual Design | \$ 107,433.00 | \$ 77,000.00 |
| | Task 2 | Schematic Design | \$ 402,872.00 | \$ 554,600.00 |
| | Task 3 | Design Development | \$ 564,021.00 | \$ 693,250.00 |
| | Task 4 | Construction Documents | \$ 940,035.00 | \$ 970,550.00 |
| | Task 5 | Assistance with Permitting/Bidding | \$ 134,291.00 | \$ 138,650.00 |
| | Task 6 | Construction Administration and Close-Out | \$ 589,003.00 | \$ 465,950.00 |
| | | Sub-Total Basic Design Services (LS) | \$ 2,737,655.00 | \$ 2,900,000.00 |
| Specialty Services | Task 7 | Geotechnical Engineering | \$ 13,053.00 | TBD |
| | Task 8 | Phase I Environmental - provided by BHS | \$ - | - |
| | Task 9 | Asbestos Survey -provided by BHS | \$ - | - |
| | Task 10 | Sub Utilities SUE + Locates | \$ 30,475.00 | TBD |
| | Task 11 | Traffic Engineering | \$ 57,443.00 | \$ 85,500.00 |
| | Task 12 | Reasonable Assurance Report | \$ 3,450.00 | TBD |
| | Task 13 | Lighting Design | \$ 256,136.00 | TBD |
| | Task 14 | Interior Design and Furniture and Furnishings | \$ 126,390.00 | TBD |
| | Task 15 | Sustainability and LEED Consulting | \$ 128,743.00 | TBD |
| | Task 16 | Building Envelope Consulting/Commissioning | \$ 124,200.00 | \$ 55,750.00 |
| | Task 17 | Audio/Visual/IT/Low Voltage | \$ 222,212.00 | TBD |
| | Task 18 | Acoustic Design | \$ 17,535.00 | TBD |
| | Task 19 | Building Security | \$ 81,075.00 | TBD |
| | Task 20 | Threshold Inspections | \$ 143,520.00 | TBD |
| | Task 21 | Art-In-Public Spaces | \$ 19,800.00 | TBD |
| | Task 22 | Signage and Wayfinding | \$ 30,000.00 | TBD |
| | Task 23 | Planning & Zoning | \$ 100,000.00 | NA |
| | | Sub-Total Specialty Services (NTE) | \$ 1,354,032.00 | TBD |
| Financial Summary | | | WJA's Totals | Zyscovich's Totals |
| Reimbursable Expenses | | | \$ 60,000.00 | \$ 60,000.00 |
| Total Fees | | | \$ 4,151,687.00 | \$ 3,101,250.00 |
| Owner's Design Contingency | | | \$ 200,000.00 | \$ 200,000.00 |

The basic services fee of \$2,737,655 (LS) is 9% of the \$30,000,000 construction budget and with the added specialty consultants' fees in the amount of \$1,354,032 (NTE) the overall total fee is \$4,151,687. The total fee is 13.8% of \$30 million. The specialty consultants' fees are NTE to allow the Village the flexibility to either contract our own consultant, such as the threshold inspector.

While WJ Architects' total estimated cost appears higher than Zyscovich's, it is important to consider several key factors:

1. Inflation & Market Increases

- Zyscovich's proposal was submitted over a year ago, and construction and design costs have risen significantly due to inflation and market conditions.
- 2. Inclusion of Specialty Services
 - Zyscovich's proposal did not include several specialty services that are likely to be required for the successful execution of the project. The Village was in the process of negotiating the contract, but the final proposal was never finalized.
 - WJ Architects' proposal incorporates essential components such as Geotechnical Engineering, Phase I Environmental Assessments, Lighting Design, Sustainability & LEED Consulting, Audio/Visual & IT, Acoustic Design, Building Security, and Art-In-Public Spaces—all of which are necessary for modern municipal buildings.
- 3. Basic Services Cost Comparison
 - WJ Architects' Basic Services fee (\$2,737,655) is lower than Zyscovich's (\$2,900,000).
 - The primary difference in the total estimated cost is due to the inclusion of Specialty Services under a "Not to Exceed" structure.
- 4. Fee Structure: Lump Sum vs. Not to Exceed
 - WJ's Basic Services fees are lump sum, meaning they are fixed costs.
 - Specialty Services are listed as Not to Exceed amounts, meaning the Village will only pay for what is necessary and used—providing financial flexibility.
- 5. Negotiation Efforts
 - The Village has negotiated extensively to streamline costs and eliminate unnecessary expenses, reducing the likelihood of having to return to the Council for additional funding approvals later in the project.
- 6. Potential Future Unknowns
 - At this time, the main unknown factors that could necessitate future Council action for additional funding include:
 - 1. Extreme escalation in construction costs beyond current projections.

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 design and construction of the new Village Hall correspond directly to our goals for:

- Modernized Public Facilities and Infrastructure
- Safety
- Resiliency and Sustainable Community.
- Beautiful Environment
- Destination & Amenities
- Exclusivity & Access

CONCLUSION

The WJ Architects, in collaboration with Wolfberg Alvarez & Partners' fee proposal, has been thoroughly reviewed and negotiated to align with the Village's needs while maintaining financial flexibility. The total fee of \$4,351,687 includes all necessary basic services structured as a lump sum and specialty services proposed as not-to-exceed amounts to prevent cost overruns. In addition, this amount also includes an owner's design contingency of \$200,000 and an amount of \$60,000 as a reimbursable fee. This contract is based on a level of effort rather than a percentage of the construction value, and every effort has been made to minimize the need for future funding requests. Approval of this resolution will authorize the Village Manager to execute the Professional Services Agreement with WJ Architects in collaboration with Wolfberg Alvarez & Partners for architectural, engineering, and construction administration services for the Bal Harbour Village Hall Project.

Attachments:

1. WJ Architects Proposal
2. WJ Architects Response Letter

RESOLUTION NO. 2025-

A RESOLUTION OF THE VILLAGE COUNCIL OF BAL HARBOUR VILLAGE, FLORIDA; APPROVING A PROFESSIONAL SERVICES AGREEMENT WITH WJ ARCHITECTS IN COLLABORATION WITH WOLFBERG ALVAREZ & PARTNERS FOR THE PROVISION OF ARCHITECTURAL, ENGINEERING, AND CONSTRUCTION ADMINISTRATION SERVICES FOR THE DESIGN AND DEVELOPMENT OF THE NEW BAL HARBOUR VILLAGE HALL, IN AN AMOUNT NOT TO EXCEED FOUR MILLION THREE HUNDRED FIFTY-ONE THOUSAND SIX HUNDRED EIGHTY-SEVEN DOLLARS (\$4,351,687), WHICH INCLUDES AN OWNER'S DESIGN CONTINGENCY; PROVIDING FOR IMPLEMENTATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Bal Harbour Village (the "Village") committed to the planning, design, and construction of a new Village Hall at 9800 Collins Avenue as part of the December 2017 Development Agreement between the Village and Bal Harbour Shops; and

WHEREAS, the new Village Hall will serve as a centralized facility for Village Administration, the Village Council Chambers, the Bal Harbour Police Department, and other essential municipal operations; and

WHEREAS, to advance the project, the Village issued Request for Qualifications (RFQ) No. 2024-005 to solicit proposals from qualified firms for architectural, engineering, and construction administration services; and

WHEREAS, at the October 29, 2024 Bal Harbour Village Council meeting, the Council authorized negotiations with WJ Architects in collaboration with Wolfberg Alvarez & Partners ("WAP") as the selected firm to provide these services; and

WHEREAS, following an extensive negotiation process beginning in November 2024, the final proposal was received in February 2025, outlining a comprehensive scope of services, including programming, schematic design, construction document preparation, permitting assistance, construction administration, and specialized consulting services necessary for the successful development of the new Village Hall; and

WHEREAS, WJA has extensive experience in municipal and community-centered design, with a strong presence in Florida and WAP, with over 45 years of architectural and engineering expertise, brings a proven track record in designing governmental and public safety facilities in South Florida.

WHEREAS, WJA has measures in place to offset Errors or Omissions such as a Construction Management team that reviews for constructability, cost control and quality at each design phase and the project will be prepared on a Shared 3D BIM cloud model and information software where all plans and project information is shared in real time; and

WHEREAS, WJA has provided extra Liability Error and Omission insurance of \$5,000,000 per occurrence which exceeds the Village requirement of \$1,000,000 per occurrence; and

WHEREAS, the Village has negotiated extensively to ensure cost efficiency, with basic services structured as a lump sum and specialty services under a not-to-exceed framework, reducing the likelihood of additional funding requests from the Council; and

WHEREAS, the total estimated cost for WJ Architects' professional services is \$4,351,687 reflecting market increases, expanded specialty services, and critical project needs; and

WHEREAS, the basic services fee of \$2,737,655 (LS) is 9% of the \$30,000,000 construction budget and with the added specialty consultants' fees in the amount of \$1,354,032 (NTE) the overall total fee including reimbursable expenses is \$4,151,687, which is 13.8% of the estimated construction budget; and

WHEREAS, the Village acknowledges that future Council action may be required to address potential increases in construction costs and zoning ordinance modifications necessary to accommodate the required building size and parking constraints, with WJ Architects assisting in this effort; and

WHEREAS, the Village Council has determined that entering into a Professional Services Agreement with WJ Architects in collaboration with Wolfberg Alvarez & Partners is in the best interest of the Village and will advance the design and development of the new Bal Harbour Village Hall.

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

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

Section 2. Resolution and Professional Services Agreement Approved. The Village Council hereby approves this Resolution and the Professional Services Agreement with WJ Architects in collaboration with Wolfberg Alvarez & Partners for the provision of architectural, engineering, and construction administration services for the Bal Harbour Village Hall Project, in an amount not to exceed \$4,351,687, which includes an owner's design contingency.

Section 3. Implementation. That the Village Manager is authorized to execute the Professional Services Agreement, initiate all necessary activities to proceed with project development 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 18th day of March 2025.



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
Matilde Reyes
Capital Program Director
655 96th Street
Bal Harbour, FL 33154

February 17, 2025

Ref: Architectural and Engineering Design Services Agreement for The New Bal Harbour Village Hall Project – RFQ NO. 2024-005

Wannemacher Jensen Architects, Inc. (Architect) is pleased to submit this proposal to provide design services for the development of a new Village Hall and Police Department for Bal Harbour Village (Client or Village). This proposal is based upon the following assumptions.

Project Description/Information

Location:

The project site is on a vacant parcel located at 9800 Collins Avenue within Bal Harbour Village. The site sits between Collins Avenue (East) and Park Drive (West). To the North, the site abuts a Multi family residential building. To the south is the vehicular entry drive to the Bal Harbour shops.

Project information, Program and Physical Characteristics:

The Village of Bal Harbour seeks to develop a new Village Hall that will be a beacon of elegance and sustainability. This design will integrate the Village Council, Administration, Police Department, and other essential departments, providing a unified hub for civic and community services. The project will incorporate all necessary parking facilities to ensure convenient access for both staff and visitors. The new Village Hall will be an iconic multi-level structure with an elegant and understated modern aesthetic that reflects the timeless character of Bal Harbour Village.

ARCHITECT shall integrate building materials and methods that promote environmental quality, economic vitality, and social benefit through the construction and operation of the built environment in accordance with U.S. Green Building Council standards Requirements. The final project aims to meet LEED Silver Certification. Additionally, the project shall include best design practices to address future sea-level rise, the VILLAGES's storm water management program.

Client's Budget for Construction Cost and Delivery Method:

\$25 - \$30 Million Estimated Construction Budget.

Scope of Basic Services

The Basic Services below (Task 1 thru Task 6) consist of Programming/Conceptual Design, Schematic Design, Design Development, Construction Documents, Permitting/Bidding, and Construction Administration for architectural, structural, mechanical, electrical, plumbing, Fire Protection,

landscape, civil, Generator Design, Lightning Protection, Entitlement Process, Renderings, Public Meetings, Life Safety, Parking Design, and Cost Estimating Services. All Sub-consultants are required to meet and coordinate internally as needed including but not limited to quality control and clash detection. Services not set forth in the Scope of Basic Services are considered Specialized Services and are listed starting from Task 7.

Task 1: Pre-Design, Programming Verification and Conceptual Design

Prior to beginning Schematic Design Phase ARCHITECT will develop a project specific programming document and Conceptual Design Based on Existing Conditions and Investigations. ARCHITECT will meet with all pertinent department heads and stakeholders. ARCHITECT will prepare a program summary identifying all required areas and their associated square footage. The ARCHITECT will assist the Client to establish the project goals, size, budget, and objectives to provide a clear scope of work for the full design and documentation for the Project. All Surveys and Reports will commence during this task. It is assumed the VILLAGE will provide site access as needed.

The Architect will:

1. Coordinate and attend a kick-off meeting to discuss and reach an understanding of the ARCHITECT/VILLAGES's Project requirements.
2. Review the program and other information provided by the VILLAGE.
3. Meet with the VILLAGE Stakeholders and VILLAGE departments heads.
 - a. It is assumed that the Village will be responsible for selecting the required stakeholders/departments and organizing the meetings with these parties. It is also assumed these meetings will be scheduled to be completed across a span of no more than Five (5) days.
4. Analyze Data gathered and provided.
5. Prepare program summary with Square Foot requirements.
6. Review laws, codes, and regulations applicable to the Project.
7. Prepare a program of spaces for individual spaces and rooms. (If a program has not been developed)
8. Assist with developing two conceptual site plans.
9. Provide up to two conceptual floor plan design options for review and selections.
10. Provide up to two 3-Dimensional design options for review and selection.
11. Provide a conceptual cost opinion of the selected option.

Civil Engineer Consultant will:

1. Attend kick-off and bi-weekly meetings
2. Meet with and advise Architect on design iterations during progress meetings and furnish feedback and comments for consideration.
3. Data gathering and review utility information, as-builts and surveys.
4. Review all Due Diligence Documentation.
5. Perform Site Visit to review existing conditions

Landscape Architecture Consultant will:

6. Attend kick-off and bi-weekly meetings
7. Data gathering
 - Review utility information, as-builts, existing topographic survey.
 - Perform a site visit to review the existing conditions.
 - Request additional information as needed for the design.

8. Review all Due Diligence Documentation. (design, permitting, design services during bidding, services during construction)
9. Design of the required new services for preparation of paving grading and drainage plans, preparation of planting plans, and preparation of irrigation plans for the proposed site improvements
10. Perform Site Visit to review existing conditions
11. Meet the Village's Architectural Review Board Process, if required.
12. Consultant will develop initial design concepts and ideas through sketches and preliminary layouts, addressing the main functions and aesthetics of the space.
 - concept development process will be in an advisory capacity
13. Meetings with the project team to review the design concepts.

Task 2: Schematic Design

Based upon a Client provided approved program of spaces, the Architect will prepare Schematic Design Documents for review and approval. The documents will consist of items necessary to convey the nature of the schematic approach, including an architectural site plan, preliminary building plans and other drawings as needed by Architect for Client review and feedback.

Included in this task will be the schematic design for architectural, structural, mechanical, electrical, plumbing, Fire Protection, landscape, civil, Generator Design, Lightning Protection, Entitlement Process, Renderings, Public Meetings, Life Safety, Parking Design, and Cost Estimating Services. All Sub-consultants are required to meet and coordinate internally as needed including but not limited to quality control and clash detection.

The Architect will:

1. Coordinate and attend a kick-off meeting to discuss and reach an understanding of the Client's Project requirements.
2. Review the program and other information provided by the Client, review laws, codes, and regulations applicable to the Project.
3. Evaluate the Client provided program, schedule, budget for the Cost of Work, Project site, and other information pertinent to the requirements of the Project.
4. Coordinate and attend up to six (6) progress AO meeting(s).
5. Coordinate Preliminary Design Review Meetings with FDOT and MDC Fire Department for early input and recommendations. It is assumed that the Village will schedule and pay for MDC Fire Review meeting.
6. Prepare one Schematic concept consisting of a site plan, preliminary building plan, sections and elevations required to develop and coordinate the schematic scope of work.
7. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.
8. Submit Schematic Design Documents and Basis of Design Report for Client's review and approval.
9. Provide a cost estimate for the project at the completion of Schematic Design Phase.

Civil Engineering

Consultant will:

1. Review design iterations during progress meetings and furnish feedback and comments for consideration.

2. Contribute necessary information for inclusion in the Basis of Design Report including Design Narrative, Applicable codes and standards.
3. Identify risk factors, if any, that need to be factored into the design process.
4. Prepare a preliminary evaluation of the drainage requirements and existing utilities conditions and connection needs to support the approved project program requirements, including assessing any required processes and agencies that need to be engaged with.

Landscape

Consultant will:

1. review design iterations during progress meetings and furnish feedback and comment for considerations on landscape components of the project.
2. contribute necessary information for inclusion in the Basis of Design Report, limited to landscape components of the project as follows but not limited to:
 - Prepare a narrative of the landscape design approaches
 - Define the applicable codes and standards to be applied for landscape elements to ensure compliance with applicable regulations.
 - Identify landscape related risk factors, if any, that need to be factored into the design process.
 - Prepare a preliminary evaluation to support the approved programming requirements of the project, including assessing any required processes and agencies that need to be engaged with.
 - Prepare a preliminary evaluation of landscape needs (including placement, code requirements/limitations, and soil volumes) to support resiliency needs of the project and impacts on irrigation design.
3. Meetings with the project team to review the design advancement. Attendance by representative of the Landscape team. Assumed as bi-weekly, virtual meetings.

Life Safety

Conduct an initial review of architectural drawings for the new building construction being proposed. This initial phase of design will focus on developing a list of codes, standards and other regulations that would be applicable to the project. The exit arrangement will also be studied to determine how applicable provisions may affect the design development of the existing for the building.

Consultant will:

1. Perform one (1) review of the architectural drawings in PDF format. Prepare a redline markup of the PDF's to identify building features to consider for establishing a means of egress approach to be carried forward in the building design.
2. Attend a total of one (1) coordination meeting with the design team to facilitate life safety planning. This total is in addition to participation of the initial kickoff meeting anticipated for the project.
3. Consultation effort for the purpose of addressing building code and life safety planning inquiries

Parking Design

Support of Architect regarding the functional design of the parking garage as described below, providing input on the parking levels focused on maximizing efficiency and implementing user-friendly layouts. Consultant design phase involvement will commence with Schematic Design Development through 50% Design Development.

Consultant will:

- review progress drawings, zoning requirements, and user requirements related to the parking garage as needed.
- Analyze the parking structure for general parking functionality, circulation, level of service, and efficiency. Areas of emphasis are provided below.
 1. Number of parking spaces
 2. Efficiency of parking layouts and traffic flow
 3. Parking geometrics including parking space dimensions, dead-end bays, bay and aisle widths, ADA parking spaces, and accessible routes
 4. Vehicle maneuverability and turning radii
 5. Ramp configurations and slopes
 6. Entrance and exit capacities
 7. Potential vehicular and pedestrian conflicts
 8. Vehicular entry/exit number of lanes
 9. Parking equipment recommendations
 10. Pick-up/drop-off areas
- Provide comments and recommendations placed on plan PDFs (redlines) to guide project improvements.
- Participate in conference calls/virtual meetings as requested/needed.

Task 3: Design Development

Based upon the Client's approval of the Schematic Design Documents, the Architect will prepare Design Development Documents for review and approval. The Design Development Documents will consist of items necessary to illustrate and describe the development of the schematic design, including building plans, sections, elevations, and diagrammatic layouts of building systems necessary to convey the character of the project.

Included in this task will be the design development for architectural, structural, mechanical, electrical, plumbing, Fire Protection, landscape, civil, Generator Design, Lightning Protection, Entitlement Process, Renderings, Public Meetings, Life Safety, Parking Design, and Cost Estimating Services. All Sub-consultants are required to meet and coordinate internally as needed including but not limited to quality control and clash detection.

The Architect will:

1. Coordinate structural, mechanical and electrical systems with engineering design consultants as needed to meet the project requirements.
2. Prepare developed plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems.
3. Coordinate and attend up to 8 progress meeting(s).
4. Outline specifications that identify the major materials and systems.
5. Submit Design Development Documents for Client's approval.

6. Provide a cost estimate for the project at the completion of Design Development Phase.

Architectural Review Board (ARB) Submittal

The process will start after schematic Design is approved. It is expected to be two (2) month duration. This scope is based on the standard practices of the Village's ARB process and with the understanding that the process will go through the ARB review and approval process only once.

1. Consultants will prepare presentation documents and attend Meetings / presentation to the board. Prepare required site plan and rendered views necessary for Planning and ARB review Including computer-based model of proposed structure as well as generic massing for existing structures on all directions within 200 feet of the proposed structure.

Public Meetings

Attend up to two (2) Public meetings with the community. Consultant will prepare presentation documents and attend Meetings for community input and feedback.

Civil Engineering

Consultant will provide the following:

- Preliminary plan layout consisting of Demolitions and Proposed drawings (water, sewer, fire, and storm water utilities), and Proposed Grading improvements for building entrances and sidewalks.
- Consultant will prepare the required documents for ARB Submission including:
 - Pre-application meeting with city staff and architect
 - Prepare drawings for the architect to submit to the Village for ARB to include
 - Preliminary utility demolition
 - Preliminary utility relocation plan
 - Preliminary paving grading and drainage (PGD)
 - Preliminary PGD drawings to include a schematic infrastructure drainage plan depicting the general direction of surface water flow and ADA compliant connections to garage entrance and exits.
 - Attend one (1) ARB meeting with all relevant City staff and design team staff for a site plan review and feedback.
 - Address the ARB comments and progress plans
- Provide engineer's opinion of probable cost.

Landscape

Consultant will provide the following:

- Develop more detailed and specified site plan and architectural plans, including finalizing materials, finishes, and systems. Specific to landscape components, all design elements shall be considered conceptual in nature to support the architectural resolution of the site and building design. Consultant will review Geotechnical investigation reports during this phase.
- Develop a conceptual landscape planting plan.
- Develop a conceptual irrigation plan, focusing on infrastructure and connection needs only (no head or system layout to be provided during this phase).

- Provide an engineer's opinion of probable cost for the conceptual landscape and irrigation plans.

Architectural Review Board (ARB) Submittal

This scope is based on the standard practices of the Village's ARB process.

Consultant will provide:

- Preliminary hardscape plan
- Preliminary disposition plans for trees and palms.
- Preliminary planting plan, including planting selection and specie images.
- Preliminary irrigation head layout plan.
- Preparation on Arborist Report for any impacted vegetation.
- Preparation of certification letter that all landscaping satisfies all requirements of the Miami-Dade County Landscape Code, Section 18A.
- Landscape design illustrative renders, including:
 - A color-rendered, scaled site plan
 - Color-rendered, landscape-focused site elevations (North, south, west and east frontages of the property). This scope is based on the understanding that WJARC will furnish a completed 3-d model of the proposed structure in a Rhino 3d-compatible format.
- Address the ARB comments and progress plans

Life Safety

Evaluate the new building renovation in terms of meeting the requirements of the applicable building code (Florida Building Code 8th edition). Provisions for Use and Occupancy Classification and Fire Protection Systems will be reviewed to confirm and establish the code compliant approach for this project. Means of egress provisions for the building code will also be reviewed. An emphasis on the following items will also be examined during this design phase in order to assist with further development of the design:

Consultant will:

1. Fire separation distances from adjacent lot lines and openings being planned.
2. Remoteness of exits and exist discharge locations
3. Capacity of exiting required for the calculated occupant load.
4. Review requirements for the state adopted version of the Fire Code (NFPA 1) and Life Safety Code (NFPA 101) as applicable will be reviewed.

Deliverables include:

1. Perform one (1) review of the architectural drawings in PDF format for compliance with building code provisions applicable to the project. Prepare a redline markup of the PDF's to identify building features which may not be conforming or may be in excess of code requirements.
2. Provide consultation effort for the purpose of addressing building code and life safety planning inquiries

Task 4: Construction Documents

Based upon the Client's approval of the Design Development Documents, the Architect will prepare Construction Documents for review and approval. The Construction Documents will illustrate and

describe the further development of the approved Design Development Drawings and will consist of detailed Drawings and Specifications that describe requirements for the construction of the work. The Construction Documents will be used for the purpose of bidding, permitting, and construction.

Included in this task will be the construction documents for architectural, structural, mechanical, electrical, plumbing, Fire Protection, landscape, civil, Generator Design, Lightning Protection, Entitlement Process, Renderings, Public Meetings, Life Safety, Parking Design, and Cost Estimating Services. All Sub-consultants are required to meet and coordinate internally as needed including but not limited to quality control and clash detection.

The Architect will:

1. Meet and coordinate systems with engineering design consultants.
2. Coordinate and attend up to 11 progress meeting(s).
3. Incorporate the design requirements of governmental authorities having jurisdiction over the Project
4. Prepare a set of 90% Construction Documents for permitting including detailed design plans, detailed building system plans, specifications identifying materials, systems and their respective standard of quality.
5. Submit 100% Final Construction Documents to Client based on comments and changed received based on 90% CD Submission.
6. Provide a cost estimate for the project at the completion of Construction Document Phase.

Civil Engineering

- Attend bi-weekly meetings
- provide advanced plan layouts consisting of the following:
 - Site demolition notes, plans, and details
 - Demolition notes and plans for water, sewer, fire, and stormwater utilities.
 - Proposed location for the new water, sewer, fire and stormwater utilities for the proposed building.
 - Grading notes and plans for the building entrances and sidewalks around the proposed improvements.
 - Signing and Pavement Marking notes, plans, and details
 - Proposed Erosion Control Plan
- Quality Assurance/Quality Control: Review of the plans at each phased submittal by each professional of record as well as an in-house professional not directly involved with the project.
- Provide an engineer's opinion of probable cost

LANDSCAPE

This scope is based on the understanding that, at the completion and approval of the Design Development documents and ARB approval. The completed Design Development approach shall be the basis for the preparation of plans and specifications, moving forward, and it is understood that there will be no major iterative design changes that will impact previously determined decisions on utility, drainage, planting or infrastructure designs.

The Construction Documents phase is hereby understood as the preparation of final, fully detailed and specified construction documents ready for use in permitting and for contractor

use in building the project. This phase includes pre-application meetings and development Consultant's plans for submittal to the Village and permitting agencies.

Consultant will

- Attend meetings with the project team to review the document advancement.
- Utilizing the completed plans, Consultant will provide plans and specifications consisting of the following:
 - Proposed hardscape notes, plans, schedules, and details.
 - Disposition notes and plans for trees and palms.
 - Proposed planting notes, plans, schedules, and details.
 - Proposed irrigation notes, plans, schedules, and details.
 - Quality Assurance/Quality Control: Review of the plans at each phased submittal by each professional of record as well as an in-house professional not directly involved with the project.
 - Provide an engineer's opinion of probable cost for the proposed civil and landscape improvements.
 - Attend pre-application meetings with permitting agencies, limited to:
 - Bal Harbour Village Building Department
 - Miami-Dade County Department of Environmental Management (DERM) for tree permits

Lightning Protection

Consultant's scope of services will include a Lightning protection design specification for the project as requested by the Village.

Fire Protection Design

Consultant's scope of services will include a Fire protection design specification for the project as requested by the Village.

Emergency Generator

Consultant's scope of services will include a back-up generator design for the building

Life Safety

Review the life safety plan view drawing sheets based on the architectural background information prepared by the architectural group to ensure that the applicable code provisions are met. Prepare life-safety drawing annotations and supporting tabulations as required of the occupancy loads, exit widths and capacities. Evaluate common path and dead-end travel distances, wall fire-ratings and opening protection requirements for code compliance. Interface with the architectural group as well as coordinate with other design team members as required to assist in finalizing this design phase for completion of the construction documents.

Deliverables

1. Prepare one (1) PDF drawing markup submittal of the Phase VI building design (60%) with redline markups of the life safety plan view drawing sheets, providing drawing symbolism and notations as required to demonstrate applicable code compliance.

2. Perform one (1) review of the Phase VIII final architectural drawings (90%) in PDF format for compliance with building and fire code provisions applicable to the project. Prepare/update a redline markup of the PDF's for completion of the design phase to identify building features which may not be conforming to code requirements.
3. Attend coordination meetings with the design team to review/discuss the markup submittals and finalize life safety planning.

Task 5: Assistance with Permitting/Bidding

Following the submission of the Construction Documents for Client's approval, the Architect will assist the Client/Contractor with permitting and obtaining bids from Contractors/subcontractors.

The Architect will:

1. Provide Signed and Sealed document sets for the building permit to the following Jurisdictions;
 - Bal Harbour Building Dept., DEP, DERM, MDC Fire, DOH, FDOT, WASD, South Florida Water Management.
2. Respond to questions, provide clarifications, and modify documents as required in response to Permit Review comments
3. Assist the Client/Contractor with preparation and distribution of bid documents.
4. Respond to questions and provide clarifications and interpretations of the Construction Documents to Client/Contractor and prospective subcontractors.

Landscape Consultant will:

1. Prepare and process permit applications through the above entities.
2. Address all comments issued by permit agencies and make one (1) resubmittal in order to secure permits and obtain a building department 'Dry Run' approval, pending the contractor's official submittal of the plans.
3. Meetings with the project team to coordinate all final components. Limited to one 1-hour meetings.
4. Provide Bid Documents to include:
 - Final building department approved plans and specifications for advertisement to include:
 - Two (2) 24" x 36" set of plans signed & sealed
 - (Two (2) Technical Specifications Documents (front-end documents by others).
 - One (1) Digitally signed and sealed PDF set of plans
 - Applicable Permits
 - Landscape-related bid tab elements for inclusion in advertisement.
5. Attend Pre-Bid Conference with potential Contractors and Village representatives.
 - Consultants will respond to contractor questions related to civil and landscape improvements.
6. Consultant to include written responses to RFI questions

Task 6: Construction Administration and Close-Out

The Architect will provide construction oversight to review if the project is being performed in accordance with the Construction Documents. The Architect will assist the Contractor when conflicts or clarifications are needed. The Architect will make periodic site visits to observe construction and follow the progress.

The Architect will:

1. Review and certify Contractor's pay applications based on the Architect's best knowledge of the information and data available to Architect.
2. Attend site visits/meetings at the project site to evaluate the progress of Construction.
 - a. Prepare Meeting Minutes and Field Reports
 - b. It is anticipated that all site visits and meetings will be completed concurrently.
3. Review and respond to the contractor's submittals and shop drawings.
4. Review and respond to the contractor's requests for information (RFIs).
5. Provide telephone and email correspondence as necessary.

Landscape Consultant will:

1. Prepare "as-bid" construction documents.
2. Attend Pre-Construction Conference meeting with Contractor.
3. Shop Drawing Review for up to one (1) initial review of shop drawing and one (1) review following any required revisions.
4. Construction Meetings – up to a maximum of 10 meetings.
5. Site Visits - up to six 1-hour site visits for the LAOR are included.
6. Respond in writing to Contractor's Requests for Information (RFI) regarding the design documents during the construction period.
7. Any field visits necessary for conflict resolution shall occur during the site visits.
8. Assist in the preparation of inspection punch list(s).
9. Certificate of Construction Completion - Provide assistance for necessary documents to close out applicable regulatory permitting for the project and to obtain acceptance of site improvements.

Close Out:

1. Attend one Substantial Completion walk-through.
2. Attend one Final Completion Walk-Through.
3. Review and respond to the Contractor's prepared as-built drawings.

A construction duration not exceeding 18 months is anticipated based on the project information. Up to 36 site visits/meetings at the Project site are included.

Specialty Services

The following services are not included in Basic Services but may be required for the Project or requested by the Client.

Task 7: Geotechnical Engineering

The geotechnical engineering scope of services will include the following main items.

- Desktop review of generally available public information, i.e., NRCS, USGS databases.
- Field exploration consisting of drilling and sampling of the subsurface materials and observation of current groundwater levels at the site.
- Conducting representative laboratory testing of subsurface materials.
- Performing engineering analysis and providing geotechnical recommendations in written report PDF format.

Private Utility Locator – Ground Penetrating Radar (GPR):

Considering the site is an existing building and paved lot, to further mitigate the risk of drilling through existing underground utilities, the proposed exploratory areas will be scanned with Ground Penetrating Radar (GPR), which is a special device that transmits electromagnetic pulses through the ground at shallow depths. Upon locating any underground utility lines, their approximate locations will be marked on the ground surface with temporary marking paint. It should be noted that the proposed location methods are typically only somewhat reliable for larger or shallower utilities. Smaller utility lines such as fiber optic cable or utility lines deeper than five to six feet from the ground surface may not be identified.

Field Exploration

Consultant proposes that the subsurface conditions be explored by five Standard Penetration Test (SPT) soil borings, and one South Florida Water Management District (SFWMD) exfiltration test following the provided Consultant drilling program. The table below summarizes our exploratory boring program and the figure that follows depicts the proposed boring location plan.

TABLE 3: SUMMARY OF BORINGS

| Design Element | Number of Borings | Boring Depth (feet) | Drilling Footage (feet) |
|------------------------------------|-------------------|---------------------|-------------------------|
| Proposed Buildings (B2 and B4) | 2 | 50 | 100 |
| Proposed Buildings (B1, B3 and B5) | 3 | 40 | 120 |
| Percolation Test (P1) | 1-PT | - | - |
| TOTAL (Borings): | 5 | - | 220 |

The borings' locations will be identified in the field using available natural landmarks or standard GPS coordinates. Surveying of the boring locations to obtain surface coordinates and elevations is beyond the scope of service. References to depths of various subsurface strata will be based on depths below existing grade at the time of drilling. See below for a list of field activities and then a table below of our field exploration description.

- During the field activities, the subsurface conditions will be observed, logged, and visually classified. Field notes will be maintained to summarize soil types and descriptions, water levels, changes in subsurface conditions, and drilling conditions.
- Final depths of the borings may be extended (because of weak/soft soils) or reduced (because of refusal) depending on the subsurface materials identified during field activities.
- Consultant will contact Local Utility Clearance Entity, i.e., Sunshine 811 prior to the start of drilling activities. It is our experience that these companies do not mark the locations of privately-owned utilities. This proposal is based on private utility lines and other subsurface appurtenances are located in the field by others prior to field activities.
- Some damage to the ground surface may result from the drilling operations near the work areas and along ingress/egress pathways. The field crew will attempt to limit such damage, but no restoration other than backfilling and grouting the borings is included in this proposal. Excess auger cuttings and drilling spoils would be spread on the site.

TABLE 4: ANTICIPATED FIELD EXPLORATION DESCRIPTION

| | |
|---|---|
| Drilling Equipment | Truck-mounted drilling equipment |
| Drilling Method | Mud rotary |
| Field Testing | Standard Penetration Testing (ASTM D1586) |
| Sampling Procedure | Soils: ASTM D1587/1586 |
| Sampling Frequency | Continuously (two-foot intervals) to a depth of 10 feet and at five-foot intervals thereafter |
| Frequency of Groundwater Level Measurements | During drilling |
| Boring Backfill Procedures | Soil cuttings and grouting |
| Sample Preservation and Transportation Procedure | General accordance with ASTM D4220 |

The field exploration program will be performed in general accordance with the designated ASTM procedures considering local and regional standard of care practices. Laboratory Testing Representative split spoon soil samples obtained during the SPT-field exploration program will be transported to the Consultant's laboratory in Fort Lauderdale for testing. The nature and extent of this representative laboratory testing program will be dependent upon the subsurface conditions identified during the field exploration program. The laboratory program will be performed in general accordance with the applicable ASTM procedures considering local and regional standard of care practices. The laboratory program may include the following standard tests included in Table 5.

TABLE 5: LABORATORY TESTING GENERAL PROCEDURES

| Laboratory Test | Applicable ASTM |
|--|------------------------|
| Visual Classification | ASTM D2488 |
| Organic Content | ASTM D2944 |
| Moisture Content | ASTM D2216 |
| Material Finer than No. 200 Sieve | ASTM D1140 |

Engineering Analyses and Report

The results of the field exploration and representative laboratory testing will be used in the engineering analysis and in the formulation of the recommendations. The results of the subsurface exploration, including the recommendations and the data on which they are based, will be presented in a written geotechnical report. The geotechnical report may include the following items:

- General soil profile description, soil characteristics, soil classifications, and groundwater table conditions.
- General site development and subgrade preparation recommendations.
- Recommendations for site excavation, fill compaction, and the use of on-site and imported fill material under the structures.
- Recommendations for shallow foundation system, i.e., spread, and continuous footings, as needed for the project. Estimation of bearing capacity and settlements.
- Recommendations for building pad preparation for ground supported slabs having a maximum movement potential, due to settlement, of one inch.
- Provide Hydraulic Conductivity (K) rate.

A pdf version of the geotechnical report will be prepared and submitted by email to WJ Architects and design team. The geotechnical report will be reviewed, signed, and sealed by a registered Professional Engineer in the State of Florida.

Task 8: Phase I Environmental Site Assessment

Consultant will complete the Phase I ESA using the guidelines of the ASTM International Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process (ASTM E1527-21), and the United States Environmental Protection Agency's (US EPA's) All Appropriate Inquiries (AAI) Rule (40 CFR Part 312). The purpose of this Phase I ESA is to identify, to the extent feasible pursuant to the processes prescribed herein, recognized environmental conditions (RECs) in connection with the subject property. The Phase I ESA will include reviewing physical setting resources, government records and historical records; completing a site reconnaissance; interviewing owners/operators/occupants of the subject property; and evaluating the information obtained. We will provide the findings, opinions, and conclusions of the Phase I ESA in a report signed by an environmental professional.

Consultant assumes that the names and contact information for current and prior owners, operators, and occupants of the subject property will be provided by Owner, if available.

Consultant assumes that the following information be provided upon authorization to proceed:

- A completed User Questionnaire (Attachment B)
- The findings of tasks defined as user responsibilities (e.g., title search, environmental lien search, etc.)
- Pertinent documents as described in Attachment A, Task 2
- All previous environmental reports (e.g., previous Phase I ESA reports)

Task 9: Pre-Demolition Asbestos-Containing Materials Survey

The purpose of the ACM survey will be to identify ACM for compliance with Florida Department of Environmental Protection (FDEP) and U.S. Environmental Protection Agency (EPA) National Emission Standards for Hazardous Air Pollutants (NESHAP), and Occupational Safety and Health Administration (OSHA) asbestos regulations prior to demolition. The state, county, and federal NESHAP regulations require a 'thorough inspection' prior to the renovation or demolition of a facility so that identified ACM can be properly managed.

Consultant will endeavor to conduct the survey to meet the federal, state, and local regulatory requirements for a "thorough inspection" by assessing safely accessible interior, exterior, and roof areas to the practical extent allowed by current property ownership and/or current occupants/tenants, as applicable.

Consultant will conduct the ACM survey following the guidance for Pre-Construction Survey protocols in the ASTM International's (ASTM) E2356 Standard Practice for Comprehensive Building Asbestos Surveys. ASTM E2356 meets the applicable requirements of current FDEP, Miami-Dade County, EPA NESHAP Standard 40 CFR 61, Subpart M (Asbestos), EPA Asbestos Hazard Emergency Response Act (AHERA) Standard 40 CFR 763, Subpart E, and OSHA asbestos survey and/or sampling regulations. consultant may deviate from the ASTM E2356 prescribed protocols or recommendations if warranted

or determined necessary by the inspector's professional judgment to meet our client's expectations within the limitations of our scope of services.

Destructive, intrusive, and/or exploratory testing is included in our scope of services as part of the ACM survey. We will endeavor to observe normally inaccessible areas such as pipe chases, wall cavities, inside mechanical systems, under primary flooring surfaces, etc. for suspect ACMs, as practical. Where destructive, intrusive, and/or exploratory testing is unauthorized, or access is prevented or unsafe, consultant will document these areas and/or materials that may not be properly inspected and include them in the report for further investigation prior to or during the actual construction work. The survey will include interior, exterior, and roof probes. These probes may be necessary for areas where consultant suspects that ACM may be hidden or concealed. For roofing systems, consultant will provide temporary patch/repair of intrusive/destructive access locations. However, we cannot warranty or guarantee the effectiveness or water-tightness of our patch and repair work. It is assumed that there will be safe access to roofing systems and ceiling areas with either a fixed-ladder to access the roofs or stepladder to access ceilings.

To the practical extent allowed, consultant will endeavor to observe normally inaccessible areas such as pipe chases, wall cavities, inside mechanical systems, under primary flooring surfaces, etc. for suspect ACMs, as practical. There may be areas, materials, and/or equipment that would be considered inaccessible at the time of the survey due to current owner/tenant and/or physical constraints, or apparent safety hazards. In these instances, consultant will document suspect ACM that in our professional opinion may be present or are observed but cannot be accessed due to either administrative or physical constraints, or accessing would be unsafe.

When necessary and based upon site conditions, samples will be collected in a random, representatively distributed manner at the inspector's judgment. However, based upon site conditions, scope, budgetary, and/or schedule constraints, observations and samples may be collected at points of convenience to facilitate the execution of the survey.

Because of the inherent nature of collecting bulk samples from suspect materials, some damage will occur to these building components. Consultant will not be responsible for repairing such damage back to its original finish for interior sampling locations but will attempt to reduce this damage to the extent practicable.

Consultant will inventory and collect representative bulk samples from suspect homogeneous areas (HAs) and submit the samples for analysis. HAs are materials that appear similar in terms of color, texture, and date of material application. The condition, and approximate location and quantity of each identified ACM will be documented for incorporation in the survey report. Our survey will include only above ground investigations (e.g., no subsurface/below grade sampling is included).

Consultant anticipates collecting up to 115 bulk samples for laboratory analysis from the facility. Each bulk asbestos sample will be submitted under chain of custody to a Voluntary Laboratory Accreditation Program (NVLAP) accredited laboratory and analyzed using Polarized Light Microscopy (PLM) coupled with dispersion staining as outlined in the USEPA's "Method for the Determination of Asbestos in Bulk Building Materials" (EPA-600/R-93, July 1993). The samples will be analyzed with a standard five (5) business-day turnaround time schedule. Our proposal does not include performing point counting or other additional analysis for bulk samples being reported as trace amounts of

asbestos. If point counting or additional confirmatory analysis is recommended, Langan will discuss additional costs prior to proceeding with additional confirmatory analyses.

ACM Survey Report

Upon completion of the pre-demolition ACM field survey activities and receipt of laboratory analytical results, a single report of findings will be prepared that presents the sampling strategy, sample results and recommendations for abatement, if necessary, for the facility. The one survey report will include the following:

- ACM Summary Table:
 - Description (e.g., 12" x12" black floor tile) and result (e.g. ACM, non-ACM, etc.)
 - General location
 - Approximate quantity
 - General condition (Friable/Non-Friable)
 - Regulated or Non-Regulated (required abatement prior to demo or not)
 - Recommended action for demolition (e.g., remove, remain in-place, dispose of as hazardous waste)
- Laboratory Reports
 - Photograph Log
 - Figures with Approximate Bulk Sample Locations
- Inspector Qualifications

Task 10: Sub Utilities SUE + Locates

(SUE) GPR of the subject site and requested area for underground utilities. (As shown within Red limits)

Site and SUE Survey Extents



Task 11: Traffic Engineering

Traffic engineering services related to preparing the Traffic Impact Study for the proposed new Bal Harbour Village Hall located at 9800 Collins Avenue in Bal Harbour, Florida. The proposed new Village Hall will house the Village Council, Administration, the Bal Harbour Police Department, and other Village Departments. The current conceptual design anticipates a building with 20,000 to 30,000 square feet of interior conditioned space. The site will also incorporate all parking facilities to accommodate the facility's requirements. The existing parcel is vacant.

This Traffic Impact Study will be prepared following the Miami-Dade County Department of Transportation and Public Works Traffic Impact Study Standard Methodology document dated 07/29/2020.

II. SCOPE OF SERVICES

This task work order proposal will include the following TASKS:

1. Project Traffic Methodology & General Project Management Activities
2. Traffic Data Collection
3. Trip Generation
4. Trip Distribution & Assignment
5. Traffic Operational Analysis

6. Roadway Segment Analysis
7. Traffic Impact Study Preparation
8. Traffic Impact Study Agency Review/Revisions
9. Public Hearings/Meeting Attendance
10. Civil Engineering and Architectural Site Plan Review

1.0: General Project Management Activities

This task includes general project management activities, client management, coordination with the Design Team, Village of Bal Harbour, FDOT, Miami Dade County Department of Transportation and Public Works (DTPW). This includes attendance at up to two (2) joint virtual meetings with the Design Team, Village staff, FDOT, and Miami-Dade County DTPW.

2.0: Traffic Data Collection

Turning movement counts will be collected during the morning (7:00 a.m. – 9:00 a.m.) and afternoon (4:00 p.m. – 6:00 p.m.) peak periods during a normal week at the following intersections:

1. SR A1A/Collins Avenue and 9800 Block (signalized)
2. SR A1A Collins Avenue and 9700 Block (signalized)
3. SR A1A/Collins Avenue and Bal Harbour Shops Driveway (signalized)
4. SR A1A/Collins Avenue and SR 922/96th Street (signalized)
5. SR A1A/Harding Avenue and SR 922/96th Street (signalized)
6. SR 922/96th Street and 500 Block/Bal Harbour Shops (signalized)

Existing FDOT traffic count station number 870540 along SR A1A/Collins Avenue (200' S End Bridge/NCL Bal Harb) was reviewed, and the AM peak period was confirmed to be between 7:00 a.m. and 9:00 a.m. The PM peak period was confirmed to be between 4:00 p.m. and 6:00 p.m. One 72-hour daily speed/volume tube count will be collected on SR A1A/Collins Avenue between SR 922/96th Street and Harbour Way. Historical traffic counts may be used in lieu of collecting new traffic data as approved by the Village

3.0: Trip Generation

The number of weekday peak period trips generated by the proposed development will be calculated using rates in the Institute of Transportation Engineers (ITE) Trip Generation, 11 Edition for Land Use Code 730 (Government Office Building). Additional trip reductions for internal capture and pass-by trips are not anticipated for this proposed land use.

4.0: Trip Distribution & Assignment

Distribution of project traffic will be based on cardinal distribution percentages for TAZ 615 published in the latest edition of the Miami-Dade Transportation Planning Organization (TPO)'s Directional Trip Distribution Report and then assigned to the roadway network in the study area.

5.0 Traffic Operational Analyses

Existing Conditions: The Consultant will complete a traffic operational analysis of the existing conditions using the traffic data collected from task 2.0 Future Conditions (Background Traffic): The Consultant will complete a traffic operational analysis for the future project build-out year without the subject project traffic. This scenario will include the traffic expected to be generated by committed developments within the study area. Future Conditions with Project: The Consultant will complete a traffic operational analysis for the future project build-out year as explained under Future Conditions (Background Traffic), plus the project site generated trips.

6.0: Roadway Segment Analysis

The Consultant will complete a Roadway Segment Analysis along SR A1A/Collins Avenue between SR 922/96th Street and Harbour Way in accordance with FDOT's latest Q/LOS procedures.

7.0 Traffic Impact Study Preparation

The Consultant will prepare a traffic impact study documenting the results of task 1.0 to 6.0 using tables and figures. Based on the results of the future traffic analysis, traffic mitigation improvements will be recommended for roadways and intersections which are forecasted to operate below the adopted level of service threshold. The traffic mitigation improvements will aim at maintaining levels of operation without project implementation. The traffic impact study will be signed and sealed by a Florida-registered professional engineer.

8.0 Traffic Impact Study Agency Review/Revisions

This scope of services includes the initial traffic impact study submittal plus one revision based on a set of comprehensive traffic review comments by the Village of Bal Harbour, FDOT, and/or Miami Dade County DTPW (as applicable). Any additional revisions will be performed as part of an additional service agreement.

9.0 Public Hearings/Meeting Attendance

This Consultant will prepare and attend up to three (3) planning and zoning meetings/hearings related to the traffic impact study.

10.0 Civil Engineering and Architectural Site Plan Review

This Consultant will complete a traffic review of the proposed architectural site plan and pavement, marking and signage plan. The Consultant will provide suggested improvements related to internal traffic circulation. The Consultant will complete a review of the parking information to confirm compliance with the Village of Bal Harbour criteria and standards.

Note:

- The Village of Bal Harbour will approve the traffic count locations prior to deployment of the traffic data collection devices.
- If modifications are required to the traffic impact study due to changes in the traffic impact study methodology, including the proposed site and intensity of the proposed development program, these services can be provided as an additional service as requested.

Task 12: Reasonable Assurance Report

Prepare Reasonable Assurance Report re-write

Task 13: Lighting Design

An over-arching lighting strategy will establish the hierarchy of places and series of 'character zones', through location specific lighting elements. To encourage nighttime use of the spaces, we suggest to emphasize comfort and accessibility at night and providing an agreeable passage experience between the various exterior spaces using re-occurring elements along the pathways.

Environmental protection, including turtle friendly lighting between May and October, will play an important role in supporting the defined character of the exterior lighting.

Our design may be influenced by following lighting mitigation hierarchy:

- Reduce quantity
- Reduce time
- Focus
- Reduce brightness
- Adjust spectrum

The lighting technology will be designed to a high standard of impact protection, suitable for their locations and ease of maintenance.

Meetings and Site Visit

Consultant will meet with the Owner, Client, the design & engineering team, and others during the design and construction phases for reviews, coordination, and presentations, as needed by phone, web conference or in person in Bal Harbour.

We have allowed in our fees for one (1) in-person site visit in preparation for existing conditions analysis, up to four (4) in-person site visits during CA for construction progress review, and up to one (1) in-person site visit upon substantial completion of construction for aiming and adjustment of lights and for overseeing commissioning of lighting control system.

Lighting Scope of Work

Proposed scope of work covers the following lighting systems for the project:

- Architectural interior lighting
- Façade lighting and nighttime building image (including lighting within 5 feet of the building envelope)
- Site lighting (beyond 5 feet from the building envelope, extending to the project boundary)
- Exterior landscape lighting (including within and beyond 5 feet from the building envelope, extending to the project boundary)
- Emergency / egress lighting (for review by the project electrical engineer)
- Lighting control system design (for review by the project electrical engineer)
- Daylight analysis for LEED Silver certification (for review by the project LEED consultant)

Architectural and Façade

Consultant will work with the design team to develop visual concepts that complement the project specifics, while supporting the project goals. To communicate design concepts, we will utilize the following tools, as determined by project needs:

- Lighting concept renderings and sketches
- Illustrative lighting diagrams based on 3D renderings provided to us by the Architect
- Visual references and precedents to convey design concepts
- Sketches, drawings, and specifications

Consultant will provide design information on illumination levels to meet program requirements and/or industry standard practice. We will provide relevant lighting information for others to use for energy code analysis, such as lighting power densities.

Interior architectural lighting design scope includes all public spaces in the building and the parking

garage. Back-of-house spaces such as MEP rooms and janitor's closets are not included but can be for additional fee.

Exterior Site and Landscape Lighting

For the exterior architectural lighting design, the following scope will be included within the Project Site boundary.

- Pedestrian pathway lighting
- Landscape accent lighting
- Building nighttime image illumination (façade)
- Outdoor common areas
- Lighting for building entry points and outdoor circulation

Lighting Control System Design

Consultant will provide the design team with guidance on the lighting control system design and strategy to meet the sustainability and functional design goals for the project.

Consultant will recommend a control system type and provide a lighting control schedule indicating control type and functionality required. We expect the project electrical engineer to incorporate this information into the final design. All sizing and placement of panels, circuiting, and specification of lighting control equipment shall be by the electrical engineer.

Emergency Lighting Design

Emergency lighting for architecturally sensitive areas often requires emergency lighting to be a highly integrated part of the lighting and architectural design. We will provide full design services of the emergency lighting system, including emergency lighting calculations for review and approval by the project electrical engineer at the end of Phase 6 – 60% Construction Documentation (CD).

Consultant expects that exit sign specification and placement will be done by the architect and incorporated into the contract drawings by the project electrical engineer.

Daylight Analysis

As part of the design process, we will work with the Client and LEED Consultant to identify the impact of the proposed fenestration systems and solar mitigation on the daylight environment within the building. We will work with the architect to review the design and propose adjustments to the building massing and / or fenestration to optimize the design for daylight access and visual comfort in spaces deemed necessary for LEED requirements.

The following services are included in the daylighting scope:

- Daylight Autonomy (DA) – the percentage of time during a typical year that a target daylight illuminance is exceeded for LEED Silver only
- Specification review and comment on daylighting-related elements, such as glazing and roller shades
- Recommendations of daylight mitigation and shading techniques, including fenestration and shading systems
- Lighting control system consultation related to daylighting design, including zoning of luminaires based on daylight availability.

Our proposed scope includes daylighting consultation for regularly occupied spaces within the buildings.

Theatrical / Event Lighting Design

The following Scope will be included in theatrical / Event lighting for chambers space.

- Design of the event lighting system, specifying fixture types, locations, control systems, and power distribution. This phase includes lighting plots (drawings showing fixture placement), circuit schedules, equipment specifications, and renderings or visualizations to illustrate the final look.

Key Deliverables

Key tasks and deliverables for each stage are as follows:

Phase 1 – Existing Conditions Analysis

- Existing lighting conditions analysis on site, including review of site context and space use at night, physical urban characteristics, and technical lighting measurements (foot-candle spot measurements)
- Photo survey to document street, pedestrian and existing architectural elements for future reference
- In-person meeting with Client for understanding existing conditions and opportunities
- Virtual meetings are assumed to be bi-weekly with regular communication

Phase 2 – Concept Development

- N.A.

Phase 3 – Schematic Design (SD)

- Meet with the Client, Owner and other stakeholders to understand project goals and aspirations and to explore the neighborhood character context
- Identify applicable code and standards with local consultants and engineers
- Working with the Client, develop preliminary lighting design concept sketches to illustrate the lighting design concepts
- Generate a concept statement for each area
- Develop shaded sketches to indicate lighting zones/atmospheres per space type
- Propose a lighting control strategy
- Provide input to presentations and Produce a Basis of Design report including:
 - Applicable codes and standards
 - A concept statement for each area
 - Shaded site plan to indicate lighting zones/atmospheres
 - Conceptual/precedent images for lighting and installation types
 - Recommendations on preliminary luminaires
 - Recommendations related to lighting sustainability and light pollution reduction/turtle friendly lighting
 - Recommendations on light source type and color temperature
 - Lighting control recommendations
- Virtual meetings are assumed to be bi-weekly with regular communication

Phase 4 – Design Development (DD)

- Incorporate comments from the review of SD documentation by the Owner/Client
- Review cost estimates from SD phase estimation

- Develop preliminary lighting scheme using site plans, floor plans, reflected ceiling plans and elevations furnished to us by the Client
- Prepare preliminary luminaire schedule
- Prepare outline CSI formatted Luminaire and Lighting Controls fixture specifications
- Provide the design team with guidance on the options available to the project on various lighting control strategies. These strategies will comply with the project's programming and space use design goals.
- Prepare a lighting control narrative and lighting control schedule
- Daylight Simulation: Spatial Daylight Autonomy for spaces necessary for LEED
- Provide supporting specification information for glazing and shading systems for inclusion in the architect's documents for spaces necessary for LEED
- Discuss the design with the Project's Electrical Engineer of Record (EEoR) for their incorporation of the requirements in the electrical system engineering design
- Provide final Basis of Design report, including all design elements
- Virtual meetings are assumed to be bi-weekly with regular communication

Phases 5-8 – Construction Documents (CD)

- Incorporate comments from the review of DD documentation by the Owner/Client
- 30-60% CD: Finalize lighting scheme using site plans, floor plans, reflected ceiling plans and elevations furnished to us by the Client. The architects and engineers shall use these drawings in the preparation of the contract documents.
 - Provide updated luminaire schedule
 - Provide a written Luminaires specification in CSI format, including:
 - Written text describing installation requirements
 - Luminaire Data sheets for each fixture type
 - Provide a written Lighting Controls specification in CSI format
 - Provide designation of control zoning information in lighting layouts for use in engineering the lighting control system
 - Provide an updated lighting control schedule and narrative
 - Work with the EEoR to incorporate the lighting control system design with the facilities electrical infrastructure. We expect the electrical engineer to produce branch circuiting, and panel schedules
 - Provide sketches, where required, to clarify the design and develop lighting details with the Client and other project consultants
 - Coordinate issues related to lighting with structural and MEP trades
 - Coordinate foundation details with the project's civil and structural engineer for site lighting
- 90-100% CD: Review and annotate Client's and EEoR's drawings to show modifications to layouts. The architects and engineers shall use these markups in the preparation of the contract documents. No Lighting drawings/specifications after 60% CD.
- Virtual meetings are assumed to be bi-weekly with regular communication

Phase 9 – Bidding & Negotiation (BN)

- Assist the Client, where required, with the selection of appropriate bidders
- Provide one set of responses to RFIs from bidders for portions of the work related to lighting
- Provide one review of bids for conformance with our design intent, and make recommendations
- One round of value engineering (VE) to meet the project budget

Construction Administration (CA)

- Attend construction progress meetings by phone or web conference, as needed
- Respond to requests for information (RFIs)
- Review of shop drawings and submittals for luminaires and lighting controls systems. This proposal allows for up to two (2) reviews of each submittal.
- Visit the site to prepare punch lists, subject to the field-day limit:
 - Up to four (4) site visits during construction / luminaire installation to review progress
- Provide an overview of set-up of the lighting installation
- Provide direction for onsite programming by the contractor of level scenes and selections of the lighting installation
- Provide direction for luminaire focusing by the contractor
- Supervise, upon completion of the punch-list, the final focus and adjustment by the contractor of all permanently installed, adjustable lighting equipment subject to field-day limit
- Following formal notification of systems commissioning completion from the contractor, provide a site review observing system operations.
- Up to one (1) site visit to prepare punch lists, oversee aiming / adjustments of luminaires, and oversee commissioning of lighting control systems

Task 14: Interior Design and Furniture and Furnishings

Interior design applies creative and technical solutions within a structure to achieve a built interior environment. Designs are coordinated with the building shell and acknowledge the physical location and social context of the project finishes.

The Interior Designer will:

- Formulate preliminary space plans, design concept studies and sketches that integrate the client's program needs.
- Attend up to two (2) in-person meetings with the Village
- Survey existing furniture and equipment if needed
- Prepare furniture plans and drawings to assist with placement and installation.
- Research and selection of required furniture with standard manufacturer finishes.
- Coordination and assistance with a single furniture vendor.
- Research interior materials applicable to the Project.
- Provide interior finish selections (color/material) and specifications
- Design and documentation of custom casework/millwork to include elevations, sections, detailing and selection of decorative hardware.
- Select specialty lighting fixtures
- Coordination with Electrical Engineer and AV/IT Vendor for power/data location requirements
- Formulate reflected ceiling plan to illustrate specialty ceiling materials, finishes and lighting selections.
- Select and document interior signage.
- Present preliminary design vision inclusive of material selections and color palettes.
- Present final design vision inclusive of Owner selected material selections and color palettes.
- Construction Documentation: Prepare finish plans, interior elevations, detailing, finish schedules and legends to illustrate specialty materials and finishes.
- Provide specifications and select all room finishes, including flooring, paint, wallcovering, wall base, millwork, furniture, and window blinds.

- Observe and report on the construction of the project, while in progress and upon completion, as it pertains to the interior scope listed within this task.

Not Included but can be added for an additional fee if requested by Client:

- Detailed specifications for furniture selections
- Incorporation of Owner's graphics into built interior environment.
- Selection of Fixtures or Equipment.
- Survey of and/or Incorporation of Owner's Fixtures or Equipment
- Custom selected furniture finishes.
- Coordination and assistance with multiple furniture vendors.
- Materials Presentation Boards
- Supervision during furniture installation

Task 15: Sustainability and LEED Consulting

The approach to decarbonization and certification for this project will be determined by Ownership goals and development plans.

For this project, Consultant proposes the following:

- Participation during the early stages of design to ensure that the project sustainability and increased building performance goals are integrated in the project design.
- LEED Program Management: Design + construction phases documentation and submittal + certification
- LEED Fundamental (pre-requisite)
- LEED Energy Modeling under the new version of LEED

For this project, Consultant will lead the LEED NC certification efforts for the project. Based on the project's description and at the client's request, Consultant proposes to represent the ownership and design team as the Sustainability Consultant and LEED Program Manager on behalf of the USGBC/GBCI while pursuing a LEED Certification under Version 4.0 or 4.1. Consultant assumes management of the entire LEED certification process from design to final construction submittal and certification.

Consultant will:

- Provide advice to ownership and A/E on cost-efficient sustainability and increased performance design strategies, included but not limited to: passive design, heat-gain management, heat island effect, energy conservation measures, etc.
- Offer an integrative approach to the implementation of sustainability and performance strategies towards the achievement of the LEED certification.
- Complete the LEED Energy Modeling & Simulation.
- Collaborate with the entire team to evaluate site use strategies and resiliency considerations that impact both the use of the site and the LEED certification.
- Coordinate LEED efforts with all team members, complete most LEED templates, except those required to be completed by the Engineer of Record.
- Identify credits and strategies that are most appropriate at the Site and Building that better align with the Client's sustainability goals.
- Provide comprehensive LEED PM and Commissioning Design Reviews, LEED and commissioning site visits, inspections, and testing as described in this scope.

- Reviews of construction submittals.
- Work with the construction team to guide them on providing construction-related documentation and implementation of strategies, all leading towards the successful achievement of the LEED certification.
- Collaborate with ownership, the A/E team, and solar vendors on the design and selection of a solar renewable energy system that aligns with ownership goals, future proof the site, and that is cost-efficient.
- Prepare most LEED templates for submittal, except those requiring the designer/engineer seal.
- Submit documentation to the LEED online platform for GBCI review (design and final submittals).
- Respond to GBCI reviewer comments and/or coordinate with the appropriate team member for response.

LEED Feasibility

Overview

Consultant will provide feasibility analysis, consulting, and certification administration services to facilitate the project's achievement of LEED Silver certification. A detailed description of the approach to LEED facilitation can be found in the LEED Services section below.

Consultant project management services shall include:

- Appoint a project manager who will be the primary point of contact.
- Coordinate the planning, execution, and documentation of all LEED-related criteria among the Owner and project team members.
- Provide services required to complete the project in accordance with best professional practices.
- Identify the applicability of Bal Harbour's Local Laws and regulatory processes and permits, and any potential impact to project cost and/or scope.
- Consultant will complete a review of the SD Layout package and the existing LEED scorecard prepared by others and identify potential gaps and efficiencies needed to be implemented towards the achievement of the LEED Silver certification.
- Conduct an initial charette with Ownership and the Arch team to determine what the most appropriate path for certification would be for this project.
- At this point, the project has the potential to pursue several avenues to LEED certification. Consultant will assess the most cost-effective path for the project to be finally determined with the Client.

Deliverables

Consultant will deliver the following, either throughout or at the end of this process:

- LEED feasibility scorecard, indicating which credits will be targeted for certification and the selected LEED version, presented based on their achievability potential.
- LEED feasibility Executive Summary memo
- LEED action items list + narrative
- List of items required for the project registration with the USGBC

Meetings & Site Visits

Consultant will attend the following meetings during the feasibility phase:

- Introductory meeting
- Feasibility LEED charette

LEED Certification Management

Overview

Consultant will provide analysis, consulting, and certification administration services to facilitate the project's achievement of LEED certification.

Consultant project management services shall include:

- Appoint a project manager who will be the primary point of contact.
- Coordinate the planning, execution, and documentation of all LEED-related criteria among the Owner and project team members.
- Complete most LEED templates for submittal for LEED review and certification, except those required to be signed by the specialty engineers (IAQp1, IAQc6, Thermal Comfort calculations, stormwater calculations, MEP calculations, interior lighting, surface reflectivity calculations).
- In depth materials vetting consulting during the design phase and additional materials tracking during construction.
- Provide services required to complete the project in accordance with best professional practices.

Deliverables

Consultant will deliver the following, either throughout or at the end of this process:

- Division 1 sustainable design requirements.
- SDs-DDs-CDs drawing set reviews and updated scorecard updates.
- LEED action items list, issues logs, site visits reports.
- Access to Consultant's online Project Management Platform and automations
- Digital files of LEED certification award, documents, and final LEED Scorecard post certification.

Meetings & Site Visits

Consultant will attend regular weekly virtual project meetings as requested:

- LEED charrette and design/construction kickoff meetings.
- LEED-design meetings with individual trades from A/E to address specific credits.
- Attendance to regular design-phase meetings
- Attendance to Construction O/A/C meetings
- Coordination with other LEED credits Energy Model results. Additional services recommendations may be made for points compliance.
- Should the Client require it: Up to three (3) construction-phase site visits.
- Monthly LEED progress meetings with the construction team throughout the construction phase.

Energy Modeling & Analysis – Required for LEED certification

Consultant will provide energy modeling and analysis services to facilitate high-performing MEP system design and to support achievement of the project's energy goals and overall sustainable objectives, including LEED certification. Energy modeling will be used as a tool to evaluate the project's expected performance relative to local code and LEED requirements, yielding an

understanding of the design's overall utility costs, energy usage, and greenhouse gas (GHG) emissions. Modeling will also provide analytics on the end-use systems level, enabling opportunities for improvement to be identified and quantified.

Ultimately, the purpose of modeling is to provide the best possible understanding of expected system performance to facilitate decision making for improvements during the design process. Modeling also provides a preferred path to achieving LEED prerequisite compliance and energy performance points.

Understanding that the project is currently at the end of the issuance of Construction Documents and nearing the beginning of construction activities, Consultant's energy modeling scope will fuse together the scope to generally a baseline, comparison with proposed design, issue potential energy conservation measures, document final design, and related Energy & Atmosphere prerequisite and credits. Below is a description of the scope:

Integrated Design Assistance

Following the energy targets charrette, Consultant will build a simple box and/or single floor energy model based on the early schematic design documents as well as standard simulation assumptions, with review and input from the design team. The building system options will be incorporated into the model parametrically to estimate energy, utility cost, and greenhouse gas emission impacts. Individual building system upgrades are added sequentially to the model for quality control purposes with the result being the as-designed building. This model will help identify the major energy end-uses and utility costs in the building. Work at this phase includes:

Parametric analysis of additional upgrades: Energy efficiency measure recommendations, which may include but are not limited to:

- HVAC system selection
- HVAC controls including heat recovery and ventilation
- Glazing area and glazing performance
- Envelope performance
- Lighting systems
- Lighting controls
- Residential appliance selection
- Plumbing fixture and domestic hot water system selection
- Energy analysis memo detailing energy end uses, current energy performance, carbon emissions and energy efficiency measures
- LEED prerequisite and energy credit point estimate

Design Energy Model

At the CD phase, a full building energy model will be developed at this stage. Work included at this phase includes:

- Whole building energy model built based on current construction documents with input from the design, construction, and ownership teams
 - Identification of energy end-use, utility cost, and carbon emission breakdown including potential effect of on-site renewable energy systems

- Refinement of systems selection should there be an opportunity to implement Energy Conservation Measures
- Review and confirm compliance with mandatory provisions of ASHRAE 90.1-2010 and 90.1-2016:
 - Envelope
 - 6.4 Mechanical
 - Service Hot Water
 - 8.4 Power
 - 9.4 Lighting
 - 10.4 Other Equipment
- Energy conservation measure (ECM) recommendations, which may include but are not limited to:
 - Alternate lighting system selection
 - HVAC controls and integration
 - Façade optimization
 - Heat recovery
 - Domestic hot water (DHW) system integration
- Analysis of available utility incentive programs (optional)
- Energy analysis memo detailing current energy performance, LEED performance, breakdown of major energy end uses, and recommended energy efficiency measures.

Final Energy Model & Documentation

The final energy model will be built based on the IFC documents or other documents representing the project's final MEP design. This model will reflect the project's actual operational parameters and equipment selections, including but not limited to lighting fixtures, domestic hot water systems, HVAC systems, controls, and renewable energy systems.

The project's final design will also be documented for LEED, using either the prescriptive or performance option, based on the most advantageous path for demonstrating LEED prerequisite compliance and potentially earning LEED credit points.

Work included at this phase includes:

- Updated proposed design energy model to reflect final set of design documents
- Updated energy model memo detailing final energy end uses and energy performance
- Completion of LEEDv4 energy and atmosphere prerequisite and related documentation
- Completion of LEEDv4 energy and atmosphere credit and related documentation, if achievable
- Response and update to energy model based on GBCI review of energy prerequisite and energy credit, if required
- Submission of utility incentive applications (optional)

LEED Fundamental Commissioning – Required

Overview

Consultant will provide commissioning services to ensure the project's energy-related systems are designed, installed, and calibrated to meet the Owner's requirements. Consultant's commissioning services shall include:

Design Development

- Perform activities prescribed for the CxA to satisfy LEED v4/v4.1 prerequisite requirements for Fundamental Commissioning and, if selected, Enhanced Commissioning.
- Provide services required to complete the project in accordance with best professional practices.
- Serve as the Building Commissioning Authority (BCxA) on behalf of the owner to ensure that the project intent is met for the systems to be commissioned.
- Review the Owner's Project Requirements (OPR) and the Basis of Design (BOD) as prepared/provided by the owner and design team, including building envelope performance requirements.
- Provide commissioning specifications and create sample pre-functional checklists document for inclusion in the project's Construction Documents.
- Ensure and verify that all commissioning activities have been included in the project specifications.

Construction Documents

- Conduct a thorough review of the design and specification of materials, components, assemblies and systems of all Commissioned Systems (CxS) at 50% construction documents.
- Prepare a Building Commissioning Plan (BCxP) and use it to guide the commissioning process.
- Provide a backcheck commissioning design review at 100% construction documents.
- Verify that contractor training obligations are clearly identified in the project specifications.
- Incorporate Systems Manual requirement into the project specifications.

Construction Administration

- Report all findings and recommendations directly to the owner throughout the commissioning process.
- Attend pre-construction meetings as required and necessary.
- Schedule building commissioning kick-off meeting with CM, general contractor, ownership, design team and relevant subcontractors.
- Review construction schedule as prepared by the Contractor and provide commissioning schedule estimations and milestones.
- Assist project team and controls subcontractor in coordinating BAS sequence of operations based on actual system to be installed.
- Update the Commissioning Plan to reflect actual submitted materials.
- Perform site visits to witness installation of building system components and witness mockup staging and testing as defined in the specifications.
- Initiate an Issues Log to document findings in the field and track resolution and corrective action through project completion.
- Observe, document and verify materials, components, assemblies and systems to validate that installation meets project requirements.
- Develop Functional Test Plans (FTP) describing a series of customized procedures for the commissioning of the building envelope systems.
- Perform on-site Functional Performance Tests (FPT) of the building envelope systems to verify intended performance, for the commissioned systems as defined elsewhere in this proposal.
- Complete a system-wide validation of the Building Automation System (BAS).
- Provide ongoing documentation of the commissioning process, including letters, Project Communication Reports and an Issues Log to track issues and document resolution.

- Confirm that contractor fulfills obligation for owner and occupant training on the operation of the commissioned systems, in an effective manner.
- Develop and execute alternate-season test simulations during functional testing so as to confirm that the systems perform appropriately at all times.
- Assist and advise project team on developing systems manual language for optimal owner operation of commissioned systems.

Deliverables

Consultant will deliver the following, either throughout or at the end of this process:

- Review of the OPR, BOD, and project design.
- Final review of construction documents to confirm incorporation of Cx requirements
- Cx Plan
- Construction checklists
- Design review issues log
- Issues and benefits log, to be maintained throughout the Cx process
- Documentation of all findings and recommendations, provided to Owner throughout the Cx process
- LEED credit documentation: EA Fundamental Commissioning, EA Enhanced Commissioning (if selected)

Meetings & Site Visits

Consultant will Attend regular weekly project meetings as requested. Consultant will default to attending regular project meetings by phone/videoconferencing. Consultant will perform site visits and/or work inspections as required to complete planned Cx activities.

Consultant will attend the following meetings:

- Design-phase meetings
- Monthly LEED progress meetings with the construction team throughout the construction phase
- Inspections during the construction phase, turnover, and occupancy phase as required to complete planned Cx activities and day field testing events.

Assumptions

- Consultant will witness required testing and one (1) retesting. Any additional time spent on-site may result in additional hourly fee.
- All commissioning work to be performed during normal business hours (8am-6pm). Any after-hours work requested may result in additional hourly fee.
- The scope of systems to be commissioned is not finalized at the time of bid. Consultant to provide a final Commissioning proposal based on MEP design/schedules and project timeline.

LEED Enhanced Commissioning (Optional)

As an extension of the Fundamental Commissioning process, the Consultant's Commissioning team will provide further oversight and verification that the building is capable of meeting owner expectations and requirements beyond the first day of occupancy. Enhanced Commissioning activities allow the CxA to advocate important specification - defined contractor requirements such as training, testing and proper delivery of closeout documentation.:

1. Conduct a review of contractor submittals representing components of systems to be commissioned.
2. Review any changes to the design during construction and incorporate these changes into the commissioning process.
3. Confirm that contractor fulfills obligation for owner and occupant training on the operation of the commissioned systems in an effective manner.
4. Develop and execute alternate-season test simulations during functional testing so as to confirm that the systems perform appropriately at all times.
5. Maintain changes in the Commissioning Plan that reflect the ongoing nature of the construction process.
6. Prepare a Systems Manual that provides the owner with relevant information necessary to operate, maintain and recommission the commissioned systems within the building.
7. Provide an on-site, post-occupancy warranty review of system operation and performance, at approximately 8-10 months after substantial completion.

Deliverables

Consultant will deliver the following, either throughout or at the end of this process:

- Reviewed Cx Plan
- Construction checklists
- Submittals review log
- Documentation of all findings and recommendations, provided to Owner throughout the Cx process
- LEED credit documentation: EA Enhanced Commissioning (if selected)

Meetings & Site Visits

Consultant will attend regular weekly project meetings as requested. Consultant will default to attending regular project meetings by phone/videoconferencing. Consultant will perform site visits and/or work inspections as required to complete planned Cx activities. Consultant will attend the following meetings:

- One (1) 10 month post occupancy visit.

Assumptions

- All commissioning work to be performed during normal business hours (8am-6pm). Any after-hours work requested may result in additional hourly fee.
- The scope of systems to be commissioned is not finalized at the time of bid. Consultant may provide a refined Commissioning proposal based on MEP design/schedules and project timeline.

LEED Certification Management

LEED Design Development & Construction Document Phase

LEED Action Item Checklist

Consultant will create an action item checklist for LEED during the design development phase based on the preliminary LEED scorecard. This list will feature a credit matrix that indicates the LEED prerequisites and credits targeted for certification. Each prerequisite and credit will include a list of action items (i.e. documentation, calculations, explanations, etc.) that must be completed and

provided to Consultant in order to document compliance for LEED. The action items list will identify the responsible party for demonstrating compliance with each action item. Consultant will maintain this list, providing periodic updates to the team showing which items are still open and which have been completed. An overall LEED project schedule will be set, including delivery dates of all action items and other milestones associated with the LEED certification submissions.

Design Administration

Consultant will provide ongoing consulting and guidance to verify that the project is on track for the targeted certification level as outlined in the LEED scorecard.

To ensure successful implementation of the action items list, Consultant will work with the project team to facilitate LEED documentation and will perform reviews of all submitted action items to ensure compliance with LEED requirements. We will work with each design team member on their assigned action items to satisfy LEED credit templates and documentation requirements. Consultant may also provide sample policies required for certification that have already been vetted by the LEED review team at GBCI. Such policies may include construction waste management, construction indoor air quality management, water fitting and fixture upgrade policy, among others.

Drawings Review

Consultant will perform drawing and specification reviews, typically at the 50% and 100% DD stages and 50% and 95%-100% CD stages, to ensure adherence to the LEED requirements and preliminary scorecard. During each drawing review, Consultant will determine if the design meets all LEED requirements as outlined during the LEED charrette. With each drawing review, Consultant will deliver a memo to the owner and project team indicating the status of all prerequisites and credits being pursued. The memo will include a list of corrective actions where prerequisites and credits are not correctly incorporated into the design. At the conclusion of the 100% CD drawing review, Consultant will issue a revised LEED scorecard reflecting the final project design.

LEED Design Submission

Consultant will guide the team in preparing documentation for the LEED design submission. Consultant will follow up with each team member on their assigned action items that contribute to the submission. Consultant will complete the remainder of LEED Online documentation. Timely completion of the LEED design submission will depend on project team responsiveness and quality of deliverables. Once Consultant has finished coordinating the LEED design submission preparation, Consultant will conduct a comprehensive quality assurance review of the submission before delivering to LEED reviewers at GBCI for commenting. When comments are returned from GBCI, Consultant will coordinate responses to each comment.

Note: following design credits, are designated to the following responsible party indicated in parenthesis:

- Minimum Energy Performance (Energy Modeler)
- Optimize Energy Performance (Energy Modeler)
- Renewable Energy Production (Energy Modeler)
- Enhanced Refrigerant Management (MEP)
- Minimum Indoor Air Quality Performance (MEP)
- Thermal Comfort (MEP)
- Interior Lighting (Lighting Designer)

- Acoustical Performance (Acoustician)

Once Consultant has finished coordinating the LEED design submission preparation, Consultant will complete a comprehensive QA/QC of the documentation before submitting it to LEED reviewers at GBCI for commenting. Consultant will then complete the submission through LEED Online. When comments are returned from LEED reviewers, Consultant will coordinate responses to each comment.

LEED Construction Administration Phase

LEED Construction Kickoff Meeting

Consultant will host the LEED construction kickoff meeting with the construction team to educate the team on the LEED requirements for the construction phase. This will include best management practices for construction waste management and indoor air quality, materials submittals requirements, and documentation requirements for the LEED construction submission. Consultant will issue a construction-specific LEED action item list to the team at this kickoff meeting.

The construction credits to be pursued will be determined based upon the goals stated in the LEED charrette, the project's certification goal, the current LEED scorecard, and discussions held at this meeting. In order to ensure success, it is critical that the construction team is well-versed in the LEED program and associated requirements. Consultant requests that the owner, project management, general contractor, and associated subs attend this meeting. Concurrently with this meeting, or shortly thereafter, Consultant recommends that the commissioning agent hold a commissioning kickoff meeting to review requirements and process throughout and post-construction.

LEED Action Item Checklist

Consultant will create a construction-specific action item checklist for LEED during the construction phase based on the revised LEED scorecard. This list will feature a credit matrix that indicates the LEED prerequisites and credits targeted for certification. Each prerequisite and credit will include a list of action items (i.e. documentation, calculations, explanations, etc.) that must be completed and provided to Consultant in order to document compliance for LEED. The action items list will identify the responsible party for demonstrating compliance with each action item. Consultant will maintain this list, providing periodic updates to the team showing which items are still open and which have been completed.

Construction Administration

Consultant will provide ongoing consulting and guidance to verify that the project is on track for the target certification level as outlined in the LEED scorecard.

Throughout the construction phase, Consultant will review select construction submittals (product selection, shop drawings, and RFIs) that are relevant for LEED certification. Consultant will provide feedback on the submittals to support LEED credit achievement. Consultant will return submittal comments within one-week or as requested for any high-priority items.

It is the responsibility of the general contractor to provide product documentation and to maintain ongoing tracking for LEED materials credits being pursued. Consultant will coordinate with the general contractor to ensure criteria are being met and properly tracked and will provide periodic status updates to the project team.

LEED Construction Submission

Consultant will guide the team in preparing documentation for the LEED construction submission. Consultant will follow up with each team member on their assigned action items that contribute to the submission. Consultant will complete the remainder of LEED Online documentation. Timely completion of the LEED construction submission will depend on project team responsiveness and quality of deliverables.

Note: The following responsible party for documenting the following construction credits are indicated in parenthesis:

- Fundamental Commissioning and Verification (Commissioning Agent)
- Enhanced Commissioning (Commissioning Agent)
- Building Products Disclosure & Optimization: Sourcing of Raw Materials (Contractor)
- Construction Activity Pollution Prevention – (Contractor) to provide documentation of onsite practices
- Construction Indoor Air Quality Management Plan – (Contractor) to provide photos documenting onsite practices
- Construction and Demolition Waste Management – (Contractor) to provide documentation of waste diversion
- Low-Emitting Materials – Contractor to provide material cost and volume information for submitted products as requested

Once Consultant has finished coordinating the LEED construction documentation preparation, we will conduct a comprehensive quality assurance review of the submission package prior to delivering to GBCI for official review. When comments are returned from GBCI, Consultant will coordinate with the project team to provide responses to each comment.

LEED Certification Award Phase

When the project receives official certification award from GBCI, Consultant will notify the Owner and project team and provide the Owner with digital files of the project's LEED award certificate, final LEED scorecard, and USGBC congratulatory letter. Consultant will also provide the Owner with instructions for purchasing any additional LEED award plaques desired.

Task 16: Building Envelope Consulting/Commissioning

Document/Design Review Phase:

1. Attend project planning conference; review program requirements; provide a summary of the preliminary Building Envelope Commissioning (BECx) Plan scope and budget.
2. Review and provide technical assistance during the development of the preliminary building enclosure (BE) basis of design (BOD).
3. Prepare BECx Document Review Comment list; Update, refine, and document the enclosure BOD, and BECx Plan at the conclusion of each sub-phase of the design process. Redline enclosure details at each phase and provide revision commentary to the Design Team.
4. Design review of enclosure-related construction document drawings and specifications at:
 - Schematic Design phase
 - Design Development phase
 - Construction Document phase

5. Document review to address design concepts, design criteria, compliance with codes, and compliance with generally accepted local industry standards, constructability, and compliance with the Owners's Performance Requirements (OPR).
6. Provide recommendations and sketches of roofing, flashing and other BE related details as needed to supplement the Construction Documents.
7. Review and comment on the BECx requirements and specifications incorporated into the CD's. Confer with design team regarding review and recommendations.

Construction Administration Phase - Field Observations:

1. Quality assurance observation work is defined as the observation of construction to permit the consultant to determine that the Work, when completed by the Contractor, generally conforms to the Contract Documents. The consultant shall have no responsibility for the means, methods, techniques, sequences or procedures selected by the Contractor or for the Contractor's safety precautions and programs nor for failure by the Contractor to comply with any laws or regulations relating to the performance or furnishing of the Work by the Contractor, or for the acts or omissions of the Contractor or any other persons or entities performing portions of the Work.
2. Visually assess construction activities, identify any/all problematic detail conditions (where applicable) and provide commentary on any non-conforming work.
3. Review construction materials and methods employed and compare work with the approved drawings and specifications, manufacturer's published details and available product/system literature, along with generally accepted waterproofing practices.
4. Photograph details and construction as necessary to explain and support the report commentary.
5. Prepare and submit a written field report for each site visit.
6. Field observation work shall include a review of the following items:
 - Mock ups of windows and cladding systems.
 - Roofing and plaza deck waterproofing application and related details.
 - Air/vapor retarder application
 - WRB application.
 - Below-grade waterproofing application.
 - Waterproofing application around fenestration openings.
 - Window and glazing application.
 - Sealant applications.
 - Substantial completion walkthroughs.
 - Final walkthrough

Process and Documentation

1. Prepare a building enclosure commissioning (BECx) plan and project-specific BECx requirements.
2. Provide consulting support during construction (estimated).
3. Review RFIs, ASIs, Change Orders, etc. that may affect the systems to be commissioned.
4. Attend all online BECx meetings during construction as needed and scheduled (estimated).
5. Review all enclosure submittals and shop drawings to support the commissioning process.
6. Maintain an issues/non-conformance log process.
7. Attend OAC progress meetings via Zoom, WebEx, MS Teams, etc.
8. Review O & M manuals prepared by the CM and subcontractors.

9. Review enclosure-related items to be included in the System Readiness Checklist (SRC).
10. Review operating and maintenance manuals from envelope product manufacturers.
11. Review operator training plans and schedules prepared by CM.
12. Review and prepare checklists and reports, as required to achieve final project commissioning.
13. Prepare related BECx items to be included in the final Commissioning report.

Task 17: Audio/Visual/IT/Low Voltage

Consultant will work with the Village to design the space with cost-effective, high-quality Audio and Video equipment. Working closely with Bal Harbour Village IT department, Facilities consultant will review the potential approaches to the A/V, wireless, and security deployment, considering industry trends, hybrid workplace standards, existing assets, and project specific design considerations.

Consultant will:

- Meet with the key users of the Council Chamber and other conferencing spaces to understand the objectives for the room, the intended use, and any personal preferences.
- Consider various approaches to equipping the Council Chambers with Audio/Visual technologies, and present three options for Bal Harbour Villages' consideration.
- Review alternatives for a more basic deployment in other spaces, such as multipurpose, medium, and smaller conference rooms and potentially a break room.
- Evaluate the feasibility of re-deploying some existing assets, considering their suitability for the space, age, reliability history, and any migration challenges.
- Based upon selections made, prepare an A/V budget and implementation schedule.
- Identify items impacting the project MEP, such as niches to recess displays, location of ceiling-mounted loudspeakers and room controls, input points, or faceplates.
- Project probable number, location, and nature of Wireless Access Points.

Once A/V/IT decisions are made and the requirements are well understood, Consultant will document the choices during the Construction Documents & Acquisition phase. This phase will include necessary AutoCAD or Revit drawings (using typical outlet layouts provided by Architect), component specifications, one Request for Proposal package suitable for competitive bidding of the Audio/Visual.

Consultant will evaluate existing 911 equipment, consider migration options to minimize downtime, and prepare specifications for new 911 equipment, as appropriate. Note our focus will be on voice systems, recording, and peripherals, and will exclude applications such as computer-aided dispatch.

Consultant will also review Architects and the electrical engineer's drawings to ensure the needs for conduits and electrical power are on their drawings.

Evaluation & Selection

Consultant provides Evaluation & Selection services to fully evaluate the various proposals, provide specific recommendations for the best offering, and assist in contract negotiations. Our team can quickly discern the most attractive proposal and provide a "user friendly" evaluation matrix such as the one below, resulting in a clear contract with highly predictable costs. We also encourage our clients to consider using our contract template, which includes

provisions for consistent project management, penalties for failure to deliver on time, service response requirements, and provisions to cap ongoing support costs.

Precision Project Management

Consultant will coordinate with all providers such as: the cable contractor, A/V Integrators, construction trades, Internet providers, and more.

Key elements of our Precision Project Management® methodology include:

- Participation in OAC coordination meetings, as warranted.
- Careful coordination throughout.
- Clear documentation (beginning with Project Plans and specifications).
- Frequent, unannounced inspections to ensure quality.
- Coordination and sequencing with construction trades.
- Change Order controls.
- Cutover Management.
- Hosting Coordination Meetings with IT providers.
- Providing leadership during cutover.
- Acceptance testing.
- Reconciling and approving vendor invoices.

Task 18: Acoustic Design

Acoustical consulting services for the proposed new Bal Harbour Village Hall. The new Village Hall will consist of a chamber, conference rooms, offices, and open workspaces. Mitigation of acoustical issues and noise are of critical importance.

The proposed Key Public Areas (from an acoustical perspective) are as follows:

- Chambers
- Public Reception and Pre-Function (volume shared with Chambers)
- Open/Private Offices
- Meeting/Conference Rooms

It is understood that some of these areas will have audiovisual facilities.

Acoustical Goals

The proposed new facility will be multi-use. Reverberance, echoes, and other acoustical anomalies should be mitigated to help optimize speech intelligibility and to provide a proper environment for the varied performance and educational functions. The acoustics of the Chamber, Reception and Open Office spaces should be as acoustically neutral as possible to allow for a diverse program of activities.

Sound Isolation

Based on initial review of information provided, it is anticipated standard noise mitigation methods and constructions will be used to address general sound isolation issues.

Sound Absorption

The design of the sound system will be reviewed to ensure the acoustics of Key Spaces enhance speech intelligibility (both natural and amplified).

Mechanical Noise

Mechanical Noise will need to be well controlled in the Key Areas, especially the Chamber which may include additional provisions for mechanical noise mitigation (i.e. possibly duct silencers, and/or extra vibration isolation of equipment, ductwork, and piping).

To ensure these fundamental goals are met, the following acoustical consulting scope is recommended:

Architectural Acoustics

Consultant will provide Architectural Acoustics advice on the following:

- Sound absorbing finishes in the Key Areas
- Sound insulation of internal partitions for Key Areas
- Room shape and wall surfaces (to avoid disruptive sound reflections which may have a negative effect on music or speech)

The following are key tasks for the Architectural Acoustics design:

- Provide recommendations on mitigation of reverberation and noise buildup in key Spaces
- Address any acoustical issues arising from non-orthogonal wall geometry
- Provide recommendations on cost effective materials that meet architectural and acoustical criteria

Mechanical/Electrical Services Noise & Vibration

Keane Acoustics will provide Mechanical/Electrical Acoustics advice on the following:

- Provide advice on noise attenuation and vibration isolation of mechanical and electrical systems (emphasis on rooftop equipment)

The following are key tasks for the Mechanical/Electrical Acoustics design:

- Isolation/mitigation of air handling units (including rooftop units above Chambers)
- Resolve mechanical/electrical room adjacency issues

Design Phase: The following tasks will be completed during the Design Phase.

- Establish acoustic criteria for: a) sound insulation of internal partitions; b) room reverberation; c) mechanical noise
- Conduct review of the design drawings as issued by the architect and engineers
- Provide recommendations of the amount, type and location of sound absorbing and sound finishes required to meet the room acoustic design targets
- Identify costs for key acoustic elements
- Discuss options and alternatives with the design team and develop the preferred design approach to achieve the design goals
- Review final drawings and specifications prior to completion to verify that previous recommendations are coordinated

Deliverables

- Basis of Design Report with narrative that summarizes the design targets and initial acoustical strategy
- DD Drawings and Construction Drawings Review Report that cover key cost items, and issues addressed in the design.
- Additional drawing reviews as needed with technical recommendation letters, memoranda, and analysis documentation, as appropriate

Meetings

- Attend design meetings by Teams or phone upon request to discuss acoustical topics.

Construction Support Services: The following tasks will be completed during the Construction phase.

- Respond to requests for information on interpretations and clarifications of construction issues relating to acoustics
- Review of related submittals
- Conduct site visits as needed to review construction progress and quality of workmanship (additional services based on attached hourly rates).
- Issue review notes for each site visit, indicating issues that do not match the design intent

Deliverables

- Responses to RFIs
- Review of related submittals
- Issue site review notes and punch lists

Task 19: Building Security

Electronic Security Systems, including access control, intrusion detection, emergency phones, intercom, secure vestibules, 911 alerting systems, security gates and interior/exterior video surveillance systems, applying the principles of Crime Prevention Through Environmental Design (CPTED). Our scope of work includes all relevant spaces and systems in the facility.

Pre-Design and Programming

1. Meet with the owner and architect to ascertain the functional, aesthetic, sustainability and budgetary requirements and aspirations of the building security. Review the principles of CPTED or Crime Prevention Through Environmental Design.
2. Submit a preliminary electronic security systems program with optional security mitigation measures to consider and an Opinion of Probable Cost for the installed electronic security systems. Present non-electronic elements as options to consider but not included in the Opinion of Probable Cost. The report is intended to be used as a decision-making tool for planning and budgeting purposes. The costs expressed are estimates for the equipment and labor necessary to achieve the planned functionality; the document does not identify specific component-level costs, manufacturers, makes or model numbers. Submit the report in PDF format intended to be used as a stand-alone document or as an attachment to other project documentation prepared by the architect.
3. Meet with the owner and architect to review the electronic security systems program.

4. Submit a final electronic security systems program based on the information provided at the meeting. Upon acceptance by the owner, the final document is a guideline for planning and design efforts as the project progresses.

Systems Design and Bidding

1. Review and comment on the architectural plans in the context of principles of CPTED or Crime Prevention Through Environmental Design.
2. Generate and submit equipment plan drawings for the electronic security systems, illustrating recommended locations for surveillance cameras, card access, intrusion detection, emergency telephone (often referred to as "Blue Phones") and recording and monitoring equipment locations as needed.
3. Review the equipment plan drawings with the owner and architect. Submit revised equipment plan drawings for approval by the owner. Submit to the architect, for coordination with appropriate members of the design team, guidelines for the following elements as related to the electronic security systems: as bollards, gates, fencing, AC power, vibration and structural needs, lighting performance, telecommunications, interior finishes, cooling, humidity, furnishings, elevators and intelligent building systems. Our input for these elements as related to building security will be recommendations and options to consider, not final designs or specifications.
4. Perform one review of the project's door hardware schedule, created by others, at 60% construction documents or another milestone directed by the architect. Submit report summarizing electronic access control coordination items.
5. Submit to the architect, or contribute to the Revit model, for inclusion into the construction documents package, model elements and detail drawings illustrating the electronic security systems design. Floor plans, site plans, security monitoring room enlarged plans, riser diagrams, equipment rack elevations, select elevations, and associated details as required comprise the drawing set. The drawings illustrate equipment locations, camera mounting and housing types, panel details, access door types, emergency phone locations, conduit and junction box types, cable pathways, conduit destinations and sizes, power locations, architectural integration details, and other information conveying design intent.
6. Submit to the architect CSI-format specifications for electronic security systems. Specifications are anticipated to include access control systems, surveillance systems, intrusion detection, emergency phones, racks and cable management, installation requirements, training, warranty, performance verification, and certification.
7. Provide answers to technical questions from bidders during the bidding process.
8. Review bid responses for compliance to design and specification.

Construction Administration

1. Provide clarifications to drawings and specifications if required.
2. Respond to relevant RFIs, shop drawings and other project submittals for compliance with design documentation, as related to our design scope and responsibilities.
3. Observe and report on the general, electrical and electronic security system contractor's work-in-progress as related to our design scope and responsibilities.
4. Observe and report on the completed building security systems and final documentation. Submit punch list report detailing results.

Task 20: Threshold Inspections

The Threshold Inspector shall observe that the work is executed in substantial accordance with the permitted Official Contract Documents. The Official Contract Documents are defined as the permitted plans, recorded addenda, and the specifications with all amendments thereto, including the Threshold Inspection Plan.

DUTIES

The Threshold Inspector shall maintain a record of the progress, working conditions, observations given to the Contractor and suspected deviations from the Official Contract Documents. The reports shall be in writing and shall be made out promptly at the end of the period covered. The reports will be present at all times, in the Contractor's field office, in the job site in the form of a job site log and an inspection field report for each day an inspection is made.

CONSULTANT will inspect the following areas:

- Foundation reinforcement and concrete placement.
- Concrete columns and shear walls reinforcement and concrete placement.
- Masonry wall reinforcing.
- Steel and metal deck erection

The report may consist of any or all the following:

- Report of each inspection.
- Job site log of area inspected.
- Special records from testing lab (welding and bolts inspection, mill tests, and concrete tests).
- Record of placing and curing concrete.
- Changes made in the field during observations.

REPORTING INFORMATION AND OBSERVATIONS

It is the duty of the Threshold Inspector to notify the Contractor, Building Official, Architect of Record, and the Owner if the following events occur:

- The use of materials, equipment or workmanship that does not conform to the Official Contract Documents or which may cause improper construction, which is not acceptable.
- Work that is not being done in accordance with the approved Official Contract Documents.
- Faulty construction or of construction performed without inspection and not capable of being inspected or tested in place.
- The request for interpretations from the Architect of Record, as required, to clarify the construction documents.

REQUIREMENTS OF THE OWNER

The Construction Manager shall arrange for all necessary construction records to be furnished to the Threshold Inspector during the progress of the work in a timely manner. Such records shall consist of, but may not be limited to: soil density test records, shop drawings, mill reports, concrete cylinder test reports, bolted and welded connections testing result, etc. The owner should contract the services of a testing lab to provide concrete cylinders test, slump test, mortar test, bolted connections quantity, sizes and proper torque/tension and welded connections sizes and quality. For elevated slabs that require shoring, The CONSULTANT shall insure that the Contractor provides a shoring and re-shoring plan to the Building Department which is signed and sealed by an Engineer registered in the State of Florida. Such registered engineer may represent the form supplier. Such

engineer must also inspect the shoring and re-shoring for each elevated slab and provide a signed and sealed affidavit indicating that "Shoring and re-shoring has been installed as per the drawings prepared by his office", this affidavit for each elevated deck, must be delivered to the job site and a copy provided to the threshold inspector before concrete is placed.

RESPONSIBILITY

The Threshold Inspector does not surrogate the Building Official's or the Architect of Record's responsibilities. Further, it is not intended that the Contractor's contractual or statutory obligations are in any way relieved or foregone by the presence of the Threshold Inspector. The Contractor has the sole responsibility for any deviations from the Official Contract Documents. The Threshold Inspector will not replace the quality control personnel for the Contractor. All inspections will be in accordance with the provisions of the Threshold Inspector Law.

LIMITATIONS

Unless otherwise provided in written requests, this contract limits the Threshold Inspector to provide services only with regards to the structural frame of the building, including foundation, primary and secondary framing systems, and all items included in the Inspection Plan and as indicated above.

This Contract does not include any testing of bolted or welded connections, concrete slump or concrete strength test, which should be done by a testing lab as specified by the Engineer of Record. Also, this Contract does not include inspection of any safety provisions as required by OSHA or other safety standards that apply during the construction period. Nor does it apply to elements such as metal or wooden balcony railings, mechanical/electrical systems, architectural components, site work or other elements not contributing to the capacity of the structural building frame. Since the Threshold Inspector does not certify that the Official Contract Documents are, in themselves, in compliance with the Standard Building Code, all certifications issued will refer to completed work being in substantial accordance with the Official Contract Documents rather than the Florida Building Code. Inspection reports of Consultant's findings will be furnished on a weekly basis.

Task 21: Art In Public Spaces (Miami-Dade County Requirement)

Architect will assist the Village in administering the requirements of Miami Dade Art in Public Places Ordinance with Selection of artist and works of art. See attached code section (EXHIBIT A) for reference.

Scope of work:

- Assistance with Coordination with MDC Department of Cultural Affairs
- Assistance with preparing required documents for RFQ Process.
- Attendance at required Committee meeting and artist interviews.
 - 3-4 (Virtual or In Person) meetings are Anticipated.
- Participate in the Selection of Artist and Artist proposed design if required.
 - 2-3 (Virtual or In Person) meetings are Anticipated.
- Participate in Village's Approvals Process if required .
 - 1-2 (Virtual or In Person) meetings are Anticipated.
- Coordination with Design Team and the selected artist to incorporate the Art into the project design with required disciplines.
- Attend Additional Meetings (Up to 6 virtual meetings) as required.

It is anticipated that the art in public places Department of cultural affairs will organize, manage, and lead the Art-in-Public Places process. AIPP coordination will be initiated during the projects Design Development Phase and all required specific coordination for the installation will be developed along with the Design development and Construction Document process for the project. Approval by Miami Dade County is anticipated for the proposed art as part of the AIPP process.

Task 22: Signage and Wayfinding

Architect will develop an overarching signage concept that aligns with the overall design vision and identity of the project, including color palette, typography, materials, and locations.

Types of Signage: Design and provide prototypes for the following types of signage:

- Directional Signage: Signs to guide visitors through the building or site.
- Informational Signage: Includes signs providing details such as room names, functions, and other essential information.
- Regulatory Signage: Safety, compliance, and regulatory signs, including ADA-compliant signage (e.g., restroom, exit, no smoking).
- Building Identification: Signs that identify key locations or building entrances.
- Specialty Signage: One exterior monumental sign
- Wayfinding: Maps, directories, and points of interest to help users orient themselves within the space or campus.

Task 23: Planning and Zoning Amendment Process

Architect will provide services for municipal zoning and ordinance amendments which may encompass: research, analysis, and documentation of existing regulations; development of proposed revisions with supporting rationale; preparation of presentation materials for community and municipal review; and advocacy for the proposed changes through the approval process.

Project Milestones

| <u>Description</u> | <u>Duration</u> |
|--|--|
| Pre-Design & Programming & Concept Development | 8 weeks |
| Schematic Design and Basis of Design Report (BODR) | 12 weeks |
| Architectural Review Board (ARB) Submission | 4 weeks |
| Design Development | 12 weeks |
| Construction Document Preparation (30%) | 6 weeks |
| Construction Document Preparation (60%) | 6 weeks |
| Construction Document Preparation (90%) | 6 weeks |
| Construction Document Preparation (100%) | 3 weeks |
| Bidding and Award Assistance | Appx. 12 weeks |
| Construction Administration | Based on City and AHJ schedule. up to 18 months included. Selected contractor to provide final schedule. |
| Close-out and Warranty Phase Services | 2 weeks |

While every effort will be made by the Architect to adhere to the anticipated schedule, delays may occur due to revisions, approvals, or changes requested by the City. The proposed fees and anticipated schedule are dependent on timely responses from the City, including providing necessary information, approvals, and feedback. This schedule does not include any additional work outside the included scope, which may result in a revised schedule.

PROPOSED FEES:

The following is a summary of the total fees for all services listed above.

| Task | Basic Services | Total Fee |
|---------|---|--------------------|
| | <i>The Basic Services (Task 1 thru Task 6) includes: structural, mechanical, electrical, plumbing, Fire Protection, landscape, civil, Generator Design, Lightning Protection, Entitlement Process, Renderings, Public Meetings, Life Safety, Parking Design, and Cost Estimating Services</i> | |
| Task 1 | Programming / Conceptual Design | \$107,433 |
| Task 2 | Schematic Design | \$402,872 |
| Task 3 | Design Development | \$564,021 |
| Task 4 | Construction Documents | \$940,035 |
| Task 5 | Assistance with Permitting/Bidding | \$134,291 |
| Task 6 | Construction Administration & Close-out | \$589,003 |
| | Sub-Total Design Services | \$2,737,655 |
| Task | Specialty Services | Total Fee |
| Task 7 | Geotechnical Engineering | \$13,053 |
| Task 8 | Phase I Environmental Site Assessment | \$6,900 |
| Task 9 | Pre-demolition Asbestos Survey | \$4,428 |
| Task 10 | Sub Utilities SUE + Locates | \$30,475 |
| Task 11 | Traffic Engineering | \$57,443 |
| Task 12 | Reasonable Assurance Report | \$3,450 |
| Task 13 | Lighting Design | \$256,136 |
| Task 14 | Interior Design and Furniture and Furnishings | \$126,390 |
| Task 15 | Sustainability and LEED Consulting | \$128,743 |
| Task 16 | Building Envelope Consulting/Commissioning | \$124,200 |
| Task 17 | Audio/Visual/IT/Low Voltage | \$222,212 |
| Task 18 | Acoustic Design | \$17,535 |
| Task 19 | Building Security | \$81,075 |
| Task 20 | Threshold Inspections | \$143,520 |
| Task 21 | Art-In-Public Spaces | \$19,800 |
| Task 22 | Signage and Wayfinding | \$30,000 |
| | Sub-Total Specialty Services | 1,265,360 |
| Task | Undefined Specialty Services (hourly Not-to Exceed) | |
| Task 23 | Planning and Zoning Amendment Process | NTE \$ 100,000 |
| | Sub-Total | \$100,000 |

| | |
|---|------------------|
| Estimated Reimbursable Expenses (Allowance) | \$60,000 |
| Total Design Services and Allowances | 4,163,015 |

Reimbursable Expenses

Reimbursable expenses are in addition to compensation for Basic and Supplemental, and Additional Services and include expenses incurred by the design team directly related to the Project. Compensation for reimbursable expenses shall be the cost of expenses incurred plus 10%. Reimbursable expenses include but are not limited to:

1. Printing and Plotting costs incurred by the A/E Design Team for review, team distribution, and Bid & Permit Documents.
2. Courier, Mail and Delivery.
3. Transportation and travel
4. Physical Presentation materials (Boards, banners, etc.)
5. Other similar Project-related expenditures

The Reimbursable Expenses is an estimate and may not cover all reimbursable expenses necessary to either meet the Client's or Project's needs. Contrarily, the full estimated amount may not be required. Unused reimbursable expense allowance will not be billed to the Client.

The Following Services Are Not Included Within This Fee:

- Application fees and fees paid to secure approval from authorities with jurisdiction over the Project
- Measured Drawings of Existing Facilities
- Existing Facilities Analysis
- Historic Preservation
- Grant Assistance or Applications
- Existing Off-site Utility Infrastructure Improvements
- Food Service
- Life Cycle Cost and/or Energy (FLEET) Analysis
- Solar/Photovoltaic Design or Consultation
- Graphic Design/Branding
- Value Analysis or Value Engineering beyond Design Development phase. VE is included after both the schematic/programming verification phase and the Design Development phase. A conceptual estimate will be performed and presented for approval. We would ask that the budget is verified at that time and either approved or VE occur at these phases to reduce greater effort later in the project. VE for elements, materials and similar are included during the CD phase. We would just not anticipate structural or square footage changes to the building.
- Documents Prepared for: Alternate Bids Requested by Client, Change Orders, Multiple Construction Contracts, Record Documents/As-Builts
- Prolonged Construction Contract Administration Services
- Construction Phasing or Multiple Bid Submissions
- Project Representation During Construction Beyond periodic inspection

- Additional Construction Contract Administration Services for Multiple Contracts
- Building Commissioning and Training Services
- Post Occupancy Inspections/ Evaluations
- Changes to Scope, Size or Complexity
- Revisions to Previously Approved Documents
- ACM survey for exterior sub-surface/below-grade investigations.
- Considerations outside of the scope of ASTM E1527-21 are excluded from this Phase I ESA. Such non-scope considerations include, but are not limited to: asbestos-containing building materials (unrelated to releases into the environment); biological agents; cultural and historical resources; ecological resources; endangered species; health and safety; indoor air quality (unrelated to releases of hazardous substances or petroleum products into the environment); industrial hygiene; lead-based paint (unrelated to releases into the environment); lead-in-drinking water; mold or microbial growth conditions; polychlorinated biphenyl (PCB)-containing building materials (for example, fluorescent light ballasts, paint, and caulk); naturally occurring radon; regulatory compliance; substances not defined as hazardous substances (including some substances sometimes generally referred to as emerging contaminants); and wetlands.
- Lighting along the existing-to-remain roadway/sidewalk areas for public right-of-way
- Monumental art or exterior feature elements. Coordination of an art piece/sculpture is included. However, if the selected art requires any structural, electrical, plumbing, etc. that is not included and assumed to be handled directly by the Artist/Contractor.
- Design of custom luminaires and site visits to manufacturer.
- Daylighting design beyond the required by LEED Silver documentation
- Daylight analysis and integration, including but not limited to:
 - Solar animations indicating solar exposure and shadowing on the exterior/interior of the building
 - Annual illuminance calculations on the interior/exterior of the building indicating hourly illuminance at specific points
 - Daylight Autonomy (DA) beyond spaces necessary for LEED – the percentage of time during a typical year that a target daylight illuminance is exceeded
 - Specification review and comment on daylighting-related elements, such as glazing and roller shades beyond spaces necessary for LEED
- Fee includes LEED facilitation services for up to the Silver certification level. Feasibility analysis, consulting, and certification services to facilitate any higher certification target, if requested, will be considered additional services.
- Any LEED credit appeals or Credit Interpretation Rulings (CIR) will be considered additional services.
- Boundary and Topographic Survey

Thanks for the opportunity to propose services for your project.

Wannemacher Jensen Architects, Inc.

A handwritten signature in black ink, appearing to read 'Jason Jensen', with a stylized, flowing script.

Jason Jensen, AIA, LEED AP, Principal

Pursuant to Florida State Statute 558.0035, an individual employee or agent of the Design Professional may not be held individually liable for negligence.



March 3, 2025

Project: Bal Harbour Village Hall

Re: Response to Request for No Change Order Guarantee

Dear Village Mayor, Council and Staff:

In response to the request to guarantee cost due to Change Orders resulting from Errors and Omissions we offer the following discussion and responses.

WJA Architects is extremely dedicated to quality control and has assembled leading services and the most qualified team to ensure the best delivery for Bal Harbour. In the presentation I stated that our Goal for this project is to have no Change Orders. During the Q&A, when asked specifically about Change orders, I reiterated that No Change orders is our Goal. The highest standard possible should be our Goal for Bal Harbour. Goals are aspirational and not absolute. I apologize if I unintentionally misrepresented that Goal as a Guarantee caused by anything said in jest, and general emphasis for that Goal. Unfortunately, Architects can't provide Guarantees. If we do contract such language, we are not able to have the required Insurance.

We reached out to our insurance Carrier and broker who provided the following response to the Village's request: *The request for a "Guarantee Statement that there will be no Errors or Omissions" is an objectionable premise in any design professional agreement, in addition to being excluded from coverage. There cannot be a statement styled as a warranty/guarantee and maintain insurance coverage.*

WJA Architects has provided extra Liability Error and Omission insurance of \$5,000,000 per occurrence which exceeds the Village requirement of \$1,000,000 per occurrence. Hopefully this gives the Village more confidence that we are going beyond expectations to protect Bal Harbour's interests.

In response to Bal Harbour's Previous construction project your staff and our team have included multiple belt and suspender services to provide the Village more confidence and quality control. This includes first our internal Quality Control system where we have two staff dedicated strictly to quality control reviews. Second, we have provided an envelope consultant to review specifications and details for all exterior conditions such as the roof, cladding, and glazing. Also Included is a Life safety consultant to review all Florida Building Code and Fire Prevention code requirements. We have our Construction Management team to review constructability and cost. Our construction documents for the project will be prepared on a Shared 3D BIM cloud model and information sharing software were all consultants will have real time information on all design development. Our services and team are more robust and comprehensive than the previous process the village has experienced. Staff has been extremely thorough review the scope of services for the team and its consultants for the Village's benefit.



Bal Harbour has multiple avenues of remedy within the existing contract. The Villages contract includes a statement for Indemnification, Standard of Care, and Warranties. WJArchitects made no revision requests of the Village's contract.

The project will include a large team of Architects and Engineers from 8 different companies under this contract that WJArchitects becomes responsible for. Although we are not allowed to give a Guarantee from each entity, we have brought the most qualified team to this project. We look forward to serving Bal Harbour and providing a Community Jewel that we can all be proud of.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jason Jensen'.

Jason Jensen AIA, LEED AP

Wannemacher Jensen Architects, Inc.

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 based on Village Council's determination that the performance is 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 the 5% increase in hourly rates that it determined was warranted for satisfactory performance at the Council Retreat.

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 year, and determine whether to adjust the compensation. The performance of the Village Attorney was discussed at the Council retreat, and the consensus was that the Village Attorney should receive an increase in compensation of 5% on the hourly fees under the agreement, while holding the fixed fee steady.

THE ADMINISTRATION RECOMMENDS ACCEPTANCE OF THE REPORT AND APPROVAL OF THE RESOLUTION.

Financial Information:

| | Amount | Account | Account # |
|--|--------|---------|-----------|
| | X | X | X |

Sign off:

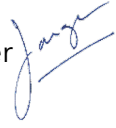
| | | |
|------------------|-------------------------|---|
| Village Attorney | Chief Financial Officer | Village Manager |
| Susan Trevarthen | Claudia Dixon | Jorge M. Gonzalez |
| | |  |

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 18, 2025

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; 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.¹

ANALYSIS

The Village Attorney has submitted the Annual Report and met with Village Council members. At the Council Retreat in February 2025, the Council discussed its evaluation of the Village Attorney, determined the performance was satisfactory, and decided that a five

¹ 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. At the March 2023 Village Council meeting, the Council authorized an increase in compensation of 3% in the hourly rate for attorneys, paralegals and the fixed fee for FY 2023-24. At the July 2024 Village Council meeting, the Council authorized an increase in compensation of 5% in the hourly rate for attorneys, paralegals and the fixed fee for the remainder of FY 2024-25.

percent (5%) increase in the hourly fees is justified (while holding the fixed fee at the current rate) effective April 1, 2025.

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 the Village Council accept the Annual Report of the Village Attorney, and authorize the 5% increase in hourly rates that the Village Council determined was warranted based on the satisfactory performance of the Village Attorney.

Attachments:

1. 2025 Village Attorney Annual Report

RESOLUTION NO. 2025-____

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; 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 "1" 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 the Village Council discussed the review at its Council Retreat; 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 hourly rates of 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 five percent (5%) increase in the hourly rate (from \$311 to \$327 for

attorneys and from \$142 to \$149 for paralegals) in recognition of the continued satisfactory performance on behalf of the Village, effective April 1, 2025.

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 18th day of March, 2025.



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: Mayor and Village Council, Bal Harbour Village

Cc: Village Manager Jorge M. Gonzalez

From: Susan L. Trevarthen, Village Attorney *SLT*

Date: February 14, 2025

RE: Annual Report of Village Attorney for 2024

In 2021, the Council established a process that I provide an annual report to them, 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.¹

The Village Attorney's Report for 2024 (January 1, 2024 – December 31, 2024)

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. As you will see below, 2024 was an exceptionally active and busy year covering a wide range of issues, and 2025 is continuing in the same direction.

There is ongoing litigation of the Village Council's actions in relation to the Bal Harbour Shops (the "Shops"), and litigation which concluded in 2024 regarding the approval of the new Rivage condominium and the construction of the waterfront park, as reported in greater detail below. In alignment with the Council's wishes, we have worked with your Administration to avoid litigation where possible, to resolve it efficiently where it was unavoidable, and to work with additional counsel when the Council so directs. 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.

Another major goal was 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

¹ **Exhibit 2** is an updated list of the Village Attorney Team. **Exhibit 3** is an evaluation form is provided that can be used if desired to provide 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.

while supporting an ambitious and widespread agenda of improvement established by the Village Council and led by the Village Administration.

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 2024 Annual Report, our significant accomplishments have included the following, organized by department or topic:

Legislation and Advice to Administration²

- Advised the Administration on the online local noticing statute, and worked with the Village Clerk and the County on implementation of the option. Drafted amendment to the Village Code related to legal advertisements in newspapers of general circulation to enable the Village to place legal notices and advertisements on the County-created website once it was available, consistent with changes in State law.
- Drafted amendments to the Village Code (Chapter 21, B District) in response to the Live Local Act (and later revised to account for the 2024 legislation) by ensuring compliance with state and local land development regulations for LLA development in the B Business District in accordance with the development standards of the Village's only high-rise residential zoning district (Oceanfront), while addressing potential abuses and maintaining the character and quality of life of the Village. The regulations established standards for the enforceability of the required affordable housing commitment, and assured the quality and equity of affordable rental units with regard to amenities, access, building materials, parking, unit size, and common areas. They also defined mixed use for LLA development, addressed the height and density preemptions, provided for the required administrative approval process and website posting, incorporated the statutory preemption and standards for FAR regulations, and established a front setback suited to the character of the Collins Avenue corridor. They provided standards for tower articulation and massing, addressed the potential impact of variances or bonuses to the statutory height, FAR and density preemptions, and provided for administrative approval of potential parking reductions as required by the LLA while further specifying how the residential parking is incorporated into the B District parking requirements.
- Drafted amendments to the Village Code (Oceanfront District provisions), including a redefinition and reduction in allowed floor area, the introduction of a bonus system for development to be able to achieve the same floor area, and reduction of the minimum parcel size to be eligible for PD designation to four acres.
- Drafted amendments to the Village Code (Chapter 21, Zoning Administration) revising the parking regulations applicable to all multi-family dwellings in the Village, strengthening requirements for owner consent to applications, and refining the general definition of Floor Area Ratio to account for zoning district-specific variation.
- Drafted amendments to the noise ordinance (Chapter 11) to further address noise created by construction activities to include additional Federal holidays, to include the Business District in the Saturday prohibition already applied to the rest of the Village, and to revise the process for enforcement. Drafted an amendment to the commercial

² All references to drafting ordinances to revise the Code may be understood to refer to adopted ordinances. Where we drafted something that was not adopted during the timeframe of this Report, it will be so noted.

vehicle ordinance to align it with the noise ordinance (all federal holidays and other prohibited dates set forth in the Village Code).

- Drafted an ordinance aimed at creating economic and regulatory incentives for developing workforce housing in the Village.
- Drafted an ordinance to establish definitions and regulations applicable to marijuana uses and dispensaries in anticipation of a statewide ballot referendum on recreational marijuana use.
- Analyzed statutory preemptions and drafted a Village-wide ordinance addressing the operation of motorized vehicles and devices on paths and sidewalks and to establish penalties for violations. (Council declined to adopt).
- Worked with the Administration and the Village Clerk to call and conduct the November Village election, and address related inquiries.
- Drafted an ordinance to clarify the roles of the special master and the village attorney in the code enforcement process.
- Counseled the Administration and police department and drafted an ordinance amending the Village Code in response to a new state statute requiring municipalities to prohibit camping or similar activities in public spaces. Devising a phased in approach to establish the legal framework, followed by operational procedures and enforcement mechanisms.
- Drafted a resolution accepting the Tourism Strategic Plan developed by Ernst & Young, including separate resolutions approving a professional services agreement for tourism data warehousing and marketing intelligence, and a professional services agreement related to the creation and development of creative collateral materials to be used for promotion and marketing purposes.
- Drafted a resolution authorizing the Village Manager to negotiate an agreement for the provision of architectural, engineering and construction administrative services for the construction of Village Hall.
- Drafted a resolution to work with Sister Cities International to enter into a Sister Cities Agreement with HOF Hacamrel Regional Council of the State of Israel.
- Drafted a Code of Conduct for recreational staff and volunteers.
- Drafted language for all Village agreements to incorporate an anti-coercion affidavit newly required by state law.
- Drafted a memorandum explaining the changes to Financial Disclosure Form 1 filing requirements and provided training to Reporting Individuals.
- Drafted a memorandum with revised building permit timeframes based on amendments to the Florida Statutes.
- Worked with staff and participated in meetings with staff and Shops representatives regarding the status of the Shops' compliance with conditions of approval of the expansion, and updated the checklist to incorporate conditions in the resolutions and TCO and prepared documents incorporating all changes to the development agreement. Worked with staff and attended meetings concerning the status of the

expansion of the Shops.

Significant Agreements

- Drafted a resolution and voluntary contribution agreement with Carlton Terrace Owner, LLC for the Rivage.
- Avoided a dispute with Oceana by working with the Administration to address their lack of compliance with their development agreement. Drafted a resolution approving the first amendment to the Development Agreement with Oceana to place money in escrow for property improvements and assure compliance.
- Drafted a resolution authorizing the Village Manager to execute a new use and occupancy agreement with the Florida Department of Transportation for the lease of the parcel under the Baker's Haulover Bridge.
- Drafted a revised mutual aid agreement with Miami-Dade County to reflect issues raised by the County related to prosecution agreements with State Attorney's Office and defense of municipal ordinance violations. Drafted mutual aid agreements with several surrounding municipalities.
- Drafted several agreements for the Village Harbourfront Park, Cutwalk and Jetty Project:
 - an assignment agreement to from MikYoung Kim to Benson Architects for the provision of architectural design and construction administrative services.
 - a resolution awarding a construction manager at risk agreement to the Whiting-Turner construction company.
 - an agreement for additional services to Moffatt and Nichol.
 - an agreement authorizing the Village to act as fiscal agent for the subconsultant agreements associated with the project.
- Drafted a task agreement with Cummins Cederberg for the provision of environmental consulting services related to the planned flood control and coastal emergencies project to provide beach renourishment at Bal Harbour Beach.
- Drafted several agreements related to cultural activities and art exhibitions located in the Village during the year in review.
- Drafted an agreement with Drones Sky Elements for a state-of-the-art Fourth of July fireworks and drone show.
- Renegotiated and/or terminated professional services agreements with domestic and foreign travel sales representatives.

Gated Community Activities

- Drafted a continuing services agreement with Kimley-Horn for the provision of landscape architectural and professional consulting services with the gated residential community.
- Drafted a resolution approving the expenditure of Landscape and Security Assessment funds for legal expenses associated with FPL activities.

- Continued to advise the Administration on permissible expenses and various other inquiries.

State and County Legislation

- Analyzed the effects of the Miami-Dade County resolution creating a publicly-accessible website enabling municipalities to post notices and advertisements on the site.
- Analyzed challenges to the state's home-based business statute.
- Analyzed and advised the Administration on the 2024 changes to the Live Local Act.
- Analyzed charter provisions and Attorney General Opinions regarding Charter amendment processes and their relationship to state statutes regarding land development regulations.
- Analyzed and reviewed Miami-Dade County Impervious Ordinance and analyzed the Village-proposed synthetic turf ordinance for conflicts.
- Reviewed and analyzed revisions to state-mandated Business Impact Estimates for proposed ordinances triggering this requirement.
- Analyzed the applicability of a Countywide Ordinance prohibiting solicitation of business on residential property.
- Reviewed caselaw and sample ordinances regarding action to comply with HB 1365 regarding public camping.
- Reviewed new state law restricting the investigative authority of local ethics commission and civilian oversight agencies.

Litigation:

- Bellini Condominium Association litigation over the redevelopment of the Carlton Terrace into the Rivage:
 - In 2023, we worked with counsel for the developer to defeat the petition for writ of certiorari challenging the Village ARB's approval of the certificate of appropriateness for the redevelopment, and the Village Council's denial of Bellini's appeal to the ARB decision.
 - In 2024, we worked with counsel for developer to achieve dismissal of federal court litigation seeking a declaration of whether the underground parking garage complied with a federal regulation implemented as part of the National Flood Insurance Program.
 - We also worked with counsel for the developer on the state court litigation challenging the Village's interpretation of its zoning code regarding the underground garage. Bellini sought a declaration that the project's inclusion of a medical office, which in turn allowed the underground garage, was not a permitted use under Village Code Sec. 21-181. This lawsuit was ultimately settled in 2024 between the developer and Bellini, and was dismissed against the Village.
 - Advised the Administration on the related amendments to the conditions of approval, and interpretation of the Code as applied to the final plans.

- Form 6 litigation – Represented the Village and its councilmembers (along with a large group of other local governments and elected officials) in our litigation to stop the state from implementing Form 6 financial disclosure for municipal officers. We obtained a federal preliminary injunction accomplishing that objective, and the state withdrew implementation of the requirement, while litigation continues. Advised the Village on compliance with the enhanced Form 1 requirements.
- Bal Harbour Shops lawsuits – Worked closely with litigation counsel Mark Migdal & Hayden to research, analyze, and develop litigation strategy, analyze the relationships between the application review process and the litigation, and generally support their defense of the Village from the Live Local Act and Noise lawsuits as needed.
- Waterfront Park design and construction claims.
 - NV2A Group sued over its construction of the Waterfront Park, claiming nonpayment against the Village, and the Village asserted defenses based on delays and numerous construction defects. The parties resolved the matter by signing a closeout agreement pursuant to which the Village paid the remaining balance to NV2A. In exchange, NV2A dismissed its lawsuit and agreed to repair certain defective items.
 - We worked closely with Village staff to evaluate design errors and omissions by Zyscovich Architects related to the plans for the Waterfront Park, and develop strategies for potentially pursuing them.
- 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.
- 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 related to litigation matters. Supported liability insurance counsel in defending claims against the Village.

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 1.31.25
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: [Signature]
Jorge Gonzalez, Village Manager

ON July 23, 2021

Attest: [Signature]
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 ¹

- 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.

¹ 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.²
- 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.

² 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
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
Alicia Gonzalez: Eminent domain, utilities, litigation
*Edward G. Guedes: Appellate, litigation
Eric Hockman: IT, Litigation
Judelande Jeune: 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 advice
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 | N/A: No Opinion | The evaluator lacks sufficient information to evaluate the criteria, or does not have an opinion on the criteria. |
| 1 | Poor: 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 | Fair: 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 | Good: Meets expectations | Meets all expectations of the position and is competent in the performance of responsibilities. |
| 4 | Very Good: 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 | Excellent: 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.¹ 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. 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. Within the timeframe covered by this evaluation, the Village Council chose to engage additional litigation counsel to respond to the Bal Harbour Shops litigation matters. In years past, we have also brought in special counsel to address pension tax issues. 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

¹ The Village carries liability insurance with the Florida Municipal Insurance Trust, which assigns litigators to handle liability cases separately from the Firm's agreement.

² As far as I have been able to determine, I am the first woman to serve the Village in that capacity.

businesses. We understand that the Village is a multi-million dollar entity with employees, complex regulatory systems, and demanding stakeholders, namely, the residents and 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 all over the state of Florida. 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

- VILLAGE -

MEMORANDUM

TO: Honorable Mayor and Council

FROM: Dwight S. Danie, Village Clerk 

DATE: March 11, 2025

RE: Lobbyist Registration Report

| Name of Lobbyist | Principal Represented | Date Registered |
|----------------------|-------------------------------------|-----------------|
| Carter McDowell | LK Hotel, LLC | 01/01/25 |
| Nicholas Noto | Carlton Terrace Owner | 01/15/25 |
| Thomas Robertson | LK Hotel, LLC | 01/15/25 |
| Caroline Travis | Bal Harbour Shops LLC | 01/16/25 |
| Ivor Nicholas Massey | Bal Harbour Shops LLC | 01/16/25 |
| Benjamin Elias | Bal Harbour Shops LLC | 01/16/25 |
| Ian DeMello | Mathew Whitman Lazenby | 01/22/25 |
| John Shubin | Mathew Whitman Lazenby | 01/22/25 |
| Eitan Zimmerman | Bal Harbour Civic Association, Inc. | 02/24/25 |
| Rita Collins | Bal Harbour Civic Association, Inc. | 02/24/25 |
| Neca Logan | Bal Harbour Civic Association, Inc. | 02/24/25 |
| | | |
| | | |

BAL HARBOUR

- VILLAGE -

MEMORANDUM

TO: Honorable Mayor and Council

FROM: Susan L. Trevarthen *SLT*

DATE: March 18, 2025

RE: Monthly Report of Village Attorney for February 2025 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 2025 (98), we completed our work for the February Council and GEP meeting agenda and the annual Council Retreat issue sheets, attended those meetings, and began to review, advise, and prepare documents for agenda items for the March Council meeting. We attended the weekly staff meetings, and the monthly agenda review/after action meetings.

Specific additional matters included:

- We continued to analyze and advise staff on title issues for submerged lands.
- We met with staff regarding stormwater issues and related financing inquiries.
- We began to summarize new immigration laws for impact on the Village's police function, and responded to an inquiry re red light camera issues.
- We continued our work with staff and counsel related to an unsafe structures notice for Bal Harbour Manor, including correspondence and conferences, and other building inquiries.
- We continued to advise staff re contractual revisions and procurement related to Jetty project. We continued to analyzed the CM at risk agreement for the jetty in detail for potential issues in response to Administration inquiries.
- We analyzed, advised staff, and worked with litigators on a Chapter 119 5-day notice related to public records requests from the Shops.
- We followed up and finalized our advice to staff on the interpretation of the Medicare supplement obligation.
- We evaluated an inquiry re the Citizens Bill of Rights.

- We researched and responded to additional inquiries regarding the resort tax.
- We continued to work on the Police Department's idCore agreement, and follow up re inquiries concerning the police pension board.
- We presented an ethics training workshop for Village Manager's office.
- We reviewed and commented on proposed legislation affecting the Village.

Additional Services

For the Security/Landscaping Assessment matter, we met with the Administration and with Civic Association special counsel, and met with FPL issues.

For the Dade County PBA Collective Bargaining matter, we reviewed and responded to correspondence concerning continued negotiations and bargaining strategies; prepared for and participated in bargaining sessions and evaluated various issues related thereto; prepared our response to and prepared to select the arbitrator for the PBA longevity pay grievance.

For the Zyscovich matter, we responded to client directives by assessing and evaluating the potential claim.

For the Bal Harbour Shops (Live Local Act) matter, we conferred with the client and litigators regarding several filings and strategy matters and evaluated discovery in the first two lawsuits (Noise and LLA), and reviewed and conferred with litigators on the third lawsuit (FLUEDRA).