

BLUEWATER BAY MUNICIPAL SERVICES BENEFIT UNIT
MANAGEMENT AGREEMENT

12 THIS MANAGEMENT AGREEMENT ("Agreement") is made and entered into this day of Sept, 2023, by and between the Board of Directors of the Bluewater Bay Municipal Services Benefit Unit ("MSBU") and Bluewater Association Management, LLC ("BAM, LLC").

RECITALS

WHEREAS, the MSBU desires to obtain accounting, management and other related services to assist the MSBU in carrying out its responsibilities ("Services"); and

WHEREAS, BAM, LLC has the requisite experience and is able and willing to provide such Services to the MSBU; and

WHEREAS, the MSBU wishes to enter into this Agreement with BAM, LLC to provide the Services to the MSBU under the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the promises and the mutual covenants herein, the parties agree as follows:

1. Effective Date. This Agreement shall be effective beginning October 1, 2023, through September 30, 2024.

2. Services. Subject to approval and supervision by MSBU, BAM, LLC agrees to provide accounting, management and other related services ("Services"), which shall include, but not be limited to the following:

- a. Maintaining an office in the Bluewater Bay area that provides convenient access to the MSBU and the public.
 - i. BAM, LLC shall be available during normal business hours (9 am to 4 pm Monday through Thursday) and on an emergency basis.
- b. Establishing and implementing appropriate procedures for the operation and maintenance of the property for which MSBU is responsible.
- c. Administering the operations of the MSBU and perform all other administrative duties as directed by the MSBU.
- d. Implementing the directives of the MSBU and carrying out its policies.
- e. Maintaining a map with an outline of the area under the responsibility of the MSBU.
- f. Ensuring all meetings of the MSBU comply with the Sunshine Law.
- g. Managing other MSBU contracts.
- h. Coordinating with the County in preparing competitive solicitations for goods and services to be procured by the MSBU, evaluating responses, and overseeing the resulting contract in compliance with the County's Purchasing Manual.

- i. Preparing agendas, resolutions, notices, minutes and other communications that are required to carry out the function and purpose of the MSBU, including the MSBU's website.
- j. Maintaining all official records and files pertaining to the MSBU operations in compliance with Florida law.
- k. Surveying the area controlled by MSBU on a weekly basis to determine if any items need to be addressed. Preparing a report of such needed actions and presenting it to the MSBU.
- l. Compiling and reporting all necessary communications to the Board of County Commissioners and any other constitutional officer.
- m. Maintaining insurance on behalf of the MSBU.
- n. Preparing an annual budget.
- o. Providing financial management and accounting services.
- p. Responding to inquiries and communications from the public.
- q. Any other duties as directed by the MSBU.

3. Term and Renewal. The term of this Agreement shall be for one (1) year commencing October 1, 2023, and ending on September 30, 2024, subject to the MSBU's ability to terminate in accordance with Section 7 of this Agreement. The terms of Section 20 entitled "Indemnification and Waiver of Liability" shall survive termination of this Agreement.

4. Compensation. BAM, LLC agrees to provide the Services to MSBU for a monthly fee of two thousand three hundred Dollars (\$2,300.00) and a total annual fee of Twenty-Seven Thousand Six Hundred Dollars (\$27,600.00). Invoices shall be submitted on the tenth (10th) day of the contract month.

5. Insurance. BAM, LLC shall, at its sole cost and expense, during the period of any work being performed under this Agreement, procure and maintain the minimum insurance coverage required as set forth in Attachment "A" attached hereto and incorporated herein, to protect the MSBU and County against any loss, claims, damages and liabilities caused by BAM, LLC, its agents, or employees.

6. Termination and Remedies for Breach.

- a. If, through any cause within its reasonable control, BAM, LLC shall fail to fulfill in a timely manner or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the MSBU shall have the right to terminate the Services then remaining to be performed. Prior to the exercise of its option to terminate for cause, the MSBU shall notify BAM, LLC of its violation of the particular terms of the Agreement and grant them thirty (30) days to cure such default. If the default remains uncured after thirty (30) days the MSBU may terminate this Agreement, and the MSBU shall receive a refund from BAM, LLC in an amount equal to the actual cost of a third party to cure such failure. If BAM, LLC fails, refuses or is unable to perform any term of this Agreement, MSBU shall pay for services rendered as of the date of termination.

- i. In the event of termination, all finished and unfinished documents, data and other work product prepared by BAM, LLC (and sub-Contractor (s)) shall be delivered to the MSBU and the MSBU shall compensate BAM, LLC for all Services satisfactorily performed prior to the date of termination, as provided in Section 4 herein.
 - ii. Notwithstanding the foregoing, BAM, LLC shall not be relieved of liability to the MSBU for damages sustained by it by virtue of a breach of the Agreement by BAM, LLC and the MSBU may reasonably withhold payment for the purposes of set-off until such time as the exact amount of damages due the MSBU from BAM, LLC is determined.
- b. Termination for Convenience of MSBU. The MSBU may, for its convenience and without cause terminate the Services then remaining to be performed at any time by giving written notice. The terms of Section 7 Paragraphs a(i) and a(ii) above shall be applicable hereunder.
 - c. Termination for Insolvency. The MSBU also reserves the right to terminate the remaining Services to be performed in the event BAM, LLC is placed either in voluntary or involuntary bankruptcy or makes any assignment for the benefit of creditors.
 - d. Termination for failure to adhere to the Public Records Law. Failure of BAM, LLC to adhere to the requirements of Chapter 119, Florida Statutes, and Section 9 below, may result in immediate termination of this Agreement.

7. Governing Law, Venue and Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. All parties agree and accept that jurisdiction of any dispute or controversy arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder shall be brought exclusively in the First Judicial Circuit in and for Okaloosa County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

8. Public Records. Any record created by either party in accordance with this Agreement shall be retained and maintained in accordance with the public records law, Florida Statutes, Chapter 119. BAM, LLC must comply with the public records laws, Florida Statute chapter 119, as follows:

- a. Keep and maintain public records required by the MSBU to perform the Services.

- b. Upon request from the MSBU, provide a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if BAM, LLC does not transfer the records to the MSBU.
- d. Upon completion of the contract, transfer, at no cost, to the MSBU all public records in possession of BAM, LLC or keep and maintain public records required by the MSBU to perform the service. If BAM, LLC transfers all public records to the MSBU upon completion of the contract, BAM, LLC shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If BAM, LLC keeps and maintains public records upon completion of the contract, BAM, LLC shall meet all applicable requirements for retaining the public records. All records stored electronically must be provided to the MSBU, upon the request from the MSBU, in a format that is compatible with the information technology systems of the MSBU.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT OKALOOSA COUNTY RISK MANAGEMENT DEPARTMENT 302 N. WILSON ST., CRESTVIEW, FL 32536 PHONE: (850) 689-5977 riskinfo@myokaloosa.com.

9. Audit. The MSBU and/or its designee shall have the right from time to time at its sole expense to audit the compliance by BAM, LLC with the terms, conditions, obligations, limitations, restrictions, and requirements of this Agreement and such right shall extend for a period of three (3) years after termination of this Agreement.

10. Assignment. BAM, LLC shall not assign this Agreement or any part thereof, without the prior consent in writing of the MSBU. If BAM, LLC does, with approval, assign this Agreement or any part thereof, it shall require that its assignee be bound to it and to assume toward BAM, LLC all of the obligations and responsibilities that BAM, LLC has assumed toward the MSBU.

11. Subcontracting. BAM, LLC shall not subcontract any services or work to be provided to MSBU without the prior written approval of the MSBU. The MSBU reserves the right to accept the use of a subcontractor or to reject the selection of a particular subcontractor. Additionally, any subcontract entered into between BAM, LLC and subcontractor will need to be approved by the MSBU prior to it being entered into and said agreement shall incorporate in all required terms in accordance with local, state and Federal regulations.

12. Conflict of Interest. BAM, LLC covenants that it presently has no interest and shall not acquire any interest, directly or indirectly which could conflict in any manner or degree with the performance of the Services. BAM, LLC further covenants that in the performance of this Agreement, no person having any such interest shall knowingly be employed by BAM, LLC.

13. Independent Contractor. BAM, LLC enters into this Agreement as, and shall continue to be, an independent contractor. All services shall be performed only by BAM, LLC and its employees. Under no circumstances shall BAM, LLC or any of its employees look to the MSBU as his/her employer, or as partner, agent or principal. BAM, LLC shall be responsible for providing, at its expense, and in its name, unemployment, disability, worker's compensation and other insurance as well as licenses and permits usual and necessary for conducting the services to be provided under this Agreement.

14. Third Party Beneficiaries. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third-party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

15. Indemnification and Waiver of Liability. BAM, LLC agrees to defend, indemnify and hold harmless the MSBU, the County, its agents, representatives, officers, directors, officials and employees from and against claims, damages, losses and expenses (including but not limited to attorney's fees, court costs and costs of appellate proceedings) relating to, arising out of or resulting from BAM LLC's negligent acts, errors, mistakes or omissions relating to Services performed under this Agreement. BAM, LLC's duty to defend, hold harmless and indemnify the MSBU, the County its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury; sickness; disease; death; or injury to impairment, or destruction of tangible property including loss of use resulting therefrom, caused by any negligent acts, errors, mistakes or omissions related to Services in the performance of this Agreement including any person for whose acts, errors, mistakes or omissions BAM, LLC may be legally liable. The parties agree that TEN DOLLARS (\$10.00) represents specific consideration to BAM, LLC for the indemnification set forth herein.

The waiver by a party of any breach or default in performance shall not be deemed to constitute a waiver of any other or succeeding breach or default. The failure of the MSBU to enforce any of the provisions hereof shall not be construed to be a waiver of the right of the MSBU thereafter to enforce such provisions.

16. Severability. If any term or condition of this Agreement shall be deemed, by a court having appropriate jurisdiction, invalid or unenforceable, the remainder of the terms and conditions of this Agreement shall remain in full force and effect. This Agreement shall not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all the terms and provisions hereof.

17. Entire Agreement. This Agreement contains the entire agreement of the parties, and may be amended, waived, changed, modified, extended or rescinded only by in writing signed by the

party against whom any such amendment, waiver, change, modification, extension and/or rescission is sought.

18. Representation of Authority to Contractor/Signatory. The individual signing this Agreement on behalf of BAM, LLC represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. The signatory represents and warrants to the MSBU that the execution and delivery of this Agreement and the performance of the Services and obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on BAM, LLC and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate on the day and year first written above.


**BLUEWATER ASSOCIATION
MANAGEMENT, LLC**



Laura Landsberger, Association Manager

9.12.23
Date

**BOARD OF DIRECTORS
BLUEWATER BAY MSBU**



Steve Boswell, Chairman

9/12/2023
Date