

RESOLUTION 11- 2041

A RESOLUTION OF THE TOWN OF SURFSIDE FLORIDA (“TOWN”), ADOPTING A MEMORANDUM OF UNDERSTANDING (“MOU”) BETWEEN THE TOWN AND BAL HARBOUR VILLAGE, FLORIDA (“BAL HARBOUR”); AUTHORIZING THE TOWN MANAGER TO TAKE ANY AND ALL STEPS NECESSARY TO EXECUTE THE NECESSARY DOCUMENTS TO CARRY OUT THE INTENT AND PURPOSE OF THIS RESOLUTION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on August 22, 1946, Surfside granted Miami Beach Heights, Inc., a Florida corporation, amongst other things, the right to construct and install a water line and a sanitary sewer force main under certain designated streets in Surfside pursuant to Surfside Ordinance No. 132 (the “1946 Ordinance”); and

WHEREAS, the grant under the 1946 Ordinance was for a term of thirty (30) years from the effective date thereof; and

WHEREAS, subsequent to the 1946 Ordinance, Miami Beach Heights, Inc., a Florida corporation assigned, amongst other things, all of its rights under 1946 Ordinance to Bal Harbour; and

WHEREAS, on July 26, 1977, Surfside and Bal Harbour entered into an agreement renewing and modifying certain terms of the 1946 Ordinance (“1977 Extension”); and

WHEREAS, on May 15, 2004, Bal Harbour adopted Resolution Number 661 amending certain terms of the 1946 Agreement and the 1977 Extension (the 1946 Ordinance, the 1977 Extension and Resolution Number 661 being collectively referred to as the “Existing Water and Sewer Agreements”); and

WHEREAS, the Existing Water and Sewer Agreements are now expired and Surfside and Bal Harbour wish to enter into an agreement providing for the design, development, construction, operation and maintenance of a new sanitary sewer force main through Bal Harbour and Surfside (“New Sewer Line”); and

WHEREAS, the Town and Bal Harbour wish to enter into this MOU to memorialize certain of the terms and conditions that will serve as the basis for the preparation of a New Sewer Line agreement (the “New Sewer Line Agreement”); and

WHEREAS, the Town Commission finds that this Resolution is in the best interest and welfare of the residents of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are incorporated herein by this reference.

Section 2. Adoption of Memorandum of Understanding. The Town Commission hereby approves the Memorandum of Understanding between the Town and Bal Harbour attached hereto as Exhibit "A,"

Section 3. Authorization. The Town Manager is hereby authorized to take any and all steps necessary to execute the necessary documents to carry out the intent and purpose of this Resolution.

Section 4. Effective Date. This resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 9 day of August, 2011

Moved. Commissioner Karukin
Second. Commissioner Olchyk

FINAL VOTE ON ADOPTION

Commissioner Michael Karukin
Commissioner Edward Kopelman
Commissioner Marta Olchyk
Vice Mayor Joseph Graubart
Mayor Daniel Dietch

yes
absent
yes
yes
yes


Daniel Dietch, Mayor

Attest:


Debra E. Eastman, MMC
Town Clerk

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


Lynn M. Dannheisser, Town Attorney

EXHIBIT A

MEMORANDUM OF UNDERSTANDING BETWEEN THE TOWN OF SURFSIDE, FLORIDA AND BAL HARBOUR VILLAGE , FLORIDA

THIS MEMORANDUM OF UNDERSTANDING (this “MOU”) is made as of this ____ day of _____, 2011 by and between the undersigned representatives of the Town of Surfside, Florida, (“Surfside”) and Bal Harbour Village, Florida, (“Bal Harbour”)

BACKGROUND:

WHEREAS, on August 22, 1946, Surfside granted Miami Beach Heights, Inc., a Florida corporation, amongst other things, the right to construct and install a water line and a sanitary sewer force main under certain designated streets in Surfside pursuant to Surfside Ordinance No. 132 (the “1946 Ordinance”);

WHEREAS, the grant under the 1946 Ordinance was for a term of thirty (30) years from the effective date thereof;

WHEREAS, subsequent to the 1946 Ordinance, Miami Beach Heights, Inc., a Florida corporation assigned, amongst other things, all of its rights under 1946 Ordinance to Bal Harbour;

WHEREAS, on July 26, 1977, Surfside and Bal Harbour (each, a “Party” and sometimes hereinafter referred to collectively, as the “Parties”), entered into an agreement renewing and modifying certain terms of the 1946 Ordinance (“1977 Extension”);

WHEREAS, on May 15, 2004, Bal Harbour adopted Resolution Number 661 amending certain terms of the 1946 Agreement and the 1977 Extension (the 1946 Ordinance, the 1977 Extension and Resolution Number 661 being collectively referred to as the “Existing Water and Sewer Agreements”); and

WHEREAS, the Existing Water and Sewer Agreements are now expired and the Parties desire, amongst other things, to enter into an agreement providing for the design, development, construction, operation and maintenance of a new sanitary sewer force main through Bal Harbour and Surfside (“New Sewer Line” or “Project”). Further, the Parties wish to enter into this MOU to memorialize certain of the terms and conditions that will serve as the basis for the preparation of a New Sewer Line agreement (the “New Sewer Line Agreement”).

TERMS:

1. Subject to the terms hereof, the Parties shall jointly undertake the construction of a new 16” HDPE sewer main that shall run through Bal Harbour, Surfside and the

City of Miami Beach to be constructed in the locations as more particularly shown on Exhibit "A" attached hereto and made a part hereof.

2. Bal Harbour has entered into that certain contract with TB Landmark Construction, Inc., a Florida corporation ("Contractor") for the design, development, construction and installation of the New Sewer Line ("Construction Agreement"). Additionally, on June 21, 2011, Bal Harbour issued a change order to the Contractor requesting certain modifications to the Construction Agreement as more specifically set forth therein (a copy of the Construction Agreement and the change order are attached hereto as Exhibit "B", hereinafter the term "Construction Agreement" shall be deemed to include all change orders and modifications thereto).
 - A. Contractor acknowledges and agrees that Surfside is third party beneficiary under the Construction Agreement. Contractor's joinder in this MOU is for the sole purpose of acknowledging Surfside's rights under the Construction Agreement. To the extent that the Construction Agreement requires amendments or change orders which result in additional fees and/or costs of \$5,000.00 or less, as quoted by the Contractor, Bal Harbour shall be authorized to approve such modifications without the need for Surfside's consent. Any modifications to the Construction Agreement which result in additional fees and costs of greater than \$5,000.01, as quoted by the Contractor, shall require the written consent of both Parties prior to being authorized.
 - B. Subject to the terms contained in section 4 hereof, each Party shall be responsible for one half of all of the costs for the design, development, construction and installation of the New Sewer Line as set forth in the Construction Agreement.
 - C. Each Party shall be responsible for one half of all of the costs for the construction costs and engineering fees of the interconnection of the existing force main on Byron Avenue at two locations in Surfside in the amount not to exceed \$285,000.00. Any costs in excess of \$285,000.00 with respect to the interconnection of the existing force main on Byron Avenue shall require the written consent of both Parties prior to being authorized.
3. Bal Harbour shall provide notice to Surfside of any subsequent modifications or change orders pertaining to the Construction Agreement and Design Agreement (Attachment "C") which result in additional fees or costs to the Parties within ten (10) days after the date of such modifications or changes.

(Attachment "C") which result in additional fees or costs to the Parties within ten (10) days after the date of such modifications or changes.

4. If Bal Harbour finances and/or advances any or all of the costs of the construction of the New Sewer Line on behalf of Surfside through the use of municipal bonds or other financing arrangements, Surfside shall repay Bal Harbour for the borrowed funds at the rate of 15 basis points (.15%) over the interest rate paid by Bal Harbour to the applicable lender or bondholders and otherwise upon the same terms and conditions as Bal Harbour is responsible to repay the same. For purposes hereof, "costs of the construction" shall be deemed to include all hard costs and soft costs related to the design, development, construction and installation of the New Sewer Line.
5. The Parties shall each own an undivided fifty percent (50%) interest in the New Sewer Line.
6. Each Party shall be responsible for one half of the costs of maintaining and repairing the New Sewer Line subsequent to the completion of its construction. Surfside shall have in the first instance the initial responsibility for the routine maintenance and repair of the New Sewer Line and shall submit invoices to Bal Harbour for payment of its one half share of the maintenance costs, which sums shall be due and payable within thirty (30) days from the date of Bal Harbour's receipt of the applicable invoice.

Notwithstanding the forgoing, prior to performing any routine maintenance or repairs of the New Sewer Line, Surfside shall provide an estimate of the costs thereof to Bal Harbour and such repairs shall require the reasonable consent of both Parties prior to being authorized. Bal Harbour shall approve or reject the proposed maintenance costs within thirty (30) days from the date of the receipt of the estimate. Bal Harbour shall not be required to pay for any repairs or maintenance charges unless such charges are authorized in accordance with this section. Additionally, the Bal Harbour charter requires council approval of expenditures in excess of \$2,500.00. To the extent that Bal Harbour's consent is required for repairs and maintenance of the New Sewer Line and such consent would result in expenditures in excess of \$2,500.00, such consent shall be conditioned on approval of the Bal Harbour Village council.

In the event Surfside fails to perform the required non-emergency maintenance on the New Sewer Line to Bal Harbour's reasonable satisfaction, Bal Harbour, shall notify Surfside in writing and Surfside shall have thirty (30) days to perform the repairs to Bal Harbour's reasonable satisfaction. In the event Surfside fails to perform the repairs to Bal Harbour's reasonable satisfaction Bal Harbour shall have the right to perform such maintenance and Surfside shall, within thirty (30) days after its receipt of the invoice from Bal Harbour, be required to reimburse Bal Harbour for one half of such maintenance costs. Notwithstanding the foregoing, in the event either Party hereunder causes damage to the New Sewer

repairs are required with respect to the New Sewer Line, Surfside shall in its reasonable discretion perform such emergency repairs and send an invoice to Bal Harbour for one half of the costs of the repair which shall be due and payable within thirty (30) days after receipt; provided however, if Surfside fails to immediately respond to such emergency, Bal Harbour may, upon notice to Surfside given by reasonably appropriate manner under such circumstances, perform such emergency repairs or contract with third parties to perform such repairs which Surfside, subject to the terms hereof, being responsible for one half of such emergency repair costs. Each Party shall have the right to enter upon and open roadways under which the New Sewer Line is laid for the purpose of maintenance and repair as may reasonably be required.

7. In addition to the New Sewer Line, pursuant to the Existing Water and Sewer Agreements, Bal Harbour owns the sewer main located at Byron Avenue which is currently being used by both Parties (“Existing Sewer Main”). Bal Harbour shall, contemporaneously with the mutual execution and delivery of the New Sewer Line Agreement, transfer an undivided one half ownership interest in and to the Existing Sewer Main to Surfside; thereafter, the Parties shall maintain the Existing Sewer Main in the same manner as set forth in Section 6 hereof. Thereafter, the Parties shall mutually determine whether to repair or replace the Existing Sewer Main as may be required.
8. In lieu of any obligation under Section 164.1052, Florida Statutes, in the event a claim or dispute shall arise between the Parties relating to any term or provision of the New Sewer Line Agreement or the Construction Agreement, such claim or dispute shall be settled by binding arbitration in the state of Florida. The Parties shall have thirty (30) days from the date a claim or dispute arises between them to attempt to resolve the matter through mediation, failing which the parties will resolve the dispute through neutral binding arbitration in Miami-Dade County. The arbitrator may not alter the contract terms or award any remedy not provided for in the Construction Agreement or the New Sewer Line Agreement. The award will be based on the greater weight of the evidence and will state findings of fact and the contractual authority on which it is based. If the parties agree to use discovery, it will be in accordance with the Florida Rules of Civil Procedure and the arbitrator will resolve all discovery-related disputes. Arbitration will be in accordance with the rules of the AAA or other arbitrator agreed on by the Parties. Each Party to any arbitration will pay its own fees, costs and expenses, including attorneys’ fees, and will equally split the arbitrators’ fees and administrative fees of arbitration. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all conclusions of law and fact and shall include the assessment of costs, expenses, and reasonable attorneys’ fees. Any such arbitration shall be conducted by an arbitrator experienced in municipal construction matters and shall include a written record of the arbitration hearing.

9. This MOU reflects the current understanding and intent of the Parties with respect to the matters described herein and shall serve as an interim agreement between the parties until such time as a more complete Interlocal Agreement has been executed for the duration of expected life of the New Sewer Line. Said Interlocal Agreement shall be executed no later than one (1) year from the date of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the day and year first written above by their duly authorized representatives.

BAL HARBOUR VILLAGE, FLORIDA

BY: _____
Ellisa Horvath , Village Clerk

BY: _____
Alfred J. Treppeda, Village Manager

APPROVED AS TO LEGAL SUFFICIENCY:

BY: _____
Richard Jay Weiss , Village Attorney

TOWN OF SURFSIDE, FLORIDA

BY: _____
Debra Eastman, Town Clerk

BY: _____
Roger Carlton, Town Manager

APPROVED AS TO LEGAL SUFFICIENCY:

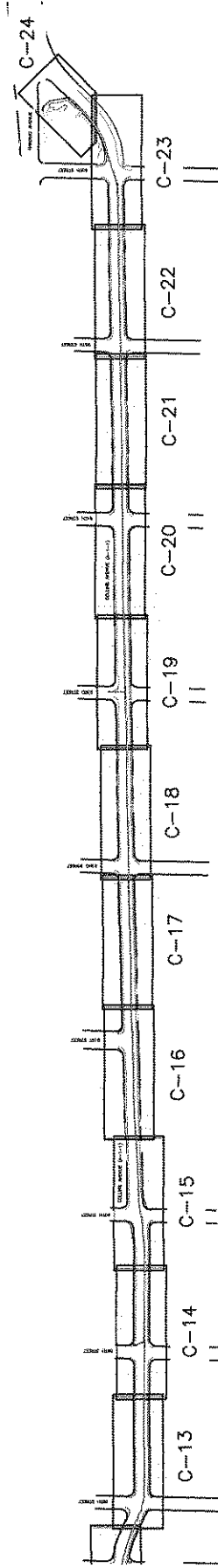
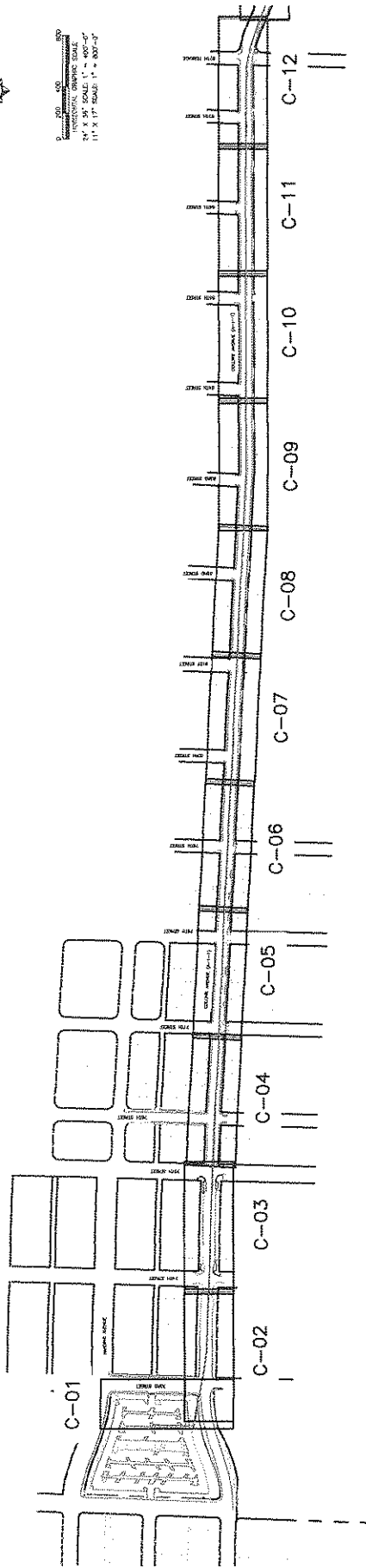
BY: _____
Lynn M. Dannheisser, Town Attorney

TB Landmark Construction Inc hereby acknowledges that Town of Surfside is a third party beneficiary of the construction agreement between it and the Village of Bal Harbor for the design, development, construction and installation of the New Sewer Line as outlined above.

T B Landmark Construction, Inc



0 200 400
 1" = 200'-0"
 1/4" X 35' SCALE: 1" = 400'-0"
 1 1/2" X 17" SCALE: 1" = 800'-0"



FOR CONSTRUCTION

	CRAIG A. SMITH & ASSOCIATES, INC. 7777 GULF BLVD, SUITE 110 BOCA RATON, FLORIDA 33433 (561) 991-1100 CREDIT CARD ACCEPTED	FOR CONSTRUCTION FILE NAME: 02-1558-G-02-REV.A.dwg LAST SAVED: 09/09/11 - 3:41 PM 09-1556	G-02 BAL HARBOUR PROJECT 3 FORCE MAIN IMPROVEMENTS KEY SHEET & SITE PLAN
	PETER & WENZEL, INC. 1000 N. W. 10th St. Dania Beach, FL 33019 (954) 944-1100		
	CRAIG A. SMITH & ASSOCIATES, INC. 7777 GULF BLVD, SUITE 110 BOCA RATON, FLORIDA 33433 (561) 991-1100 CREDIT CARD ACCEPTED		
	PETER & WENZEL, INC. 1000 N. W. 10th St. Dania Beach, FL 33019 (954) 944-1100		
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	PETER & WENZEL, INC. 1000 N. W. 10th St. Dania Beach, FL 33019 (954) 944-1100		

EXHIBIT B

SECTION 00500

AGREEMENT

THIS AGREEMENT, made and entered into on this 17th day of May, 2011, by and between TB Landmark Construction, Inc., Party of the First Part, and BAL HARBOUR VILLAGE (OWNER), Party of the Second Part:

WITNESSETH:

That, the First Party, for the consideration hereinafter fully set out, hereby agrees with the Second Party as follows:

1. That the First Party shall furnish all the materials, and perform all of the work in manner and form as provided by the Drawings Identified in section 00015 List of Drawings, Specifications Identified in section 00010, and Documents which are attached hereto and made a part hereof, as if fully contained here:
2. That the First Party shall commence the work to be performed under this Agreement on a date to be specified in a written order of the Second Party and shall complete all work hereunder within the length of time stipulated in the BID.
3. That the Second Party hereby agrees to pay to the First Party for the faithful performance of this Agreement, subject to additions and deductions as provided in the Specifications of Proposal, in lawful money of the United States, the amount of \$2,691,819.55:

**TWO MILLION SIX HUNDRED NINETY ONE THOUSAND EIGHT HUNDRED
NINETEEN AND 55/100 DOLLARS**

(Written Total Amount)

based on the estimated quantities and Unit or Lump Sum Prices contained herein.

4. That the Second Party shall make monthly partial payments to the First Party on the basis of a duly certified and approved estimate of work performed during each calendar month by the First Party, LESS the retainage provided in the General Conditions, which is to be withheld by the Second Party until work within a particular part has been performed strictly in accordance with this Agreement and until such work has been accepted by the Second Party.
5. That upon submission by the First Party of evidence satisfactory to the Second Party that all payrolls, material bills, and other costs incurred by the First Party in connection with the construction of the work have been paid in full, final payment on account of this

Bal Harbour Village
Sanitary Force Main Improvements
Project No. 3
09-1556 / 06-27-2011

00500-1

Agreement

this Agreement shall be made within 60 days after the completion by the First Party of all work covered by this Agreement and the acceptance of such work by the Second Party.

6. In the event that the Contractor shall fail to complete the work within the time limit or the extended time limit agreed upon, as more particularly set forth in the Contract Documents, liquidated damages shall be paid at the rate of **One Thousand Nine Hundred and 20/100 Dollars (\$1,920.00) per day**, plus any monies paid by the OWNER to the Engineer for additional engineering and inspection services associated with such delay. (Refer to Tab 'A')
- ~~7. All work, including all required restoration, paving, striping, testing of tracer wire systems, air release valves, plug valves and related appurtenances within the area defined as Milestone One, shall be completed within 90 calendar days following the 30 day Material Acquisition allowance. The Contractor will receive an incentive payment of \$10,000.00 per day for each day or part thereof that the project is substantially complete prior to 12:00 mid-night on the date stipulated for substantial completion as defined above. The incentive payments will be made up to a maximum limit of \$150,000.00 for a maximum of 15 days prior to the date of substantial completion. The Contractor will be assessed as a disincentive the per day amount stipulated in the paragraph above for each day or part thereof that the project phase is not substantially complete by 12:00 mid night on the date stipulated for substantial completion. The disincentive assessment will continue without limitation until the Engineer notifies the Owner of substantial completion in accordance with the provisions of Article 14.9 of the General Conditions. The Owner may deduct the total accrued disincentive assessment from the final payment due to the Contractor if sufficient monies are available. Otherwise, the Contractor shall pay to the Owner the total accrued disincentive assessment. (Refer to Tab 'A')~~
- ~~8. All work, including all required restoration, paving, striping, testing of tracer wire systems, air release valves, plug valves and related appurtenances within the area defined as Milestone Two shall be completed within 30 calendar days following the substantial completion of Milestone One as detailed above. The Contractor will receive an incentive payment of \$5,000.00 per day for each day or part thereof that the project is substantially complete prior to 12:00 mid night on the date stipulated for substantial completion as defined above. The incentive payments will be made up to a maximum limit of \$25,000.00 for a maximum of 5 days prior to the date of substantial completion. The Contractor will be assessed as a disincentive the per day amount stipulated in the paragraph above for each day or part thereof that the project phase is not substantially complete by 12:00 mid night on the date stipulated for substantial completion. The disincentive assessment will continue without limitation~~

~~limitation until the Engineer notifies the Owner of substantial completion in accordance with the provisions of Article 14.9 of the General Conditions. The Owner may deduct the total accrued disincentive assessment from the final payment due to the Contractor if sufficient monies are available. Otherwise, the Contractor shall pay to the Owner the total accrued disincentive assessment. (Refer to Tab 'A')~~

9. It is further mutually agreed between the parties hereto that if, at any time after the execution of this Agreement and the Surety Bond hereto attached for its faithful performance and payment, the Second Party shall deem the Surety or Sureties upon such bond to be unsatisfactory, or if, for any reason such bond ceases to be adequate to cover the performance of the work, the First Party shall, at its expense within 5 days after the receipt of notice from the Second Party so to do, furnish an additional bond or bonds in such form and amount and with such Surety or Sureties as shall be satisfactory to the Second Party. In such event, no further payment to the First Party shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the work shall be furnished in manner and form satisfactory to the Second Party.
10. No additional work or extras shall be done unless the same shall be duly authorized by appropriate action by the Party of the Second Part.

SECTION 00931

CHANGE ORDER

DATE OF ISSUANCE: June 21, 2011

No. 1

PROJECT: BAL HARBOUR VILLAGE – COLLINS AVENUE SANITARY FORCE MAIN IMPROVEMENTS PROJECT

OWNER: BAL HARBOUR VILLAGE
655 96TH STREET
BAL HARBOUR, FL 33154

CONTRACTOR: TB LANDMARK CONSTRUCTION, INC.

ENGINEER: CRAIG A. SMITH & ASSOCIATES

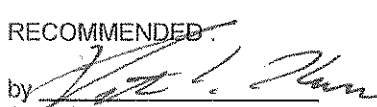
YOU ARE DIRECTED TO MAKE THE FOLLOWING CHANGES IN THE CONTRACT DOCUMENTS.

DESCRIPTION: EXTEND THE POINT OF CONNECTION FURTHER SOUTH, AT 72ND STREET, AS PER CITY OF MIAMI BEACH REQUIREMENTS. RESIZE PIPELINE DIAMETER TO 16-INCH DR 11 HDPE WITHIN THE COLLINS AVENUE FDOT R/W.

THE ATTACHED REVISION TO THE INCENTIVE/DISINCENTIVE PROVISIONS WILL BE ADOPTED FOR THE PROJECT.

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIME:
Original Contract Price \$2,691,819.55	Original Contract Time 150 Days
Previous Change Orders NONE	Net change from previous Change Orders NONE
Contract Price prior to this Change Order \$2,691,819.55	Contract Time prior to this Change Order 150 Days
Net increase of this Change Order \$448,926.99	Net Increase of this Change Order 30 Days
Contract Price with all approved Change Orders \$3,140,746.54	Contract Time with all approved Change Orders 180 Days

RECOMMENDED:

by 
CRAIG A. SMITH & ASSOCIATES

ACCEPTED:

by 
CONTRACTOR

APPROVED:

by 
BAL HARBOUR VILLAGE

END OF SECTION

00931-1

Change Order No. 1

Bal Harbour Village
Sanitary Force Main Improvements
Project No. 3
09-1556 / 06-16-2011

Project Incentive/Disincentive for work **within** the Collins Avenue/FDOT Right-of-Way

The construction timeline for this project is very limited, as FDOT is planning to begin the milling and paving of Collins Avenue in early 2012. The main goal of this project is to have the work within the Collins Avenue/FDOT Right-of-Way completed on or before November 30, 2011.

The Project Incentive/Disincentive for work within the Collins Avenue/FDOT Right-of-Way is amended as follows:

1. The Contractor will receive an incentive payment of **\$150,000** for the substantial completion of all work, including all required restoration, paving, striping, testing of tracer wire systems, air release valves, plug valves and related appurtenances within the Collins Avenue/FDOT Right-of-Way on or before November 30, 2011.
2. Should any unknown or unforeseen conditions develop that causes a justifiable project time delay or additional work is added to the scope of work, additional time will be added to the Contract Time, and the incentive goal date will be moved back to a date mutually agreed upon between the Contractor and the Village.
3. The Project Disincentive is eliminated from this Contract.

Project Incentive/Disincentive for work **outside** the Collins Avenue/FDOT Right-of-Way

The Project Incentive/Disincentive for work outside the Collins Avenue/FDOT Right-of-Way is amended as follows:

1. The Contractor will receive an incentive payment of **\$25,000** for the substantial completion of all work outside the Collins Avenue/FDOT Right-of-Way on or before December 31, 2011.
2. Should any unknown or unforeseen conditions develop that causes a justifiable project time delay or additional work is added to the scope of work, additional time will be added to the Contract Time, and the incentive goal date will be moved back to a date mutually agreed upon between the Contractor and the Village.
3. The Project Disincentive is eliminated from this Contract.

Liquidated Damages

The Contract provisions regarding liquidated damages will remain the same. In the event that the Contractor shall fail to complete the work within the time limit or the extended time limit agreed upon, as more particularly set forth in the Contract Documents, liquidated damages shall be paid at the rate of **One Thousand Nine Hundred and 20/100 Dollars (\$1,920.00) per day**, plus any monies paid by the OWNER to the Engineer for additional engineering and inspection services associated with such delay.

Tab 'A'

Project Incentive/Disincentive for work **within** the Collins Avenue/FDOT Right-of-Way

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2. Should any unknown or unforeseen conditions develop that causes a justifiable project time delay or additional work is added to the scope of work, additional time will be added to the Contract Time, and the incentive goal date will be moved back to a date mutually agreed upon between the Contractor and the Village.
3. The Project Disincentive is eliminated from this Contract.

Project Incentive/Disincentive for work **outside** the Collins Avenue/FDOT Right-of-Way


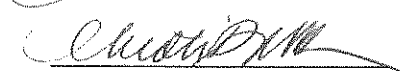
The Project Incentive/Disincentive for work outside the Collins Avenue/FDOT Right-of-Way is amended as follows:

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2. Should any unknown or unforeseen conditions develop that causes a justifiable project time delay or additional work is added to the scope of work, additional time will be added to the Contract Time, and the incentive goal date will be moved back to a date mutually agreed upon between the Contractor and the Village.
3. The Project Disincentive is eliminated from this Contract.


Liquidated Damages

The Contract provisions regarding liquidated damages will remain the same. In the event that the Contractor shall fail to complete the work within the time limit or the extended time limit agreed upon, as more particularly set forth in the Contract Documents, liquidated damages shall be paid at the rate of **One Thousand Nine Hundred and 20/100 Dollars (\$1,920.00) per day**, plus any monies paid by the OWNER to the Engineer for additional engineering and inspection services associated with such delay.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and date first above written, in three (3) counterparts, each of which shall, without proof or accounting for the other counterpart be deemed an original Contract.

WITNESSES:



CONTRACTOR: TB LANDMARK CONSTRUCTION, INC.

BY: 

NAME: TIMOTHY C BEASLEY

TITLE: V.P.

OWNER: BAL HARBOUR VILLAGE

BY: 

NAME: ALFRED J. TREMPEAU

TITLE: VILLAGE MANAGER

AUTHENTICATION:

BY: 

NAME: ELLISA L. HORVATH

TITLE: Village Clerk

APPROVED AS TO FORM:

BY: 

NAME: Matthew Paul

TITLE: Village Attorney

END OF SECTION

CRAIG A. SMITH & ASSOCIATES

PROPOSED SCOPE OF SERVICES AND PROPOSED FEE

FOR

SEWER FORCEMAIN REPLACEMENT (COLLINS AVENUE)
FROM PS-2 TO CITY OF MIAMI BEACH
POINT OF CONNECTION ON 74TH STREET

CAS PROPOSAL NUMBER: P 2461

BAL HARBOUR VILLAGE

DATED: October 13, 2009



CRAIG A. SMITH & ASSOCIATES

Engineers•Surveyors•Utility Locators•Grant Specialists

7777 Glades Road, Suite 410

Boca Raton, FL 33434

Tel. (561) 791-9280 Fax. (561) 791-9818



CRAIG A. SMITH & ASSOCIATES

PROPOSED SCOPE OF SERVICES AND PROPOSED FEE

**PROJECT NAME: BAL HARBOUR VILLAGE
SEWER FORCEMAIN REPLACEMENT (COLLINS
AVENUE) FROM PS-2 TO CITY OF MIAMI BEACH
POINT OF CONNECTION ON 74TH STREET**

PROPOSAL NO: P 2461

PROJECT DESCRIPTION:

The purpose of this project is to replace the existing cast-iron sewer forcemain that begins at the Bal Harbour Sewer Master Pumping Station No. 2 (PS-2) and extends to the City of Miami Beach point of connection located on 74rd Street.

This existing forcemain has been in service since 1946 and has experienced numerous age-related leaks and line breaks over the past fifteen years and is in need of replacement.

The preliminary estimated construction budget for this project is **\$2,500,000.00**

OWNER/CLIENT:

Name: Bal Harbour Village
Attention: Alfred J. Treppeda, Village Manager
Address: 655 96th Street
Bal Harbour, FL 33154
Phone: (305) 866-4633
Facsimile: (305) 868-6575

GENERAL:

Craig A. Smith & Associates will provide engineering services during the design, permitting, and bidding of the wastewater improvements associated with the Sewer Forcemain Replacement Project (Collins Avenue) from PS-2 to City of Miami Beach Point of Connection.

More specifically, the scope of work is as follows:



PHASE I DESIGN AND PERMITTING

Task 1: Project Initiation Meeting with Bal Harbour Village

A meeting with the Village's Utility Staff and the CAS project team will be held immediately after the authorization to commence the project. This purpose of this meeting is to discuss any modification to the proposal, discuss and finalize the schedule of each major activity, and to discuss design criteria and design modification requirements, if any exist. The Village should also inform CAS in this meeting if there are planned developments or additional items that would influence the final design.

Lump sum for Task 1: \$8,800.00

Task 2: Field Survey

Survey will physically locate all above ground, visible improvements within the existing right of way of Harding Ave. from Master Pump Station PS-2 and from the centerline of 96th Street to its north right of way east to Collins Ave. Said improvements will then be located within the right of way of Collins Ave. extending south to 74th Street, west to the proposed tie-in point on 74th Street. Survey baselines will be established at 100 foot intervals along all streets and cross-sections taken at 50 foot intervals in the corridors as described above. Plan view elevations will be shown as relative to National Geodetic Vertical Datum of 1929 at each section and at pertinent points for facilitation of Engineering Design. A base map will be created and provided to the Engineering Department as well as a Map of Topographic Survey for submittal to entities of interest.

Lump Sum for Task 2: \$88,000.00



Task 3: UTILITY LOCATES

All visible, above ground utilities will be located and shown as well as those utilities as marked by CAS utility locates department on the surface. Up to 100 vacuum excavation areas ("soft digs") will be performed to identify the type, size, and material as well as depth to the top of potentially conflicting and/or newly identified or previously unknown facilities.

Lump Sum for Task 3: \$66,000.00

Task 4: Preliminary Engineering Design and Drawings

CAS will prepare preliminary design drawings. The preliminary design drawings will show the design concept for the Village to review and finalize.

As a part of this design, the following items will be undertaken:

- Review of existing plans and field conditions with Bal Harbour Village, the City of Surfside, and the City of Miami Beach
- CAS will prepare base sheets with a preliminary site plan
- Review of pipeline sizing flow and head requirements
- Maintenance of Traffic (MOT) evaluation due to site locations

Lump sum for Task 4: \$12,375.00

Task 5: Preparation of Detailed Design Drawings and Specifications

The preparation of detailed design drawings and the technical specifications will be prepared under this task. The approved recommendations in the preliminary engineering design will be incorporated on the drawings and the technical specifications will be reviewed and modified to conform to the project requirements.

Lump sum for Task 5: \$116,875.00



Task 6: Preparation of Quantity Take-Off and Construction Cost Estimate

A quantity take-off and estimate of the construction costs will be performed under this task. A preliminary cost estimate will be prepared based on these quantities.

Lump sum for Task 6: \$5,500.00

Task 7: Discussion of Village's Review Comments and Preparation of Final Design Documents

CAS will submit the design drawings, specifications, quantities, and construction cost estimate to the Village for their review and comments. CAS will review and discuss the Village's comments with the Village's Utility Staff. The final agreed comments will be incorporated in the drawings and specifications and, if necessary, the design will be revised accordingly.

Lump sum for Task 7: \$10,450.00

Task 8: Permits

CAS will prepare and submit permit applications to the regulatory departments and agencies as required. The Village shall pay all permit fees. Drawings and specifications will also be modified to conform to any comments these agencies might have.

Lump sum for Task 8: \$56,375.00



Task 9: Bidding Services

CAS will assist the Village during bidding. Solicit Contractors, conduct and attend pre-bid meeting, respond to questions during bidding, conduct and attend bid opening, prepare bid tabulation and recommend Award of Contract.

Lump sum for Task 9: \$22,825.00



Our fee for the above-described work would be a lump sum fee of Three Hundred Eighty Seven Thousand Two Hundred Dollars (\$387,200.00).

Any services requested or required in addition to those listed in the scope will be considered additional services and will be billed at our standard hourly rates.

We look forward to assisting Bal Harbour Village on this project. If the scope of services and fee are acceptable to you, please authorize below and/or process for necessary approvals.

Should you have any questions, please feel free to contact our office.

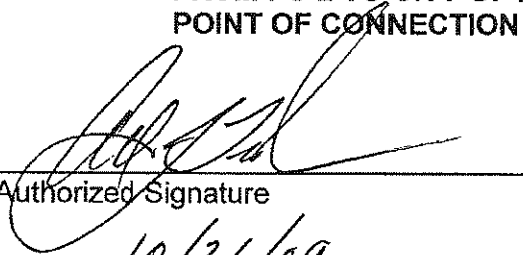
Yours sincerely,

CRAIG A. SMITH & ASSOCIATES

Stephen C. Smith, P.E., Sr. Vice President - CAS

cc: William H. Landis, P.E., Village Engineer
Gene R. Schriener, P.E., President - CAS
Peter A. Kunen, P.E., Project Manager - CAS

**APPROVED: ENGINEERING PROPOSAL
BAL HARBOUR VILLAGE
SEWER FORCEMAIN REPLACEMENT (COLLINS AVENUE)
FROM PS-2 TO CITY OF MIAMI BEACH
POINT OF CONNECTION ON 74TH STREET**



Authorized Signature

Date

10/21/09