

MEMORANDUM

CRC
Agenda Item No. 3(C)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: December 9, 2013

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution approving an
Interlocal Agreement between
Miami-Dade County and the
Village of Bal Harbour;
authorizing assistance for
development approvals in
support of implementing the
Haulover Park General Plan

The accompanying resolution was prepared by the Parks, Recreation and Open Spaces Department and placed on the agenda at the request of Prime Sponsor Commissioner Sally A. Heyman.



R. A. Cuevas, Jr.
County Attorney

RAC/smm

Memorandum

MIAMI-DADE
COUNTY

Date: January 22, 2014

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Resolution Approving Interlocal Agreement at Haulover Park

Recommendation

It is recommended that the Board adopt the attached Resolution approving the Interlocal Agreement between Miami-Dade County ("County") and the Village of Bal Harbour ("Village") to establish a means to restore, renourish and retain Bal Harbour Beach which is maintained by the County.

Scope

Miami-Dade County's Haulover Park, a park of County-wide significance, is located at 10800 Collins Avenue, Miami, FL 33167, in Commission District 4. This item focuses exclusively on improving and managing upland beach areas owned by the State of Florida and managed for park and recreational use through Miami-Dade County Parks, Recreation and Open Spaces Department.

Fiscal Impact/Funding Source

All costs not provided for by State grants will be paid by the Village. There is no fiscal impact nor any County funding attached to this Agreement.

Track Record/Monitor

Kevin Asher, Special Projects Manager for the Miami-Dade County Parks, Recreation and Open Spaces Department (PROS), will monitor the Agreement between the County and Village.

Background

For many years, the existing configuration of the Haulover Beach jetty has allowed long-shore currents to deposit sand sediment into Biscayne Bay, rather than across the Bakers Haulover Inlet and onto Bal Harbour Beach. The resulting sand starved beach adversely impacts property and tourism values and requires significant renourishment.

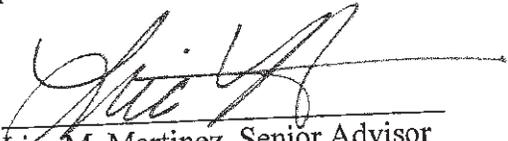
In order to remedy the situation, the County has agreed to allow: 1) modification of the Haulover jetty structure into a larger and longer jetty/fishing pier that is consistent with the approved Haulover Park General Plan; and 2) establishment of periodic sand bypass projects to relocate sand from Haulover Beach to Bal Harbour Beach.

An Interlocal Agreement was prepared to establish a means for the County and Village to coordinate all development approvals for the project, and seek State grant assistance to offset

Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners
Page 2

the majority of costs associated with plans, designs, permitting, construction and project management. The Village agreed to be responsible for all project costs not provided for in State grant agreements, inclusive of County project management expenses.

On September 23, 2013, the Village Council passed the Interlocal Agreement (Exhibit A). Board of County Commission approval of the Interlocal Agreement and subsequent development approvals will allow the County and Village to continue working together to provide and maintain recreation open spaces to residents and tourists.



Lisa M. Martinez, Senior Advisor
Office of the Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: January 22, 2014

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No.

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor

Agenda Item No.

Veto _____

Override _____

RESOLUTION NO. _____

RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE VILLAGE OF BAL HARBOUR; AUTHORIZING ASSISTANCE FOR DEVELOPMENT APPROVALS IN SUPPORT OF IMPLEMENTING THE HAULOVER PARK GENERAL PLAN; AND FURTHER AUTHORIZING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO RECEIVE AND EXPEND FUNDS AND TO EXECUTE CONTRACTS, AGREEMENTS, AMENDMENTS, AND OTHER DOCUMENTS AS REQUIRED BY THE AGREEMENT UPON REVIEW AND FINAL APPROVAL BY THE COUNTY ATTORNEY AS TO LEGAL SUFFICIENCY

WHEREAS, on September 23, 2013, the Village of Bal Harbour passed a Resolution authorizing an Interlocal Agreement with Miami-Dade County for the Jetty/Pier Reconstruction and Sand Bypass Project at Haulover Park, located at 10800 Collins Avenue, Miami, FL 33167, a park of countywide significance; and

WHEREAS, this project will advance implementation of the approved General Plan for Haulover Park by re-constructing the Jetty/Pier development to increase recreational participation, while also allowing certain Haulover Beach sand to be periodically relocated to Bal Harbour Beach, all at no cost to the County; and

WHEREAS, this Board desires to authorize an Interlocal Agreement between the Village and the County, in substantially the form attached hereto and made a part hereof, in order to have the Village pay all costs of the project not funded by other State entities; and

WHEREAS, this Board desires to accomplish the purpose outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. The recital clauses enumerated above are true and correct and are incorporated herein by reference.

Section 2. This Board approves the Interlocal Agreement between the County and the Village, in substantially the form attached hereto and authorizes and directs the County Mayor or Mayor's designee to execute said Interlocal Agreement on behalf of Miami-Dade County, Florida.

Section 3. This Board authorizes and directs the County Mayor or Mayor's designee to: 1) coordinate with the Village the design, permitting and construction of the replacement jetty/pier; 2) coordinate with the Village the design, permitting and construction of the ongoing Sand Bypass project to periodically renourish Bal Harbour Beach; and 3) to receive and expend grant funds and to execute contracts, agreements, amendments, and other documents as required by the Agreement upon review and final approval by the County Attorney as to legal sufficiency.

The foregoing resolution was offered by Commissioner
who moved its adoption. The motion was seconded by Commissioner
and upon being put to a vote, the vote was as follows:

- | | |
|----------------------|-------------------------|
| | Rebeca Sosa, Chairwoman |
| | Lynda Bell, Vice Chair |
| Bruno A. Barreiro | Esteban L. Bovo, Jr. |
| Jose "Pepe" Diaz | Audrey M. Edmonson |
| Sally A. Heyman | Barbara J. Jordan |
| Jean Monestime | Dennis C. Moss |
| Sen. Javier D. Souto | Xavier L. Suarez |
| Juan C. Zapata | |

The Chairperson thereupon declared the resolution duly passed and adopted this 22nd day of January, 2014. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

MAG

Miguel A. Gonzalez

Exhibit A

Village Approval of Interlocal Agreement



MEMORANDUM

To: Honorable Mayor and Council
From: Jay R. Smith, Interim Village Manager 
Date: September 23, 2013
Re: Request for Authorization to Execute an Interlocal Agreement with Miami-Dade County related to the Sand Transfer Operation

As you will recall, the Village has been in the development phase of creating a sand transfer operation (also referred to as a sand transfer station). At the December 2012 meeting, approval was granted for Coastal Systems International to continue the engineering work related to this project.

As a part of the project, the Village is being asked to enter into an Interlocal Agreement with Miami-Dade County. The Agreement identifies the various responsibilities of the project. A number of responsibilities fall under the Village in this Agreement, including:

- Completion of applicable reporting documents to the various entities involved;
- Identifying and applying for additional external funding;
- Paying all costs of the project not funded by other entities;
- Fund and secure all required permits (this includes paying Miami-Dade County's share of any permits required by Miami-Dade County); and
- Oversee bidding and administration of the project.

Penny Cuit from Coastal Construction will be in attendance at the Council Meeting to answer any questions related to the agreements or the Sand Transfer Project. Kevin Asher from Miami-Dade County will also be in attendance to discuss this project.

I am seeking Village Council authorization to execute this agreement.

COUNCIL ACTION

Consider authorization of execution of Interlocal Agreement with Miami-Dade related to the Sand Transfer Operation.

**INTERLOCAL AGREEMENT BETWEEN BAL HARBOUR VILLAGE AND MIAMI-
DADE COUNTY ESTABLISHING LOCAL COST SHARING COMMITMENTS AND
PROJECT IMPLEMENTATION RESPONSIBILITIES FOR THE HAULOVER INLET
SAND BYPASS AND JETTY RECONFIGURATION PROJECT**

This Interlocal Agreement (the "Agreement") is made and entered into this ____ day of _____, 2013, by and between Miami-Dade County (the "County") and Bal Harbour Village (the "Village"):

WHEREAS, the County serves as the local sponsor for all federal beach renourishment activities within the County and serves to coordinate all erosion control activities associated with maintaining the viability of the County's beachfront; and

WHEREAS, the County conducts regular beach surveys, environmental monitoring and other associated tasks to plan and implement beach erosion control and mitigation activities; and

WHEREAS, the Village and County recognize the need to take steps to mitigate the beach erosion occurring within the Village as result of the downdrift effects of the Haulover Inlet; and

WHEREAS, the Village and County have identified the transfer of sand from an area north of the north Haulover Inlet jetty to the Village beaches ("Sand Bypass") as one effective method of mitigating the beach erosion experienced within the Village; and

WHEREAS, the Village and County recognize that the reconfiguration of the Haulover Inlet Jetty to create a sand trap (the "Jetty Reconfiguration") combined with periodic bypassing of accumulated sand from the north (updrift) side of the Inlet to the south (downdrift) side of the Haulover Inlet will mitigate the downdrift Inlet effects experienced within the Village; and

WHEREAS, the Village and County wish to collaborate on the completion of both the Sand Bypass and Jetty Reconfiguration (collectively, the "Project"); and

WHEREAS, the initial Sand Bypass may be conducted simultaneously or in sequence with the Jetty Reconfiguration, depending on funding availability, permit authorizations, and other related factors; and

WHEREAS, the purpose of this Agreement is to set out the responsibilities of both the County and the Village for construction and maintenance of the Project.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, and for other good and valuable consideration, the parties hereby agree as follows:

Section 1. Definitions.

- A) **Agreement** shall mean this document, including any written amendments hereto and other written documents or parts thereof, which are expressly incorporated herein by reference.
- B) **Consultant** shall include Coastal Systems International, Inc. as well as other third party contractors engaged by the Village for the purpose of completing the Project.
- C) **County** shall mean Miami-Dade County, by and through the Regulatory and Economic Resources Department and the Park, Recreation and Open Spaces Department.
- D) **Village** shall mean Bal Harbour Village, Florida.
- E) **Project Phase** shall mean and include each of the following: completion of the initial sand bypass event, subsequent maintenance sand bypass events, jetty reconfiguration, jetty modifications, completion of required physical monitoring, completion of required biological monitoring.
- F) **LGFR** shall mean the Local Government Funding Request submitted to the State of Florida to request funding in accordance with 62B-36 F.A.C. Beach Management Funding Assistance Program. The Beach Management Funding Assistance Program specifies, at the time of this Agreement, that inlet bypass activities qualify for up to seventy-five percent (75%) State cost share.
- G) **Local Cost Share** shall mean any portion of the Project costs not funded by the State Beach Management Funding Assistance Program.
- H) **Supplemental Funding** shall mean any non-Beach Management Funding Assistance Program funding ("BMFA Funds") awarded to offset Project implementation costs. Supplemental Funding shall include, but not be limited to, funds from the Florida Inland Navigation District (FIND).
- I) **Jetty Reconfiguration** shall mean modifications to the shore perpendicular structure immediately north of Baker's Haulover Inlet to create a sand trap to minimize the volume of sand lost to the ebb and flood shoals. The modified structure shall include a concrete cap, similar to the one present on the south jetty, to facilitate public access for fishing and leisure activities. The reconfigured jetty shall be designed to include a connection point near its terminus to facilitate future connection by others to a fishing pier. The County and the Village understand that it is the intent of the Park, Recreation and Open Spaces Department to incorporate the reconfigured jetty into their future plans for the relocated Haulover Park Fishing Pier, to be designed, permitted, and constructed, by others.

Section 2. Responsibilities of the County.

- A) To the extent the County identifies and allocates County funds for its Local Cost Share of each Project Phase, the Local Cost Share percentage provided by the County for the initial Sand Bypass event and construction of the Jetty Reconfiguration shall not exceed Fifty Percent (50%) or One Million Two Hundred Fifty Thousand Dollars (\$1,250,000), based on an estimated construction cost of Two Million Five Hundred Thousand Dollars (\$2,500,000). The County's contribution of Local Cost Share shall be made in actual funds and not in-kind services. Any funds contributed by the

County towards the Local Cost Share shall be applied to Project related costs incurred by the Village, which are not eligible for reimbursement under the Beach Management Funding Assistance Program. In the event that the Village and/or County are awarded supplemental funding towards completion of the Project, such Supplemental Funding shall be utilized to reduce fiscal responsibility for payment of the Local Cost Share proportionately between the Village and County.

- B) County shall review and approve initial Project design plans and serve as Applicant and Permittee for all environmental regulatory permits, including County, State, and Federal permits and associated modifications necessary for completion of all Project Phases.
- C) Nothing in this Agreement shall be construed as obligating the County to identify and allocate funding to contribute to the Local Cost Share required for the implementation of each Project Phase.
- D) County shall submit a LGPR to the Florida Department of Environmental Protection ("DEP") Beach Management Funding Assistance Program each year, in accordance with Section 62B-36 F.A.C. and respond to any DEP requests for additional information. County shall enter into any contracts proffered by the State for disbursements of BMFA Funds and disburse payments to the Village upon receipt from the DEP. County shall submit requests for payment to the DEP upon receipt of such request and supporting documentation by the Village. County shall submit timely quarterly reports documenting Project progress to the DEP, whether work has commenced or not, as required to obtain additional Project eligibility points from DEP.
- E) County shall coordinate requests to the Regulatory and Economic Resources Department to have permit application fees waived for each Project Phase.

Section 3. Responsibilities of the Village.

- A) Village shall provide draft quarterly reports to the County for submittal to the DEP Beach Management Funding Assistance Program, whether work has commenced or not, as required to obtain additional Project eligibility points from DEP. Village shall provide receipts for eligible consulting services and construction costs to the County for submittal to the DEP with requests for reimbursement.
- B) Village shall apply for funds from the Florida Inland Navigation District to contribute to all eligible Project costs, including initial design and permitting, as well as Project construction events.
- C) Village shall identify and apply for any available Supplemental Funding for the Project.

- D) Subject to the availability of funds, the Village shall pay any portion of Project related costs not funded by the County, DEP, or Supplemental Funding.
- E) Village shall, subject to the availability of funds, be responsible for the payment of all State and federally required application fees for completion of the Project, as well as the County permit fee; the County application fee will be waived.
- F) Village shall develop and submit to the County for its approval, a final Project design, which insures that coastal processes associated with Project implementation will not result in unsafe beach swimming conditions.
- G) Village shall oversee Project bidding and construction administration for all Project related construction events.

Section 4. Terms and Extensions.

- A) The initial term of this Agreement shall be two (2) years, commencing upon execution hereof.
- B) This Agreement may be extended under the terms and conditions contained herein for additional terms of two (2) years, each without limit, upon the mutual written assent of the parties. The party desiring to extend the term of this Agreement shall notify the other party of the proposed extension no later than thirty (30) days prior to the expiration of the initial term of the Agreement.

Section 5. Payment of Project Costs.

- A) The Village shall administer payment of Project permitting, design and engineering, permit required biological and physical monitoring, construction administration, and construction costs.
- B) Costs covered by BMFA Funds. Upon satisfactory completion of Project work, the Village shall provide the County with documentation of the completed work and incurred expenses. Upon receipt of the Village documentation, the County shall process a request for the disbursement of BMFA Funds. County shall pass all BMFA Funds through to the Village as reimbursement for the documented costs incurred during construction of the Project.
- C) Permitting Costs. The Village has agreed to independently fund initial Project design and regulatory permitting and shall be responsible for rendering all required permits fees to the applicable regulatory agencies.
- D) Local Cost Share. To the extent the County identifies and allocates funding for its Local Cost Share of the Project, the Parties agree to equally apportion amongst each other the costs not funded by the Beach Management Funding Assistance Program or Supplemental Funds (i.e., the Local Cost Share). Upon Village

inspection of Project work and acceptance that Project work was completed in substantial accordance with the bid, the Village shall provide original invoices to the County for all eligible charges incurred by the Village in connection with completion of that phase of the Project. The County shall reimburse to the Village the agreed upon portion of the Local Cost Share within thirty (30) days of receipt of original invoices. The County shall not be required to reimburse the Village for any amount in excess of the County's total allocation for its Local Cost Share, to the extent the County makes any such allocation.

Section 6. Contingency.

This Agreement is contingent upon the availability of County and Village funds and is subject to amendment or termination due to a shortfall in available funding, a reduction in funding, and/or a change in regulations governing Project activities. In the event that this Agreement is terminated in accordance with Section 10 following the County identification and allocation of funding for its share of the Local Cost Share of the Project, the County shall pay to the Village, consistent with this Agreement, its proportionate share of Local Share Costs for all Project costs incurred prior to the effective date of the Termination.

Section 7. Project Modification.

Future Project design modifications must be approved in writing by both the County and Village.

Section 8. Liability and Indemnification.

To the extent permitted and limited by Florida Statute 728.28, each party agrees to indemnify, defend and save harmless the other, their appointed boards and commissions, officials, officers, employees, individually and collectively from any and all losses, claims, suits, demands, expenses, subrogations, or actions of any kind resulting from all personal injury, including bodily injury and death, and property damage occasioned during the term of this Agreement for execution or performance of the terms of this Agreement. However, the parties do not and shall not be deemed to have given any indemnification for damages arising out of any such injury or damage to persons or property caused by or resulting from the negligence of the other party hereto or any of its officers, agents or employees if applicable.

Section 9. Amendment of the Agreement.

This Agreement may be amended upon the mutual written assent of both parties. All amendments to this Agreement must be made in writing and properly executed by both the County and Village.

Section 10. Termination.

This Agreement may be terminated without cause and for the convenience of either party, upon sixty (60) days prior written notice. In the event that this Agreement is terminated in following the County identification and allocation of funding for its share of the Local Cost Share of the

Project, the County shall pay to the Village, consistent with this Agreement, its proportionate share of Local Share Costs for all Project costs incurred prior to the effective date of the Termination.

Section 11. Notices.

All notices required or permitted to be given under the terms of this Agreement by either party to the other shall be in writing and shall be sent by registered or certified mail, return receipt requested, to the parties, addressed as follows:

For Village:

Jay Smith, Interim Village Manager
Bal Harbour Village
655 96th Street
Bal Harbour, Florida 33154
(305) 866-4633
manager@balharbourflorida.com

For County:

Lee Hefty, Assistant Director
Division of Environmental Resources Management
Regulatory and Economic Resources Department
Miami-Dade County
701 NW 1st Court
Miami, FL 33136
(305) 372-6750
hefty1@miamidade.gov

Jack Kardys, Director
Parks, Recreation and Open Spaces Department
Miami-Dade County
275 NW 2 Street, 5 FL
Miami, FL 33128
Kardys@miamidade.gov

Section 12. County Default.

The failure of the County to substantially fulfill any material obligation in accordance with this Agreement, unless justified by force majeure, shall constitute a "County Default." If a County Default should occur, the Village shall have the following rights and remedies, which it may exercise individually or in combination:

- 1) The right to declare this Agreement together with all rights granted to the County hereunder terminated, effective upon such date designated by the Village.
- 2) Any and all rights provided under Federal laws and the laws of the State of Florida.

Section 13. Village Default.

The failure of the Village to substantially fulfill any of its material obligations in accordance with this Agreement, unless justified by force majeure, shall constitute a "Village Default." In the event of a Village Default, the County shall have the following rights and remedies, which it may exercise singularly or in combination:

- 1) The right to declare this Agreement together with all rights granted to the Village hereunder terminated, except the right to reimbursement for all costs incurred or irrevocable commitments made prior to the effective date of termination.
- 2) Any and all rights provided under Federal law and the laws of the State of Florida.

Section 14. Time is of the Essence.

It is mutually agreed that time is of the essence in the performance of all terms and conditions to be met and performed pursuant to this Agreement.

Section 15. Governing Law; Venue

This Agreement shall be governed by the laws of the State of Florida. Venue for any action arising from this Agreement shall be Miami-Dade County, Florida or the United States District Court for the Southern District of Florida in Miami-Dade County. The parties hereby waive any right to trial by jury in the event of any litigation between the parties arising hereunder.

Section 16. Nondiscrimination.

Each party agrees that it shall not discriminate against any person due to their sex, race, color, creed, national origin, age, handicap, sexual orientation, or marital status in connection with its performance under this Agreement.

Section 17. Severability.

The invalidity of any portion, article paragraph or provision or clause of this Agreement or extensions thereof, shall not affect the validity of the remaining provisions of the Agreement, provided that the material purpose of the Agreement can be determined and effectuated.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature:

ATTEST:

FOR THE COUNTY:

Miami-Dade County,
A political subdivision of the State of
Florida

County Clerk

By Its Board of County Commissioners

By: _____
Deputy Clerk

By: _____
County Mayor

Date Executed: _____

Approved as to Form and Legal Sufficiency

By: _____
Assistant County Attorney

ATTEST:

FOR THE VILLAGE:

Bal Harbour Village
A municipal corporation of the State of
Florida

By: _____
Ellisa L. Horvath, MMC
Village Clerk

By: _____
Jay R. Smith
Interim Village Manager

Date Executed: _____

Approved as to Form and Legal Sufficiency

By: _____
Village Attorney
Weiss Scrota Hoffman Pastoriza Cole & Boniske, P.L.
Reviewed and Approved by Village Attorney Matthew Pearl

INTERLOCAL AGREEMENT BETWEEN BAL HARBOUR VILLAGE AND MIAMI-DADE COUNTY ESTABLISHING LOCAL COST SHARING COMMITMENTS AND PROJECT IMPLEMENTATION RESPONSIBILITIES FOR THE HAULOVER INLET SAND BYPASS AND JETTY RECONFIGURATION PROJECT

This Interlocal Agreement (the "Agreement") is made and entered into this ____ day of _____, 2013, by and between Miami-Dade County (the "County") and Bal Harbour Village (the "Village"):

WHEREAS, the County serves as the local sponsor for all federal beach renourishment activities within the County and serves to coordinate all erosion control activities associated with maintaining the viability of the County's beachfront; and

WHEREAS, the County conducts regular beach surveys, environmental monitoring and other associated tasks to plan and implement beach erosion control and mitigation activities; and

WHEREAS, the Village and County recognize the need to take steps to mitigate the beach erosion occurring within the Village as result of the downdrift effects of the Haulover Inlet; and

WHEREAS, the Village and County have identified the transfer of sand from an area north of the north Haulover Inlet jetty to the Village beaches ("Sand Bypass") as one effective method of mitigating the beach erosion experienced within the Village; and

WHEREAS, the Village and County recognize that the reconfiguration of the Haulover Inlet Jetty to create a sand trap (the "Jetty Reconfiguration") combined with periodic bypassing of accumulated sand from the north (updrift) side of the Inlet to the south (downdrift) side of the Haulover Inlet will mitigate the downdrift Inlet effects experienced within the Village; and

WHEREAS, the Village and County wish to collaborate on the completion of both the Sand Bypass and Jetty Reconfiguration (collectively, the "Project"); and

WHEREAS, the initial Sand Bypass may be conducted simultaneously or in sequence with the Jetty Reconfiguration, depending on funding availability, permit authorizations, and other related factors; and

WHEREAS, the purpose of this Agreement is to set out the responsibilities of both the County and the Village for construction and maintenance of the Project.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, and for other good and valuable consideration, the parties hereby agree as follows:

Section 1. Definitions.

- A) **Agreement** shall mean this document, including any written amendments hereto and other written documents or parts thereof, which are expressly incorporated herein by reference.
- B) **Consultant** shall include Coastal Systems International, Inc. as well as other third party contractors engaged by the Village for the purpose of completing the Project.
- C) **County** shall mean Miami-Dade County, by and through the Regulatory and Economic Resources Department and the Park, Recreation and Open Spaces Department.
- D) **Village** shall mean Bal Harbour Village, Florida.
- E) **Project Phase** shall mean and include each of the following: completion of the initial sand bypass event, subsequent maintenance sand bypass events, jetty reconfiguration, jetty modifications, completion of required physical monitoring, completion of required biological monitoring.
- F) **LGFR** shall mean the Local Government Funding Request submitted to the State of Florida to request funding in accordance with 62B-36 F.A.C. Beach Management Funding Assistance Program. The Beach Management Funding Assistance Program specifies, at the time of this Agreement, that inlet bypass activities qualify for up to seventy-five percent (75%) State cost share.
- G) **Local Cost Share** shall mean any portion of the Project costs not funded by the State Beach Management Funding Assistance Program.
- H) **Supplemental Funding** shall mean any non-Beach Management Funding Assistance Program funding ("BMFA Funds") awarded to offset Project implementation costs. Supplemental Funding shall include, but not be limited to, funds from the Florida Inland Navigation District (FIND).
- I) **Jetty Reconfiguration** shall mean modifications to the shore perpendicular structure immediately north of Baker's Haulover Inlet to create a sand trap to minimize the volume of sand lost to the ebb and flood shoals. The modified structure shall include a concrete cap, similar to the one present on the south jetty, to facilitate public access for fishing and leisure activities. The reconfigured jetty shall be designed to include a connection point near its terminus to facilitate future connection by others to a fishing pier. The County and the Village Department understand that it is the intent of the Park, Recreation and Open Spaces Department to incorporate the reconfigured jetty into their future plans for the relocated Haulover Park Fishing Pier, to be designed, permitted, and constructed, by others.

Section 2. Responsibilities of the County.

- A) To the extent the County identifies and allocates County funds for its Local Cost Share of each Project Phase, the Local Cost Share percentage provided by the County for the initial Sand Bypass event and construction of the Jetty Reconfiguration shall not exceed Fifty Percent (50%) or One Million Two Hundred Fifty Thousand Dollars (\$1,250,000), based on an estimated construction cost of Two Million Five Hundred Thousand Dollars (\$2,500,000). The County's contribution of Local Cost Share shall be made in actual funds and not in-kind services. Any funds contributed by the

County towards the Local Cost Share shall be applied to Project related costs incurred by the Village, which are not eligible for reimbursement under the Beach Management Funding Assistance Program. In the event that the Village and/or County are awarded supplemental funding towards completion of the Project, such Supplemental Funding shall be utilized to reduce fiscal responsibility for payment of the Local Cost Share proportionately between the Village and County.

- B) County shall review and approve initial Project design plans and serve as Applicant and Permittee for all environmental regulatory permits, including County, State, and Federal permits and associated modifications necessary for completion of all Project Phases.
- C) Nothing in this Agreement shall be construed as obligating the County to identify and allocate funding to contribute to the Local Cost Share required for the implementation of each Project Phase.
- D) County shall submit a LGFR to the Florida Department of Environmental Protection ("DEP") Beach Management Funding Assistance Program each year, in accordance with Section 62B-36 F.A.C. and respond to any DEP requests for additional information. County shall enter into any contracts proffered by the State for disbursements of BMFA Funds and disburse payments to the Village upon receipt from the DEP. County shall submit requests for payment to the DEP upon receipt of such request and supporting documentation by the Village. County shall submit timely quarterly reports documenting Project progress to the DEP, whether work has commenced or not, as required to obtain additional Project eligibility points from DEP.
- E) County shall coordinate requests to the Regulatory and Economic Resources Department to have permit application fees waived for each Project Phase.

Section 3. Responsibilities of the Village.

- A) Village shall provide draft quarterly reports to the County for submittal to the DEP Beach Management Funding Assistance Program, whether work has commenced or not, as required to obtain additional Project eligibility points from DEP. Village shall provide receipts for eligible consulting services and construction costs to the County for submittal to the DEP with requests for reimbursement.
- B) Village shall apply for funds from the Florida Inland Navigation District to contribute to all eligible Project costs, including initial design and permitting, as well as Project construction events.
- C) Village shall identify and apply for any available Supplemental Funding for the Project.

- D) Subject to the availability of funds, the Village shall pay any portion of Project related costs not funded by the County, DEP, or Supplemental Funding.
- E) Village shall, subject to the availability of funds, be responsible for the payment of all State and federally required application fees for completion of the Project, as well as the County permit fee; the County application fee will be waived.
- F) Village shall develop and submit to the County for its approval, a final Project design, which insures that coastal processes associated with Project implementation will not result in unsafe beach swimming conditions.
- G) Village shall oversee Project bidding and construction administration for all Project related construction events.

Section 4. Terms and Extensions.

- A) The initial term of this Agreement shall be two (2) years, commencing upon execution hereof.
- B) This Agreement may be extended under the terms and conditions contained herein for additional terms of two (2) years, each without limit, upon the mutual written assent of the parties. The party desiring to extend the term of this Agreement shall notify the other party of the proposed extension no later than thirty (30) days prior to the expiration of the initial term of the Agreement.

Section 5. Payment of Project Costs.

- A) The Village shall administer payment of Project permitting, design and engineering, permit required biological and physical monitoring, construction administration, and construction costs.
- B) Costs covered by BMFA Funds. Upon satisfactory completion of Project work, the Village shall provide the County with documentation of the completed work and incurred expenses. Upon receipt of the Village documentation, the County shall process a request for the disbursement of BMFA Funds. County shall pass all BMFA Funds through to the Village as reimbursement for the documented costs incurred during construction of the Project.
- C) Permitting Costs. The Village has agreed to independently fund initial Project design and regulatory permitting and shall be responsible for rendering all required permits fees to the applicable regulatory agencies.
- D) Local Cost Share. To the extent the County identifies and allocates funding for its Local Cost Share of the Project, the Parties agree to equally apportion amongst each other the costs not funded by the Beach Management Funding Assistance Program or Supplemental Funds (i.e., the Local Cost Share). Upon Village

inspection of Project work and acceptance that Project work was completed in substantial accordance with the bid, the Village shall provide original invoices to the County for all eligible charges incurred by the Village in connection with completion of that phase of the Project. The County shall reimburse to the Village the agreed upon portion of the Local Cost Share within thirty (30) days of receipt of original invoices. The County shall not be required to reimburse the Village for any amount in excess of the County's total allocation for its Local Cost Share, to the extent the County makes any such allocation.

Section 6. Contingency.

This Agreement is contingent upon the availability of County and Village funds and is subject to amendment or termination due to a shortfall in available funding, a reduction in funding, and/or a change in regulations governing Project activities. In the event that this Agreement is terminated in accordance with Section 10 following the County identification and allocation of funding for its share of the Local Cost Share of the Project, the County shall pay to the Village, consistent with this Agreement, its proportionate share of Local Share Costs for all Project costs incurred prior to the effective date of the Termination.

Section 7. Project Modification.

Future Project design modifications must be approved in writing by both the County and Village.

Section 8. Liability and Indemnification.

To the extent permitted and limited by Florida Statute 728.28, each party agrees to indemnify, defend and save harmless the other, their appointed boards and commissions, officials, officers, employees, individually and collectively from any and all losses, claims, suits, demands, expenses, subrogations, or actions of any kind resulting from all personal injury, including bodily injury and death, and property damage occasioned during the term of this Agreement for execution or performance of the terms of this Agreement. However, the parties do not and shall not be deemed to have given any indemnification for damages arising out of any such injury or damage to persons or property caused by or resulting from the negligence of the other party hereto or any of its officers, agents or employees if applicable.

Section 9. Amendment of the Agreement.

This Agreement may be amended upon the mutual written assent of both parties. All amendments to this Agreement must be made in writing and properly executed by both the County and Village.

Section 10. Termination.

This Agreement may be terminated without cause and for the convenience of either party, upon sixty (60) days prior written notice. In the event that this Agreement is terminated in following the County identification and allocation of funding for its share of the Local Cost Share of the

Project, the County shall pay to the Village, consistent with this Agreement, its proportionate share of Local Share Costs for all Project costs incurred prior to the effective date of the Termination.

Section 11. Notices.

All notices required or permitted to be given under the terms of this Agreement by either party to the other shall be in writing and shall be sent by registered or certified mail, return receipt requested, to the parties, addressed as follows:

For Village:

Jay Smith, Interim Village Manager
Bal Harbour Village
655 96th Street
Bal Harbour, Florida 33154
(305) 866-4633
manager@balharbourflorida.com

For County:

Lee Hefty, Assistant Director
Division of Environmental Resources Management
Regulatory and Economic Resources Department
Miami-Dade County
701 NW 1st Court
Miami, FL 33136
(305) 372-6750
hefty@miamidade.gov

Jack Kardys, Director
Parks, Recreation and Open Spaces Department
Miami-Dade County
275 NW 2 Street, 5 FL
Miami, FL 33128
Kardys@miamidade.gov

Section 12. County Default.

The failure of the County to substantially fulfill any material obligation in accordance with this Agreement, unless justified by force majeure, shall constitute a "County Default." If a County Default should occur, the Village shall have the following rights and remedies, which it may exercise individually or in combination:

- 1) The right to declare this Agreement together with all rights granted to the County hereunder terminated, effective upon such date designated by the Village.
- 2) Any and all rights provided under Federal laws and the laws of the State of Florida.

Section 13. Village Default.

The failure of the Village to substantially fulfill any of its material obligations in accordance with this Agreement, unless justified by force majeure, shall constitute a "Village Default." In the event of a Village Default, the County shall have the following rights and remedies, which it may exercise singularly or in combination:

- 1) The right to declare this Agreement together with all rights granted to the Village hereunder terminated, except the right to reimbursement for all costs incurred or irrevocable commitments made prior to the effective date of termination.
- 2) Any and all rights provided under Federal law and the laws of the State of Florida.

Section 14. Time is of the Essence.

It is mutually agreed that time is of the essence in the performance of all terms and conditions to be met and performed pursuant to this Agreement.

Section 15. Governing Law; Venue

This Agreement shall be governed by the laws of the State of Florida. Venue for any action arising from this Agreement shall be Miami-Dade County, Florida or the United States District Court for the Southern District of Florida in Miami-Dade County. The parties hereby waive any right to trial by jury in the event of any litigation between the parties arising hereunder.

Section 16. Nondiscrimination.

Each party agrees that it shall not discriminate against any person due to their sex, race, color, creed, national origin, age, handicap, sexual orientation, or marital status in connection with its performance under this Agreement.

Section 17. Severability.

The invalidity of any portion, article paragraph or provision or clause of this Agreement or extensions thereof, shall not affect the validity of the remaining provisions of the Agreement, provided that the material purpose of the Agreement can be determined and effectuated.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature:

ATTEST:

FOR THE COUNTY:

Miami-Dade County,
A political subdivision of the State of
Florida

County Clerk

By its Board of County Commissioners

By: _____
Deputy Clerk

By: _____
County Mayor

Date Executed: _____

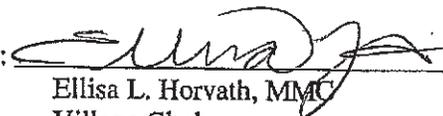
Approved as to Form and Legal Sufficiency

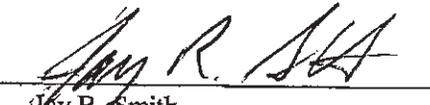
By: _____
Assistant County Attorney

ATTEST:

FOR THE VILLAGE:

Bal Harbour Village
A municipal corporation of the State of
Florida

By: 
Ellisa L. Horvath, MMC
Village Clerk

By: 
Jay R. Smith
Interim Village Manager

Date Executed: 09/25/2013

Approved as to Form and Legal Sufficiency

By: 
Village Attorney
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
Reviewed and Approved by Village Attorney Matthew Pearl