

TOWN OF BAY HARBOR ISLANDS

August 10, 2020

AGENDA

STATEMENT OF DECORUM

All comments must be addressed to the Council as a body and not to individuals. Any person making a racial or slanderous remark or who becomes boisterous while addressing the Town Council, staff, etc. shall be barred from the audience by the presiding officer. No profanity, shouting, heckling, verbal outbursts or disruptive behavior in support of or opposition to a speaker or his/her remarks is permitted. Please mute or turn off your cell phone or other electronic devices at the start of the meeting. Failure to do so may result on being barred from the meeting. Persons exiting the Chambers shall do so quietly.

SPECIAL NOTICE - VIRTUAL MEETING

This meeting is being held through the Zoom Platform. Members of the Public who wish to participate and/or view the meeting may do so by logging in through the Zoom Platform as follow:

Zoom Link: <https://zoom.us/j/98255275132>

Meeting ID: 982 5527 5132

To request to speak during Public Comment, please utilize the “raise your hand” Zoom feature on your electronic device. You will be recognized at the direction of the Zoom Meeting Host.

In addition, any member of the public who does not wish, or is unable to participate through the Zoom video conferencing platform, but would still like to participate can do so by listening to the meeting as it happens by dialing the Toll-free number below:

US Toll Free Number: 877 853 5247 or 888 788 0099

Meeting ID: 982 5527 5132

Participant ID: Press the # key

To request to speak: Dial *9 on your telephone device to activate the “Raise your Hand” feature on the zoom platform.

Members of the Public can also submit their request to speak and/or comments via e-mail to the Office of the Town Clerk at achang@bayharborislands-fl.gov

CALL TO ORDER: 5:00 p.m.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

TOWN MANAGER’S REPORT:

COUNCIL REPORTS: Each Council Member will be afforded two (2) minutes to make their reports.

PUBLIC COMMENT:

*There is a three (3) minute time limit for each speaker during public comment and a two (2) minute time limit for each speaker during all other agenda items. Your cooperation is appreciated in observing the three (3) minute rule. If you have a matter you would like to discuss which requires more than three (3) minutes, please arrange a meeting with the Town Manager or appropriate administrative official. **A request form is available from staff; please fill it in and return it to the Town Clerk prior to the start of the meeting if you would like to speak during public comment.** Please come forward to the podium, give your name and address, and the name and address of the organization you are representing if any.*

CONSENT AGENDA: *(Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.)*

1. **Approval** of the following Meeting Minutes:
 - a. October 7, 2019 - Regular Council Meeting
 - b. November 12, 2019 - Regular Council Meeting
 - c. November 19, 2019 - Public Hearing
2. **Consideration and approval** of a renewal of a Mutual Aid Agreement with the City of Coral Gables Police Department and the Town of Bay Harbor Islands Police Department. Enclosed is a copy of the proposed agreement.
3. **Consideration and Approval** of a Memorandum of Understanding to implement the Nurse Enhancement Initiative for the 2020/2021 school year. Enclosed is a copy of the agreement.
4. **Consideration and Approval** of Stipulation of Settlement in the matter of Bay Harbor Islands adv. Cone & Graham, Inc. Miami-Dade County Circuit Court. Case No. 2019-035332-CA-01. Enclosed is a copy of the settlement agreement.
5. **Consideration and Approval** of inland marine insurance policy for the Shepard Broad Causeway Bridge for the year beginning July 15, 2020 to July 14, 2021 in the amount of \$146,039. Enclosed is a copy of a memorandum from Melissa Cruz, Assistant Town Manager/Finance Director.
6. **Consideration and Approval** of Change Order #3 in favor of JVA Engineering in the amount of \$115,977.30 for work associated with BC-154 the Broad Causeway Corridor Enhancements Project. Enclosed is a copy of the changed order approved by FDOT which will be reimbursed as part of the grant.
7. **Consideration and Approval** of an Inter Local Agreement with Miami-Dade County to allocate funds to local municipalities for eligible activities under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Enclosed is a copy of the proposed agreement.

STAFF RECOMMENDATION: Approval

POLL VOTE

DEFERRED ITEMS:

TOWN MANAGER ITEMS: *(Town business items requiring Council approval)*

8. **Discussion and possible action** regarding whether or not the Town of Bay Harbor Islands wished to proceed to enter into a Memorandum of Understanding with Miami Dade County to apply for the payment of a one (1) percent hazardous duty supplement for all first responders in the Town substantially dedicated to mitigating the impact of the pandemic, as allowed by the CARES Act legislation.

DISCUSSION ITEMS:

9. **Discussion** requested by Council Member Leonard on possible legislation that would extend anti-discrimination and sexual harassment protections to independent contractors. Enclosed is a copy of the adopted ordinance from the City of Miami Beach.

ADJOURNMENT: 5:30 p.m.

Pursuant to Florida Statutes 286.0105, the Town hereby advises the public that should any person decide to appeal any decision of the Town Council with respect to any matter to be considered at this meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

AGENDA ITEM REPORT

August 10, 2020

ITEM NUMBER: 1.

ITEM:

Approval of the following Meeting Minutes:

- a. October 7, 2019 - Regular Council Meeting
- b. November 12, 2019 - Regular Council Meeting
- c. November 19, 2019 - Public Hearing

DESCRIPTION:

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Interim Town Clerk

ATTACHMENTS

- 1. 10-7-20 Draft Minutes
- 2. 11-12-19 reg DRAFT
- 3. 11-19-19 PH 1177 - DRAFT

**TOWN OF BAY HARBOR ISLANDS
MINUTES OF A REGULAR MEETING**

A Regular Meeting of the Town Council was held on Monday October 7th, 2019 at 7:00 p.m. in the Council Chambers. Upon roll call the following members responded:

Vice Mayor Joshua Fuller	Council Member Jordan Leonard
Council Member Kelly Reid	Council Member Isaac Salver
Council Member Elizabeth Tricoche	Council Member Robert Yaffe

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

TOWN MANAGER'S REPORT:

Item 1. Presentation HR Compensation Consultants, LLC

Kathie Bush of HR Compensation Consultants, LLC came forward to provide a report of the compensation program analysis. She provided the Council with a full report of the conclusion of the data collected based on the information the team was able to structure a job frame; pay frame and updated the job descriptions. The report was concluded based on the market analysis; recruit retention; labor market; salaries classification; job map; federal guidelines and the ratio formula.

Council Member Leonard suggested to have a separate category for the Town Clerk since she is a constitutional officer just like the Town Manager.

Town Manager Jimenez explained that phase 2 would go in effect next fiscal year which analyzes each individual.

COUNCIL REPORTS: Each Council Member will be afforded two (2) minutes to make their reports.

Council Member Tricoche reminded the Town residents of the Car Show that will held in Town on October 20th and also reminded the resident the Town now offer Day Camp for kids the Community Center for off school days.

Council Member Reid reported she attended the Best Practices Conference and sent her sincere condolences to Meiselman Family and the family of Howard Hollander.

Council Member Salver reported he attended the Best Practices Conference where he was the moderator for a panel.

Council Member Yaffe sent his sincere condolences to Special Magister Hollander.

Vice Mayor Fuller also extended his condolences to the Meiselman & Hollander Families.

PUBLIC COMMENT: There is a three (3) minute time limit for each speaker during public comment and a two (2) minute time limit for each speaker during all other agenda items. Your cooperation is appreciated in observing the three (3) minute rule. If you have a matter you would like to discuss which requires more than three (3) minutes, please arrange a meeting with the Town Manager or appropriate administrative official. A request form is available from staff; please fill it in and return it to the Town Clerk prior to the start of the meeting if you would like to speak during public comment. Please come forward to the

podium, give your name and address, and the name and address of the organization you are representing if any.

Frances Neuhut, 1060 Kane Concourse, came forward and asked if the Town granted the Church by the Sea off street parking.

COMMITTEE REPORTS:

CONSENT AGENDA: (Consent agenda items are those which are routine, do not require discussion or explanation prior to Town Council action, or have already been discussed and/or explained and do not require further discussion or explanation. Items can be removed from the consent agenda by the request of an individual Council member for independent consideration provided such request is made prior to the vote on the consent agenda.)

Item 2. Approval of the April 8th, 2019 Regular Council Meeting Minutes. Enclosed is a copy of the Draft Minutes.

Item 3. Consideration and Approval of proposal for insurance (general, professional, automobile, property, and workers' compensation) from the Florida Municipal Insurance Trust (Florida League of Cities) for the 2019 / 2020 fiscal year in the amount of \$247,292. Enclosed is a Memorandum provided by Assistant Town Manager / Finance Director Melissa Cruz.

Item 4. Approval of the annual contract with the health, life, disability, and dental insurance providers (Florida Blue, The Standard and MetLife) in the amount of \$812,925.48 for the 2019 / 2020 fiscal year. Enclosed is a Memorandum with detailed information from Assistant Town Manager / Finance Director Melissa Cruz.

Item 5. Consideration and Approval to utilize the Sourcewell (formally NJPA) contract with Enterprise Fleet Management (EFM) for the lease of four (4) new fleet vehicles in the amount of \$28,205.52 to be utilized by the Public Works and Parking Enforcement Departments. Enclosed is a copy of the proposal and other supporting documents.

Item 6. Consideration and Approval of a proposal by Garber Fleet Sales, through the Florida Sheriff's Association & Florida Association of Counties for an open end lease of one (1) 2020 Dodge Charger in the amount of \$23,772.00 and one (1) 2020 Chevy Tahoe in the amount of \$33,725.00 to be utilize by the Police Department. Enclosed is a copy of the proposal from Garber Fleet Sales.

ACTION: Council Member Leonard made a motion to approve the consent agenda. Council Member Tricoche seconded the motion and it passed by unanimous poll vote.

ORDINANCES ON SECOND READING:

Item 7. Consideration and Approval of an ordinance on second reading amending Chapter 16 of the Town Code to create a Deferred Retirement Option Plan("DROP") for law enforcement members of the Employees Retirement System. Enclosed is a copy of the proposed ordinance and impact study.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 16, THE TOWN OF BAY HARBOR ISLANDS EMPLOYEES RETIREMENT SYSTEM, OF THE TOWN OF BAY HARBOR ISLANDS CODE OF ORDINANCES, PROVIDING FOR THE CREATION OF A DEFERRED RETIREMENT OPTION ("DROP") PLAN FOR SWORN MEMBERS OF THE RETIREMENT SYSTEM; PROVIDING

FOR CODIFICATION; AND PROVIDING FOR THE TERMS AND CONDITIONS OF ELIGIBILITY AND PARTICIPATION.

ACTION: Council Member Leonard made a motion to approve the proposed ordinance on second reading. Council Member Yaffe seconded the motion and it passed by unanimous poll vote.

Item 8. Consideration and Approval of an ordinance on second reading increasing the monthly base and flow charges for sewer service. Enclosed is a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN OF BAY HARBOR ISLANDS AMENDING SECTION 20-9 OF THE TOWN CODE INCREASING THE MONTHLY BASE AND FLOW CHARGES FOR SEWER SERVICE; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

ACTION: Council Member Tricoche made a motion to approve the proposed ordinance on second reading. Council Member Reid seconded the motion and it passed by unanimous poll vote.

ORDINANCES ON FIRST READING:

Item 9. Consideration and Approval of an ordinance on first reading requested by Council Member Leonard and Council Member Reid to prohibit plastic beverage straws and plastic beverage stirrers. Attach is a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 9 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED SOLID WASTE COLLECTION; AND SPECIFICALLY ADDING AND REVISING DEFINITIONS TO SECTION 9.1 AND ADDING A NEW SECTION 9-28 PROHIBITING PLASTIC BEVERAGE STRAWS AND PLASTIC BEVERAGE STIRRERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

Council Member Yaffe suggested a 90 days grace period and an effective date.

ACTION: Council Member Leonard made a motion to approve the proposed ordinance on first reading with the suggested text amendment. Council Member Reid seconded the motion and it passed by unanimous poll vote.

Item 10. Consideration and Approval of an ordinance on first reading amending the Chapter 5 Town Code to require a demolition Bond. Enclosed is a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 5 ENTITLED BUILDINGS AND CONSTRUCTION OF THE TOWN'S ADOPTED CODE OF ORDINANCES AND SPECIFICALLY ADDING A NEW SECTION 5.3.1 TO REQUIRE A DEMOLITION BOND; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and suggested for the council to set policy of the coordination between the acquisition of a building permit and the demolition.

CLOSED PUBLIC COMMENT

Council Member Salver suggested that single family home be included in the language to the code amendment.

ACTION: Council Member Salver made a motion to approve the proposed ordinance on first reading with the suggested text amendment. Council Member Tricoche seconded the motion and it passed by unanimous poll vote.

TOWN MANAGER ITEMS: (Town business items requiring Council approval)

Item 11. Adoption of a Vision and Mission Statement for the Town.

ACTION: Council Member Salver made a motion to adopt a vision and mission statement for the Town. Council Member Tricoche seconded the motion and it passed unanimously.

DISCUSSION ITEMS:

Item 12. Discussion requested by Council Member Reid to amend the regulations for unit sizes in the B1 Business District to be the same size as the residential district. Enclosed is a comparison of the sizes provided by Town Planner Miller.

Council Member Reid asked for the council consideration to discuss and adjust unit sizes in the B-1 Business District so all the district are uniform. The current code does no specific the size for the Business District.

Council Member Leonard would like to see the formula other cities use for the unit size and how the Town could apply the data collected.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and was happy to see the discussion for the business district and was also concerned with the setbacks.

CLOSED PUBLIC COMMENT

Consensus was for staff to prepare an ordinance on first reading amending the unit size for the business district.

There being no further business to discuss meeting was adjourned at 8:10 p.m.

MAYOR

ATTEST

TOWN CLERK

**TOWN OF BAY HARBOR ISLANDS
MINUTES OF A REGULAR MEETING**

A Regular Meeting of the Town Council was held on Tuesday, November 12, 2019 at 7:00 p.m. in the Council Chambers. Upon roll call the following members responded:

Mayor Stephanie Bruder

Vice Mayor Joshua Fuller

Council Member Kelly Reid

Council Member Elizabeth Tricoche

Council Member Jordan Leonard

Council Member Isaac Salver

Council Member Robert Yaffe

SPECIAL PRESENTATION:

Item 1. Ruth K. Broad Bay Harbor K-8 Center - School Safety Patrols

Mayor Bruder presented Certificates of Appreciation to the Ruth K. Broad Bay Harbor K-8 Center, School Safety Patrols.

Item 2. Florida League of Cities 20 Years of Public Service Recognition to Council Member Isaac Salver

Carole Westmoreland of the Florida League of Cities presented Council Member Salver with 20 years of Public Service Recognition Award.

REQUESTS FOR WITHDRAWALS, DEFERMENTS AND FUTURE AGENDA ITEMS:

Town Manager Jimenez withdrew Item #6 from the Agenda to be brought back to a future meeting.

~~Item 6. Approval of a resolution to update the Town's travel policy. Enclosed is a copy of the proposed resolution.~~

Council Member Tricoche pulled Item # 9 for discussion.

TOWN MANAGER'S REPORT:

- West relief bridge on the Broad Causeway will undergo painting in the upcoming weeks.

Item 4. Report of the Town investment performance for quarter ended September 30, 2019. Presentation will be provided by Gerardo Rodriguez of BNY Mellon.

Gerardo Rodriguez reported on the Town performance investments for the quarter ending September 30, 2019. He provided a full detailed report of each investment and did not recommend any changes to the Town portfolio at this time.

COUNCIL REPORTS: Each Council Member will be afforded two (2) minutes to make their reports.

Council Member Tricoche congratulated Town Manager Jimenez on his one-year Anniversary and Council Member Salver on his Florida League of Cities appointment as president.

Council Member Reid congratulated Town Manager Jimenez on his first-year anniversary as Town Manager.

Council Member Salver congratulated Town Manager Jimenez for his one-year anniversary as Town Manager. He reported attending a Florida League of Cities Meeting to help draft the state legislative agenda.

Council Member Leonard congratulated Town Manager Jimenez on his one-year anniversary with Town.

Council Member Yaffe also congratulated Town Manager Jimenez on his one-year anniversary and Council Member Salver as the new incoming president to the Florida League of Cities. He also reported attending several meetings in Washington, DC to meet with state senators on issue for our community.

Vice Mayor Fuller congratulated Town Manager Jimenez on his one-year anniversary and Council Member Salver on his installation as president for the Florida League of Cities. He thanked the Town staff on a great Veteran's Day Event. He attended meetings in Washington, DC to meet with State Senators to lobby against the FAA proposed flight pattern over Bay Harbor Islands.

Mayor Bruder congratulated Town Manager Jimenez on his one-year anniversary as the Town Manager and also congratulated Council Member Salver as the incoming president for the Florida League of Cities. She also asked the residents to be vigilant as there have been several car burglaries. She asked for an article be included on the Town Newsletter to remind residents to stay vigilant.

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Kathleen Kennedy, 9180 W. Bay Harbor Drive, came forward and was concerned with the Town Parks and the Community Center being left open for anyone to access entry.

Kathie Srur, 10301 E. Bay Harbor Drive, came forward and stated that she was opposed to the lack of parking arrangement for the proposed development at 1177 Kane Concourse.

France Neuhut, 1160 Kane Concourse, came forward and reminded the council that she filed an appeal and the Town Council denied it.

Joyce Greene, 1310 99 St, came forward and explained that she had a car breaking in the past and suggested a flyer to the Town residents to remind them to lock their cars.

COMMITTEE REPORTS:

Item 5. Report from the Parks & Recreation Committee.

Chair of the Parks and Recreation Committee, Kathleen Kennedy came forward and thanked the Town Council for re-appointing her to the Parks and Recreation Committee. She came forward to report on the recent recommendations of the Parks and Recreation Committee, the first was to plan a Doogie Event where the residents can come out and enjoy a fun day with their pets.

ACTION: Consensus was to move forward and plan for a Doogie Event in the near future.

The second recommendation of the committee was to obtain an air hockey for the public to be placed at the Community Center.

ACTION: Consensus was to research the prices and purchase an air hockey machine for the Community Center.

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Item 7. Approval of a resolution updating the employee recognition awards. Enclosed is the proposed resolution and the previously approved resolutions regarding the same.

There was a brief discussion on the proposed resolution and suggestion to add a gift along with the bonus, or a gift certificate to a local restaurant.

Town Manager Jimenez stated that the proposed resolution was to update the policy on how the longterm employees are recognize.

Consensus was to also include a gift along with the employee recognition bonus.

ACTION: Council Member Yaffe made a motion to approve the proposed resolution. Council Member Leonard seconded the motion and it passed unanimously.

Item 8. Approval of an Inter-Agency Agreement Between Miami-Dade County / Miami-Dade Police Department and the Bay Harbor Islands Police Department to access the information systems known as FCIC / NCIC for criminal justice information. Enclosed is a copy of the proposed agreement.

ACTION: Council Member Yaffe made a motion not approve the proposed agreement. Council Member Leonard seconded the motion and it passed unanimously.

Item 9. Approval of an amendment to the Address Verification Plan Agreement between the Town and Miami-Dade County School Board. Enclosed is a copy of the proposed revised agreement.

Town Manager Jimenez reported he had a meeting with Bal Harbour Village Manager and the City of Miami Beach regards to STEM; International Bachelorette and engineering programs being proposed at the Ruth K. Broad School.

Consensus was for staff to continue to work with the school Board on new innovative programs.

PUBLIC COMMENT

Joyce Green, 1360 99 Street, came forward on the ongoing issues with the school address verification program and stated there were students that she personally knew of that did not live in the Town. There were reports of parents purchasing rights to utilize a Town address so kids could attend the local school.

Shanta Wise, 9202 W. Bay Harbor Drive, came forward and reported that the school was not in compliance with the Town lighting plan.

CLOSED PUBLIC COMMENT

ACTION: Vice Mayor Fuller made a motion to approve the propose agreement. Council Member Yaffe seconded the motion and it passed unanimously.

At this time Item #19 was taken out of order for discussion.

Item 19. Discussion and possible action of the Surf Bal Bay Interlocal Shuttle System Final Report conducted by Florida International University. This item is sponsored by Council Member Jordan W. Leonard. Enclosed is a copy of the report.

Council Member Leonard suggested that the ride sharing program portion can be provided through an electronic app and will be a free service. He also reported that the Town has been awarded a grant that will pay 50% of the program.

Town Manager Jimenez stated that the final report was recommending the Trolley and the ride sharing.

Consensus was to proceed with procurement and ride sharing.

ACTION: Council Member Leonard made a motion to approve the final report. Vice Mayor Fuller seconded the motion and it passed unanimously.

At this time Mayor Bruder left the meeting.

ORDINANCES ON SECOND READING:

Item 10. Consideration and Approval of an ordinance on second reading requested by Council Member Leonard and Council Member Reid to prohibit plastic beverage straws and plastic beverage stirrers. Attach is a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 9 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED SOLID WASTE COLLECTION; AND SPECIFICALLY ADDING AND REVISING DEFINITIONS TO SECTION 9.1 AND ADDING A NEW SECTION 9-28 PROHIBITING PLASTIC BEVERAGE STRAWS AND PLASTIC BEVERAGE STIRRERS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

ACTION: Council Member Leonard made a motion to approve the proposed ordinance on second reading. Council Member Reid seconded the motion and it passed by unanimous poll vote.

Item 11. Consideration and Approval of an ordinance on second reading amending the Chapter 5 Town Code to require a demolition Bond. Enclosed is a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 5 ENTITLED BUILDINGS AND CONSTRUCTION OF THE TOWN'S ADOPTED CODE OF ORDINANCES AND SPECIFICALLY ADDING A NEW SECTION 5.3.1 TO REQUIRE A DEMOLITION BOND; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

At this time Council Member Leonard left the meeting.

PUBLIC COMMENT

Vincent Martino, 1050 93 street, came forward and was in favor of the proposed ordinance.

Frances Neuhut, 1060 Kane Concourse, came forward and suggested to add language to include single family homes to the ordinance.

CLOSED PUBLIC COMMENT

ACTION: Council Member Salver made a motion to approve the proposed ordinance on second reading. Council Member Tricoche seconded the motion and it passed by unanimous poll vote.

ORDINANCES ON FIRST READING:

Item 12. Consideration and Approval of an ordinance on first reading requested by Council Member Reid amending Section 23-9 of the Town Code to revise the size of living units in the B-1 Business District. Enclosed is a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING THE TOWN'S CODE OF ORDINANCES AS RELATED TO THE MINIMUM SIZE OF LIVING UNITS IN ALL USE DISTRICTS; AMENDING SECTION 23-9 OF THE ZONING AND PLANNING CODE TO MODIFY REGULATIONS FOR THE SIZE OF LIVING UNITS IN THE B-1 BUSINESS DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

ACTION: Council Member Reid made a motion to approve the proposed ordinance on first reading. Council Member Tricoche seconded the motion and it passed by unanimous poll vote.

Item 13. Consideration and Approval of an ordinance on first reading amending Chapter 20 of the Town Code providing for water meters and sub-meters for potable water that do not not utilize the Town sanitary sewage system. Enclosed is a copy of the proposed ordinance.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, AMENDING CHAPTER 20 OF THE TOWN'S ADOPTED CODE OF ORDINANCES ENTITLED UTILITIES, BY AMENDING SECTIONS 20-3, AND 20-9 TO PROVIDE FOR THE INSTALLATION, INSPECTION, AND COST OF WATER METERS, WATER SUB-METERS, WATERBOXES, DEPOSITS, AND TAPPING CHARGES; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

PUBLIC COMMENT

Jerry Blair, 10250 W. Bay Harbor Drive, came forward and represented the condo association of Island Pointe and expressed support for the proposed ordinance.

CLOSED PUBLIC COMMENT

ACTION: Council Member Yaffe made a motion to approve the proposed ordinance on first reading. Vice Mayor Fuller seconded the motion and it passed by unanimous poll vote.

TOWN MANAGER ITEMS: (Town business items requiring Council approval)

Item 14. Consideration and approval to award project BHI-204 Parking Garage Expansion Joint Replacement and Repairs to Concrete Protection & Restoration in the amount of \$54,880.50 to remove and replace all horizontal and vertical elastomeric concrete joints on the top level of the parking garage.

ACTION: Council Member Salver made a motion to award project BHI-204 to Concrete Protection & Restoration in the amount of \$54,880.50. Council Member Tricoche seconded the motion and it passed by unanimous poll vote.

Item 15. Approval of a proposal from Coastal Risk Consulting in the amount of \$73,500 to conduct a Vulnerability Assessment and Adaptation Recommendations Study. Enclosed is a copy of the proposal submitted by Coastal Risk Consulting.

ACTION: Council Member Yaffe made a motion to approve the proposed from Coastal Risk Consulting in the amount of \$73,500. Council Member Tricoche seconded the motion and it passed by unanimous poll vote.

At this time Council Member Yaffe recused himself for Items 16 and 17.

Item 16. Consideration and Approval of a private Transfer of Development Rights (TDR) transaction of eight (8) dwelling units from the Villas at Bay Harbor Condominium Association (1150 98th Street) to Millenium Ambianta Corporation (9901 W. Bay Harbor Drive). Enclosed is a copy of the application, contract, site plans and other supporting documents.

ACTION: Council Member Tricoche made a motion to approve the private TDR transaction. Council Member Salver seconded the motion and it passed unanimously.

Item 17. Consideration and Approval of a private Transfer of Development Rights (TDR) transaction for four (4) dwelling units from the Northern Star Condominium Association, Inc (9725-9745 Bay Harbor Terrace) to Millenium Ambianta Corporation (9901 W. Bay Harbor Drive). Enclosed is a copy of the application, contract, site plans and other supporting documents.

ACTION: Council Member Tricoche made a motion to approve the private TDR transaction. Council Member Salver seconded the motion and it passed unanimously.

At this time Council Member Yaffe returned to the meeting.

Item 18. Approval of the Town's 2020-2025 Strategic Plan as prepared by Management Partners. Enclosed is a copy of the Strategic Plan.

PUBLIC COMMENT

Frances Neuhut, 1060 Kane Concourse, came forward and was concerned should the plan overlap with the Town Comprehensive Plan.

CLOSED PUBLIC COMMENT

ACTION: Council Member Tricoche made a motion to approve the 2020-2025 Strategic Plan. Council Member Reid seconded the motion and it passed unanimously.

DISCUSSION ITEMS:

Item 20. Discussion requested by Council Member Reid regarding possible charter amendments to address the size of the Town Council and an elected Mayor.

Council Member Reid asked for the Town Council consideration and comments on a possible charter amendment to address the size of the Town Council and an elected Mayor.

PUBLIC COMMENT

Paul Ruthfield, 1231 95 Street, came forward and was opposed to the smaller Town Council but suggested for the Council to have a salary.

Linda Zilber, 1231 95 Street, came forward and was opposed to a smaller group for Town Council.

Frances Neuhut, 1060 Kane Concourse, came forward and suggested term limits for the Town Council and an elected Mayor.

CLOSED PUBLIC COMMENT

Council Member Salver felt the changes to the Town Charter should come from the public.

Item 21. Discussion requested by Council Member Leonard regarding the density cap, parking requirements, and other zoning regulations in the B-1 District.

Item deferred to the next regular Council Meeting.

There being no further business to discuss meeting was adjourned at 9:55 p.m.

MAYOR

ATTEST

DEPUTY TOWN CLERK

TOWN OF BAY HARBOR ISLANDS
MINUTES OF A PUBLIC HEARING

A Public Hearing Meeting of the Town Council was held on Tuesday November 19th, 2019 at 7:00 p.m. in the Council Chambers. Upon roll call the following members responded:

Mayor Stephanie Bruder

Council Member Jordan Leonard

Council Member Kelly Reid

Council Member Elizabeth Tricoche

Council Member Robert Yaffe

QUASI-JUDICIAL PUBLIC HEARING

Town Attorney Simone swore in all the individual speaking at the Public Hearing.

Item 1. Presentation of the proposed Development Agreement by N / R Wharton Kane Concourse Property Owner, LLC to construct a mixed used development zoned in the B-1 Business District which includes 90 residential units; 98,800 square feet of office space and 15,000 square feet of commercial space.

Attorney Neisen Kasdin of Ackerman, LLP representing the developers and owners of the proposed development. He explained that the team incorporated the changes as requested by the town Council which were as followed:

- Reduced the residential component from 104 to 90 residential units.
- Increase in office space to 98,732 square feet.
- No changes to the commercial space on Kane Concourse.
- Will offer Emergency Operations Center (EOC) for the Town.
- Proposed a Lead Certified Building.
- The waterfront lot will not be used as a construction staging site.
- The project footprint was re-design to accommodate the Town commercial and residential spaces.
- Improved the vehicular access for the alleyway.
- Have internalize the loading dock by creating two loading bays for large commercial trucks.

Item 2. Town Manager's Report and presentation. Attached is a memorandum from Town Manager Jimenez with attachments.

Town Manager Jimenez stated that have he had ongoing negotiations with the developer and staff for the best possible agreement for the Town and felt that the proposed agreement before the Town Council was fair.

Item 3. Public Comment concerning the proposed Development Agreement.

Natasha Cortez, 10201 W. Bay Harbor Drive, came forward and was concerned how the project would impact the business district, streets, the children walking in Town. She urged the developers to relocate the existing trees to the new park to be conveyed to the Town.

Christine Justice, 1141 Kane Concourse, owner of the building adjacent to the proposed development. She was concerned with impact of the magnitude of the development, the alleyway; the vehicular traffic on the alley and the number of residential units proposed.

Lisa Levy, 9660 W. Bay Harbor Drive, came forward and was concerned with the increased in office space, traffic impact, parking and the rerouting of vehicles in the alleyway.

Frances Neuhut, 1060 Kane Concourse, came forward and was concerned with the parking impact; increase of office space and was opposed to affordable housing.

Miriam Desabi, 10201 E. Bay Harbor Drive, came forward and was in favor of the proposed development. She felt that the development would make a positive impact on the Business District.

Kathy Srur, 10301 W. Bay Harbor Drive, came forward and thanked the development team for a great project design. She urged the Town Council to consider the project density. She suggested for the developer to rent out a number of parking spaces from the Town parking garage.

Town Manager Jimenez clarified that the parking spaces in front of the project located on Kane Concourse will not counted towards the project parking count.

John Corral, 9660 W. Bay Harbor Drive, came forward and asked for the Town Council to be cautious on the particular property. He was concerned with the kids walking to school near the proposed site, the alleyway traffic impact and the police department response time should the traffic be diverted.

Kathleen Kennedy, 9180 W. Bay Harbor Drive, was concerned with the Church by the Sea and the 1177 Kane Concourse projects starting their construction at the same time.

Norma Orowitz, 9240 W. Bay Harbor Drive, was opposed to the proposed development and concerned with the traffic impact the project could have on the Town.

Milton Raijman, 1135 Kane Concourse, came forward and was not happy of the added square footage of office space. He was concerned with the alleyway vehicular traffic. He also asked if self-parking would be offered to the retail / commercial component of the development.

Attorney Nasdin stated that the property owner has agreed to provide self-parking and valet parking for the commercial component.

Council Member Leonard arrive at the meeting at 7:49 p.m.

Michael Orowitz, 9240 W. Bay Harbor Drive, was opposed to the proposed project and was concerned with the traffic impact on the surrounding streets.

Vincent Martino, 1050 95 Street, was concerned with the traffic impact to the Town.

Clarissa Valdivia, 9655 E. Bay Harbor Drive, came forward and felt that the proposed development did not fit the Town.

CLOSED PUBLIC COMMENT

TOWN COUNCIL COMMENTS

Council Member Tricoche felt that the developer had listen to the Council comments. The developer has agreed to obtain a demolition bond and pay \$65,000 per TDR unit. She suggested the developer increase the amount of parking spaces to 550 and urged them to rent some spaces from the Town parking garage.

Council Member Leonard and Council Member Yaffe were concerned with the alleyway traffic impact and the left turn into West Bay Harbor Drive.

Attorney Kasdin clarified that the entrances to the building would be from the west and will be providing two large loading bays to minimize the traffic impact. They will also provide the Town with an easement for the turn onto 97 street.

Council Member Leonard asked if the team could commit to free parking for the visitors and also suggested for the developer to lease the parking spaces from the Town parking garage.

Council Member Yaffe would like a provision to be added to the agreement for the developer to lease spaces from the Town.

Town Attorney Simone stated that he could include language, if the town believes that additional parking was needed, the owner could lease the spaces from the town.

Architect Alex Valner, the team could conduct a parking occupancy study on the Town request to purchase parking spaces from the parking garage.

Council Member Reid stated that she supports a responsible project in Town but was concerned with the alley traffic impact and the loading area. She asked if the loading trucks were capable of making the turn in the alleyway. She also suggested a 2-hour parking limit on Kane Concourse to limit the overflow.

Town Traffic Engineer, Joaquin Vargas, stated that he conducted several simulations on how the trucks would park in the loading zone and exit the alley onto 97 street. The turn was possible, and the width of the alley was analyzed.

Consensus was to conduct an assessment on an 18-wheeler truck specifically entering and exiting the alley from Bay Harbor Terrace into the alley.

Council Member Yaffe was concerned with the pedestrians walking around the project, alley way traffic; and suggested to add language to lease parking spaces from the Town.

There was a detailed discussion on the traffic impact on the alleyway from Bay Harbor Terrace into the alleyway north; the right turn feasibility for big trucks making deliveries; additional parking spaces to purchase for the parking garage based on index developed based on capacity; expected construction period; the parking fees that would be charged onsite; and right turn only on 97 street.

Town Manager Jimenez clarified the following amendments to the proposed development agreement were as followed:

1. Right turn only on 97 street.
2. Developer will consult with Town on affordable parking fees for their site.
3. Developer will rent parking spaces from Town based on an occupancy index.
4. The Town will conduct an analysis for large 18-wheeler trucks entering Bay Harbor Terrace into the alley

Item 4. Approval of an ordinance on first reading approving a development agreement as authorized under the Florida Statutes Section 163.3220-163.3243 between N/R Wharton Kane Concourse Property Owner, LLC and the Town. The agreement will authorize - development of approximately 1.96 Acres at

1177 Kane Concourse of a mixed-use project consisting of 90 residential units, 98,800 square feet of office space and approximately 15,000 square feet of commercial use.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BAY HARBOR ISLANDS, FLORIDA, APPROVING A DEVELOPMENT AGREEMENT AS AUTHORIZED UNDER THE FLORIDA LOCAL GOVERNMENT DEVELOPMENT AGREEMENT ACT, SECTIONS 163.3220 – 163.3243 OF THE FLORIDA STATUTES, IN SUBSTANTIALLY THE ATTACHED FORM, BETWEEN N/R WHARTON KANE CONCOURSE PROPERTY OWNER, LLC (“OWNER”) AND THE TOWN OF BAY HARBOR ISLANDS (“TOWN”), RELATING TO THE DEVELOPMENT OF APPROXIMATELY 1.96 ACRES OF LAND GENERALLY LOCATED AT 1177 KANE CONCOURSE, AS MORE PARTICULARLY DESCRIBED IN EXHIBIT “A,” ATTACHED AND INCORPORATED, FOR THE PURPOSE OF REDEVELOPMENT OF SUCH LAND FOR MIXED USES PERMITTED BY THE BAY HARBOR ISLANDS COMPREHENSIVE PLAN – FUTURE LAND USE MAP DESIGNATION AND TOWN’S ZONING AND PLANNING CODE, AS AMENDED, WITH SAID DEVELOPMENT TO BE IN ACCORDANCE WITH THE SITE PLAN APPROVED BY THE TOWN AND TO CONSIST OF UP TO 90 RESIDENTIAL DWELLING UNITS, UP TO 98,800 SQUARE FEET OF OFFICE SPACE, UP TO 15,000 SQUARE FEET OF COMMERCIAL SPACE, AND 498 PARKING SPACES IN A BUILDING WITH A MAXIMUM HEIGHT OF 75 FEET; AND WITH SAID DEVELOPMENT AGREEMENT HAVING A TERM OF 10 YEARS AND ALSO MEMORIALIZING: (1) OWNER’S CONVEYANCE OF A WATERFRONT LOT AT 9600 WEST BAY HARBOR DRIVE TO THE TOWN FOR USE AS A PUBLIC PARK, (2) TOWN’S CONVEYANCE OF 24 TRANSFERRABLE DEVELOPMENT RIGHTS (TDRS) TO OWNER FOR USE AT 1177 KANE CONCOURSE, (3) CONDITIONS FOR THE TOWN’S PARTIAL ALLEY CLOSURE BETWEEN WEST BAY HARBOR DRIVE AND BAY HARBOR TERRACE AND OWNER’S PROVISION OF APPROPRIATE ACCESS EASEMENTS WITHIN SAID ALLEY, (4) TOWN’S APPROVAL OF A HEIGHT INCREASE FROM 65 FEET TO 75 FEET UNDER THE TOWN’S PUBLIC BENEFIT PROGRAM IN TOWN CODE SECTION 23-11(C)(8), BASED ON THE LISTED PUBLIC BENEFITS FROM OWNER; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE DEVELOPMENT AGREEMENT, IN SUBSTANTIALLY THE ATTACHED FORM; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

ACTION: Mayor Bruder made a motion to approve the proposed ordinance on first reading. Council Member Tricoche seconded the motion and it passed 4-1 with Council Member Reid opposed.

Item 5. Announcement of the date of the second public hearing to consider the approval of the development agreement.

Consensus was to schedule the second Public Hearing for January 7th, 2020.

There being no further business to discuss meeting was adjourned at 9:39p.m.

MAYOR

ATTEST

TOWN CLERK

AGENDA ITEM REPORT

August 10, 2020

ITEM NUMBER: 2.

ITEM:

Consideration and approval of a renewal of a Mutual Aid Agreement with the City of Coral Gables Police Department and the Town of Bay Harbor Islands Police Department. Enclosed is a copy of the proposed agreement.

DESCRIPTION:

The Mutual Aid Agreement provides for the requesting and rendering of assistance for both routine and law enforcement intensive situations. This Mutual Aid Agreement combines the elements of both a voluntary cooperation agreement and a requested operational assistance agreement as described in Chapter 23 Florida Statutes.

RECOMMENDED ACTION:

Approve

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Curtis Johnson, Lieutenant

ATTACHMENTS

1. Coral Gables MOU Final

LAW ENFORCEMENT OPERATIONAL ASSISTANCE MUTUAL AID AGREEMENT

Between the Town of Bay Harbor Islands and the City of Coral Gables Police Departments

Whereas, the subscribing law enforcement agencies are so located in relation to each other that it is to the advantage of each to receive and extend mutual aid in the form of law enforcement services and resources to adequately respond to intensive situations, including, but not limited to, natural or manmade disasters or emergencies as defined under Section 252.34, Florida Statutes; and,

Whereas, the Bay Harbor Islands Police Department and the Coral Gables Police Department have the authority under Section 23.12, Florida Statutes, et seq., The Florida Mutual Aid Act, to enter into a mutual aid agreement for law enforcement service which provides for rendering of assistance in a law enforcement emergency.

Now, therefore, the parties agree as follows:

SECTION I: PROVISIONS FOR OPERATIONAL ASSISTANCE

Each of the aforesaid law enforcement agencies hereby approve and enter into this agreement whereby each of the agencies may request and render law enforcement assistance to the other to include, but not necessarily be limited to, dealing with civil disturbances, law enforcement emergencies, large protest demonstrations, aircraft disasters, fires, hurricanes, tornadoes or other weather-related crises, sporting events, concerts, parades, escapes from detention facilities, off duty assignments, incidents requiring utilization of specialized units and any other situation deemed appropriate by each of the aforesaid agency heads.

SECTION II: PROCEDURE FOR REQUESTING ASSISTANCE

In the event that a party to this agreement is in need of assistance as set forth above, an authorized representative of the agency requesting assistance shall notify the agency head or his/her designee from whom such assistance is requested. The agency head or authorized agency representative whose assistance is sought shall evaluate the situation and the agency's available resources, consult with his/her supervisors, if necessary, and will respond in a manner he/she deems appropriate.

The agency head or authorized representative in whose jurisdiction assistance is being rendered may determine who is authorized to lend assistance in his/her jurisdiction, for how long such assistance is authorized and for what purpose such authority is granted. This authority may be granted either verbally or in writing as the particular situation dictates.

The agency head's decision in these matters shall be final. Communications instructions will be included in each request for mutual aid. In the absence of such instructions, communications will

be conducted on a mutually agreed upon radio frequency, if not through Miami-Dade Communications Bureau.

SECTION III: COMMAND AND SUPERVISORY RESPONSIBILITY

The personnel and equipment that are assigned by the assisting agency head shall be under the immediate command of a supervising officer designated by the assisting agency head. Such supervising officer shall be under the direct supervision and command of the agency head or his/her designee of the agency requesting assistance.

Conflicts: Whenever an officer is rendering assistance pursuant to this agreement, the officer shall abide by and be subject to the rules and regulations, personnel policies, general orders and standard operating procedures of his/her own employing agency. If any such rule, regulation, personnel policy, general order or standard operating procedure is contradicted, contravened or otherwise in conflict with a direct order of a superior officer of the requesting agency, then supervising officers from each agency will together determine the appropriate course of action as determined by the situation.

Handling Complaints: Whenever there is cause to believe that a complaint has arisen as a result of a cooperative effort as it may pertain to this agreement, the agency head or his/her designee of the requesting agency shall be responsible for the documentation of said complaint to ascertain at a minimum:

1. The identity of the complainant.
2. An address where the complaining party can be contacted.
3. The specific allegation.
4. The identity of the employees accused without regard as to agency affiliation.

If it is determined that the accused is an employee of the assisting agency, the above information, with all pertinent documentation gathered during the receipt and processing of the complaint, shall be forwarded without delay to the agency head or his/her designee of the assisting agency for administrative review. The requesting agency may conduct a review of the complaint to determine if any factual basis for the complaint exists and/or whether any of the employees of the requesting agency violated any of their agency's policies or procedures.

SECTION IV: LIABILITY

Each party engaging in any mutual cooperation and assistance, pursuant to this agreement, agrees to assume responsibility for the acts, omissions, or conduct of such party's own employees while engaged in rendering such aid pursuant to this agreement, subject to the provisions of Section 768.28, Florida Statutes, where applicable.

SECTION V: POWERS, PRIVILEGES, IMMUNITIES AND COSTS

- A.** Employees of the Bay Harbor Islands Police Department and the Coral Gables Police Department when actually engaging in mutual cooperation and assistance outside of their jurisdictional limits but inside this state, under the terms of this agreement, shall, pursuant to the provisions of Section 23.127(1), Florida Statutes, have the same powers, duties, rights, privileges and immunities as if the employee was performing duties inside the employee's political subdivision in which normally employed.
- B.** Each party agrees to furnish necessary personnel, equipment, resources and facilities and to render services to each other party to the agreement as set forth above, provided, however, that no party shall be required to deplete unreasonably its own personnel, equipment, resources, facilities, and services in furnishing such aid.
- C.** A political subdivision that furnishes equipment pursuant to this agreement must bear the cost of loss or damage to that equipment and must pay any expense incurred in the operation and maintenance of that equipment.
- D.** The agency furnishing aid pursuant to this agreement shall compensate its appointees/employees during the time such aid is rendered and shall defray the actual travel and maintenance expenses of its employees while they are rendering such aid, including any amounts paid or due for compensation due to personal injury or death while such employees are rendering aid pursuant to this agreement.
- E.** The privileges and immunities from liability, exemption from laws, ordinances and rules, and all pension, insurance, relief, disability, workers' compensation, salary, death and other benefits that apply to the activity of an employee of an agency when performing the employee's duties within the territorial limits of the employee's agency apply to the employee to the same degree, manner, and extent while engaged in the performance of the employee's duties extraterritorially under the provisions of this mutual aid agreement. The provisions of this section shall apply with equal effect to paid, volunteer, and part-time employees.
- F.** Nothing herein shall prevent the requesting agency from requesting supplemental appropriations from the governing authority having budgeted jurisdiction to reimburse the assisting agency for any actual costs or expenses incurred by the assisting agency performing hereunder.
- G.** Nothing in this agreement is intended or is to be construed as any transfer or contracting away of the powers or functions of one party hereto to the other.

SECTION VI: LIABILITY INSURANCE

The City of Coral Gables is self-insured pursuant to Chapter 768, Florida Statutes. Bay Harbor Islands shall provide satisfactory proof of liability insurance by one or more of the means specified in Section 768.28(16)(a), Florida Statutes, in an amount which is, in the judgment of the governing body of that party, at least adequate to cover the risk to which that party may be exposed. Should

the insurance coverage, however provided, of any party be canceled or undergo material change, that party shall notify all parties to this agreement of such change within ten (10) days of receipt of notice or actual knowledge of such change.

SECTION VII: FORFEITURE PROVISIONS

A. In the event an agency seizes any real property, vessel, motor vehicle, aircraft, currency or other property pursuant to the Florida Contraband Forfeiture Act during the performance of this agreement, the agency requesting assistance in the case of requested operational assistance and the seizing agency in the case of voluntary cooperation shall be responsible for maintaining any forfeiture action pursuant to Chapter 932, Florida Statutes. The agency pursuing the forfeiture action shall have the exclusive right to control, and the responsibility to maintain, the property in accordance with Chapter 932, Florida Statutes, to include, but not be limited to, the complete discretion to bring the action or dismiss the action.

B. All proceeds from forfeited property seized as a result of or in accordance with this agreement shall be divided equally between the parties, less the costs associated with the forfeiture action.

SECTION VIII: EFFECTIVE DATE

This agreement shall take effect upon execution and approval by the hereinafter named officials and shall continue in full force and effect until September 1, 2025. Under no circumstances may this agreement be renewed, amended, or extended except in writing.

SECTION IX: CANCELLATION

Any party may cancel its participation in this agreement upon delivery of written notice to the other party or parties. Cancellation will be at the direction of any subscribing party.

In witness whereof, the parties hereto cause these presents to be signed on the date specified.

City of Coral Gables

Town of Bay Harbor Islands

Peter Iglesias
City Manager
City of Coral Gables

Marlene Siegel
Interim Town Manager
Town of Bay Harbor Islands

Date

Date

Edward Hudak
Chief of Police
City of Coral Gables

Pablo Lima
Acting Chief of Police
Town of Bay Harbor Islands

Date

Date

ATTEST:

ATTEST:

Billy Urquia
City Clerk
City of Coral Gables

Alba Chang
Interim Town Clerk
Town of Bay Harbor Islands

Date

Date

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Miriam Soler Ramos
City Attorney
City of Coral Gables

Frank Simone
Town Attorney
Town of Bay Harbor Islands

Date

Date

JOINT DECLARATION OF
THE CHIEF OF THE TOWN OF
BAY HARBOR ISLANDS POLICE DEPARTMENT

THE CHIEF OF THE CITY OF
CORAL GABLES POLICE DEPARTMENT
PURSUANT TO MUTUAL AID AGREEMENT

A police officer of either of the participating law enforcement agencies shall be considered to be operating under the provisions of the Mutual Aid Agreement when:

participating in law enforcement activities that are preplanned and approved by each respective agency head; or

appropriately dispatched in response to a request for assistance from the other law enforcement agency.

In compliance with, and under the authority of the Mutual Aid Agreement, heretofore entered into by the Town of Bay Harbor Islands and the Coral Gables Police Department, Florida, it is hereby declared that the following list comprises the circumstances and conditions under which mutual aid may be requested and rendered regarding police operations pursuant to the agreement. Said list may be amended or supplemented from time to time, as needs dictate by subsequent declarations.

1. Joint multi-jurisdictional criminal investigations.
2. Civil affray or disobedience, disturbances, riots, large protest demonstrations, controversial trials, political conventions, labor disputes and strikes.
3. Any natural disaster.
4. Incidents which require rescue operations and, crowd and traffic control measures, including, but not limited to, large-scale evacuations, aircraft and shipping disasters, fires, explosions, gas line leaks, radiological incidents, train wrecks and derailments, chemical or hazardous waste spills, and electrical power failures.
5. Terrorist activities including, but not limited to, acts of sabotage.
6. Escapes from, or disturbances within, detention facilities.

7. Hostage and barricaded subject situations, and aircraft piracy.
8. Control of major crime scenes, area searches, perimeter control, back-ups to emergency and in-progress calls, pursuits, and missing persons calls.
9. Enemy attack.
10. Transportation of evidence requiring security.
11. Major events; e.g., sporting events, concerts, parades, fairs, festivals, and conventions.
12. Security and escort duties for dignitaries.
13. Emergency situations in which one agency cannot perform its functional objective.
14. Incidents requiring utilization of specialized units; e.g., underwater recovery, aircraft, canine, motorcycle, bomb, crime scene, marine patrol, and police information.
15. Joint training in areas of mutual need.
16. Joint multi-jurisdictional marine interdiction operations.

City Coral Gables

Peter Iglesias
City Manager
City of Coral Gables

Date

Town of Bay Harbor Islands

Marlene Siegel
Interim Town Manager
Town of Bay Harbor Islands

Date

Edward Hudak
Chief of Police
City of Coral Gables

Pablo Lima
Acting Chief of Police
Town of Bay Harbor Islands

Date

Date

ATTEST:

Billy Urquia
City Clerk
City of Coral Gables

Alba Chang
Interim Town Clerk
Town of Bay Harbor Islands

Date

Date

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Miriam Soler Ramos
City Attorney
City of Coral Gables

Frank Simone
Town Attorney
Town of Bay Harbor Islands

Date

Date

AGENDA ITEM REPORT

August 10, 2020

ITEM NUMBER: 3.

ITEM: Consideration and Approval of a Memorandum of Understanding to implement the Nurse Enhancement Initiative for the 2020/2021 school year. Enclosed is a copy of the agreement.

DESCRIPTION:

The Memorandum of Understanding is to provide funding and implementation of the Nurse Initiative for the 20120/2020 School Year. The program helps provide onsite healthcare services for students who attend the Ruth K. Broad K-8 Center.

Enclosed is a copy of the Memorandum of Understanding.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Interim Town Clerk
Marlene Marante Siegel, Interim Town Manager

ATTACHMENTS

1. Nurse Initiative 2020-2021

**AMENDMENT NO. 3
TO THE MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF MIAMI BEACH, NORTH BAY VILLAGE, THE TOWN OF BAY HARBOR
ISLANDS, THE TOWN OF SURFSIDE, BAL HARBOUR VILLAGE, AND
THE MIAMI BEACH CHAMBER EDUCATION FOUNDATION TO IMPLEMENT A
NURSE ENHANCEMENT INITIATIVE FOR SCHOOL YEAR 2020/2021**

Amendment No. 3 ("**Amendment**") is made and entered into this ____ day of _____, 2020, by and between the **City of Miami Beach, Florida**, a municipal corporation organized and existing under the laws of the State of Florida, having its principal place of business at 1700 Convention Center Drive, Miami Beach, Florida 33139 ("**CMB**"), **North Bay Village** ("**NBV**"), the **Town of Bay Harbor Islands** ("**TBHI**"), the **Town of Surfside** ("**TS**"), **Bal Harbour Village** ("**BHV**"), and the **Miami Beach Chamber Education Foundation, Inc.** ("**MBCEF**") (collectively, the "**Parties**") to amend the Memorandum of Understanding entered into on May 17, 2018 ("**MOU**"), as amended by Amendment No. 1 to the **MOU**, dated December 24, 2018 and as amended by Amendment No. 2 to the **MOU**, dated September 19, 2019 (collectively, the "**MOU**"), as follows:

RECITALS

WHEREAS, the Parties have determined that a program to provide healthcare services to students attending underserved public schools is in the best interests of the health and public welfare of the City of Miami Beach, North Bay Village, the Town of Bay Harbor Islands, the Town of Surfside, and Bal Harbour Village (the "**Participating Municipalities**"); and

WHEREAS, following the Parties' determination that students at Miami Beach North Beach Elementary, Treasure Island Elementary, and Ruth K. Broad Bay Harbor K-8 Center (the "**Participating Schools**") did not have full-time on-site healthcare services and were, thus, underserved as compared to other public schools in the feeder pattern that falls within the City of Miami Beach, the Parties entered into a Memorandum of Understanding on August 19, 2013 for a Nurse Initiative, and another Memorandum of Understanding on April 23, 2014, to provide healthcare services to the **Participating Schools** during the 2013/2014 and the 2014/2015 School Years; and

WHEREAS, due to the success of Nurse Initiatives during the 2013/2014 and 2014/2015 School Years, the Parties implemented an enhanced nurse initiative ("**Nurse Enhancement Initiative**") for the 2015/2016, 2016/2017, and the 2017/2018 School Years for the **Participating Schools** because the basic healthcare services previously funded in the Nurse Initiative by the **Participating Municipalities**, the **MBCEF**, and the Children's Trust ("**TCT**"), were provided by **TCT** via the new School Health Programs; and

WHEREAS, on May 17, 2018, **CMB, NBV, TBHI, TS, BHV**, and **MBCEF** executed the **MOU** for the continuation of the **Nurse Enhancement Initiative** for the **Participating Schools** for the 2018-2019 School Year; and

WHEREAS, the Parties executed Amendment No. 1 to the **MOU**, dated December 24, 2018, adding an additional day of service at Ruth K. Broad Bay Harbor K-8 Center; and

WHEREAS, on September 11, 2019, the Mayor and City Commission adopted Resolution No. 2019-30956, approving Amendment No. 2 to the **MOU** and approving funding of **CMB's** contribution for each subsequent school year, on a recurring basis, subject to funding approval during **CMB's** budgetary process and provided that **CMB's** contribution amount does not exceed \$15,400.00; and

WHEREAS, the Parties executed Amendment No. 2 to the **MOU**, dated September 19, 2019, extending the **Nurse Enhancement Initiative** for the **Participating Schools** for the 2019-20 School Year; and

WHEREAS, the Parties wish to provide for another **Nurse Enhancement Initiative** for the 2020/2021 School Year; and

WHEREAS, a **Nurse Enhancement Initiative** should be established at the **Participating Schools** for School Year 2020/2021 as herein provided and pursuant to a separate agreement between **MBCEF** and **TCT**.

WHEREAS, **MBCEF** shall provide funding to **TCT** for the 2020-2021 **Nurse Enhancement Initiative** in the amount of \$7,000.00.

NOW, THEREFORE, in consideration of the mutual conditions and promises contained herein, the Parties agree to amend the **MOU** as follows:

1. ABOVE RECITALS.

The above recitals are true and correct and are incorporated as part of this Amendment.

2. MODIFICATIONS.

Paragraph 3 of the **MOU** is hereby deleted in its entirety and replaced with the following:

- 3. On or before October 31, 2020 the Participating Municipalities shall provide their proportionate share of the funds for the 2020/21 Nurse Enhancement Initiative to MBCEF, subject to budget approval by the Participating Municipalities, which funds MBCEF shall hold in escrow pending the execution of its agreement with TCT referenced in paragraph 1. The**

Participating Municipalities proportionate share of funding for the 2020/21 School Year shall be paid by October 31, 2020 in the following amounts for 44 weeks from October 1, 2020 to June 5th 2021, and August 1, 2021 to September 30, 2021:

- i) CMB shall provided funding in the amount of \$15,400;
- ii) NBV shall provide funding in the amount of \$6,600
- iii) TBHI shall provide funding in the amount of \$8,112 for 2 days of service at Ruth K. Broad Bay Harbor K-8 Center;
- iv) TS shall provide funding in the amount of \$8,112 for 2 days of service at Ruth K. Broad Bay Harbor K-8 Center;
- v) BHV shall provide funding in the amount of \$8,112 for 2 days of service at Ruth K. Broad Bay Harbor K-8 Center;

4. RATIFICATION.

Except as amended herein, all other terms and conditions of the **MOU** shall remain in full force and effect. In the event there is a conflict between the provisions of this **Amendment** and the **MOU**, the provisions of this **Amendment** shall govern.

(THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK)

IN WITNESS THEREOF, the Parties hereto have executed by their respective and duly authorized officers the day and year first above written.

ATTEST:

CITY OF MIAMI BEACH, a Municipal Corporation of the State of Florida

By: _____
Rafael E. Granado, City Clerk

By: _____
Jimmy L. Morales, City Manager

Date: _____

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney

 a 6/9/2022
Date

ATTEST:

NORTH BAY VILLAGE, a Municipal
Corporation of the State of Florida

By: _____
Village Clerk

By: _____
Village Manager

Date: _____

Approved as to form and
Legal sufficiency

ATTEST:

TOWN OF BAY HARBOR ISLANDS, a Municipal
Corporation of the State of Florida

By: _____
Town Clerk

By: _____
Mayor/Town Manager

Date: _____

Approved as to form and
Legal sufficiency

ATTEST:

TOWN OF SURFSIDE, a Municipal
Corporation of the State of Florida

By: _____
Town Clerk

By: _____
Mayor/Town Manager

Date: _____

Approved as to form and
Legal sufficiency

ATTEST:

BAL HARBOUR VILLAGE, a Municipal
Corporation of the State of Florida

By: _____
Village Clerk

By: _____
Mayor/Village Manager

Date: _____

Approved as to form and
Legal sufficiency

ATTEST:

**MIAMI BEACH CHAMBER EDUCATION
FOUNDATION**

By: _____

By: _____

Date: _____

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RESOLUTION NO. 2019-30956

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, IN THE FORM ATTACHED TO THIS RESOLUTION, AMENDMENT NO. 2 TO THE MEMORANDUM OF UNDERSTANDING ("MOU"), DATED AUGUST 10, 2016, AMONG THE CITY, THE MIAMI BEACH CHAMBER OF COMMERCE, NORTH BAY VILLAGE, THE TOWN OF BAY HARBOR ISLANDS, THE TOWN OF SURFSIDE, AND BAL HARBOUR VILLAGE FOR THE FUNDING OF MENTAL HEALTH SERVICES, PROVIDING FOR A CITY CONTRIBUTION, IN AN AMOUNT NOT TO EXCEED \$13,887 ("CITY'S CONTRIBUTION") FOR THE 2019-2020 SCHOOL YEAR; AND APPROVING FUNDING OF THE CITY'S CONTRIBUTION FOR EACH SUBSEQUENT SCHOOL YEAR, ON A RECURRING BASIS, SUBJECT TO FUNDING APPROVAL DURING THE CITY'S BUDGETARY PROCESS AND PROVIDED THAT THE CITY'S CONTRIBUTION AMOUNT DOES NOT EXCEED \$15,400; AND FURTHER AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE ANY AND ALL REQUIRED AGREEMENTS AND DOCUMENTS TO IMPLEMENT THE PROGRAM.

WHEREAS, in January 2008, the City of Miami Beach (the "City") entered into an Education Compact with the Miami-Dade County Public Schools ("MDCPS") to enhance learning opportunities for youth; and

WHEREAS, the Education Compact reflects the desire of the Miami Beach community to support excellence in the City's public schools and enhance the health and well-being of our City's youth; and

WHEREAS, as a result of the City's Education Compact with MDCPS, all public schools in Miami Beach offer the International Baccalaureate program which is internationally recognized as a benchmark for education excellence and also fosters student participation in community service; and

WHEREAS, in the 2012-2013 School Year, five of the eight schools in our educational feeder pattern had Health Connect in Our Schools ("HCIOS") suites which were supported by The Children's Trust ("The Trust") and which provided a full-time Medical Assistant and a shared Registered Nurse on campus; and

WHEREAS, for students who do not require routine medications, the HCIOS suites were used for nursing assessments, administration of first aid, and other purposes such as consulting with parents and caregivers; and

WHEREAS, the City, North Bay Village, the Town of Bay Harbor Islands, the Town of Surfside, and Bal Harbour Village ("Participating Municipalities") determined that a program to provide healthcare services to students attending underserved public schools is in the best interests of the health and public welfare of youth; and

WHEREAS, in the 2013-2014 School Year, a municipal Nurse Initiative was implemented pursuant to a Memorandum of Understanding between the Participating Municipalities to provide a HCIOS team of professionals, including a shared Registered Nurse, a full-time Medical Assistant, and a social worker which was funded by Miami-Dade County Public Schools; and

WHEREAS, the benefits of HCIOS health teams include: a coordinated level of school-based healthcare, expanded health screenings, and assessments with access to follow-up care, mental and behavioral health services to identify and solve student health and educational issues, nutrition and health counseling, health services for uninsured students with no other option for access to health care, emergency first aid/CPR, and chronic disease management; and

WHEREAS, utilization of the HCIOS remained high throughout the 2014-2015 School Year, with 52 percent of the 3,044 unduplicated students utilizing the services from August 2014 through February 2015, an average of eleven visits per day per school resulting in 3,836 visits; and

WHEREAS, by approval of Resolution 2015-42 on February 9, 2015, The Trust's Board of Directors approved the release of RFP 2015-17: School Health Programs to fund improved access to quality health care through providers delivering comprehensive services in the public schools to 145 pre-selected schools for School Years 2015-2016, 2016-2017, and 2017-2018; the programs which are the subject of the RFP include all three (3) Miami Beach schools in the City's original Nurse Initiative; and

WHEREAS, due to the success of the Nurse Initiative during the 2013-2014 and 2014-2015 School Years, the Parties implemented an enhanced Nurse Initiative ("Nurse Enhancement Initiative") for 2015-2016 and the 2016-2017 School Years for the Participating Schools because the basic healthcare services previously funded in the Nurse Initiative by the Participating Municipalities, the Miami Beach Chamber Education Foundation, Inc., and The Trust, were provided by The Trust via the new School Health Programs; and

WHEREAS, the Nurse Enhancement Initiative established at the Participating Schools for School Years 2015-2016 and 2016-2017 was a success and the Parties provided for an enhanced nurse initiative for the 2017-2018 School Year; and

WHEREAS, the City's proportionate share for the Nurse Enhancement Initiative was approximately \$15,400 for the 2017-2018 School Year; and

WHEREAS, The Trust thereafter committed to fund the School Health Programs at all Miami Beach feeder schools through the end of the 2017-2018 School Year; and

WHEREAS, the funding provided by the Participating Municipalities enhanced The Trust's School Health Programs for North Beach Elementary, Treasure Island Elementary, and Ruth K. Broad Bay Harbor K-8 Center (the "Schools"), to include services such as behavioral health each week during the 2017-2018 School Year at each of the Schools; and

WHEREAS, funding from The Trust provided for a full-time registered nurse and/or licensed practical nurse at each of the Schools for the 2017-2018 School Year; and

WHEREAS, each of the Participating Municipalities contributed approximate funding for the Nurse Enhancement Initiative for the 2017-2018 School Year, as follows: City of Miami Beach \$15,400, Town of Surfside \$3,667, Town of Bay Harbor Islands \$3,667, Bal Harbour Village \$3,667, and North Bay Village \$6,600, which amounts will be offset by unused funds from the 2016-2017 Nurse Enhancement Initiative for the Town of Surfside, the Town of Bay Harbor Islands, Bal Harbour Village, and North Bay Village; and

WHEREAS, on May 17, 2018, a Memorandum of Understanding ("MOU") was entered into between the City of Miami Beach, the Miami Beach Chamber of Commerce, North Bay Village, the Town of Surfside, the Town of Bay Harbor Islands, and Bal Harbour Village, with the Participating Municipalities contributing their proportionate share of the costs to support the Nurse Enhancement Initiative program for the 2018-2019 School Year; and

WHEREAS, on December 24, 2018, the Participating Municipalities executed Amendment No.1 to the 2018-2019 MOU, each of the Participating Municipalities contributing funding for the Nurse Enhancement Initiative for the 2018-2019 School Year; and

WHEREAS, the Administration recommends approving Amendment No. 2 to the MOU, in the form attached to this Resolution, approving a City contribution in an amount not to exceed \$13,887 ("City Contribution") for the 2019-2020 School Year, and approving, on a recurring basis, the City's Contribution to the program for subsequent years, subject to funding approval during the City's fiscal year budgetary process, provided that the City Contribution does not exceed \$15,400 per year.

NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND THE CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA that the Mayor and City Commission hereby approve, in the form attached to this Resolution, Amendment No. 2 to the Memorandum of Understanding ("MOU"), dated August 10, 2016, among the City of Miami Beach, the Miami Beach Chamber of Commerce, North Bay Village, the Town of Bay Harbor Islands, the Town of Surfside, and Bal Harbour Village for the funding of mental health services, providing for a City contribution, in an amount not to exceed \$13,887 ("City's Contribution") for the 2019-2020 school year; and approving funding of the City's Contribution for each subsequent school year, on a recurring basis, subject to funding approval during the City's budgetary process and provided that the City's Contribution amount does not exceed \$15,400; and further authorizing the City Manager

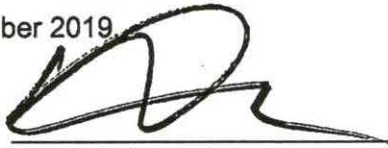
and City Clerk to execute any and all required agreements and documents to implement the program.

PASSED AND ADOPTED this 11th day of September 2019

ATTEST:


9/16/19

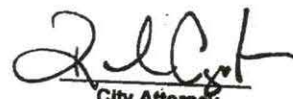
Rafael E. Granado, City Clerk



Dan Gelber, Mayor



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney
8/29/19

Date

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Jimmy L. Morales, City Manager
DATE: September 11, 2019

SUBJECT: A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, APPROVING, IN THE FORM ATTACHED TO THIS RESOLUTION, AMENDMENT NO. 2 TO THE MEMORANDUM OF UNDERSTANDING ("MOU"), DATED AUGUST 10, 2016, AMONG THE CITY, THE MIAMI BEACH CHAMBER OF COMMERCE, NORTH BAY VILLAGE, THE TOWN OF BAY HARBOR ISLANDS, THE TOWN OF SURFSIDE, AND BAL HARBOUR VILLAGE FOR THE FUNDING OF MENTAL HEALTH SERVICES, PROVIDING FOR A CITY CONTRIBUTION, IN AN AMOUNT NOT TO EXCEED \$13,887 ("CITY'S CONTRIBUTION") FOR THE 2019-2020 SCHOOL YEAR; AND APPROVING FUNDING OF THE CITY'S CONTRIBUTION FOR EACH SUBSEQUENT SCHOOL YEAR, ON A RECURRING BASIS, SUBJECT TO FUNDING APPROVAL DURING THE CITY'S BUDGETARY PROCESS AND PROVIDED THAT THE CITY'S CONTRIBUTION AMOUNT DOES NOT EXCEED \$15,400; AND FURTHER AUTHORIZING THE CITY MANAGER AND CITY CLERK TO EXECUTE ANY AND ALL REQUIRED AGREEMENTS AND DOCUMENTS TO IMPLEMENT THE PROGRAM.

RECOMMENDATION

Sustain the Nurse Enhancement Initiative for Behavioral Health Services / Mental Health Services and support the partnership for the 2019-20 school year and subsequent school years subject to approval in each subsequent fiscal year budgetary process.

ANALYSIS

The Nurse Enhancement Initiative for Behavioral Health is a partnership between the City of Miami Beach, Miami Beach Chamber of Commerce, North Bay Village, The Town of Surfside, The Town of Bay Harbor Islands, and Bal Harbour Village, that provides much needed mental health services for youth at three (3) public schools. For the 2016-17 school years, the initiative was enhanced to include behavioral health services (mental health services) to three (3) schools in the feeder pattern and was further expanded in the 2017-18 school year to an additional five (5) Miami Beach public schools. For the 2018-19 school year behavioral health/mental health youth support services were provided from August 2018 through June 2019 for North Beach Elementary, South Pointe Elementary, Fienberg Fisher K-8 Center, Biscayne Elementary, Treasure Island Elementary, Ruth K. Broad Bay Harbor K-8 Center, Nautilus Middle School, and Miami Beach Senior High School.

Overall, 2,105 youth received support services in the 2018-19 school year from the Licensed Clinical Social Workers (Social Worker) in all Miami Beach feeder public schools for 5,426 psychosocial issues an

increase of 49% and 65%, respectively. The chart below shows the utilization of students by school and number of psychosocial services provided to date:

Behavioral Health Services Summary Report 8/21/2018 - 4/30/2019						
School	# of Students 2017-18	# of Students 2018-19	% Change	# of Psychosocial Services Provided 2017-18	# of Psychosocial Services Provided 2018-19	% Change
Treasure Island Elementary School	52	174	235%	293	362	24%
South Pointe Elementary School	115	303	163%	197	465	136%
North Beach Elementary School	126	254	102%	439	398	-9%
Biscayne Elementary School	111	176	59%	428	868	103%
Ruth K. Broad K-8 Center	84	85	1%	124	196	58%
Fienberg Fisher K-8 Center	277	216	-22%	381	482	27%
Nautilus Middle School	474	582	23%	1150	1934	68%
Miami Beach Senior High School	177	315	78%	284	721	154%
Total	1,416	2,105	49%	3,296	5,426	65%

The enhanced behavioral services include on-site access to a licensed clinical social worker to provide services including, but not limited to, the following:

- o Academic Issues
- o Attention Issues
- o Anger Management
- o Anxiety
- o Attention Issues
- o Disruptive Behavior
- o Depression
- o Stress Management
- o Family Issues
- o Growth Development

Each school receives support through this initiative for the indicated number of days per week during the 2018-19 school year: Treasure Island Elementary one (1) day per week, North Beach Elementary two (2) days per week, Biscayne Elementary two (2) days per week, Ruth K. Broad K-8 Center two (2) days per week, South Pointe Elementary two (2) days per week, Fienberg Fisher K-8 Center three (3) days per week, Nautilus Middle School three (3) days per week, Miami Beach Senior High School three (3) days per week.

week, South Pointe Elementary two (2) days per week, Flenberg Fisher K-6 Center three (3) days per week, Nautilus Middle School three (3) days per week, and Miami Beach Senior High School four (4) days per week.

Legislative Tracking

Organizational Development and Performance Initiatives

ATTACHMENTS:

Description

- ☐ Form Approved Amendment 2
- ☐ Form Approved Resolution

**AMENDMENT NO. 2
TO THE MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF MIAMI BEACH, NORTH BAY VILLAGE, THE TOWN OF BAY HARBOR
ISLANDS, THE TOWN OF SURFSIDE, BAL HARBOUR VILLAGE, AND
THE MIAMI BEACH CHAMBER EDUCATION FOUNDATION, INC TO IMPLEMENT A
NURSE ENHANCEMENT INITIATIVE FOR SCHOOL YEAR 2019/2020**

Amendment No. 2 ("**Amendment**") is made and entered into this 19 day of ~~SEPT~~, 2019, by and between the **City of Miami Beach, Florida**, a municipal corporation organized and existing under the laws of the State of Florida, having its principal place of business at 1700 Convention Center Drive, Miami Beach, Florida 33139 ("**CITY**"), **North Bay Village ("NBV")**, the **Town of Bay Harbor Islands ("TBHI")**, the **Town of Surfside ("TS")**, **Bal Harbour Village ("BHV")**, and the **Miami Beach Chamber Education Foundation, Inc. ("MBCEF")** (collectively, the "**Parties**") to amend the Memorandum of Understanding entered into on May 17, 2018 ("**MOU**"), as amended by Amendment No. 1 to the MOU, dated December 24, 2018 (collectively, the "**MOU**"), as follows:

RECITALS

WHEREAS, the Parties have determined that a program to provide healthcare services to students attending underserved public schools is in the best interests of the health and public welfare of the City of Miami Beach, North Bay Village, the Town of Bay Harbor Islands, the Town of Surfside, and Bal Harbour Village (the "**Participating Municipalities**"); and

WHEREAS, following the Parties' determination that students at North Beach Elementary, Treasure Island Elementary, and Ruth K. Broad Bay Harbor K-8 Center (the "**Participating Schools**") did not have full-time on-site healthcare services and were, thus, underserved as compared to other public schools in the feeder pattern that falls within the City of Miami Beach, the Parties entered into a Memorandum of Understanding on August 19, 2013 for a Nurse Initiative, and another Memorandum of Understanding on April 23, 2014, to provide healthcare services to the **Participating Schools** during the 2013/2014 and the 2014/2015 School Years; and

WHEREAS, due to the success of Nurse Initiative during the 2013/2014 and 2014/2015 School Years, the Parties implemented an enhanced nurse initiative ("Nurse Enhancement Initiative") for the 2015/2016, 2016/2017, and the 2017/2018 School Years for the **Participating Schools** because the basic healthcare services previously funded in the Nurse Initiative by the **Participating Municipalities**, the **MBCEF**, and the Children's Trust, were provided by the Children's Trust via the new School Health Programs; and

WHEREAS, the Parties executed Amendment No. 1 to the MOU, dated December 24, 2018, extending the Nurse Enhancement Initiative for the Participating

Schools for the 2018-2019 School Year and adding an additional day of service at Ruth K Broad Bay Harbor K-8 Center; and

WHEREAS, the Nurse Enhancement Initiative established at the **Participating Schools** for the previous School Years was a success and the Parties wish to continue the Nurse Enhancement Initiative for the 2019/2020 School Year; and

WHEREAS, at the end of the 2018-2019 School Year, the Participating Municipalities unused program funds had the following:

- i) TBHI \$5,473.05
- ii) TS \$5,473.02
- iii) BHV \$5,473.02
- iv) NBV \$2,002.72
- v) CMB \$4,673.00; and

WHEREAS, the Participating Municipalities hereby agree to apply said unused funds for use from August 5th, 2019 to September 30th, 2019 for 9 weeks of service at each Participating School in the following amounts:

- i) TBHI \$1,659.27
- ii) TS \$1,659.27
- iii) BHV \$1,659.27
- iv) NBV \$1,350.00
- v) CMB \$3,150.00
 - a. \$900.00 for Treasure Island
 - b. \$2,250.00 for North Beach Elementary; and

WHEREAS, pursuant to paragraph 7 of the **MOU**, unused funds shall be used to offset the contribution of the Parties for the 2019-2020 School Year in the following amounts:

- i) TBHI \$3,813.78
- ii) TS \$3,813.78
- iii) BHV \$3,813.78
- iv) NBV \$652.72
- v) CMB \$1,523.00; and

WHEREAS, **MBCEF** shall provide funding to **TCT** for the 2019-2020 Nurse Enhancement Initiative in the amount of \$7,000.00; and

WHEREAS, the Parties wish to amend the Agreement by extending the term to include the months of August and September, 2020; and

WHEREAS, a Nurse Enhancement Initiative should be established at the Participating Schools for School Year 2019/2020 as herein provided and pursuant to a separate agreement to be entered into between **MBCEF** and **TCT**.

NOW, THEREFORE, in consideration of the mutual conditions and promises contained herein, the Parties agree to amend the **MOU** as follows:

1. ABOVE RECITALS.

The above recitals are true and correct and are incorporated as part of this Amendment.

2. MODIFICATIONS.

Paragraph 3 of the **MOU** is hereby deleted in its entirety and replaced with the following:

3. On or before October 31, 2019 the **Participating Municipalities** shall provide their proportionate share of funds for the 2019/2020 Nurse Enhancement Initiative to **MBCEF**, subject to budget approval by the **Participating Municipalities**, which funds **MBCEF** shall hold in escrow pending the execution of its agreement with **TCT** referenced in paragraph 1. The **Participating Municipalities** proportionate remaining share of funding for the 2019/2020 School Year shall be paid by October 31, 2019 in the following amounts for 44 weeks from October 1st, 2019 to June 5th, 2020, and August 1st, 2020 to September 30th, 2020:

- i) **CMB** shall provide funding in the amount of \$13,887.00;
- ii) **NBV** shall provide funding in the amount of \$5,947.28;
- iii) **TBHI** shall provide funding in the amount of \$4,298.22 for 2 days of service at Ruth K. Broad Bay Harbor K-8 Center;
- iv) **TS** shall provide funding in the amount of \$4,298.22 for 2 days of service at Ruth K. Broad Bay Harbor K-8 Center; and
- v) **BHV** shall provide funding in the amount of \$4,298.22 for 2 days of service at Ruth K. Broad Bay Harbor K-8 Center.

4. RATIFICATION.

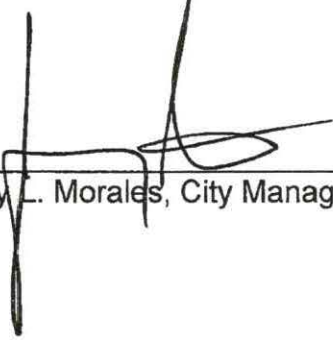
Except as amended herein, all other terms and conditions of the **MOU** shall remain in full force and effect. In the event there is a conflict between the provisions of this **Amendment** and the **MOU**, the provisions of this **Amendment** shall govern.

IN WITNESS THEREOF, the Parties hereto have executed by their respective and duly authorized officers the day and year first above written.

ATTEST:

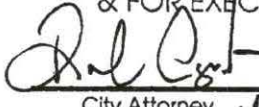
CITY OF MIAMI BEACH, a Municipal
Corporation of the State of Florida

By:  9/19/19
Rafael E. Granado, City Clerk

By: 
Jimmy L. Morales, City Manager

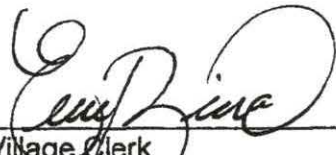


APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

 6-10-19
City Attorney Date

ATTEST:

NORTH BAY VILLAGE, a Municipal
Corporation of the State of Florida

By: 
Village Clerk

By: 
Village Manager

Approved as to form and
Legal sufficiency



ATTEST:

TOWN OF BAY HARBOR ISLANDS, a Municipal
Corporation of the State of Florida

By: [Signature]
Town Clerk

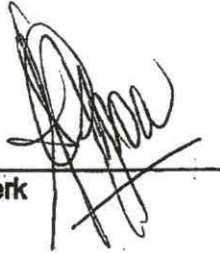
By: [Signature]
Mayor/Town Manager

Approved as to form and
Legal sufficiency

[Signature]
Asst Town Atty

ATTEST:

By: _____
Town Clerk



**TOWN OF SURFSIDE, a Municipal
Corporation of the State of Florida**

By: _____
Mayor/Town Manager



Approved as to form and
Legal sufficiency



ATTEST:

By: 

Village Clerk

BAL HARBOUR VILLAGE, a Municipal
Corporation of the State of Florida

By: 

Mayor/Village Manager

Approved as to form and
Legal sufficiency



ATTEST:

**MIAMI BEACH CHAMBER EDUCATION
FOUNDATION**

By:  _____

By:  _____

Approved as to form and
Legal sufficiency

**AMENDMENT NO. 1
TO THE MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF MIAMI BEACH, NORTH BAY VILLAGE, THE TOWN OF BAY HARBOR
ISLANDS, THE TOWN OF SURFSIDE, BAL HARBOUR VILLAGE, AND
THE MIAMI BEACH CHAMBER EDUCATION FOUNDATION TO IMPLEMENT A
NURSE ENHANCEMENT INITIATIVE FOR SCHOOL YEAR 2018/2019**

Amendment No. 1 ("**Amendment**") is made and entered into this 24 day of December, 2018, by and between the **City of Miami Beach, Florida**, a municipal corporation organized and existing under the laws of the State of Florida, having its principal place of business at 1700 Convention Center Drive, Miami Beach, Florida 33139 ("**CITY**"), **North Bay Village ("NBV")**, the **Town of Bay Harbor Islands ("TBHI")**, the **Town of Surfside ("TS")**, **Bal Harbour Village ("BHV")**, and the **Miami Beach Chamber Education Foundation, Inc. ("MBCEF")** (collectively, the "**Parties**") to amend the Memorandum of Understanding entered into on May 17, 2018 ("**MOU**") as follows:

RECITALS

WHEREAS, the Parties have determined that a program to provide healthcare services to students attending underserved public schools is in the best interests of the health and public welfare of the City of Miami Beach, North Bay Village, the Town of Bay Harbor Islands, the Town of Surfside, and Bal Harbour Village (the "**Participating Municipalities**"); and

WHEREAS, following the Parties' determination that students at North Beach Elementary, Treasure Island Elementary, and Ruth K. Broad Bay Harbor K-8 Center (the "**Participating Schools**") did not have full-time on-site healthcare services and were, thus, underserved as compared to other public schools in the feeder pattern that falls within the City of Miami Beach, the Parties entered into a Memorandum of Understanding on August 19, 2013 for a Nurse Initiative, and another Memorandum of Understanding on April 23, 2014, to provide healthcare services to the **Participating Schools** during the 2013/2014 and the 2014/2015 School Years; and

WHEREAS, due to the success of Nurse Initiatives during the 2013/2014 and 2014/2015 School Years, the Parties implemented an enhanced nurse initiative ("Nurse Enhancement Initiative") for the 2015/2016, 2016/2017, and the 2017/2018 School Years for the **Participating Schools** because the basic healthcare services previously funded in the Nurse Initiative by the **Participating Municipalities**, the **MBCEF**, and the Children's Trust, were provided by the Children's Trust via the new School Health Programs, and

WHEREAS, the Nurse Enhancement Initiative established at the **Participating Schools** for School Years 2015/2016, 2016/2017, and 2017/2018 was a success and the Parties wish to provide for another nurse enhancement initiative for the 2018/2019 School Year; and

WHEREAS, a Nurse Enhancement Initiative should be established at the Participating Schools for School Year 2018/2019 as herein provided and pursuant to a separate agreement to be entered into between **MBCEF** and **TCT**.

NOW, THEREFORE, in consideration of the mutual conditions and promises contained herein, the Parties agree to amend the **MOU** as follows:

1. ABOVE RECITALS.

The above recitals are true and correct and are incorporated as part of this Amendment.

2. MODIFICATIONS.

The **MOU** is hereby amended (deleted items ~~struck through~~ and inserted items underlined) as follows:

(a) Paragraph 3 of the **MOU** is hereby amended and replaced with the following:

1. On or before October 31, 2018, the **Participating Municipalities** shall provide their proportionate share of funds for the 2018/2019 Nurse Enhancement Initiative to **MBCEF**, subject to budget approval by the **Participating Municipalities**, which funds **MBCEF** shall hold in escrow pending the execution of its agreement with **TCT** referenced in paragraph 1. The **Participating Municipalities'** proportionate remaining share of funding for the 2018/2019 School Year shall be paid by October 31, 2018 in the following amounts:

- i) **CMB** shall provide funding in the amount of \$15,400.00;
- ii) **NBV** shall provide funding in the amount of \$6,600.00;
- iii) **TBHI** shall provide funding in the amount of ~~\$3,667.00~~ \$8,112 for 2 days of service at Ruth K. Broad Bay Harbor K-8 Center;
- iv) **TS** shall provide funding in the amount of ~~\$3,667.00~~ \$8,112 for 2 days of service at Ruth K. Broad Bay Harbor K-8 Center;
- v) **BHV** shall provide funding in the amount of ~~\$3,667.00~~ \$8,112 for 2 days of service at Ruth K. Broad Bay Harbor K-8 Center;

3. **RATIFICATION.**

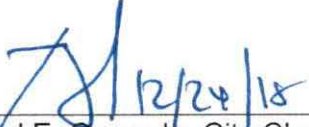
Except as amended herein, all other terms and conditions of the **MOU** shall remain in full force and effect. In the event there is a conflict between the provisions of this **Amendment** and the **MOU**, the provisions of this **Amendment** shall govern.

(THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK)

IN WITNESS THEREOF, the Parties hereto have executed by their respective and duly authorized officers the day and year first above written.

ATTEST:

CITY OF MIAMI BEACH, a Municipal Corporation of the State of Florida

By: 
Rafael E. Granado, City Clerk

By: 
Dan Gelber, Mayor



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION


City Attorney

18-3-18
Date

ATTEST:

NORTH BAY VILLAGE, a Municipal
Corporation of the State of Florida

By: [Signature]
Village Clerk

By: [Signature]
Village Manager

Approved as to form and
Legal sufficiency

[Signature]



ATTEST:

TOWN OF BAY HARBOR ISLANDS, a Municipal
Corporation of the State of Florida

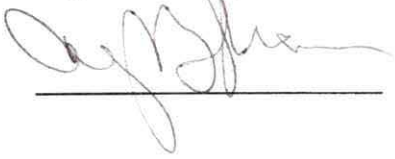
By: 

Town Clerk

By: 

Mayor/Town Manager

Approved as to form and
Legal sufficiency



ATTEST:

By: 
Town Clerk

TOWN OF SURFSIDE, a Municipal
Corporation of the State of Florida

By: 
Mayor/Town Manager

Approved as to form and
Legal sufficiency



ATTEST:

BAL HARBOUR VILLAGE, a Municipal
Corporation of the State of Florida

By: 
Village Clerk

By: 
Mayor/Village Manager

Approved as to form and
Legal sufficiency



More - More Enhancement

ATTEST:

MIAMI BEACH CHAMBER EDUCATION
FOUNDATION

By: _____

By: Jerry Blinn, President + CEO

Approved as to form and
Legal sufficiency

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF MIAMI BEACH, NORTH BAY VILLAGE, THE TOWN OF BAY HARBOR
ISLANDS, THE TOWN OF SURFSIDE, BAL HARBOUR VILLAGE, AND
THE MIAMI BEACH CHAMBER EDUCATION FOUNDATION TO IMPLEMENT A
NURSE ENHANCEMENT INITIATIVE FOR SCHOOL YEAR 2018/2019**

This is a Memorandum of Understanding ("MOU") made and entered into this 17 day of MAY, 2018, by and between the **City of Miami Beach ("CMB")**, **North Bay Village ("NBV")**, the **Town of Bay Harbor Islands ("TBHI")**, the **Town of Surfside ("TS")**, **Bal Harbour Village ("BHV")**, and the **Miami Beach Chamber Education Foundation, Inc. ("MBCEF")** (collectively, the "Parties") to provide for funding and for the implementation of a Nurse Enhancement Initiative as provided herein, and as to be provided in an agreement between **MBCEF** and **The Children's Trust ("TCT")**.

WITNESSETH

WHEREAS, the Parties have determined that a program to provide healthcare services to students attending underserved public schools is in the best interests of the health and public welfare of the City of Miami Beach, North Bay Village, the Town of Bay Harbor Islands, the Town of Surfside, and Bal Harbour Village (the "**Participating Municipalities**"); and

WHEREAS, following the Parties' determination that students at North Beach Elementary, Treasure Island Elementary, and Ruth K. Broad Bay Harbor K-8 Center (the "**Participating Schools**") did not have full-time on-site healthcare services and were, thus, underserved as compared to other public schools in the feeder pattern that falls within the City of Miami Beach, the Parties entered into a Memorandum of Understanding on August 19, 2013 for a Nurse Initiative, and another Memorandum of Understanding on April 23, 2014, to provide healthcare services to the **Participating Schools** during the 2013/2014 and the 2014/2015 School Years; and

WHEREAS, due to the success of Nurse Initiatives during the 2013/2014 and 2014/2015 School Years, the Parties implemented an enhanced nurse initiative ("Nurse Enhancement Initiative") for the 2015/2016, 2016/2017, and the 2017/2018 School Years for the Participating Schools because the basic healthcare services previously funded in the Nurse Initiative by the Participating Municipalities, the Miami Beach Chamber Education Foundation, Inc., and the Children's Trust, were provided by the Children's Trust via the new School Health Programs, and

WHEREAS, the Nurse Enhancement Initiative established at the **Participating Schools** for School Years 2015/2016, 2016/2017, and 2017/2018 was a success and the Parties wish to provide for another nurse enhancement initiative for the 2018/2019 School Year; and

WHEREAS, a Nurse Enhancement Initiative should be established at the Participating Schools for School Year 2018/2019 as herein provided and pursuant to a separate agreement to be entered into between **MBCEF** and **TCT**.

NOW, THEREFORE, in consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree to provide for a Nurse Enhancement Initiative for the Participating Schools during the 2018/2019 School Year as follows:

1. **MBCEF** shall enter into an agreement with **TCT** whereby **TCT** shall provide services for behavioral health and **TCT** shall provide certain schedules and reports as follows:
 - a) A monthly report of services provided at each of the **Participating Schools** shall be provided to the **Participating Schools** and to **MBCEF**; and
 - b) A monthly and an annual report shall be provided to the **Participating Municipalities** and to **MBCEF** documenting the percent of students returning to class after all visits relative to the above services at the **Participating Schools**.
2. On or before November 10, 2018, **MBCEF** shall provide funding to **TCT** for the 2018/2019 Nurse Enhancement Initiative in the amount of \$7,000.
3. On or before October 31, 2018, the **Participating Municipalities** shall provide their proportionate share of funds for the 2018/2019 Nurse Enhancement Initiative to **MBCEF**, subject to budget approval by the **Participating Municipalities**, which funds **MBCEF** shall hold in escrow pending the execution of its agreement with **TCT** referenced in paragraph 1. The **Participating Municipalities'** proportionate remaining share of funding for the 2018/2019 School Year shall be paid by October 31, 2018 in the following amounts:
 - i) **CMB** shall provide funding in the amount of \$15,400.00;
 - ii) **NBV** shall provide funding in the amount of \$6,600.00;
 - iii) **TBHI** shall provide funding in the amount of \$3,667.00;
 - iv) **TS** shall provide funding in the amount of \$3,667.00;
 - v) **BHV** shall provide funding in the amount of \$3,667.00;
4. **MBCEF** shall serve as the fiscal agent to collect the funds to be paid as provided in paragraph 3 above and shall disperse such funds to **TCT** after

entering into the agreement with **TCT** referenced in paragraph 1 and upon receipt of invoices from **TCT**.

5. **MBCEF** shall indemnify and hold harmless the **Participating Municipalities** and their respective officers employees, agents and instrumentalities from any and all liability, losses, or damages, including attorneys' fees and costs of defense, which the **Participating Municipalities** or their officers, employees agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to, or resulting from the performance of this **MOU** by **MBCEF** or its employees, agents, servants, partners, principals, or subcontractors. **MBCEF** shall pay claims and losses in connection therewith and shall investigate and defend all claims suits or actions of any kind or nature in the name of the **Participating Municipalities**, where applicable, including appellate proceedings, and shall pay all costs, judgements, and attorney's fees which may issue thereon.
6. In the event that one or more of the **Participating Municipalities** is not able to secure funds for their respective proportionate share of funding as provided in paragraph 3, then the remaining contributing **Participating Municipalities** may, in coordination with the **MBCEF** agree in writing to adjust the services to be provided through the Nurse Enhancement Initiative.
7. In the event that any of the provisions in this **MOU** are not performed, or if the 2018/2019 Nurse Enhancement Initiative is terminated after funds have been dispersed to **MBCEF** as provided in paragraphs 3 and 4, then **MBCEF** shall promptly reimburse each of the **Participating Municipalities** their proportionate share of unused funds. If any combination or all of the **Participating Municipalities** agree to implement a Nurse Enhancement Initiative for the 2019/2020 School Year, then **MBCEF** may, as directed by the Participating Municipalities in writing, hold any unused funds in escrow to be applied toward the 2019/2020 Nurse Enhancement Initiative. Any unused funds shall be credited toward each of the **Participating Municipalities'** proportionate share for the 2019/2020 Nurse Enhancement Initiative.

IN WITNESS THEREOF, the Parties hereto have executed by their respective and duly authorized officers the day and year first above written.

ATTEST:

CITY OF MIAMI BEACH, a Municipal Corporation of the State of Florida

By: _____

Rafael E. Granado, City Clerk

By: _____

Dan Gelber, Mayor



APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

4/2/18
Date

ATTEST:

NORTH BAY VILLAGE, a Municipal
Corporation of the State of Florida

By: 
Village Clerk

By:  - school nurse
Village Manager

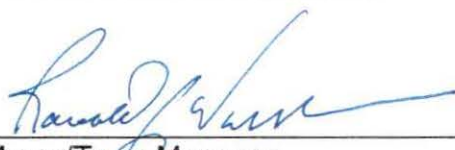
Approved as to form and
Legal sufficiency


NORMAN C. Powell

ATTEST:

TOWN OF BAY HARBOR ISLANDS, a Municipal
Corporation of the State of Florida

By: 
Town Clerk

By: 
Mayor/Town Manager

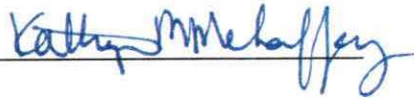
Approved as to form and
Legal sufficiency


Frank Simon, Esq.
Asst. Town Atty.

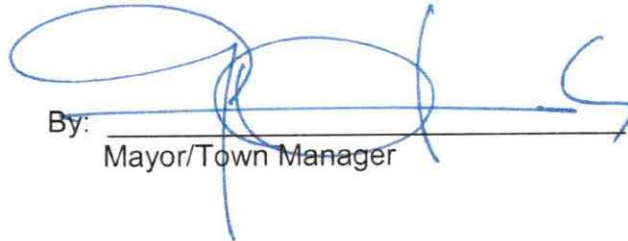
ATTEST:

By: 
Town Clerk

Approved as to form and
Legal sufficiency


Kathy McHaffey

TOWN OF SURFSIDE, a Municipal
Corporation of the State of Florida

By: 
Mayor/Town Manager

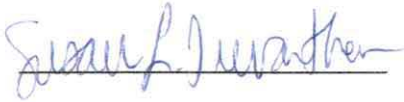
ATTEST:

BAL HARBOUR VILLAGE, a Municipal
Corporation of the State of Florida

By: 
Village Clerk

By: 
Mayor/Village Manager

Approved as to form and
Legal sufficiency


Notary Public

ATTEST:

**MIAMI BEACH CHAMBER EDUCATION
FOUNDATION**

By: Jenny Hernandez

By: Jerry L. Llin, President of C&C

Approved as to form and
Legal sufficiency

AGENDA ITEM REPORT

August 10, 2020

ITEM NUMBER: 4.

ITEM: Consideration and Approval of Stipulation of Settlement in the matter of Bay Harbor Islands adv. Cone & Graham, Inc. Miami-Dade County Circuit Court. Case No. 2019-035332-CA-01. Enclosed is a copy of the settlement agreement.

DESCRIPTION:

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Interim Town Clerk

ATTACHMENTS

1. Executed Settlement Agreement - Cone - Graham

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

CONE & GRAHAM, INC.,

Plaintiff/Counter Defendant,

CASE NUMBER: 2019-035332-CA-01

v.

TOWN OF BAY HARBOR
ISLANDS

Defendant/Counter Plaintiff.

STIPULATION OF SETTLEMENT

THIS STIPULATION OF SETTLEMENT (hereinafter "Stipulation of Settlement") is entered into and agreed upon by CONE & GRAHAM, INC. (hereinafter "Cone & Graham") and TOWN OF BAY HARBOR ISLANDS (hereinafter "Town") (and collectively, the "Parties") on this 24 day of July, 2020 (hereinafter the "Effective Date"), wherein the Parties agree to settle all claims that were raised or that could have been raised in the instant action against each other, according to the following terms and conditions:

RECITALS

WHEREAS, on or about January 15, 2019, the Parties executed Contract No. BC 512 Repair Snapped Pre-stressed Tendon in U-Channel over Indian Creek Bridge ("Contract"); and

WHEREAS, when Cone & Graham mobilized to perform the work required by the Contract, Cone & Graham identified an additional broken strand and provided the Town with a change order for the repair of the additional broken strand ("Change Order"); and

WHEREAS, the Town did not agree to the Change Order and terminated the Contract;
and

WHEREAS, Cone & Graham filed a Complaint and an Amended Complaint in the instant action against the Town for breach of the Contract; and, the Town filed a Counterclaim against Cone & Graham for breach of the Contract (hereinafter the "Action"); and

WHEREAS, the Town and Cone & Graham wish to settle all claims that were brought by the Parties or that could have been brought by the Parties in the Action or otherwise.

NOW THEREFORE, the Parties agree to the Stipulation of Settlement of the Action on the following terms:

AGREEMENT

- 1) **Recitals**. The foregoing recitals are true and correct and are incorporated herein by reference.
- 2) **Payment**. The Town shall pay Cone & Graham \$65,000.00 in one (1) payment via check no later than fourteen (14) days from the Effective Date (defined below) of this Agreement (hereinafter the "Payment"). The Payment shall be made payable to Cone & Graham, Inc. and delivered to 2123 Northwest Settle Avenue, Port St. Lucie, Florida 34986.
- 3) **Contract**. The Contract termination is hereby rescinded. The Parties understand and agree that the Contract shall be considered mutually cancelled. The Parties shall have no obligations to each other in connection with the Contract.
- 4) **Order of Dismissal**. Within five (5) business days of the delivery of the Payment, counsel for the Town shall submit the proposed Order of Dismissal with Prejudice to the Court that is attached hereto as Exhibit "A."
- 5) **Letter to Cone & Graham**. The Town shall execute the letter attached hereto as Exhibit "B" and deliver the letter to Cone & Graham along with the Payment.

6) **Mutual General Releases.** Cone & Graham and its directors, officers, attorneys, employees, agents, insurers, predecessors, successors and assigns (hereinafter collectively referred to from time to time as the "First Parties"), on the one hand, and the Town, its Council Members, attorneys, employees, agents, insurers, successors and assigns (hereinafter collectively referred to from time to time as the "Second Parties"), on the other hand, for and in consideration of mutual promises and other good and valuable consideration, do hereby mutually remise, release, acquit, satisfy and forever discharge each other, of and from all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, attorneys' fees, costs, judgments, executions, claims, damages, and demands whatsoever, in law or in equity, which the First Parties, on the one hand, and the Second Parties, on the other, ever had, now have, or may have against each other, whether known or unknown, from the beginning of the world to the Effective Date of this Stipulation of Settlement including, but not limited to, those claims arising out of or relating to the claims and causes of action that were raised, should have been raised, or could or might have been raised by the Parties in the Action whether known or unknown, **except** as to any claims that may be brought by the Parties to enforce the terms of this Stipulation of Settlement.

7) **Entire Agreement.** This Stipulation of Settlement sets forth the entire agreement between the Parties and fully supersedes any and all prior agreements or understandings between the Parties hereto concerning the instant Stipulation of Settlement. The Parties represent and acknowledge that by entering into this Stipulation of Settlement, they do not rely and have not relied upon any other representation or statement made by any person or entity with regard to the subject matter, basis, or effect of this Stipulation of Settlement. The Parties hereby represent and

warrant that they have entered into this Stipulation of Settlement of their own free will and accord and in accordance with their own judgment. The Parties hereby state that they have made a full and independent investigation of all the facts and representations relating to this Stipulation of Settlement and release and therefore state that the Parties have not been induced to enter into this Stipulation of Settlement by any statement, fact or representation of any kind or character other than those specifically set out herein.

8) **Jointly Negotiated and Drafted.** All Parties expressly acknowledge that all of the terms of this Stipulation of Settlement have been jointly negotiated by the Parties hereto and that this Stipulation of Settlement has been jointly drafted and therefore, it shall not be construed against any of the Parties to this Stipulation of Settlement.

9) **Cooperation.** The Parties agree to cooperate fully and execute any and all documents and to take all additional actions that may be necessary and appropriate to give full force and effect to the terms, conditions, and intent of this Stipulation of Settlement.

10) **Prevailing Party Attorneys' Fees.** In the event that a Party is required to bring an action to enforce this Stipulation of Settlement, the prevailing Party in any action shall be entitled to receive from the non-prevailing Party all reasonable attorneys' fees incurred in an action to obtain relief in all trial and appellate courts, together with the amount of reasonable attorneys' fees and costs incurred in connection with the determination of the amount of attorneys' fees to be awarded pursuant to this section.

11) **Counterparts.** This Stipulation of Settlement may be executed in counterparts. Signatures transmitted by facsimile or as .PDF attachments shall constitute original signatures.

12) **Effective Date.** The Effective Date shall mean the date after this Stipulation of Settlement is approved by the Town Council and the last Party executes this Stipulation of Settlement and returns it to the other Party.

13) **Amendments.** No amendments or variations of the terms of this Stipulation of Settlement shall be valid unless made in writing and executed by all Parties hereto.

14) **Headings.** The headings of the provisions herein are intended for convenient reference only, and the same shall not be, nor be deemed to be, interpretative of the contents of such provision.

15) **Signatures in Counterparts.** This Stipulation of Settlement may be executed in any number of counterparts, each of which shall be taken to be one and the same instrument, for the same effect as if all Parties had the same signature page. A facsimile copy, or Adobe PDF, of any party's signature shall be deemed as legally binding as the original signatures.

16) **Severability.** If any provision of this Stipulation of Settlement is determined to be invalid or unenforceable, the remainder of this Stipulation of Settlement shall not be affected thereby.

17) **Jointly Negotiated and Drafted.** All Parties expressly acknowledge that all of the terms of this Stipulation of Settlement have been jointly negotiated by the Parties hereto and that this Stipulation of Settlement has been jointly drafted and therefore, it shall not be construed against any of the Parties to this Stipulation of Settlement.

[Remainder of page is intentionally left blank. Signature page follows.]

The Stipulation of Settlement terms and conditions are agreed to by the Parties:

CONE & GRAHAM, INC.

By: Randall Cropp Digitally signed by Randall Cropp
Date: 2020.07.24 11:24:59 -04'00'
Sign Name

Randy Cropp
Print Name

East Coast Division Manager
Print Title

TOWN OF BAY HARBOR ISLANDS

By: Marlene Marante Siegel
Sign Name

Marlene Marante Siegel
Print Name

Interim Town Manager
Print Title

EXHIBIT "A"

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT IN AND
FOR MIAMI-DADE COUNTY, FLORIDA

CONE & GRAHAM, INC.,

Plaintiff/Counter Defendant,

CASE NUMBER: 2019-035332-CA-01

v.

TOWN OF BAY HARBOR
ISLANDS

Defendant/Counter Plaintiff.

AGREED ORDER OF DISMISSAL WITH PREJUDICE

THIS CAUSE having come before the Court on the agreement of the Parties, and the Court being fully advised in the premises, it is hereupon,

ORDERED AND ADJUDGED that:

1. The Court has jurisdiction of the parties and this Action.
2. The Court ratifies and approves the Stipulation of Settlement executed by the parties.
3. The parties are bound by all terms and conditions set forth in the Stipulation of Settlement.
4. Each party shall bear their own attorneys' fees and costs.
5. The Court retains jurisdiction over this action to enforce the terms of the Stipulation of Settlement.
6. This case is hereby **DISMISSED WITH PREJUDICE**.

DONE AND ORDERED in Chambers, at Miami-Dade County, Florida, on this _____ day
of _____, 2020.

HONORABLE MAVEL RUIZ
CIRCUIT COURT JUDGE

Exhibit "B"

TOWN OF BAY HARBOR ISLANDS

July 20, 2020

Via U.S. Mail and Email (rcropp@conegraham.com)

Mr. Randy Cropp
Cone & Graham, Inc.
5205 McMillan Way,
Riviera Beach, FL 33407

**Re: Cone & Graham, Inc. v. Town of Bay Harbor Islands, Florida
Miami-Dade County Circuit Court Case No.: 19-035332-CA-01
U Channel at Indian Creek Bridge**

Dear Mr. Cropp:

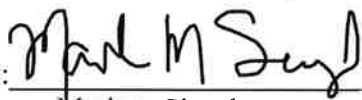
The Town of Bay Harbor Island ("Town") is pleased that the Town and Cone & Graham, Inc. ("Cone & Graham") have resolved the above referenced matter, with the Town paying the sum of \$65,000.00 in full and final settlement of the above referenced matter for all work performed by Cone & Graham.

The Town, in retrospect, understands that the former Town Engineer should have authorized the payment of \$45,529.25 for the work that Cone & Graham performed in 2019 and should not have terminated the contract, thus avoiding litigation.

Cone & Graham may use this letter in connection with its submission future bids.

Best regards,

Town of Bay Harbor Islands

By: 
Marlene Siegel,
Interim Town Manager

AGENDA ITEM REPORT

August 10, 2020

ITEM NUMBER: 5.

ITEM: Consideration and Approval of inland marine insurance policy for the Shepard Broad Causeway Bridge for the year beginning July 15, 2020 to July 14, 2021 in the amount of \$146,039. Enclosed is a copy of a memorandum from Melissa Cruz, Assistant Town Manager/Finance Director.

DESCRIPTION:

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Interim Town Clerk

ATTACHMENTS

1. Bridge Ins memo 20-21
2. Market Summary 20-21

TOWN OF BAY HARBOR ISLANDS MEMORANDUM

DATE: AUGUST 3, 2020
TO: HONORABLE MAYOR AND COUNCIL
VIA: MARLENE SIEGEL, INTERIM TOWN MANAGER
FROM: MELISSA CRUZ, ASSISTANT TOWN MANAGER/FINANCE DIRECTOR
RE: BRIDGE INSURANCE

I authorized renewal of the insurance policy on the Broad Causeway Bridge on July 15th to avoid a lapse in coverage (the policy year is July 15 to July 14). Public Risk Insurance Agency solicited fifteen carriers including the incumbent, AXIS Surplus Insurance Company. AXIS is rated A XV(Superior) by A.M. Best. The premium increased from last year's \$110,039 to \$146,039. The policy provides the same coverage as the prior policy.

The market for insurance of this type is extremely limited. The League of Cities does not provide coverage for bridges. The State of Florida Division of Risk Management does not have any programs to provide insurance or place coverage (e.g., by "piggy-backing") for units of local government. Miami-Dade County does not insure any of their bridges. I have attached a copy of the marketing summary provided by Public Risk Insurance Agency.

Covenants relating to the outstanding debt on the Causeway require that the causeway be insured.

It is requested that the Council approve my decision to renew our inland marine coverage for the ICW Bridge for the year beginning July 15, 2020 from AXIS Surplus Insurance Company for a total premium of \$146,039.

Market Summary

MARKET	NOTES / FEEDBACK
AXIS (Incumbent)	Quoted
AmRisc	Decline; class of business
Arch	Decline; class of business
Arrowhead	Decline; class of business
Aspen	Decline; wind exposure
Beazley	Decline; class of business
Berkshire Hathaway	Decline; class of business
Catalytic	Decline; class of business
Colony	No response
Great American	Decline; wind exposure
Lexington	Decline; not competitive
Lloyds of London	No response
Markel	Decline; wind exposure (location)
Ventus	Decline; class of business
Westchester	Decline; former incumbent; not competitive

AGENDA ITEM REPORT

August 10, 2020

ITEM NUMBER: 6.

ITEM: Consideration and Approval of Change Order #3 in favor of JVA Engineering in the amount of \$115,977.30 for work associated with BC-154 the Broad Causeway Corridor Enhancements Project. Enclosed is a copy of the changed order approved by FDOT which will be reimbursed as part of the grant.

DESCRIPTION:

In 2018, the Town was awarded a federal grant in the amount of \$1,200,000 through the Local Agency Program (LAP), which is administered by the Florida Department of Transportation (FDOT) for the Broad Causeway Corridor Enhancement Project.

As an additional enhancement, Florida Department of Transportation (FDOT) has approved Change Order #3 that will add a four (4) feet wide green colored bike lane coating to the length of the constructed bike lanes in each direction. This will provide for a clearer view to motorist of the bike lane's location so it will not be confused as a general purpose lane or shoulder.

This change order expenditure will be reimbursed as part of the grant.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

The funds for change order #3 additional enhancements will be covered by the federal grant that was awarded by the Local Agency Program administered by FDOT.

BUDGET IMPACT:

Submitted By: Alba Chang, Interim Town Clerk
Marlene Marante Siegel, Interim Town Manager

ATTACHMENTS

1. CO No. 3 Bike Lane Coating



ISO 9001:2015 CERTIFIED

ENGINEERS • PLANNERS • SCIENTISTS • CONSTRUCTION MANAGERS

5835 Blue Lagoon Drive, Suite 303 • Miami, FL 33126 • Phone 305.477.7667

June 17, 2020

To: Maria E. Kunhardt
District Construction Services Manager
FDOT District Six | 1000 NW 111th Avenue Miami, Florida 33172

From: Ramon Llana, E.I.; Senior Construction Engineer 6 *RLl*

Reference: **Town of Bay Harbor Islands – Broad Causeway Corridor Enhancement**
FDOT Project No.: 439906-1-58-01
Contract No.: G1213
FAP: D618-079-B
County: Miami-Dade

Subject: Change Order no.3 – Bike Lane Coating.

Maria, attached, please find the Change Order no.3 for the above referenced subject, for your review and approval. The following is a list of the paperwork attached:

1. Executed Change Order no. 3
2. Executed Contractor's submitted price
3. Engineer's Estimate
4. Backup documentation for Engineer's Estimate

If you have any questions, please do not hesitate to contact me at (786) 516-6478.



CHANGE ORDER NO. 3

Town of Bay Harbor Islands – Broad Causeway Corridor Enhancement

FDOT Project No.: 439906-1

Contract No.: BC-154

FAP: D618-079-B

County: Miami-Dade

This Change Order will authorize the following change to the Contract.

Description of Work:

Add four feet wide Green Colored Bike Lane Coating to the length of the constructed Bike Lanes in each direction.

Justification:

The existing Broad Causeway has two lanes in each direction with a variable width median and the current Enhancement Causeway Project adds a 7 feet wide Bike Lane in each direction.

The Causeway connects the Mainland with the Town of Bay Harbor Islands, Surfside and Bal Harbor to the East. A substantial number of vehicles use the Causeway and a substantial number of Bicyclists and Pedestrians use the Causeway as a means of exercising.

By applying the Green Colored Bike Lane Coating for the entire length in lieu of only adding a green box at each bike lane pavement marking location, it will provide for a clearer view to motorists of the Bike Lane's location so it will not be confused as a general purpose lane or a shoulder. This is particularly important especially at night when the visibility is low. It will provide the Bicyclists and Pedestrians a more defined and safer path to use.

Total cost on this Change Order: \$115,977.30

The Contractor estimated the total cost of the work including the Green Coating, Bicycle Marking Details, MOT and mark ups to be \$151,671.30. However there is an existing pay item in the Contract to be used for the Bicycle Marking Details for a cost of \$35,694.00. This amount can be applied against the submitted cost.

Therefore, the net change of the extra work will be \$115,977.30.

This Change order constitutes full, final, and complete compensation to the Contractor for all costs, expenses, overhead, profit, and damages of any kind that the Contractor may incur in connection with the above referenced change in the Work.

By Signing below the parties indicate acceptance of this Change Order as set forth herein.

TOWN OF BAY HARBOR ISLANDS,
a Florida municipal corporation

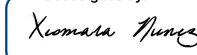
By: 
Name: Douglas Armstrong
Title: Public Works Director
Date: 06/12/2020

CONTRACTOR: JVA ENGINEERING

Francisco Cajade

By: 2020.06.12 15:25:48 -04'00'
Name: Frank Cajade
Title: Project Manager
Date: 06/12/2020

Florida Department of Transportation

DocuSigned by:

D2C7EE0EF9FA4D7
Xiomara Nunez

6/26/2020 | 10:31 AM EDT

Local Program Administrator

**TO:**

Attn: Ramon Llana
City of Bay Harbor

PROJECT:

Broad Causeway

Date	Change Order Request
6/12/20	Green Lane Installation

Labor						
Item	Description	QTY.	UNIT	BURDEN	Unit Price	Total
	Labor					
	Subtotal					\$ -
Material Cost						
Item	Description	QTY.	UNIT	Tax	Unit Price	Total
	Labor					
	Subtotal					\$ -
Equipment						
Item	Description	QTY.	UNIT		Unit Price	Total
	Equipment					
	Subtotal					\$ -
Misc						
Item	Description	QTY.	UNIT		Unit Price	Total
1	Additional MOT	1	LS		\$ 5,000.00	\$ 5,000.00
2	Additional Mobilization	1.00	LS		\$ 1,000.00	\$ 1,000.00
						\$ -
						\$ -
	Subtotal					\$ 6,000.00

Subtotal \$ 6,000.00

Mark-Up (10%) \$ 600.00

Sub-Subtotal \$ 128,520.00

Mark-Up (10%) \$ 12,852.00

Total \$ 147,972.00

Bond (2.5%) \$ 3,699.30

TOTAL OF PROPOSED CHANGE REQUEST (ADD)

\$ 151,671.30

TOTAL OF PROPOSED CHANGE TIME REQUEST (ADD)

0 Calendar Day

JVA Eng. Contractor
Contractor

Francisco Cajade
Name

Francisco Cajade
2020.06.12 15:24:17
-04'00'

Signature

Date

Having received the above, I hereby certify that the best of my knowledge and belief the same reflects adequate values and that the Contractor is entitled to payment as noted above

Owner

Name

Title

Signature

Date

[Signature] PWD

6/15/20



ISO 9001:2015 CERTIFIED

ENGINEERS • PLANNERS • SCIENTISTS • CONSTRUCTION MANAGERS

5835 Blue Lagoon Drive, Suite 303 • Miami, FL 33126 • Phone 305.477.7667

ENGINEER'S ESTIMATE

A. Atlantic Paving Estimate = \$85 per SY

1. Length = $30+85 - 12+20 = 1,865$ LF
2. Area one side = $1,865 \text{ LF} \times 4 \text{ LF wide} / 9 \text{ SF per SY} = 829 \text{ SY}$
3. Total Area = $829 \text{ SY} \times 2 \text{ sides} = 1,658 \text{ SY}$
4. Total Cost = $1658 \text{ SY} \times \$85 \text{ per SY} = \$140,930$

B. Mobilization on the original Contract is about 9% of the Total Contract Amount, therefore I will use the same percentage to calculate the Mobilization for this work.

$$\text{Mobilization} = \$140,930 \times 9\% = \$12,683.70$$

C. 10% Markup

$$10\% \text{ Markup} = (\text{Cost of Green paint} + \text{Mobilization}) \times 10\%$$

$$10\% \text{ Markup} = (\$140,930 + \$12,683.70) \times 10\% = \$15,361.37$$

D. 2.5% Bond = (Cost of Green paint + Mobilization + 10% Markup) * 2.5% = \$4,224.38

$$2.5\% \text{ Bond} = (\$140,930 + \$12,683.70 + \$15,361.37) \times 2.5\% = \$4,424.38$$

E. Total cost = A + B + C + D = $(\$140,930 + \$12,683.70 + \$15,361.37 + \$4,224.38) = \$173,199.45$

Engineer's estimate total cost = \$173,199.45

Contractor's submitted cost = \$151,671.30

Engineer's Estimate cost of \$173,199.45 > Contractor's cost of \$151,671.30

Therefore, the Contractor's submitted cost is acceptable.



Estimate

NAME / ADDRESS		PROJECT	DATE
KCI TECHNOLOGIES PROJ: BAY HARBOR ISLANDS CAUSEWAY			6/3/2020
DESCRIPTION	QTY	COST	TOTAL
(SQ YD) STREETBRICK- XL (BICYCLEWAY) FDOT QPL # 523-0020 GREEN COLORED BIKE LANE COATING AS PER FHWA GREEN COLOR BOX REQUIREMENTS ON NEW (DGFC) ASPHALT ONLY - (1,750 LF X 7' FT WIDE X 2) EXCLUSIONS : -- PERMITS -- BONDING -- LIGHT TOWERS IF NEEDED -- M.O.T. / TRAFFIC CONTROL DEVICES -- TRAFFIC POLICE -- THERMOPLASTIC REMOVAL -- HEAVY DUTY CLEANING OF ASPHALT SURFACE DUE TO INSTALLATION OF TRAFFIC LOOPS. -- PREPARING OF CONCRETE ROADWAY/ SURFACES NOTES : -- APPLICATION AREAS TO BE COMPLETELY FREE OF TACK EMULSION, HYDRAULIC OIL OR ANY BONDED SURFACE CONTAMINANT -- ONSITE TRASH DUMPSTER TO BE PROVIDED AT NO COST -- APPLICATION AREAS TO BE PROVIDED BY PRIME CONTRACTOR - NOT RESPONSIBLE FOR INCORRECT LAYOUT AREAS - FULL PAYMENT BASED ON ALL APPLICATION AREAS. -- ONE MOBILIZATION IF EXTRA NEEDED ADD (\$ 900.00) EACH -- PRICE IS BASED ON REGULAR DAY TIME HOURS OF OPERATION. -- THIS ESTIMATE MUST BE SIGNED & REFERED TO AS EXHIBIT "A " IN ANY SUBCONTRACT AGREEMENTS FORTHCOMING FROM THE PRIME CONTRACTORS. -- DEPOSIT NEEDED TO SCHEDULE	2,722.22	85.00	231,388.70
PRICE VALID FOR 30 DAYS / ALL WORK IS GUARANTEED FOR 3- YEARS		TOTAL \$231,388.70	

Customer agrees to pay all costs & attorney's fees for collection of any unpaid balance .

Any invoice not paid within 30 days will be subject to a late charge of 18 % per annum .

SIGNATURE _____

P.O. BOX 552218 DAVIE, FL 33355
 Ph: (305) 513- 8632 Fax: (305) 513- 8633
 www.atlanticpaving.com e-mail: info@atlanticpaving.com

AGENDA ITEM REPORT

August 10, 2020

ITEM NUMBER: 7.

ITEM: Consideration and Approval of an Inter Local Agreement with Miami-Dade County to allocate funds to local municipalities for eligible activities under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Enclosed is a copy of the proposed agreement.

DESCRIPTION:

The proposed Inter Local Agreement with Miami-Dade County is to ensure the effective and timely dissemination of allocated Corona Relief Fund dollars reimbursing local municipalities for eligible activities under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The Town may seek reimbursement under this agreement only for allowable cost incurred through December 30, 2020.

Enclosed is a copy of the proposed Inter Local Agreement.

RECOMMENDED ACTION:

Approval

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Interim Town Clerk
Marlene Marante Siegel, Interim Town Manager

ATTACHMENTS

1. CARES Act Interlocal Agreement 08.03.20

**INTERLOCAL AGREEMENT
FOR FEDERALLY-FUNDED SUBAWARD**

This Interlocal Agreement ("Agreement") entered into this ____ day of _____ 2020, by and between Miami-Dade County, a political subdivision of the State of Florida ("County"), and _____, a municipal corporation located within the geographic boundaries of Miami-Dade County, Florida ("Municipality").

For the purposes of this Agreement, the County serves as the Pass-through entity for a Federal Award, and the Sub-Recipient ("Municipality") serves as the recipient of a subaward.

RECITALS

WHEREAS, 2 Code of Federal Regulations (C.F.R.) §200.92 states that a "subaward may be provided through any form of legal Agreement, including an Agreement that the County considers a contract."

WHEREAS, this Agreement sets forth the terms and understanding between the named Parties to pursue their mutual interest in responding to and recovering from Coronavirus Disease 2019 (COVID-19).

WHEREAS, the primary purpose of this Agreement is to ensure the effective and timely dissemination of allocated Corona Relief Fund (CRF) dollars reimbursing the local municipality for eligible activities under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

WHEREAS, this Agreement is not a legal requirement of the United States Department of Treasury, but rather is a voluntary Agreement to provide funding to local municipalities if all conditions are met to enable the County to remain in compliance with the Department of Treasury's Office of Inspector General's memorandum regarding CRF Monitoring, Reporting and Record Retention Requirements (Exhibit 3).

WHEREAS, Miami-Dade County was awarded Funds under the CRF through the CARES Act.

WHEREAS, as allowed under the Department of Treasury's guidance pertaining to the Fund, the County will reimburse the Municipality for certain eligible CRF activities as outlined in the U.S. Department of Treasury's "*Coronavirus Relief Fund Guidance for State, Territorial, Local and Tribal Governments*" as well as the most current "*Coronavirus Relief Fund Frequently Asked Questions*" (Exhibits 1 and 2).

DEFINITIONS

- A. "CARES Act" shall mean Coronavirus Aid, Relief, and Economic Security Act.
- B. "CRF" shall mean Coronavirus Relief Fund.
- C. "Contractor" shall mean any entity, public or private, providing services as described in this Agreement.
- D. "County" shall mean Miami-Dade County, Florida.
- E. "Federal Award" shall mean Federal financial assistance that a non-Federal entity receives directly from a Federal Awarding Agency or indirectly from a Pass-through entity per 2 C.F.R. §200.38.
- F. "The Agreement" shall mean this Interlocal (subaward) Agreement for the Federally-Funded CRF.
- G. "Pass-through entity" shall mean a non-Federal entity that provides a subaward to a Sub-Recipient to carry out part of a Federal program per 2 C.F.R. §200.74.
- H. "Subaward" shall mean an award provided by a Pass-through entity to a Sub-Recipient for the Sub-Recipient to carry out part of a Federal Award received by the Pass-through entity per 2 C.F.R. §200.93.
- I. "Sub-Recipient" shall mean a non-Federal entity, such as a Municipality, that receives a subaward from a Pass-through entity to carry out part of a Federal program per 2 C.F.R. §200.93.

SUBAWARD INFORMATION

The following Agreement information is provided pursuant to 2 C.F.R. §200.331(a)(1):

Sub-Recipient's name:	_____
Sub-Recipient's unique entity identifier:	_____
Federal Award Date:	<u>March 13, 2020</u>
Name of Federal Awarding Agency:	<u>U.S. Treasury Department</u>
Name of Pass-through entity:	<u>Miami-Dade County</u>
Catalog of Federal Domestic Assistance (CFDA) Number and Name:	<u>21.019 Coronavirus Relief Fund</u>

ARTICLE I REPRESENTATIONS

- A. The Municipality represents that it is fully qualified and eligible to receive these CARES Act Funds.
- B. The Municipality certifies that it has the legal authority to receive the CARES Act Funds under this Agreement and that its governing body has authorized the execution and acceptance of this Agreement. The Municipality also certifies that the undersigned person has the authority to legally execute and bind the Municipality to the terms of this Agreement.
- C. The Municipality, by its decision to participate in this CARES Act Program, bears the ultimate responsibility for ensuring compliance with all applicable State and Federal laws, regulations and policies, and bears the ultimate consequences of any adverse decisions rendered by the County, the Federal Awarding Agency, or any other Federal agencies with audit, regulatory, or enforcement authority.
- D. The County received these CARES Act Funds from the Federal government, and the County has the authority to subgrant these CARES Act Funds to the Municipality upon the terms and conditions outlined herein.
- E. The County, as the Pass-through entity and fiduciary of such Federal Funding, reserves the right to demand that the Municipality comply with all applicable County, State and Federal laws, regulations and policies, terminate reimbursements, and take any and all other actions it deems appropriate to protect those CARES Act Funds for which it is responsible.

ARTICLE II RESPONSIBILITIES

- A. The Parties to this Agreement shall work together in a cooperative and coordinated effort, and in such a manner and fashion to utilize the CRF Funds most effectively and efficiently, to respond to and recover from COVID-19.
- B. Both the County and the Municipality are expected to remain in compliance with the Treasury Department's Guidance and FAQ's regarding CRF as outlined in Exhibits 1 and 2. As demonstrated since the initial publishing of the FAQ's, these are subject to change. The County's acceptance of an activity will be based on the information available at that time. If further clarification from the Treasury Department later determines that activity to be ineligible, the Municipality will be expected to either return the advanced Funds or propose an alternate eligible activity.

ARTICLE III TERMS OF AGREEMENT

A. This Agreement will begin upon execution by both Parties and shall end upon closeout of the Municipality's account for this disaster by the County and/or the Federal Awarding Agency, unless terminated earlier as specified elsewhere in this Agreement.

B. The Municipality may seek reimbursement under this Agreement only for allowable costs incurred through December 30, 2020. Any funds not spent by this deadline shall be returned to the County.

C. The County may terminate this Agreement for cause after seven (7) days written notice. Cause can include Funds not being expended in a timely manner, misuse of Funds, fraud, lack of compliance with applicable rules, laws and regulations, and refusal by the Municipality to permit public access to any document, paper, letter, or other material subject to disclosure under Chapter 119, Florida Statutes, as amended. Upon such termination, the Municipality shall within thirty (30) days, return all unexpended Funds to the County, or the County will reimburse the Municipality for any remaining eligible expenditures through the date of termination.

D. The County may terminate this Agreement for convenience or when it determines, in its sole discretion, that continuing the Agreement would not produce beneficial results in line with the further expenditure of Funds, by providing the Municipality with seven (7) days prior written notice.

E. The Parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement.

F. In the event that this Agreement is terminated, the Municipality will not incur new obligations after the Municipality has received the notification of termination.

ARTICLE IV LAWS, RULES, REGULATIONS AND POLICIES

Performance under this Agreement is subject to Section 601(a) of the Social Security Act, as incorporated by Section 5001 of the "CARES Act". Fund payments are only subject to the following requirements in the Uniform Guidance (2 C.F.R. Part 200): 2 CFR §200.303 regarding Internal Controls, 2 CFR §§200.330 through 200.332 regarding Sub-Recipient Monitoring and Management, and Subpart F regarding Audit Requirements. Pursuant to Exhibit 1, the CARES Act provides that payments from the Fund may only be used to cover costs that:

A. are necessary expenditures incurred due to the public health emergency with respect to the COVID-19;

B. were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the County or Municipality; and

C. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

ARTICLE V CONTACTS

The County's Contract Manager shall be responsible for enforcing performance of this Agreement's terms and conditions and shall serve as the County's liaison with the Municipality. As part of his/her duties, the Contract Manager for the County shall monitor, review, and document all activities for which the Municipality requests payment.

A. The County's Contract Manager for this Agreement is:

Name: Barbara Gomez, CPA
Title: Deputy Director, Miami-Dade County Finance Department
Address: 111 N.W. 1st Street, Suite 2550
Miami, Florida 33128-1900
Telephone: (305) 375-5245
Email: Barbara.Gomez@miamidade.gov

B. The name and address of the Representative of the Municipality responsible for the administration of this Agreement is:

Name: _____
Title: _____
Address: _____

Telephone: _____
Email: _____

C. In the event that different representatives or addresses are designated by either Party after execution of this Agreement, notice of the name, title, and address of the new representative will be provided to the other Party in writing via letter or electronic mail. It is the Municipality's responsibility to authorize its users in the County's Grants Management System. Only the Authorized or Primary Agents identified in Attachment A to this Agreement ("Designation of Authority") may authorize addition or removal of agency users.

ARTICLE VI
REIMBURSEMENT OF ELIGIBLE COSTS

A. The County will reimburse the Municipality for COVID-19 related and incurred operational expenses eligible to be paid by the Fund, other than FEMA Public Assistance (PA) eligible expenses, for the period of March 1, 2020 through December 30, 2020.

B. Whenever eligible, the Municipality will seek FEMA reimbursement rather than CRF reimbursement since the CRF can be used more readily to support the public's economic needs due to impacts of the pandemic.

C. The County will reimburse the Municipality the FEMA PA local match upon documentation of its application for FEMA reimbursement.

D. The County will reimburse the Municipality for CRF eligible operational costs, that are not FEMA reimbursable, within the following categories:

1. Personnel Costs - Payroll expenses for employees whose service are substantially dedicated to mitigating or responding to COVID19 public health emergency such as:
 - a. Park Attendant performing duties to enforce compliance with public health orders
 - b. Unbudgeted overtime to perform functions to mitigate or respond to COVID19 health emergency
2. Medical Expenses – Examples:
 - a. COVID19 testing
 - b. COVID19 tracing
 - c. Medical responses, including emergency transportation
3. Public Health - Examples:
 - a. Communication and enforcement of local health orders
 - b. Acquisition and Distribution of medical and protective supplies, such as sanitizing products, personal protection equipment for County employees and workers in connection with COVID19 public health emergency
 - c. Disinfection of public areas and other facilities
 - d. Public Safety measures undertaken in response to COVID19 - Quarantine Individuals

4. Actions to Facilitate Compliance Expenses - Examples:
 - a. Food deliveries to residents including senior citizens and other vulnerable populations, to enable compliance with public health precautions
 - b. Improvements to telework capabilities for public employees to enable compliance with public health precautions
 - c. Provide paid sick, family, and medical leave to public employees to enable compliance with public health precautions
5. Miscellaneous Expenditures - Any other COVID19 related expenses reasonably necessary to the function of government that satisfy the Fund's eligibility criteria and that are not FEMA reimbursable.

E. The Municipality will provide all documentation of costs to the County on the County's On-line Portal.

F. The County will audit all documentation for sufficiency and costs for eligibility and if in order, will reimburse the Municipality in an expedited manner. If not in order, the County will notify the Municipality of issues related to the submission.

G. The County will reimburse the Municipality for eligible economic support and assistance program costs that benefit residents and local businesses if the Board of County Commissioners appropriates CRF monies to such program(s). Economic support and assistance programs are not FEMA eligible and reimbursements for these programs must comply with Article VI (E) and (F), above.

ARTICLE VII FUNDING

The County, subject to availability, will provide Funds on a cost reimbursement basis to the Municipality for eligible activities approved by the County.

A. Any request for payment under this Agreement must include a certification, signed by an official who is authorized to legally bind the Municipality, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the Report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in this Agreement".

B. The Municipality must complete Attachment A by designating at least three agents to execute any Requests for Reimbursement, certifications, changes to contacts, or other necessary documentation on behalf of the Municipality. Attachment A must be completed electronically and submitted via email to the County Contract Manager (see Article V).

C. The County will review all Requests for Reimbursement and only release funds for eligible, substantiated costs.

ARTICLE VIII PROCUREMENT

A. The Municipality shall ensure that any procurement involving Funds authorized by the Agreement complies with all applicable Federal and State laws and regulations. For this event, the County and funding Federal Agency recognize that noncompetitive procurements may be necessary to save lives, to protect property and public health and to ensure public safety, as well as to lessen or avert the threat of a catastrophe. The President's unprecedented Nationwide Emergency Declaration and the Secretary of Health and Human Services' (HHS) declaration of a Public Health Emergency for COVID-19 establish that exigent and emergency circumstances currently exist. For the duration of the Public Health Emergency, which began January 27, 2020 as determined by HHS, local governments, tribal governments, nonprofits, and other non-state entities may proceed with new and existing noncompetitively procured contracts in order to protect property and public health and safety, or to lessen or avert the threats created by emergency situations for 1) emergency protective measures and 2) to respond to or address COVID-19.

B. If the Municipality contracts with any contractor or vendor for performance of any portion of the work required under this Agreement, the Municipality must incorporate into its contract with such contractor or vendor an indemnification clause holding the Federal Government, its employees and/or their contractors, the County, its employees and/or their contractors, and the Municipality and its employees and/or their contractors harmless from liability to third Parties for claims asserted under such contract.

ARTICLE IX PAYMENTS

A. Requests for Reimbursement (RFR) serve as invoices and shall include the supporting documentation for all costs of the project or services in detail sufficient for a proper pre-audit and post-audit thereof. The final RFR shall be submitted within thirty (30) days after the expiration of this Agreement.

B. If the necessary Funds are not available to meet the funding obligations under this Agreement, as a result of action by the United States Congress, the Federal Office of Management and Budget, the County Chief Financial Officer, or under Article X (B) of this Agreement, all obligations on the part of the County to make any further payment of Funds shall terminate, and the Municipality shall submit its closeout report within thirty (30) days of receiving notice from the County.

C. If the Municipality separately invests amounts received under this Agreement, the interest earnings or other proceeds must be used to cover expenditures incurred in accordance with Section 601(d) of the Social Security Act and the Guidance on eligible expenditures (Exhibit 1). If the Municipality deposits Fund payments in its General Accounts, it may use the CRF dollars to meet immediate cash management needs provided that the full amount of the payment is used to cover necessary expenditures. Fund payments are not subject to the Cash Management Improvement Act of 1990, as amended.

ARTICLE X FUND REPAYMENT

A. All refunds or repayments due to the County under this Agreement are due no later than thirty (30) days from notification by the County of Funds due.

B. The Municipality agrees that the County may withhold Funds otherwise payable to the Municipality upon a determination by the County or the Federal Awarding Agency that Funds exceeding eligible costs have been disbursed to the Municipality pursuant to this Agreement.

C. The Municipality understands and agrees that the County may offset any Funds due and payable to the Municipality until the debt to the County is satisfied.

D. All refunds or repayments due to the County under this Agreement are to be made payable to the order of "Miami-Dade County" and be mailed directly to the Contract Manager (as stipulated in Article V).

ARTICLE XI RECORDS

A. The Federal Awarding Agency, Inspectors General, the Comptroller General of the United States, and the County, or any of the County authorized representatives, (e.g. the Inspector General of the County, the Commission Auditor, Audit and Management Services Department), shall enjoy the right of access to any documents, financial statements, papers, or other records of the Municipality which are pertinent to this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right of access also includes timely and reasonable access to the Municipality's personnel for the purpose of interview and discussion related to such documents.

B. As required by the County's record retention requirements (Chapter 119, Florida Statutes) and by the Department of the Treasury Memorandum for Coronavirus Relief Fund Reporting and Record Retention Requirements (Exhibit 3), the Municipality shall retain sufficient records to show its compliance with the terms of this Agreement, as well as the compliance of all subcontractors or consultants paid from Funds under this Agreement, for a period of five (5) years from the date of submission of the final expenditure report.

C. As required by 2 C.F.R. §200.303, the Municipality shall take reasonable measures to safeguard protected personal identifiable information and other information the Federal Awarding Agency or the County designates as sensitive or the Municipality considers sensitive consistent with applicable Federal, State, Local, and Tribal laws regarding privacy and obligations of confidentiality.

D. The Municipality shall maintain all records for the Municipality and for all subcontractors or consultants to be paid from Funds provided under this Agreement, including documentation of all program costs, in a form sufficient to determine compliance with the requirements and objectives of this Agreement.

ARTICLE XII REPORTS

A. The Municipality shall provide the County with unaudited quarterly reports as may be prescribed in Exhibit 3 or, as requested by the County, and any applicable close-out reports.

B. Quarterly reports are due to the County no later than fifteen (15) days after the end of each quarter of the program year and shall be sent each quarter until submission of the administrative close-out report. The ending dates for each quarter of the program year are March 31, June 30, September 30 and December 31.

C. The closeout report is due sixty (60) days after termination of this Agreement or sixty (60) days after completion of the activities contained in this Agreement, whichever first occurs.

D. The Municipality shall provide additional program updates, reports or information that may be required by the Federal Award Agency or the County.

ARTICLE XIII MONITORING

A. The County shall monitor the performance of the Municipality under this Agreement, as well as that of its subcontractors and/or consultants who are paid from Funds provided under this Agreement, to ensure that the tasks outlined in the Scope of Work are being accomplished within the specified time periods, and other performance goals are being achieved.

B. In addition to reviews of audits, monitoring procedures may include, but not be limited to, on-site visits by County staff, desk reviews and/or other procedures. The Municipality agrees to cooperate with any monitoring procedures/processes deemed appropriate by the County.

ARTICLE XIV AUDITS

A. The Municipality shall comply with the audit requirements contained in 2 C.F.R. Part 200, Subpart F.

B. In accounting for the receipt and expenditure of Funds under this Agreement, the Municipality shall follow Generally Accepted Accounting Principles ("GAAP"). As defined by 2 C.F.R. §200.49, GAAP "has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB)."

C. As per this Agreement, audits conducted under 2 C.F.R. Part 200, Subpart F shall be performed in accordance with Generally Accepted Government Auditing Standards ("GAGAS") as issued by the Comptroller General of the United States.

1. If an audit shows that all or any portion of the Funds disbursed were not spent in accordance with the conditions of this Agreement, the Municipality shall be held liable for reimbursement to the County.
2. The Municipality shall have all audits completed by an independent auditor, which is defined in section 215.97(2)(i), Florida Statutes, as “an independent certified public accountant licensed under chapter 473.” The independent auditor shall state that the audit complied with the applicable provisions noted above. The audit must be received by the County no later than nine months from the end of the Municipality’s fiscal year.
3. The Municipality shall send copies of the audit and any Management Letters issued by the auditor to the County’s Contract Manager.

ARTICLE XV MANDATED CONDITIONS

A. Execution of this Agreement constitutes a certification that the Municipality will comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et. seq.). Pursuant to 44 C.F.R. §§ 7 and 16, and 44 C.F.R. § 206.11, the Municipality must undertake an active program of nondiscrimination in its administration of disaster assistance under this Agreement.

B. The Municipality agrees to comply with the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. Section 12101 et seq.), which prohibits discrimination by public and private entities on the basis of disability in employment, public accommodations, transportation, State and Local government services, and telecommunications.

C. The Municipality shall require that this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all such sub-recipients shall certify and disclose the following to the best of their knowledge and belief that they:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal department or agency;
2. Have not, within a five (5)-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local); and,
4. Have not, within a five (5)-year period preceding this Agreement, had one or more public transactions (Federal, State or Local) terminated for cause or default. If the Municipality is unable to certify to any of the statements in this certification, then the Municipality shall attach an explanation to this Agreement.

ARTICLE XVI LOBBYING PROHIBITION

The Municipality certifies, by its Representative's signature to this Agreement, that to the best of his or her knowledge and belief:

A. No Federal Funds awarded under this Agreement have been paid or will be paid, by or on behalf of the Municipality, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.

B. If any Funds other than Federal appropriated Funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the Municipality shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

C. The Municipality shall require that this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all such sub-recipients shall certify and disclose accordingly.

D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ARTICLE XVII
LIABILITY AND INDEMNIFICATION

The Municipality is solely responsible to the Parties it deals with in carrying out the terms of this Agreement. The Municipality shall be responsible for and agrees to indemnify and hold harmless and defend the County and its boards, commissions, agencies, officers and employees from and against all third party claims, demands and causes of actions, of any nature whatsoever, directly resulting from the willful misconduct or negligent acts or omissions of the Municipality, its officers, agents, employees, or subcontractors in its performance under this Agreement. The Municipality shall pay all claims and losses in connection therewith and, at the election of the County, shall investigate and defend, or pay for the defense of, all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Municipality expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Municipality shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided. For purposes of this Agreement, Municipality agrees that it is not an agent of the County. Nothing herein shall be construed as consent by the County to be sued by third parties in any matter arising out of any contract.

ARTICLE XVIII
EVENTS OF DEFAULT

If any of the following events occur ("Events of Default"), all obligations on the part of the County to make further payment of Funds shall terminate and the County has the option to exercise any of its remedies as set forth in Article XIX:

- A. Any warranty or representation made by the Municipality in this Agreement is or becomes false or misleading in any respect.
- B. The Municipality fails or is unable or unwilling to perform and complete on time any of its obligations under this Agreement, following a reasonable opportunity to cure.

ARTICLE XIX REMEDIES

If an Event of Default occurs, then the County shall, after seven (7) days of providing written notice to the Municipality and upon the Municipality's failure to cure within those seven (7) days, exercise any one or more of the following remedies, either concurrently or consecutively:

- A. Terminate this Agreement, provided that the Municipality is given at least seven (7) days prior written notice of the termination.
- B. Withhold or suspend payment of all or any part of a request for payment.
- C. Require that the Municipality refund to the County any monies used for ineligible purposes.
- D. Exercise any other rights or remedies which may be available under law.

ARTICLE XX EXHIBITS AND ATTACHMENT

- A. All Exhibits and the Attachment to this Agreement are incorporated as if set out fully.
- B. In the event of any inconsistencies or conflict between the language of this Agreement and the Exhibits and Attachment, the language of the Exhibits and Attachment shall control, but only to the extent of the conflict or inconsistency.
- C. This Agreement has the following Exhibits and Attachment:
 - 1. **Exhibit 1** – Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments - Updated June 30, 2020
 - 2. **Exhibit 2** – Coronavirus Relief Fund Frequently Asked Questions - Updated July 8, 2020
 - 3. **Exhibit 3** – Department of the Treasury Memorandum for Coronavirus Relief Fund Reporting and Record Retention Requirements – July 2, 2020
 - 4. **Attachment A** – Designation of Authority

EXHIBIT – 1

Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments Updated June 30, 2020¹

The purpose of this document is to provide guidance to recipients of the funding available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). The CARES Act established the Coronavirus Relief Fund (the “Fund”) and appropriated \$150 billion to the Fund. Under the CARES Act, the Fund is to be used to make payments for specified uses to States and certain local governments; the District of Columbia and U.S. Territories (consisting of the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands); and Tribal governments.

The CARES Act provides that payments from the Fund may only be used to cover costs that—

1. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
2. were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the State or government; and
3. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.²

The guidance that follows sets forth the Department of the Treasury’s interpretation of these limitations on the permissible use of Fund payments.

Necessary expenditures incurred due to the public health emergency

The requirement that expenditures be incurred “due to” the public health emergency means that expenditures must be used for actions taken to respond to the public health emergency. These may include expenditures incurred to allow the State, territorial, local, or Tribal government to respond directly to the emergency, such as by addressing medical or public health needs, as well as expenditures incurred to respond to second-order effects of the emergency, such as by providing economic support to those suffering from employment or business interruptions due to COVID-19-related business closures.

Funds may not be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the statute. Although a broad range of uses is allowed, revenue replacement is not a permissible use of Fund payments.

The statute also specifies that expenditures using Fund payments must be “necessary.” The Department of the Treasury understands this term broadly to mean that the expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending Fund payments.

Costs not accounted for in the budget most recently approved as of March 27, 2020

The CARES Act also requires that payments be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020. A cost meets this requirement if either (a) the

¹ This version updates the guidance provided under “Costs incurred during the period that begins on March 1, 2020, and ends on December 30, 2020”.

² See Section 601(d) of the Social Security Act, as added by section 5001 of the CARES Act.

cost cannot lawfully be funded using a line item, allotment, or allocation within that budget or (b) the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation.

The “most recently approved” budget refers to the enacted budget for the relevant fiscal period for the particular government, without taking into account subsequent supplemental appropriations enacted or other budgetary adjustments made by that government in response to the COVID-19 public health emergency. A cost is not considered to have been accounted for in a budget merely because it could be met using a budgetary stabilization fund, rainy day fund, or similar reserve account.

Costs incurred during the period that begins on March 1, 2020, and ends on December 30, 2020

Finally, the CARES Act provides that payments from the Fund may only be used to cover costs that were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020 (the “covered period”). Putting this requirement together with the other provisions discussed above, section 601(d) may be summarized as providing that a State, local, or tribal government may use payments from the Fund only to cover previously unbudgeted costs of necessary expenditures incurred due to the COVID-19 public health emergency during the covered period.

Initial guidance released on April 22, 2020, provided that the cost of an expenditure is incurred when the recipient has expended funds to cover the cost. Upon further consideration and informed by an understanding of State, local, and tribal government practices, Treasury is clarifying that for a cost to be considered to have been incurred, performance or delivery must occur during the covered period but payment of funds need not be made during that time (though it is generally expected that this will take place within 90 days of a cost being incurred). For instance, in the case of a lease of equipment or other property, irrespective of when payment occurs, the cost of a lease payment shall be considered to have been incurred for the period of the lease that is within the covered period, but not otherwise. Furthermore, in all cases it must be necessary that performance or delivery take place during the covered period. Thus the cost of a good or service received during the covered period will not be considered eligible under section 601(d) if there is no need for receipt until after the covered period has expired.

Goods delivered in the covered period need not be used during the covered period in all cases. For example, the cost of a good that must be delivered in December in order to be available for use in January could be covered using payments from the Fund. Additionally, the cost of goods purchased in bulk and delivered during the covered period may be covered using payments from the Fund if a portion of the goods is ordered for use in the covered period, the bulk purchase is consistent with the recipient’s usual procurement policies and practices, and it is impractical to track and record when the items were used. A recipient may use payments from the Fund to purchase a durable good that is to be used during the current period and in subsequent periods if the acquisition in the covered period was necessary due to the public health emergency.

Given that it is not always possible to estimate with precision when a good or service will be needed, the touchstone in assessing the determination of need for a good or service during the covered period will be reasonableness at the time delivery or performance was sought, *e.g.*, the time of entry into a procurement contract specifying a time for delivery. Similarly, in recognition of the likelihood of supply chain disruptions and increased demand for certain goods and services during the COVID-19 public health emergency, if a recipient enters into a contract requiring the delivery of goods or performance of services by December 30, 2020, the failure of a vendor to complete delivery or services by December 30, 2020, will not affect the ability of the recipient to use payments from the Fund to cover the cost of such goods or services if the delay is due to circumstances beyond the recipient’s control.

This guidance applies in a like manner to costs of subrecipients. Thus, a grant or loan, for example, provided by a recipient using payments from the Fund must be used by the subrecipient only to purchase (or reimburse a purchase of) goods or services for which receipt both is needed within the covered period and occurs within the covered period. The direct recipient of payments from the Fund is ultimately responsible for compliance with this limitation on use of payments from the Fund.

Nonexclusive examples of eligible expenditures

Eligible expenditures include, but are not limited to, payment for:

1. Medical expenses such as:
 - COVID-19-related expenses of public hospitals, clinics, and similar facilities.
 - Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs.
 - Costs of providing COVID-19 testing, including serological testing.
 - Emergency medical response expenses, including emergency medical transportation, related to COVID-19.
 - Expenses for establishing and operating public telemedicine capabilities for COVID-19-related treatment.
2. Public health expenses such as:
 - Expenses for communication and enforcement by State, territorial, local, and Tribal governments of public health orders related to COVID-19.
 - Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment, for medical personnel, police officers, social workers, child protection services, and child welfare officers, direct service providers for older adults and individuals with disabilities in community settings, and other public health or safety workers in connection with the COVID-19 public health emergency.
 - Expenses for disinfection of public areas and other facilities, *e.g.*, nursing homes, in response to the COVID-19 public health emergency.
 - Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety.
 - Expenses for public safety measures undertaken in response to COVID-19.
 - Expenses for quarantining individuals.
3. Payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.
4. Expenses of actions to facilitate compliance with COVID-19-related public health measures, such as:
 - Expenses for food delivery to residents, including, for example, senior citizens and other vulnerable populations, to enable compliance with COVID-19 public health precautions.
 - Expenses to facilitate distance learning, including technological improvements, in connection with school closings to enable compliance with COVID-19 precautions.
 - Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions.

- Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions.
 - COVID-19-related expenses of maintaining state prisons and county jails, including as relates to sanitation and improvement of social distancing measures, to enable compliance with COVID-19 public health precautions.
 - Expenses for care for homeless populations provided to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.
5. Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency, such as:
 - Expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures.
 - Expenditures related to a State, territorial, local, or Tribal government payroll support program.
 - Unemployment insurance costs related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.
 6. Any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the Fund's eligibility criteria.

Nonexclusive examples of ineligible expenditures³

The following is a list of examples of costs that would *not* be eligible expenditures of payments from the Fund.

1. Expenses for the State share of Medicaid.⁴
2. Damages covered by insurance.
3. Payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.
4. Expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds.
5. Reimbursement to donors for donated items or services.
6. Workforce bonuses other than hazard pay or overtime.
7. Severance pay.
8. Legal settlements.

³ In addition, pursuant to section 5001(b) of the CARES Act, payments from the Fund may not be expended for an elective abortion or on research in which a human embryo is destroyed, discarded, or knowingly subjected to risk of injury or death. The prohibition on payment for abortions does not apply to an abortion if the pregnancy is the result of an act of rape or incest; or in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed. Furthermore, no government which receives payments from the Fund may discriminate against a health care entity on the basis that the entity does not provide, pay for, provide coverage of, or refer for abortions.

⁴ See 42 C.F.R. § 433.51 and 45 C.F.R. § 75.306.

EXHIBIT – 2

Coronavirus Relief Fund Frequently Asked Questions Updated as of July 8, 2020

The following answers to frequently asked questions supplement Treasury’s Coronavirus Relief Fund (“Fund”) Guidance for State, Territorial, Local, and Tribal Governments, dated April 22, 2020, (“Guidance”).¹ Amounts paid from the Fund are subject to the restrictions outlined in the Guidance and set forth in section 601(d) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”).

Eligible Expenditures

Are governments required to submit proposed expenditures to Treasury for approval?

No. Governments are responsible for making determinations as to what expenditures are necessary due to the public health emergency with respect to COVID-19 and do not need to submit any proposed expenditures to Treasury.

The Guidance says that funding can be used to meet payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. How does a government determine whether payroll expenses for a given employee satisfy the “substantially dedicated” condition?

The Fund is designed to provide ready funding to address unforeseen financial needs and risks created by the COVID-19 public health emergency. For this reason, and as a matter of administrative convenience in light of the emergency nature of this program, a State, territorial, local, or Tribal government may presume that payroll costs for public health and public safety employees are payments for services substantially dedicated to mitigating or responding to the COVID-19 public health emergency, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise.

The Guidance says that a cost was not accounted for in the most recently approved budget if the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation. What would qualify as a “substantially different use” for purposes of the Fund eligibility?

Costs incurred for a “substantially different use” include, but are not necessarily limited to, costs of personnel and services that were budgeted for in the most recently approved budget but which, due entirely to the COVID-19 public health emergency, have been diverted to substantially different functions. This would include, for example, the costs of redeploying corrections facility staff to enable compliance with COVID-19 public health precautions through work such as enhanced sanitation or enforcing social distancing measures; the costs of redeploying police to support management and enforcement of stay-at-home orders; or the costs of diverting educational support staff or faculty to develop online learning capabilities, such as through providing information technology support that is not part of the staff or faculty’s ordinary responsibilities.

Note that a public function does not become a “substantially different use” merely because it is provided from a different location or through a different manner. For example, although developing online instruction capabilities may be a substantially different use of funds, online instruction itself is not a substantially different use of public funds than classroom instruction.

¹ The Guidance is available at <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>.

May a State receiving a payment transfer funds to a local government?

Yes, provided that the transfer qualifies as a necessary expenditure incurred due to the public health emergency and meets the other criteria of section 601(d) of the Social Security Act. Such funds would be subject to recoupment by the Treasury Department if they have not been used in a manner consistent with section 601(d) of the Social Security Act.

May a unit of local government receiving a Fund payment transfer funds to another unit of government?

Yes. For example, a county may transfer funds to a city, town, or school district within the county and a county or city may transfer funds to its State, provided that the transfer qualifies as a necessary expenditure incurred due to the public health emergency and meets the other criteria of section 601(d) of the Social Security Act outlined in the Guidance. For example, a transfer from a county to a constituent city would not be permissible if the funds were intended to be used simply to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify as an eligible expenditure.

Is a Fund payment recipient required to transfer funds to a smaller, constituent unit of government within its borders?

No. For example, a county recipient is not required to transfer funds to smaller cities within the county's borders.

Are recipients required to use other federal funds or seek reimbursement under other federal programs before using Fund payments to satisfy eligible expenses?

No. Recipients may use Fund payments for any expenses eligible under section 601(d) of the Social Security Act outlined in the Guidance. Fund payments are not required to be used as the source of funding of last resort. However, as noted below, recipients may not use payments from the Fund to cover expenditures for which they will receive reimbursement.

Are there prohibitions on combining a transaction supported with Fund payments with other CARES Act funding or COVID-19 relief Federal funding?

Recipients will need to consider the applicable restrictions and limitations of such other sources of funding. In addition, expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds, are not eligible uses of Fund payments.

Are States permitted to use Fund payments to support state unemployment insurance funds generally?

To the extent that the costs incurred by a state unemployment insurance fund are incurred due to the COVID-19 public health emergency, a State may use Fund payments to make payments to its respective state unemployment insurance fund, separate and apart from such State's obligation to the unemployment insurance fund as an employer. This will permit States to use Fund payments to prevent expenses related to the public health emergency from causing their state unemployment insurance funds to become insolvent.

Are recipients permitted to use Fund payments to pay for unemployment insurance costs incurred by the recipient as an employer?

Yes, Fund payments may be used for unemployment insurance costs incurred by the recipient as an employer (for example, as a reimbursing employer) related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.

The Guidance states that the Fund may support a “broad range of uses” including payroll expenses for several classes of employees whose services are “substantially dedicated to mitigating or responding to the COVID-19 public health emergency.” What are some examples of types of covered employees?

The Guidance provides examples of broad classes of employees whose payroll expenses would be eligible expenses under the Fund. These classes of employees include public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. Payroll and benefit costs associated with public employees who could have been furloughed or otherwise laid off but who were instead repurposed to perform previously unbudgeted functions substantially dedicated to mitigating or responding to the COVID-19 public health emergency are also covered. Other eligible expenditures include payroll and benefit costs of educational support staff or faculty responsible for developing online learning capabilities necessary to continue educational instruction in response to COVID-19-related school closures. Please see the Guidance for a discussion of what is meant by an expense that was not accounted for in the budget most recently approved as of March 27, 2020.

In some cases, first responders and critical health care workers that contract COVID-19 are eligible for workers’ compensation coverage. Is the cost of this expanded workers compensation coverage eligible?

Increased workers compensation cost to the government due to the COVID-19 public health emergency incurred during the period beginning March 1, 2020, and ending December 30, 2020, is an eligible expense.

If a recipient would have decommissioned equipment or not renewed a lease on particular office space or equipment but decides to continue to use the equipment or to renew the lease in order to respond to the public health emergency, are the costs associated with continuing to operate the equipment or the ongoing lease payments eligible expenses?

Yes. To the extent the expenses were previously unbudgeted and are otherwise consistent with section 601(d) of the Social Security Act outlined in the Guidance, such expenses would be eligible.

May recipients provide stipends to employees for eligible expenses (for example, a stipend to employees to improve telework capabilities) rather than require employees to incur the eligible cost and submit for reimbursement?

Expenditures paid for with payments from the Fund must be limited to those that are necessary due to the public health emergency. As such, unless the government were to determine that providing assistance in the form of a stipend is an administrative necessity, the government should provide such assistance on a reimbursement basis to ensure as much as possible that funds are used to cover only eligible expenses.

May Fund payments be used for COVID-19 public health emergency recovery planning?

Yes. Expenses associated with conducting a recovery planning project or operating a recovery coordination office would be eligible, if the expenses otherwise meet the criteria set forth in section 601(d) of the Social Security Act outlined in the Guidance.

Are expenses associated with contact tracing eligible?

Yes, expenses associated with contract tracing are eligible.

To what extent may a government use Fund payments to support the operations of private hospitals?

Governments may use Fund payments to support public or private hospitals to the extent that the costs are necessary expenditures incurred due to the COVID-19 public health emergency, but the form such assistance would take may differ. In particular, financial assistance to private hospitals could take the form of a grant or a short-term loan.

May payments from the Fund be used to assist individuals with enrolling in a government benefit program for those who have been laid off due to COVID-19 and thereby lost health insurance?

Yes. To the extent that the relevant government official determines that these expenses are necessary and they meet the other requirements set forth in section 601(d) of the Social Security Act outlined in the Guidance, these expenses are eligible.

May recipients use Fund payments to facilitate livestock depopulation incurred by producers due to supply chain disruptions?

Yes, to the extent these efforts are deemed necessary for public health reasons or as a form of economic support as a result of the COVID-19 health emergency.

Would providing a consumer grant program to prevent eviction and assist in preventing homelessness be considered an eligible expense?

Yes, assuming that the recipient considers the grants to be a necessary expense incurred due to the COVID-19 public health emergency and the grants meet the other requirements for the use of Fund payments under section 601(d) of the Social Security Act outlined in the Guidance. As a general matter, providing assistance to recipients to enable them to meet property tax requirements would not be an eligible use of funds, but exceptions may be made in the case of assistance designed to prevent foreclosures.

May recipients create a “payroll support program” for public employees?

Use of payments from the Fund to cover payroll or benefits expenses of public employees are limited to those employees whose work duties are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

May recipients use Fund payments to cover employment and training programs for employees that have been furloughed due to the public health emergency?

Yes, this would be an eligible expense if the government determined that the costs of such employment and training programs would be necessary due to the public health emergency.

May recipients use Fund payments to provide emergency financial assistance to individuals and families directly impacted by a loss of income due to the COVID-19 public health emergency?

Yes, if a government determines such assistance to be a necessary expenditure. Such assistance could include, for example, a program to assist individuals with payment of overdue rent or mortgage payments to avoid eviction or foreclosure or unforeseen financial costs for funerals and other emergency individual needs. Such assistance should be structured in a manner to ensure as much as possible, within the realm of what is administratively feasible, that such assistance is necessary.

The Guidance provides that eligible expenditures may include expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures. What is meant by a “small business,” and is the Guidance intended to refer only to expenditures to cover administrative expenses of such a grant program?

Governments have discretion to determine what payments are necessary. A program that is aimed at assisting small businesses with the costs of business interruption caused by required closures should be tailored to assist those businesses in need of such assistance. The amount of a grant to a small business to reimburse the costs of business interruption caused by required closures would also be an eligible expenditure under section 601(d) of the Social Security Act, as outlined in the Guidance.

The Guidance provides that expenses associated with the provision of economic support in connection with the public health emergency, such as expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures, would constitute eligible expenditures of Fund payments. Would such expenditures be eligible in the absence of a stay-at-home order?

Fund payments may be used for economic support in the absence of a stay-at-home order if such expenditures are determined by the government to be necessary. This may include, for example, a grant program to benefit small businesses that close voluntarily to promote social distancing measures or that are affected by decreased customer demand as a result of the COVID-19 public health emergency.

May Fund payments be used to assist impacted property owners with the payment of their property taxes?

Fund payments may not be used for government revenue replacement, including the provision of assistance to meet tax obligations.

May Fund payments be used to replace foregone utility fees? If not, can Fund payments be used as a direct subsidy payment to all utility account holders?

Fund payments may not be used for government revenue replacement, including the replacement of unpaid utility fees. Fund payments may be used for subsidy payments to electricity account holders to the extent that the subsidy payments are deemed by the recipient to be necessary expenditures incurred due to the COVID-19 public health emergency and meet the other criteria of section 601(d) of the Social Security Act outlined in the Guidance. For example, if determined to be a necessary expenditure, a government could provide grants to individuals facing economic hardship to allow them to pay their utility fees and thereby continue to receive essential services.

Could Fund payments be used for capital improvement projects that broadly provide potential economic development in a community?

In general, no. If capital improvement projects are not necessary expenditures incurred due to the COVID-19 public health emergency, then Fund payments may not be used for such projects.

However, Fund payments may be used for the expenses of, for example, establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity or improve mitigation measures, including related construction costs.

The Guidance includes workforce bonuses as an example of ineligible expenses but provides that hazard pay would be eligible if otherwise determined to be a necessary expense. Is there a specific definition of “hazard pay”?

Hazard pay means additional pay for performing hazardous duty or work involving physical hardship, in each case that is related to COVID-19.

The Guidance provides that ineligible expenditures include “[p]ayroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.” Is this intended to relate only to public employees?

Yes. This particular nonexclusive example of an ineligible expenditure relates to public employees. A recipient would not be permitted to pay for payroll or benefit expenses of private employees and any financial assistance (such as grants or short-term loans) to private employers are not subject to the restriction that the private employers’ employees must be substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

May counties pre-pay with CARES Act funds for expenses such as a one or two-year facility lease, such as to house staff hired in response to COVID-19?

A government should not make prepayments on contracts using payments from the Fund to the extent that doing so would not be consistent with its ordinary course policies and procedures.

Must a stay-at-home order or other public health mandate be in effect in order for a government to provide assistance to small businesses using payments from the Fund?

No. The Guidance provides, as an example of an eligible use of payments from the Fund, expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures. Such assistance may be provided using amounts received from the Fund in the absence of a requirement to close businesses if the relevant government determines that such expenditures are necessary in response to the public health emergency.

Should States receiving a payment transfer funds to local governments that did not receive payments directly from Treasury?

Yes, provided that the transferred funds are used by the local government for eligible expenditures under the statute. To facilitate prompt distribution of Title V funds, the CARES Act authorized Treasury to make direct payments to local governments with populations in excess of 500,000, in amounts equal to 45% of the local government's per capita share of the statewide allocation. This statutory structure was based on a recognition that it is more administratively feasible to rely on States, rather than the federal government, to manage the transfer of funds to smaller local governments. Consistent with the needs of all local governments for funding to address the public health emergency, States should transfer funds to local governments with populations of 500,000 or less, using as a benchmark the per capita allocation formula that governs payments to larger local governments. This approach will ensure equitable treatment among local governments of all sizes.

For example, a State received the minimum \$1.25 billion allocation and had one county with a population over 500,000 that received \$250 million directly. The State should distribute 45 percent of the \$1 billion it received, or \$450 million, to local governments within the State with a population of 500,000 or less.

May a State impose restrictions on transfers of funds to local governments?

Yes, to the extent that the restrictions facilitate the State's compliance with the requirements set forth in section 601(d) of the Social Security Act outlined in the Guidance and other applicable requirements such as the Single Audit Act, discussed below. Other restrictions are not permissible.

If a recipient must issue tax anticipation notes (TANs) to make up for tax due date deferrals or revenue shortfalls, are the expenses associated with the issuance eligible uses of Fund payments?

If a government determines that the issuance of TANs is necessary due to the COVID-19 public health emergency, the government may expend payments from the Fund on the interest expense payable on TANs by the borrower and unbudgeted administrative and transactional costs, such as necessary payments to advisors and underwriters, associated with the issuance of the TANs.

May recipients use Fund payments to expand rural broadband capacity to assist with distance learning and telework?

Such expenditures would only be permissible if they are necessary for the public health emergency. The cost of projects that would not be expected to increase capacity to a significant extent until the need for distance learning and telework have passed due to this public health emergency would not be necessary due to the public health emergency and thus would not be eligible uses of Fund payments.

Are costs associated with increased solid waste capacity an eligible use of payments from the Fund?

Yes, costs to address increase in solid waste as a result of the public health emergency, such as relates to the disposal of used personal protective equipment, would be an eligible expenditure.

May payments from the Fund be used to cover across-the-board hazard pay for employees working during a state of emergency?

No. The Guidance says that funding may be used to meet payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. Hazard pay is a form of payroll expense and is subject to this limitation, so Fund payments may only be used to cover hazard pay for such individuals.

May Fund payments be used for expenditures related to the administration of Fund payments by a State, territorial, local, or Tribal government?

Yes, if the administrative expenses represent an increase over previously budgeted amounts and are limited to what is necessary. For example, a State may expend Fund payments on necessary administrative expenses incurred with respect to a new grant program established to disburse amounts received from the Fund.

May recipients use Fund payments to provide loans?

Yes, if the loans otherwise qualify as eligible expenditures under section 601(d) of the Social Security Act as implemented by the Guidance. Any amounts repaid by the borrower before December 30, 2020, must be either returned to Treasury upon receipt by the unit of government providing the loan or used for another expense that qualifies as an eligible expenditure under section 601(d) of the Social Security Act. Any amounts not repaid by the borrower until after December 30, 2020, must be returned to Treasury upon receipt by the unit of government lending the funds.

May Fund payments be used for expenditures necessary to prepare for a future COVID-19 outbreak?

Fund payments may be used only for expenditures necessary to address the current COVID-19 public health emergency. For example, a State may spend Fund payments to create a reserve of personal protective equipment or develop increased intensive care unit capacity to support regions in its jurisdiction not yet affected, but likely to be impacted by the current COVID-19 pandemic.

May funds be used to satisfy non-federal matching requirements under the Stafford Act?

Yes, payments from the Fund may be used to meet the non-federal matching requirements for Stafford Act assistance to the extent such matching requirements entail COVID-19-related costs that otherwise satisfy the Fund's eligibility criteria and the Stafford Act. Regardless of the use of Fund payments for such purposes, FEMA funding is still dependent on FEMA's determination of eligibility under the Stafford Act.

Must a State, local, or tribal government require applications to be submitted by businesses or individuals before providing assistance using payments from the Fund?

Governments have discretion to determine how to tailor assistance programs they establish in response to the COVID-19 public health emergency. However, such a program should be structured in such a manner as will ensure that such assistance is determined to be necessary in response to the COVID-19 public health emergency and otherwise satisfies the requirements of the CARES Act and other applicable law. For example, a per capita payment to residents of a particular jurisdiction without an assessment of individual need would not be an appropriate use of payments from the Fund.

May Fund payments be provided to non-profits for distribution to individuals in need of financial assistance, such as rent relief?

Yes, non-profits may be used to distribute assistance. Regardless of how the assistance is structured, the financial assistance provided would have to be related to COVID-19.

May recipients use Fund payments to remarket the recipient's convention facilities and tourism industry?

Yes, if the costs of such remarketing satisfy the requirements of the CARES Act. Expenses incurred to publicize the resumption of activities and steps taken to ensure a safe experience may be needed due to

the public health emergency. Expenses related to developing a long-term plan to reposition a recipient's convention and tourism industry and infrastructure would not be incurred due to the public health emergency and therefore may not be covered using payments from the Fund.

May a State provide assistance to farmers and meat processors to expand capacity, such to cover overtime for USDA meat inspectors?

If a State determines that expanding meat processing capacity, including by paying overtime to USDA meat inspectors, is a necessary expense incurred due to the public health emergency, such as if increased capacity is necessary to allow farmers and processors to donate meat to food banks, then such expenses are eligible expenses, provided that the expenses satisfy the other requirements set forth in section 601(d) of the Social Security Act outlined in the Guidance.

The guidance provides that funding may be used to meet payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. May Fund payments be used to cover such an employee's entire payroll cost or just the portion of time spent on mitigating or responding to the COVID-19 public health emergency?

As a matter of administrative convenience, the entire payroll cost of an employee whose time is substantially dedicated to mitigating or responding to the COVID-19 public health emergency is eligible, provided that such payroll costs are incurred by December 30, 2020. An employer may also track time spent by employees related to COVID-19 and apply Fund payments on that basis but would need to do so consistently within the relevant agency or department.

May Fund payments be used to cover increased administrative leave costs of public employees who could not telework in the event of a stay at home order or a case of COVID-19 in the workplace?

The statute requires that payments be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020. As stated in the Guidance, a cost meets this requirement if either (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget or (b) the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation. If the cost of an employee was allocated to administrative leave to a greater extent than was expected, the cost of such administrative leave may be covered using payments from the Fund.

Questions Related to Administration of Fund Payments

Do governments have to return unspent funds to Treasury?

Yes. Section 601(f)(2) of the Social Security Act, as added by section 5001(a) of the CARES Act, provides for recoupment by the Department of the Treasury of amounts received from the Fund that have not been used in a manner consistent with section 601(d) of the Social Security Act. If a government has not used funds it has received to cover costs that were incurred by December 30, 2020, as required by the statute, those funds must be returned to the Department of the Treasury.

What records must be kept by governments receiving payment?

A government should keep records sufficient to demonstrate that the amount of Fund payments to the government has been used in accordance with section 601(d) of the Social Security Act.

May recipients deposit Fund payments into interest bearing accounts?

Yes, provided that if recipients separately invest amounts received from the Fund, they must use the interest earned or other proceeds of these investments only to cover expenditures incurred in accordance with section 601(d) of the Social Security Act and the Guidance on eligible expenses. If a government deposits Fund payments in a government's general account, it may use those funds to meet immediate cash management needs provided that the full amount of the payment is used to cover necessary expenditures. Fund payments are not subject to the Cash Management Improvement Act of 1990, as amended.

May governments retain assets purchased with payments from the Fund?

Yes, if the purchase of the asset was consistent with the limitations on the eligible use of funds provided by section 601(d) of the Social Security Act.

What rules apply to the proceeds of disposition or sale of assets acquired using payments from the Fund?

If such assets are disposed of prior to December 30, 2020, the proceeds would be subject to the restrictions on the eligible use of payments from the Fund provided by section 601(d) of the Social Security Act.

Are Fund payments to State, territorial, local, and tribal governments considered grants?

No. Fund payments made by Treasury to State, territorial, local, and Tribal governments are not considered to be grants but are "other financial assistance" under 2 C.F.R. § 200.40.

Are Fund payments considered federal financial assistance for purposes of the Single Audit Act?

Yes, Fund payments are considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance, 2 C.F.R. § 200.303 regarding internal controls, §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements.

Are Fund payments subject to other requirements of the Uniform Guidance?

Fund payments are subject to the following requirements in the Uniform Guidance (2 C.F.R. Part 200): 2 C.F.R. § 200.303 regarding internal controls, 2 C.F.R. §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements.

Is there a Catalog of Federal Domestic Assistance (CFDA) number assigned to the Fund?

Yes. The CFDA number assigned to the Fund is 21.019.

If a State transfers Fund payments to its political subdivisions, would the transferred funds count toward the subrecipients' total funding received from the federal government for purposes of the Single Audit Act?

Yes. The Fund payments to subrecipients would count toward the threshold of the Single Audit Act and 2 C.F.R. part 200, subpart F re: audit requirements. Subrecipients are subject to a single audit or program-

specific audit pursuant to 2 C.F.R. § 200.501(a) when the subrecipients spend \$750,000 or more in federal awards during their fiscal year.

Are recipients permitted to use payments from the Fund to cover the expenses of an audit conducted under the Single Audit Act?

Yes, such expenses would be eligible expenditures, subject to the limitations set forth in 2 C.F.R. § 200.425.

If a government has transferred funds to another entity, from which entity would the Treasury Department seek to recoup the funds if they have not been used in a manner consistent with section 601(d) of the Social Security Act?

The Treasury Department would seek to recoup the funds from the government that received the payment directly from the Treasury Department. State, territorial, local, and Tribal governments receiving funds from Treasury should ensure that funds transferred to other entities, whether pursuant to a grant program or otherwise, are used in accordance with section 601(d) of the Social Security Act as implemented in the Guidance.



OFFICE OF
INSPECTOR GENERAL

EXHIBIT – 3

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

July 2, 2020

OIG-CA-20-021

MEMORANDUM FOR CORONAVIRUS RELIEF FUND RECIPIENTS

FROM: Richard K. Delmar /s/
Deputy Inspector General

SUBJECT: Coronavirus Relief Fund Reporting and Record Retention
Requirements

Title VI of the Social Security Act, as amended by Title V of Division A of the *Coronavirus Aid, Relief, and Economic Security Act* (Public Law 115-136), provides that the Department of the Treasury (Treasury) Office of Inspector General (OIG) is responsible for monitoring and oversight of the receipt, disbursement, and use of Coronavirus Relief Fund payments. Treasury OIG also has authority to recover funds in the event that it is determined a recipient of a Coronavirus Relief Fund payment failed to comply with requirements of subsection 601(d) of the Social Security Act, as amended, (42 U.S.C. 801(d)). Accordingly, we are providing recipient reporting and record retention requirements that are essential for the exercise of these responsibilities, including our conduct of audits and investigations.

Reporting Requirements and Timelines

Each prime recipient of Coronavirus Relief Fund payments¹ shall report Coronavirus Disease 2019 (COVID-19) related “costs incurred” during the “covered period”² (the period beginning on March 1, 2020 and ending on December 30, 2020), in the manner of and according to the timelines outlined in this memorandum. As described below, each prime recipient shall report interim and quarterly data and other recipient data according to these requirements. Treasury OIG is working on development of a portal with GrantSolutions³ that is expected to be operational on

¹ Prime recipients include all 50 States, Units of Local Governments, the District of Columbia, U.S. Territories, and Tribal Governments that received a direct payment from Treasury in accordance with Title V.

² Refer to Treasury’s guidance dated June 30, 2020 for more information on costs incurred and the covered period.

³ A grant management service provider under the U.S. Department of Health and Human Services.

September 1, 2020, for recipients to report data on a quarterly basis. Until the GrantSolutions portal is operational, each prime recipient shall follow the interim reporting requirements. Treasury OIG will notify each prime recipient when GrantSolutions is operational or of any changes to the expected September 1, 2020 start date.

Interim Reporting for the period March 1 through June 30, 2020

By no later than July 17, 2020, each prime recipient is responsible for reporting costs incurred during the period March 1 through June 30, 2020. For this interim report, prime recipients need only report totals by the following broad categories:

- a. Amount transferred to other governments;
- b. Amount spent on payroll for public health and safety employees;
- c. Amount spent on budgeted personnel and services diverted to a substantially different use;
- d. Amount spent to improve telework capabilities of public employees;
- e. Amount spent on medical expenses;
- f. Amount spent on public health expenses;
- g. Amount spent to facilitate distance learning;
- h. Amount spent providing economic support;
- i. Amount spent on expenses associated with the issuance of tax anticipation notes; and
- j. Amount spent on items not listed above.

Recipients should consult Treasury's guidance and Frequently Asked Questions in reporting costs incurred during the period March 1 through June 30, 2020. The total of all categories must equal the total of all costs incurred during that period. A spreadsheet is attached for your use in providing the data. As discussed below, the prime recipient will be required to report information for the period March 1 through June 30, 2020 into GrantSolutions once it is operational.

Quarterly Reporting

Each prime recipient of Coronavirus Relief Fund payments shall report COVID-19 related costs into the GrantSolutions portal. Data required to be reported includes, but is not limited to, the following:

1. the total amount of payments from the Coronavirus Relief Fund received from Treasury;
2. the amount of funds received that were expended or obligated for each project or activity;
3. a detailed list of all projects or activities for which funds were expended or obligated, including:
 - a. the name of the project or activity;
 - b. a description of the project or activity; and

4. detailed information on any loans issued; contracts and grants awarded; transfers made to other government entities; and direct payments made by the recipient that are greater than \$50,000.

The prime recipient is responsible for reporting into the GrantSolutions portal information on uses of Coronavirus Relief Fund payments.

Recipient Portal Access: For future quarterly reporting, each prime recipient will have GrantSolutions portal access for three (3) individuals: two (2) designees (preparers) to input quarterly data and one (1) official authorized to certify that the data is true, accurate, and complete.⁴ **By no later than July 17, 2020**, please provide the name, title, email address, phone number, and postal address of these individuals so that portal access can be granted. After this information is received, guidance on the GrantSolutions portal access and data submission instructions will be issued separately.

Reporting timeline

By no later than September 21, 2020, recipients shall submit via the portal the first detailed quarterly report, which shall cover the period March 1 through June 30, 2020. Thereafter, quarterly reporting will be due no later than 10 days after each calendar quarter. For example, the period July 1 through September 30, 2020, must be reported no later than October 13, 2020 (Tuesday after the 10th day of October and the Columbus Day Holiday). Reporting shall end with either the calendar quarter after the COVID-19 related costs and expenditures have been liquidated and paid or the calendar quarter ending September 30, 2021, whichever comes first.

Record Retention Requirements

Recipients of Coronavirus Relief Fund payments shall maintain and make available to the Treasury OIG upon request all documents and financial records sufficient to establish compliance with subsection 601(d) of the Social Security Act, as amended, (42 U.S.C. 801(d)), which provides:

(d) USE OF FUNDS.—A State, Tribal government, and unit of local government shall use the funds provided under a payment made under this section to cover only those costs of the State, Tribal government, or unit of local government that—

1. are necessary expenditures incurred due to the public health emergency with respect to COVID-19;
2. were not accounted for in the budget most recently approved as of the date of enactment of this section for the State or government; and

⁴ The certifying official is an authorized representative of the recipient organization with the legal authority to give assurances, make commitments, enter into contracts, and execute such documents on behalf of the recipient.

3. were incurred⁵ during the period that begins on March 1, 2020, and ends on December 30, 2020.

Records to support compliance with subsection 601(d) may include, but are not limited to, copies of the following:

1. general ledger and subsidiary ledgers used to account for (a) the receipt of Coronavirus Relief Fund payments and (b) the disbursements from such payments to meet eligible expenses related to the public health emergency due to COVID-19;
2. budget records for 2019 and 2020;
3. payroll, time records, human resource records to support costs incurred for payroll expenses related to addressing the public health emergency due to COVID-19;
4. receipts of purchases made related to addressing the public health emergency due to COVID-19;
5. contracts and subcontracts entered into using Coronavirus Relief Fund payments and all documents related to such contracts;
6. grant agreements and grant subaward agreements entered into using Coronavirus Relief Fund payments and all documents related to such awards;
7. all documentation of reports, audits, and other monitoring of contractors, including subcontractors, and grant recipient and subrecipients;
8. all documentation supporting the performance outcomes of contracts, subcontracts, grant awards, and grant recipient subawards;
9. all internal and external email/electronic communications related to use of Coronavirus Relief Fund payments; and
10. all investigative files and inquiry reports involving Coronavirus Relief Fund payments.

Records shall be maintained for a period of five (5) years after final payment is made using Coronavirus Relief Fund monies. These record retention requirements are applicable to all prime recipients and their grantees and subgrant recipients, contractors, and other levels of government that received transfers of Coronavirus Relief Fund payments from prime recipients.

Thank you and we appreciate your assistance.

⁵ Refer to Treasury's guidance dated June 30, 2020 for more information on the definition of costs incurred.

Attachment A

DESIGNATION OF AUTHORITY

Instructions for Completion

The **Designation of Authority Form** should be completed in its entirety, listing the name and information for all representatives who will be authorized agents for the Miami-Dade County (County) Coronavirus Aid, Relief, and Economic Security Act (CARES Act) Corona Relief Fund (CRF) Program. The form is divided into six blocks; each block must be completed where appropriate.

Block 1: “Authorized Agent” – This should be the highest authority in your Municipality who is authorized to sign legal documents on behalf of your Municipality. (Only one Authorized Agent is allowed).

Block 2: “Primary Agent” – This is the person designated by your Municipality to receive all correspondence and is our main point of contact. This contact will be responsible for answering questions, uploading documents, and submitting reports/requests in the County's Grants Management System. The Primary Agent is usually not the Authorized Agent but should be responsible for updating all internal stakeholders on all Program activities. (Only one Primary Agent is allowed).

Block 3: “Alternate Agent” – This is the person designated by your Municipality to be available when the Primary is not. (Only one Alternate Agent is allowed).

Block 4, 5, and 6: “Authorized Agent to Request Funds/Reimbursements” – These are the persons authorized to execute requests for reimbursement, certification, or other required documents on behalf of the Municipality.

**DESIGNATION OF AUTHORITY
CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT (CARES ACT)
CORONA RELIEF FUND (CRF) PROGRAM**

Municipality:

Box 1: Authorized Agent

Agent's Name

Signature

Organization / Official Position

Mailing Address

City, State, Zip

Daytime Telephone

E-mail Address

Box 2: Primary Agent

Agent's Name

Signature

Organization / Official Position

Mailing Address

City, State, Zip

Daytime Telephone

E-mail Address

Box 3: Alternate Agent

Agent's Name

Signature

Organization / Official Position

Mailing Address

City, State, Zip

Daytime Telephone

E-mail Address

Box 4: Authorized Agent to Request Funds/Reimbursements

Official's Name

Signature

Organization / Official Position

Mailing Address

City, State, Zip

Daytime Telephone

E-mail Address

Box 5: Authorized Agent to Request Funds/Reimbursements

Agent's Name

Signature

Organization / Official Position

Mailing Address

City, State, Zip

Daytime Telephone

E-mail Address

Box 6: Authorized Agent to Request Funds/Reimbursements

Agent's Name

Signature

Organization / Official Position

Mailing Address

City, State, Zip

Daytime Telephone

E-mail Address

The above Primary and Alternate Agents are hereby authorized to execute and sign the Interlocal and other pertinent documents related to the CARES Act CRF Program. The persons designated in boxes 4 through 6 are authorized to execute requests for reimbursement, certification, or other required documents on behalf of the Municipality.

Municipality Authorized Agent Signature

Date

AGENDA ITEM REPORT

August 10, 2020

ITEM NUMBER: 8.

ITEM:

Discussion and possible action regarding whether or not the Town of Bay Harbor Islands wished to proceed to enter into a Memorandum of Understanding with Miami Dade County to apply for the payment of a one (1) percent hazardous duty supplement for all first responders in the Town substantially dedicated to mitigating the impact of the pandemic, as allowed by the CARES Act legislation.

DESCRIPTION:

The proposed Memorandum of Understanding between the Miami Dade County is to grant a 1% hazardous pay for all public safety employees for services dedicated to mitigating or responding to the COVID-19 public health emergency. Covered employees will receive a 1% pay adjustments for the performance of their duties specifically related to the Coronavirus (COVID-19) retroactive to April 1, 2020 thru December 30, 2020.

As you know the County has designated 16 million dollars of the CARES Act to be distributed to first responders from the entire county and the cities who opt to provide the 1% hazardous pay.

Enclosed is information provided by the County Mayor and the Police Benevolent Association.

RECOMMENDED ACTION:

Council Discretion

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Interim Town Clerk
Marlene Marante Siegel, Interim Town Manager

ATTACHMENTS

1. Letter Regarding First Responder Hazard Pay Supplement
2. MOU Bay Harbor Islands- DCPBA
3. Coronavirus-Relief-Fund-Frequently-Asked-Questions



CARLOS A. GIMENEZ
MAYOR
MIAMI-DADE COUNTY

July 29, 2020

Dear Union and Municipal Leaders:

Our first responders are always at the front lines, ready to serve in any emergency. The COVID-19 pandemic is an emergency without precedent, requiring extraordinary efforts of our first responders to keep our community safe and healthy. At the July 27, 2020 Special Meeting of the Board of County Commissioners, the Board accepted a report regarding the utilization of CARES Act funding. One of the recommended allocations is the payment of a one (1) percent hazardous duty supplement for all first responders in geographic Miami-Dade County substantially dedicated to mitigating the impact of the pandemic, as allowed by the CARES Act legislation. This supplement will be paid retroactively to the beginning of the declared emergency and continue until the emergency declaration is lifted, but consistent with CARES Act legislation, no later than December 31, 2020.

So that we may expedite the payment of this supplement, please develop the appropriate memoranda of understanding or other documentation to allow the application of such supplement as required by your respective collective bargaining agreements and submit to Miami-Dade County via Edward.Marquez@miamidade.gov as quickly as possible. Each jurisdiction should also submit appropriate payroll documentation in order to support the funding required for each department to provide the supplement. Authorization of the payments will be authorized through the interlocal agreements to be used for CARES Act reimbursements which will be approved by the Board of County Commissioners.

As a former firefighter, I know that first responders are prepared to put themselves in dangerous situations when they respond to emergencies. However, what has been required of our first responders during this pandemic is without compare and deserves recognition and remuneration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Carlos A. Gimenez", with a stylized flourish at the end.

MEMORANDUM OF UNDERSTANDING BETWEEN
THE TOWN OF BAY HARBOR ISLANDS AND
THE DADE COUNTY POLICE BENEVOLENT ASSOCIATION, INC.

This MEMORANDUM OF UNDERSTANDING ("MOU") is entered this ____ day of **August, 2020**, between the DADE COUNTY POLICE BENEVOLENT ASSOCIATION, INC. ("PBA") and the TOWN OF BAY HARBOR ISLANDS ("Town"), jointly referred to as the ("PARTIES").

WHEREAS, the Town of Bay Harbor Islands is currently experiencing the effects of the COVID-19 pandemic which has resulted in a severe drain of resources due to the public health emergency; and

WHEREAS, due to the COVID-19 public health emergency first responders have expanded duties with an increased exposure to COVID-19; and

WHEREAS, the Coronavirus Aid, Relief and Economic Securities Act ("CARES") provides a relief fund to State, Local, and Tribal governments which is intended to assist in the fight against COVID-19; and

WHEREAS, the PARTIES are desirous of providing the available funding to its first responders such as sworn law enforcement personnel.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the PARTIES intending to be legally bound do hereby stipulate and agree as follows:

1. Sworn law enforcement employees as defined by Chapter 943 Florida Statutes who are included within a bargaining unit covered by a collective bargaining agreement between the Town and the PBA ("Covered Employee"), shall receive a one percent (1%) pay adjustment to their base pay for the performance of their duties specifically related to the coronavirus retroactive to April 01, 2020 as provided in paragraph 2. The Covered Employee's rate of base pay on August 1, 2020 shall be used for the computation of the one percent (1%) pay adjustment regardless of the date in which the work assignment was performed.
2. The one percent (1%) pay adjustment shall be paid only for the time the Covered Employee actually worked on assignments related to the COVID-19 pandemic and shall be applied on an hour for hour basis and not based on the entire shift

unless applicable. The PBA and the Town both agree that the determination of whether an assignment qualifies for payment of the 1% pay adjustment provided by this MOU and the amount of hours that are eligible for payment of this 1% pay adjustment are entirely within the discretion of the Town, after consultation with the PBA.

3. The one percent (1%) pay adjustment provided by this MOU shall permanently cease to exist effective the first full pay period of December 2020.
4. The PARTIES agree and state that no promise, inducement or agreement not expressly contained herein has been made, that this MOU constitutes their entire and final understanding to the subject matter of this agreement, and that the terms of this MOU are contractual and not a mere recital.
5. The PARTIES understand that this Memorandum of Understanding and the 1% pay adjustment will be implemented only after ratification by both the PBA's bargaining unit members and the Town Council.

IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

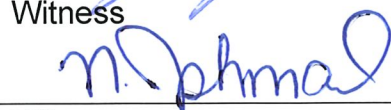
AGREED TO THIS ____ DAY OF AUGUST, 2020.

For Dade County Police
Benevolent Association



Steadman Stahl, President

Witness



Witness



Andrew M. Axelrad, General Counsel

For Town of Bay Harbor Islands

Marlene M. Siegel Int. Town Manager

Witness

Witness

Witness

**Coronavirus Relief Fund
Frequently Asked Questions
Updated as of July 8, 2020**

The following answers to frequently asked questions supplement Treasury’s Coronavirus Relief Fund (“Fund”) Guidance for State, Territorial, Local, and Tribal Governments, dated April 22, 2020, (“Guidance”).¹ Amounts paid from the Fund are subject to the restrictions outlined in the Guidance and set forth in section 601(d) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”).

Eligible Expenditures

Are governments required to submit proposed expenditures to Treasury for approval?

No. Governments are responsible for making determinations as to what expenditures are necessary due to the public health emergency with respect to COVID-19 and do not need to submit any proposed expenditures to Treasury.

The Guidance says that funding can be used to meet payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. How does a government determine whether payroll expenses for a given employee satisfy the “substantially dedicated” condition?

The Fund is designed to provide ready funding to address unforeseen financial needs and risks created by the COVID-19 public health emergency. For this reason, and as a matter of administrative convenience in light of the emergency nature of this program, a State, territorial, local, or Tribal government may presume that payroll costs for public health and public safety employees are payments for services substantially dedicated to mitigating or responding to the COVID-19 public health emergency, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise.

The Guidance says that a cost was not accounted for in the most recently approved budget if the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation. What would qualify as a “substantially different use” for purposes of the Fund eligibility?

Costs incurred for a “substantially different use” include, but are not necessarily limited to, costs of personnel and services that were budgeted for in the most recently approved budget but which, due entirely to the COVID-19 public health emergency, have been diverted to substantially different functions. This would include, for example, the costs of redeploying corrections facility staff to enable compliance with COVID-19 public health precautions through work such as enhanced sanitation or enforcing social distancing measures; the costs of redeploying police to support management and enforcement of stay-at-home orders; or the costs of diverting educational support staff or faculty to develop online learning capabilities, such as through providing information technology support that is not part of the staff or faculty’s ordinary responsibilities.

Note that a public function does not become a “substantially different use” merely because it is provided from a different location or through a different manner. For example, although developing online instruction capabilities may be a substantially different use of funds, online instruction itself is not a substantially different use of public funds than classroom instruction.

¹ The Guidance is available at <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>.

May a State receiving a payment transfer funds to a local government?

Yes, provided that the transfer qualifies as a necessary expenditure incurred due to the public health emergency and meets the other criteria of section 601(d) of the Social Security Act. Such funds would be subject to recoupment by the Treasury Department if they have not been used in a manner consistent with section 601(d) of the Social Security Act.

May a unit of local government receiving a Fund payment transfer funds to another unit of government?

Yes. For example, a county may transfer funds to a city, town, or school district within the county and a county or city may transfer funds to its State, provided that the transfer qualifies as a necessary expenditure incurred due to the public health emergency and meets the other criteria of section 601(d) of the Social Security Act outlined in the Guidance. For example, a transfer from a county to a constituent city would not be permissible if the funds were intended to be used simply to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify as an eligible expenditure.

Is a Fund payment recipient required to transfer funds to a smaller, constituent unit of government within its borders?

No. For example, a county recipient is not required to transfer funds to smaller cities within the county's borders.

Are recipients required to use other federal funds or seek reimbursement under other federal programs before using Fund payments to satisfy eligible expenses?

No. Recipients may use Fund payments for any expenses eligible under section 601(d) of the Social Security Act outlined in the Guidance. Fund payments are not required to be used as the source of funding of last resort. However, as noted below, recipients may not use payments from the Fund to cover expenditures for which they will receive reimbursement.

Are there prohibitions on combining a transaction supported with Fund payments with other CARES Act funding or COVID-19 relief Federal funding?

Recipients will need to consider the applicable restrictions and limitations of such other sources of funding. In addition, expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds, are not eligible uses of Fund payments.

Are States permitted to use Fund payments to support state unemployment insurance funds generally?

To the extent that the costs incurred by a state unemployment insurance fund are incurred due to the COVID-19 public health emergency, a State may use Fund payments to make payments to its respective state unemployment insurance fund, separate and apart from such State's obligation to the unemployment insurance fund as an employer. This will permit States to use Fund payments to prevent expenses related to the public health emergency from causing their state unemployment insurance funds to become insolvent.

Are recipients permitted to use Fund payments to pay for unemployment insurance costs incurred by the recipient as an employer?

Yes, Fund payments may be used for unemployment insurance costs incurred by the recipient as an employer (for example, as a reimbursing employer) related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.

The Guidance states that the Fund may support a “broad range of uses” including payroll expenses for several classes of employees whose services are “substantially dedicated to mitigating or responding to the COVID-19 public health emergency.” What are some examples of types of covered employees?

The Guidance provides examples of broad classes of employees whose payroll expenses would be eligible expenses under the Fund. **These classes of employees include public safety,** public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. Payroll and benefit costs associated with public employees who could have been furloughed or otherwise laid off but who were instead repurposed to perform previously unbudgeted functions substantially dedicated to mitigating or responding to the COVID-19 public health emergency are also covered. Other eligible expenditures include payroll and benefit costs of educational support staff or faculty responsible for developing online learning capabilities necessary to continue educational instruction in response to COVID-19-related school closures. Please see the Guidance for a discussion of what is meant by an expense that was not accounted for in the budget most recently approved as of March 27, 2020.

In some cases, first responders and critical health care workers that contract COVID-19 are eligible for workers’ compensation coverage. Is the cost of this expanded workers compensation coverage eligible?

Increased workers compensation cost to the government due to the COVID-19 public health emergency incurred during the period beginning March 1, 2020, and ending December 30, 2020, is an eligible expense.

If a recipient would have decommissioned equipment or not renewed a lease on particular office space or equipment but decides to continue to use the equipment or to renew the lease in order to respond to the public health emergency, are the costs associated with continuing to operate the equipment or the ongoing lease payments eligible expenses?

Yes. To the extent the expenses were previously unbudgeted and are otherwise consistent with section 601(d) of the Social Security Act outlined in the Guidance, such expenses would be eligible.

May recipients provide stipends to employees for eligible expenses (for example, a stipend to employees to improve telework capabilities) rather than require employees to incur the eligible cost and submit for reimbursement?

Expenditures paid for with payments from the Fund must be limited to those that are necessary due to the public health emergency. As such, unless the government were to determine that providing assistance in the form of a stipend is an administrative necessity, the government should provide such assistance on a reimbursement basis to ensure as much as possible that funds are used to cover only eligible expenses.

May Fund payments be used for COVID-19 public health emergency recovery planning?

Yes. Expenses associated with conducting a recovery planning project or operating a recovery coordination office would be eligible, if the expenses otherwise meet the criteria set forth in section 601(d) of the Social Security Act outlined in the Guidance.

Are expenses associated with contact tracing eligible?

Yes, expenses associated with contract tracing are eligible.

To what extent may a government use Fund payments to support the operations of private hospitals?

Governments may use Fund payments to support public or private hospitals to the extent that the costs are necessary expenditures incurred due to the COVID-19 public health emergency, but the form such assistance would take may differ. In particular, financial assistance to private hospitals could take the form of a grant or a short-term loan.

May payments from the Fund be used to assist individuals with enrolling in a government benefit program for those who have been laid off due to COVID-19 and thereby lost health insurance?

Yes. To the extent that the relevant government official determines that these expenses are necessary and they meet the other requirements set forth in section 601(d) of the Social Security Act outlined in the Guidance, these expenses are eligible.

May recipients use Fund payments to facilitate livestock depopulation incurred by producers due to supply chain disruptions?

Yes, to the extent these efforts are deemed necessary for public health reasons or as a form of economic support as a result of the COVID-19 health emergency.

Would providing a consumer grant program to prevent eviction and assist in preventing homelessness be considered an eligible expense?

Yes, assuming that the recipient considers the grants to be a necessary expense incurred due to the COVID-19 public health emergency and the grants meet the other requirements for the use of Fund payments under section 601(d) of the Social Security Act outlined in the Guidance. As a general matter, providing assistance to recipients to enable them to meet property tax requirements would not be an eligible use of funds, but exceptions may be made in the case of assistance designed to prevent foreclosures.

May recipients create a “payroll support program” for public employees?

Use of payments from the Fund to cover payroll or benefits expenses of public employees are limited to those employees whose work duties are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

May recipients use Fund payments to cover employment and training programs for employees that have been furloughed due to the public health emergency?

Yes, this would be an eligible expense if the government determined that the costs of such employment and training programs would be necessary due to the public health emergency.

May recipients use Fund payments to provide emergency financial assistance to individuals and families directly impacted by a loss of income due to the COVID-19 public health emergency?

Yes, if a government determines such assistance to be a necessary expenditure. Such assistance could include, for example, a program to assist individuals with payment of overdue rent or mortgage payments to avoid eviction or foreclosure or unforeseen financial costs for funerals and other emergency individual needs. Such assistance should be structured in a manner to ensure as much as possible, within the realm of what is administratively feasible, that such assistance is necessary.

The Guidance provides that eligible expenditures may include expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures. What is meant by a “small business,” and is the Guidance intended to refer only to expenditures to cover administrative expenses of such a grant program?

Governments have discretion to determine what payments are necessary. A program that is aimed at assisting small businesses with the costs of business interruption caused by required closures should be tailored to assist those businesses in need of such assistance. The amount of a grant to a small business to reimburse the costs of business interruption caused by required closures would also be an eligible expenditure under section 601(d) of the Social Security Act, as outlined in the Guidance.

The Guidance provides that expenses associated with the provision of economic support in connection with the public health emergency, such as expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures, would constitute eligible expenditures of Fund payments. Would such expenditures be eligible in the absence of a stay-at-home order?

Fund payments may be used for economic support in the absence of a stay-at-home order if such expenditures are determined by the government to be necessary. This may include, for example, a grant program to benefit small businesses that close voluntarily to promote social distancing measures or that are affected by decreased customer demand as a result of the COVID-19 public health emergency.

May Fund payments be used to assist impacted property owners with the payment of their property taxes?

Fund payments may not be used for government revenue replacement, including the provision of assistance to meet tax obligations.

May Fund payments be used to replace foregone utility fees? If not, can Fund payments be used as a direct subsidy payment to all utility account holders?

Fund payments may not be used for government revenue replacement, including the replacement of unpaid utility fees. Fund payments may be used for subsidy payments to electricity account holders to the extent that the subsidy payments are deemed by the recipient to be necessary expenditures incurred due to the COVID-19 public health emergency and meet the other criteria of section 601(d) of the Social Security Act outlined in the Guidance. For example, if determined to be a necessary expenditure, a government could provide grants to individuals facing economic hardship to allow them to pay their utility fees and thereby continue to receive essential services.

Could Fund payments be used for capital improvement projects that broadly provide potential economic development in a community?

In general, no. If capital improvement projects are not necessary expenditures incurred due to the COVID-19 public health emergency, then Fund payments may not be used for such projects.

However, Fund payments may be used for the expenses of, for example, establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity or improve mitigation measures, including related construction costs.

The Guidance includes workforce bonuses as an example of ineligible expenses but provides that hazard pay would be eligible if otherwise determined to be a necessary expense. Is there a specific definition of “hazard pay”?

Hazard pay means additional pay for performing hazardous duty or work involving physical hardship, in each case that is related to COVID-19.

The Guidance provides that ineligible expenditures include “[p]ayroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.” Is this intended to relate only to public employees?

Yes. This particular nonexclusive example of an ineligible expenditure relates to public employees. A recipient would not be permitted to pay for payroll or benefit expenses of private employees and any financial assistance (such as grants or short-term loans) to private employers are not subject to the restriction that the private employers’ employees must be substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

May counties pre-pay with CARES Act funds for expenses such as a one or two-year facility lease, such as to house staff hired in response to COVID-19?

A government should not make prepayments on contracts using payments from the Fund to the extent that doing so would not be consistent with its ordinary course policies and procedures.

Must a stay-at-home order or other public health mandate be in effect in order for a government to provide assistance to small businesses using payments from the Fund?

No. The Guidance provides, as an example of an eligible use of payments from the Fund, expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures. Such assistance may be provided using amounts received from the Fund in the absence of a requirement to close businesses if the relevant government determines that such expenditures are necessary in response to the public health emergency.

Should States receiving a payment transfer funds to local governments that did not receive payments directly from Treasury?

Yes, provided that the transferred funds are used by the local government for eligible expenditures under the statute. To facilitate prompt distribution of Title V funds, the CARES Act authorized Treasury to make direct payments to local governments with populations in excess of 500,000, in amounts equal to 45% of the local government's per capita share of the statewide allocation. This statutory structure was based on a recognition that it is more administratively feasible to rely on States, rather than the federal government, to manage the transfer of funds to smaller local governments. Consistent with the needs of all local governments for funding to address the public health emergency, States should transfer funds to local governments with populations of 500,000 or less, using as a benchmark the per capita allocation formula that governs payments to larger local governments. This approach will ensure equitable treatment among local governments of all sizes.

For example, a State received the minimum \$1.25 billion allocation and had one county with a population over 500,000 that received \$250 million directly. The State should distribute 45 percent of the \$1 billion it received, or \$450 million, to local governments within the State with a population of 500,000 or less.

May a State impose restrictions on transfers of funds to local governments?

Yes, to the extent that the restrictions facilitate the State's compliance with the requirements set forth in section 601(d) of the Social Security Act outlined in the Guidance and other applicable requirements such as the Single Audit Act, discussed below. Other restrictions are not permissible.

If a recipient must issue tax anticipation notes (TANs) to make up for tax due date deferrals or revenue shortfalls, are the expenses associated with the issuance eligible uses of Fund payments?

If a government determines that the issuance of TANs is necessary due to the COVID-19 public health emergency, the government may expend payments from the Fund on the interest expense payable on TANs by the borrower and unbudgeted administrative and transactional costs, such as necessary payments to advisors and underwriters, associated with the issuance of the TANs.

May recipients use Fund payments to expand rural broadband capacity to assist with distance learning and telework?

Such expenditures would only be permissible if they are necessary for the public health emergency. The cost of projects that would not be expected to increase capacity to a significant extent until the need for distance learning and telework have passed due to this public health emergency would not be necessary due to the public health emergency and thus would not be eligible uses of Fund payments.

Are costs associated with increased solid waste capacity an eligible use of payments from the Fund?

Yes, costs to address increase in solid waste as a result of the public health emergency, such as relates to the disposal of used personal protective equipment, would be an eligible expenditure.

May payments from the Fund be used to cover across-the-board hazard pay for employees working during a state of emergency?

No. The Guidance says that funding may be used to meet payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. Hazard pay is a form of payroll expense and is subject to this limitation, so Fund payments may only be used to cover hazard pay for such individuals.

May Fund payments be used for expenditures related to the administration of Fund payments by a State, territorial, local, or Tribal government?

Yes, if the administrative expenses represent an increase over previously budgeted amounts and are limited to what is necessary. For example, a State may expend Fund payments on necessary administrative expenses incurred with respect to a new grant program established to disburse amounts received from the Fund.

May recipients use Fund payments to provide loans?

Yes, if the loans otherwise qualify as eligible expenditures under section 601(d) of the Social Security Act as implemented by the Guidance. Any amounts repaid by the borrower before December 30, 2020, must be either returned to Treasury upon receipt by the unit of government providing the loan or used for another expense that qualifies as an eligible expenditure under section 601(d) of the Social Security Act. Any amounts not repaid by the borrower until after December 30, 2020, must be returned to Treasury upon receipt by the unit of government lending the funds.

May Fund payments be used for expenditures necessary to prepare for a future COVID-19 outbreak?

Fund payments may be used only for expenditures necessary to address the current COVID-19 public health emergency. For example, a State may spend Fund payments to create a reserve of personal protective equipment or develop increased intensive care unit capacity to support regions in its jurisdiction not yet affected, but likely to be impacted by the current COVID-19 pandemic.

May funds be used to satisfy non-federal matching requirements under the Stafford Act?

Yes, payments from the Fund may be used to meet the non-federal matching requirements for Stafford Act assistance to the extent such matching requirements entail COVID-19-related costs that otherwise satisfy the Fund's eligibility criteria and the Stafford Act. Regardless of the use of Fund payments for such purposes, FEMA funding is still dependent on FEMA's determination of eligibility under the Stafford Act.

Must a State, local, or tribal government require applications to be submitted by businesses or individuals before providing assistance using payments from the Fund?

Governments have discretion to determine how to tailor assistance programs they establish in response to the COVID-19 public health emergency. However, such a program should be structured in such a manner as will ensure that such assistance is determined to be necessary in response to the COVID-19 public health emergency and otherwise satisfies the requirements of the CARES Act and other applicable law. For example, a per capita payment to residents of a particular jurisdiction without an assessment of individual need would not be an appropriate use of payments from the Fund.

May Fund payments be provided to non-profits for distribution to individuals in need of financial assistance, such as rent relief?

Yes, non-profits may be used to distribute assistance. Regardless of how the assistance is structured, the financial assistance provided would have to be related to COVID-19.

May recipients use Fund payments to remarket the recipient's convention facilities and tourism industry?

Yes, if the costs of such remarketing satisfy the requirements of the CARES Act. Expenses incurred to publicize the resumption of activities and steps taken to ensure a safe experience may be needed due to

the public health emergency. Expenses related to developing a long-term plan to reposition a recipient's convention and tourism industry and infrastructure would not be incurred due to the public health emergency and therefore may not be covered using payments from the Fund.

May a State provide assistance to farmers and meat processors to expand capacity, such to cover overtime for USDA meat inspectors?

If a State determines that expanding meat processing capacity, including by paying overtime to USDA meat inspectors, is a necessary expense incurred due to the public health emergency, such as if increased capacity is necessary to allow farmers and processors to donate meat to food banks, then such expenses are eligible expenses, provided that the expenses satisfy the other requirements set forth in section 601(d) of the Social Security Act outlined in the Guidance.

The guidance provides that funding may be used to meet payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. May Fund payments be used to cover such an employee's entire payroll cost or just the portion of time spent on mitigating or responding to the COVID-19 public health emergency?

As a matter of administrative convenience, the entire payroll cost of an employee whose time is substantially dedicated to mitigating or responding to the COVID-19 public health emergency is eligible, provided that such payroll costs are incurred by December 30, 2020. An employer may also track time spent by employees related to COVID-19 and apply Fund payments on that basis but would need to do so consistently within the relevant agency or department.

May Fund payments be used to cover increased administrative leave costs of public employees who could not telework in the event of a stay at home order or a case of COVID-19 in the workplace?

The statute requires that payments be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020. As stated in the Guidance, a cost meets this requirement if either (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget or (b) the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation. If the cost of an employee was allocated to administrative leave to a greater extent than was expected, the cost of such administrative leave may be covered using payments from the Fund.

Questions Related to Administration of Fund Payments

Do governments have to return unspent funds to Treasury?

Yes. Section 601(f)(2) of the Social Security Act, as added by section 5001(a) of the CARES Act, provides for recoupment by the Department of the Treasury of amounts received from the Fund that have not been used in a manner consistent with section 601(d) of the Social Security Act. If a government has not used funds it has received to cover costs that were incurred by December 30, 2020, as required by the statute, those funds must be returned to the Department of the Treasury.

What records must be kept by governments receiving payment?

A government should keep records sufficient to demonstrate that the amount of Fund payments to the government has been used in accordance with section 601(d) of the Social Security Act.

May recipients deposit Fund payments into interest bearing accounts?

Yes, provided that if recipients separately invest amounts received from the Fund, they must use the interest earned or other proceeds of these investments only to cover expenditures incurred in accordance with section 601(d) of the Social Security Act and the Guidance on eligible expenses. If a government deposits Fund payments in a government's general account, it may use those funds to meet immediate cash management needs provided that the full amount of the payment is used to cover necessary expenditures. Fund payments are not subject to the Cash Management Improvement Act of 1990, as amended.

May governments retain assets purchased with payments from the Fund?

Yes, if the purchase of the asset was consistent with the limitations on the eligible use of funds provided by section 601(d) of the Social Security Act.

What rules apply to the proceeds of disposition or sale of assets acquired using payments from the Fund?

If such assets are disposed of prior to December 30, 2020, the proceeds would be subject to the restrictions on the eligible use of payments from the Fund provided by section 601(d) of the Social Security Act.

Are Fund payments to State, territorial, local, and tribal governments considered grants?

No. Fund payments made by Treasury to State, territorial, local, and Tribal governments are not considered to be grants but are "other financial assistance" under 2 C.F.R. § 200.40.

Are Fund payments considered federal financial assistance for purposes of the Single Audit Act?

Yes, Fund payments are considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance, 2 C.F.R. § 200.303 regarding internal controls, §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements.

Are Fund payments subject to other requirements of the Uniform Guidance?

Fund payments are subject to the following requirements in the Uniform Guidance (2 C.F.R. Part 200): 2 C.F.R. § 200.303 regarding internal controls, 2 C.F.R. §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements.

Is there a Catalog of Federal Domestic Assistance (CFDA) number assigned to the Fund?

Yes. The CFDA number assigned to the Fund is 21.019.

If a State transfers Fund payments to its political subdivisions, would the transferred funds count toward the subrecipients' total funding received from the federal government for purposes of the Single Audit Act?

Yes. The Fund payments to subrecipients would count toward the threshold of the Single Audit Act and 2 C.F.R. part 200, subpart F re: audit requirements. Subrecipients are subject to a single audit or program-

specific audit pursuant to 2 C.F.R. § 200.501(a) when the subrecipients spend \$750,000 or more in federal awards during their fiscal year.

Are recipients permitted to use payments from the Fund to cover the expenses of an audit conducted under the Single Audit Act?

Yes, such expenses would be eligible expenditures, subject to the limitations set forth in 2 C.F.R. § 200.425.

If a government has transferred funds to another entity, from which entity would the Treasury Department seek to recoup the funds if they have not been used in a manner consistent with section 601(d) of the Social Security Act?

The Treasury Department would seek to recoup the funds from the government that received the payment directly from the Treasury Department. State, territorial, local, and Tribal governments receiving funds from Treasury should ensure that funds transferred to other entities, whether pursuant to a grant program or otherwise, are used in accordance with section 601(d) of the Social Security Act as implemented in the Guidance.

AGENDA ITEM REPORT

August 10, 2020

ITEM NUMBER: 9.

ITEM: Discussion requested by Council Member Leonard on possible legislation that would extend anti-discrimination and sexual harassment protections to independent contractors. Enclosed is a copy of the adopted ordinance from the City of Miami Beach.

DESCRIPTION:

Enclosed is an ordinance recently adopted by the City of Miami Beach to extend employment protections to independent contractors.

RECOMMENDED ACTION:

FINANCIAL ANALYSIS:

BUDGET IMPACT:

Submitted By: Alba Chang, Interim Town Clerk
Jordan W. Leonard, Council Member

ATTACHMENTS

1. CBM- Ordinance 2020-4334

ORDINANCE NO. 2020-4334

**AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF
THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER
62 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED,
"HUMAN RELATIONS," BY AMENDING ARTICLE II, ENTITLED
"DISCRIMINATION," BY AMENDING SECTION 62-86
ENTITLED "DISCRIMINATION IN EMPLOYMENT," TO EXTEND
EMPLOYMENT PROTECTIONS TO INDEPENDENT
CONTRACTORS; AND PROVIDING FOR REPEALER,
SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.**

WHEREAS, the United States is in the middle of an independent labor explosion. As of 2016, the Bureau of Labor Statistics estimates that there are 15 million independent workers in the United States, and that number has been on a mostly steady growth track since 2000; and

WHEREAS, according to a 2017 study conducted by Fiverr, an online marketplace for freelance services, Miami metropolitan area ranks as the fourth biggest market for independent professionals in the country and has the largest share of independent workers in the country when viewed as a share of contribution to metro GDP; and

WHEREAS, however, despite their rapidly growing numbers, independent workers also face unique challenges, such as limited legal protections; and

WHEREAS, legal protection for self-employed professionals varies wildly across the United States depending on whether they are independent contractors or run their own corporations; and

WHEREAS, under federal law, a contract worker lacks the right to sue for sexual harassment or gender discrimination, for example, because workplace civil rights laws do not apply; and

WHEREAS, currently, only New York City, California, Washington and Pennsylvania extend other workplace protections to contractors; and

WHEREAS, Section 62-86 of the City Code prohibits employers from discriminating against any individuals on any basis articulated in Section 62-33 of the City Code, with respect to that individual's compensation, terms, conditions or privileges of employment because of such individual's actual or perceived classification category; and

WHEREAS, the City of Miami Beach prides itself on being a diverse community, and a leader in adopting policies of inclusiveness, and has demonstrated a long history of opposing discrimination based on gender; and

WHEREAS, as such, the City has an important government interest in protecting independent contractors and providing them with legal protections under the City Code; and

WHEREAS, it is the desire of the Miami Beach City Commission to prohibit employers from discrimination against independent workers and contractors on any basis articulated in Section 62-33.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA AS FOLLOWS:

SECTION 1. That Sections 62-31 and 62-86 of Chapter 62 of the City Code is hereby amended as follows, with additional provisions provided for references purposes:

Chapter 62

HUMAN RELATIONS

* * *

ARTICLE II. DISCRIMINATION

DIVISION 1. GENERALLY

Sec. 62-31. Definitions.

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

Administrator means that person appointed pursuant to subsection 62-56(a).

Age means the chronological age of any individual who is 18 years or older.

Ancestry means a person's family or ethnic descent or the origin and background surrounding a person's genealogical lineage.

Classification category means each category by which discrimination is prohibited as set forth within section 62-33. These categories are as follows: race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, disability, marital and familial status, age, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, and political affiliation.

Committee means the City of Miami Beach Human Rights Committee.

Disability. Disabled persons are persons who:

- (1) Have a physical or mental impairment that substantially limits one or more of such person's major life activities.
 - a. Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
 - b. Qualified, with respect to employment, means such individual can perform the essential functions of the job in question with reasonable accommodations, and with respect to public services means an individual who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the city.
 - c. Substantially limited means likely to experience difficulty in securing, retaining or advancing in employment because of a disability.

Discriminatory practice means an intentional act that is unlawful and prohibited.

Domestic partnership status means the presence or absence of a domestic partnership and include the state of being in a domestic partnership, separated, or not in a domestic partner relationship. In this context, the term "separated" includes persons who have previously been a part of a domestic partnership.

Employee means a person employed by or seeking employment from an employer. It does not include any person employed by parents, a spouse or child.

Employer means any person who has five or more employees, in each of four or more calendar weeks in the current calendar year, and any agent of such person.

Entity includes "employee," "employer," and "person."

Familial situation means the state of a person's being raised by, or currently living with, a certain number of biological parents, or by a non-biological parent or parents, or without parents, or by any individual or group of individuals who is protected by this chapter.

Familial status means one or more individuals who have not attained the age of 18 years being domiciled with:

- (1) A parent or another person having legal custody of such individual or individuals; or
- (2) The designee of such parent or other person having custody, with the written permission of such parent or other person.

Family means one or more individuals living as a single housekeeping unit.

Gender identity includes actual or perceived sex, and shall also include a person's gender identity, self-image, appearance, expression or behavior, whether or not that gender identity, self-image, appearance, expression or behavior is different from that traditionally associated with the sex assigned to that person at birth.

Height means a numerical measurement from base to top of a human person, but includes an expression of that measurement in relation to weight, or an individual's unique physical composition through body size, shape, and proportions.

Housing or housing accommodations means any building, structure or portion thereof, or other facility occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof, mobile home, trailer or other facility. However, nothing in this article shall apply to rooms or units in housing containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

Independent contractor or worker means a person or entity contracted to perform work for—or provide services to—another entity as a nonemployee.

Interested party means the person filing a complaint or the person against whom a complaint has been filed.

Intersexuality means the condition of either having both male and female gonadal tissue in one individual or of having the gonads of one sex and external genitalia that is of the other sex or is ambiguous.

Labor organization membership means the presence or absence of a person's status either as a member or non-member, regarding any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for

the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Marital status means the presence or absence of a marital relationship and includes the state of being married, separated, or unmarried. The term "unmarried" includes persons who are single, divorced or widowed.

Mediation agreement means a written agreement entered into between a complainant and respondent setting forth the resolution of the issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the complainant, the respondent, and the mediator.

Mediator means that person appointed pursuant to section 62-63.

National origin means the origin of an ancestor, the country of origin of a person's forbearer, naturally, by marriage or by adoption.

Owner means any person, including, but not limited to, a lessee, sublessee, assignee, manager or agent, and also including the city and its departments or other subunits, having the right of ownership or possession or the authority to sell or lease any real property.

Person means one or more individuals, partnerships, associations, political subdivisions, labor unions, organizations, cooperatives, mutual companies, joint-stock companies, unincorporated organizations, trusts, trustees, or receivers, legal representatives, for-profit and not-for-profit associations and corporations, and business associations of whatever kind including, without limitation, general partnerships, limited liability partnerships, corporations, limited liability companies, business trusts, and joint ventures.

Political affiliation means ideological support of or opposition to, membership in, or donation of value to an organization or person which is engaged in supporting or opposing candidates for public office or influencing or lobbying any incumbent holder of public office on any single or number of issues which may be before any governmental branch.

Public accommodations means any retail establishment, an inn, hotel, motel or other establishment providing lodging to transient guests, other than an establishment located within a building containing not more than five rooms for rent or hire and is actually occupied by the proprietor of such establishment as his residence; any restaurant, cafeteria, lunchroom, lunch counter, soda fountain or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station; any bar, lounge, nightclub or other facility principally engaged in selling alcoholic beverages for consumption on the premises or any facility principally engaged in selling both food and alcoholic beverages for consumption on the premises; any motion picture house, theater, concert hall, convention hall, or other place of exhibition of entertainment; and any establishment physically located within the premises of any establishment otherwise covered by this article or within the premises of which is physically located any such covered establishment, and which holds itself out as serving patrons of such covered establishment.

Public services means services, programs, or activities of the city.

Real property means any land, buildings, fixtures, and all other improvements to land. The terms "land", "real estate," "realty" and "real property" may be used interchangeably.

Rent means to lease, sublease, assign, let or otherwise grant for a consideration the right to occupy premises not owned by the occupant.

Respondent means any person against whom a complaint is filed pursuant to this article.

Sale includes any contract to sell, exchange, convey, transfer or assign legal or equitable title to, or a beneficial interest in, real property.

Sex means male or female gender, and includes pregnancy, child birth, or medical conditions related to pregnancy or child birth.

Sexual orientation means actual or perceived heterosexuality, homosexuality, or bisexuality.

Weight means a numerical measurement of a human body's relative mass or the quantity of matter contained by it, giving rise to downward force, or an individual's unique physical composition through body size, shape, and proportions, and may be influenced by another person's impression of that individual as fat or thin, regardless of the numerical measurement.

Sec. 62-32. City of Miami Beach Human Rights Ordinance.

This article shall be known and may be cited as the "City of Miami Beach Human Rights Ordinance."

Sec. 62-33. Purpose; declaration of policy.

In the city, with its cosmopolitan population consisting of people of every race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, and age, some of them who are disabled as defined under section 62-31 hereof, there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of prejudice against one another and antagonistic to each other because of actual or perceived differences of race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation. The city finds and declares that prejudice, intolerance, bigotry and discrimination and disorder occasioned thereby threaten the rights and proper privileges of its inhabitants and menace the very institutions, foundations and bedrock of a free, democratic society.

The general purpose of this article and the policy of the city, in keeping with the laws of the United States of America and the spirit of the state constitution, is to promote through fair, orderly and lawful procedure the opportunity for each person so desiring to obtain employment, housing and public accommodations of the person's choice in the city without regard to actual or perceived differences of race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partnership status, labor organization membership, familial situation, or political affiliation, and, to that end, to prohibit discrimination in employment, housing and public accommodations by any person.

Sec. 62-34. Human Rights Committee established.

Effective April 15, 2010, there shall be established a Human Rights Committee, with shall be a standing committee of the city.

Sec. 62-35. Membership.

- (a) The committee shall consist of a minimum of five and a maximum of 11 members, with one out of every five members to be a direct appointment by the mayor, and with the remaining members to be at large appointments of the city commission.
- (b) The members of the committee shall reflect, as nearly as possible, the diversity of individuals protected under the city's human rights ordinance. In keeping with this policy,

not less than two months prior to making appointments or re-appointments to the committee, the city manager shall solicit nominations from as many public service groups and other sources, which he/she deems appropriate, as possible.

- (c) At least one of the committee members shall possess, in addition to the general qualifications set forth herein for members, a license to practice law in the State of Florida; be an active member of and in good standing with the Florida Bar; and have experience in civil rights law.
- (d) Members shall serve without compensation.

Sec. 62-36. Meetings; conduct of business.

- (a) Regular meetings of the committee shall be held at least monthly.
- (b) The city manager shall provide such adequate and competent administrative, technical and clerical personnel as may be reasonably required for the proper performance of the committee's duties.

Sec. 62-37. Duties and powers.

The committee shall have the following advisory duties, functions, powers, and responsibilities:

- (a) To study, advise, and make recommendations to the city manager and city commission for:
 - (1) Legislation on policies, procedures, and practices which would further the purposes of this article;
 - (2) Developing human relations plans and policies for the city to consider and making investigations and studies appropriate to effectuate the purposes of this article;
- (b) To inform persons of the rights assured and remedies provided under this article, and to promote goodwill, and minimize or eliminate actual or perceived discrimination because of race, color, national origin, religion, sex, intersexuality, sexual orientation, gender identity, disability, marital and familial status, age, ancestry height, weight, domestic partnership status, labor organization membership, familial situation, or political affiliation;
- (c) To call conferences of persons in the industries of housing, public accommodations, and employment in the city to acquaint them with the requirements of this article and, without limitation, the City of Miami Beach Human Rights Ordinance, and to endeavor with their advice to develop programs of voluntary compliance and enforcement; and
- (d) To hear appeals from the city manager's determination of no probable cause, where appropriate and necessary; and designate committee members to hear, in an advisory capacity to the hearing examiner, complaints alleging unlawful discrimination practices; and provide the hearing examiner (through the designated committee members) with a non-binding advisory recommendation prior to final disposition of the complaint.

The city's adoption of any committee recommendations (pursuant to those powers and duties which may be exercised by the committee under subsections (a) through (d) above, including, without limitation, recommendations that the city enact any legislation; plans, policies and procedures; call for studies and/or investigations; call for conferences; enact any programs; and/or distribute educational/informational materials, all with the purpose of furthering and effectuating the mission of the City of Miami Beach Human Rights Ordinance and this article), shall be subject to prior approval of the city commission, and such approval (if given at all) shall be further subject to funding availability.

DIVISION 2. ADMINISTRATION

Sec. 62-56. Administrative authority; powers and duties.

- (a) The provisions of this article shall be administered and enforced by the city manager or his/her designee. The city manager or his/her designee shall hereinafter be referred to as the "administrator".
- (b) The administrator's powers and duties include the following:
 - (1) Receive written complaints as provided by this article relative to alleged unlawful discriminatory practices, and transmit those complaints for proper handling;
 - (2) Establish, administer or review programs at the request of the city commission and make reports on such programs to the city commission;
 - (3) Render to the city commission annual written reports of activities under the provisions of this article, along with such comments and recommendations as the administrator may choose to make;
 - (4) Cooperate with and render technical assistance to federal, state, local and other public and private agencies, organizations and institutions that are formulating or carrying on programs to prevent or eliminate the unlawful discriminatory practices covered by the provisions of this article; and
 - (5) Conduct educational and public information activities at the request of the city commission that are designed to promote the policy of this article.

Sec. 62-57. Religious organizations.

The provisions in this article relating to sexual orientation shall not apply to any religious organization, association, society or any nonprofit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.

Sec. 62-58. Filing of a complaint and time limit.

- (a) Any person alleging that an unlawful discriminatory practice has occurred must file a verified, written complaint with the administrator within 180 days after the alleged unlawful discriminatory practice occurred.
- (b) The complaint may be filed by personal delivery, ordinary mail, registered mail or certified mail, addressed to the office of the city manager.

Sec. 62-59. Information on complaint.

- (a) A complaint of an unlawful discriminatory practice must be in writing, either on a form promulgated by the city administration (and approved by the administrator) or on any paper suitable for a complaint. The complaint shall be signed by the person making the complaint (hereinafter, the "complainant"); shall be sworn to or affirmed; and, at a minimum, shall state the full name and address, of the complainant; the full name and address of each respondent against whom the complaint is made, and who are alleged to have committed the unlawful discriminatory practice; the facts upon which the complaint is based; the classification category or categories of discrimination upon which the complaint is based; and other such information as may be required by the administrator.

- (b) A complaint shall not be within the jurisdiction of the City of Miami Beach Human Rights Ordinance if:
- (1) The complaint has been filed more than 180 days after the alleged unlawful discriminatory practice occurred;
 - (2) The complainant has previously initiated, or initiates, a civil action in a court of competent jurisdiction alleging an unlawful discriminatory practice with respect to the same grievance which is the subject of the complaint under this article; or
 - (3) The complainant has previously filed, or files, an action or proceeding before any administrative agency under any other law of the state, county, or city (including, without limitation, an agency with duties and powers similar to those prescribed in this article) alleging an unlawful discriminatory practice with respect to the same grievance which is the subject of the complaint under this article, and the administrative agency is either proceeding with its own investigation of the complaint or final determination has been made thereon.

Sec. 62-60. Notification of respondent; answer.

- (a) The administrator shall, within 45 days after the filing of a verified, written complaint of an unlawful discriminatory practice, serve on the respondent, by certified mail or personal delivery, a copy of the complaint and a notice identifying the alleged unlawful discriminatory practice and advising respondent of the procedural rights and obligations of respondent under this article.
- (b) Within 45 days after a copy of the complaint is served upon the respondent by the administrator, the respondent may file an answer thereto. If an answer is filed, the administrator shall cause a copy of such answer to be served upon the complainant. If an answer is filed, the answer shall be in writing and contain, at a minimum, a separate and specific response to each and every particular of the complaint or a denial of any knowledge or information thereof sufficient to form a belief. Any allegation in the complaint which is not denied shall be deemed admitted. If the respondent elects not to answer the complaint, and an answer to the complaint is not filed, then the hearing shall proceed on the evidence in support of the complaint.

Sec. 62-61. Amending complaints or answers.

A complaint of an unlawful discriminatory practice, or answer (if filed), may be amended in writing at any time when it would be fair and reasonable to do so, so long as the administrator will have adequate time to investigate any additional allegations and the parties will have adequate time to present the administrator, mediator, or hearing examiner (as the case may be) with evidence concerning such allegations before the issuance of findings of fact and a determination. The administrator shall furnish a copy of each amended complaint or answer to the respondent or complainant, respectively, as promptly as practicable. For jurisdictional purposes, such amendments shall be related back to the date the original complaint was first filed.

Sec. 62-62. Investigation of complaints.

- (a) Whenever a verified, written complaint is filed pursuant to this article, the administrator, at his or her sole option and election, shall either designate a member of his/her administrative staff, or retain an outside consultant/investigator, who shall make a full and prompt investigation in connection therewith (including a prompt and full investigation of the alleged unlawful discriminatory practice), and forward to the administrator a written summary of the

investigation. In the event that the administrator retains an outside investigator, he/she shall first report same to the city commissioners through the "letter to commission" (LTC) process, indicating the name, qualifications and other curriculum vitae of the investigator; and the proposed fee for the investigation. Any city commissioner may place the administrator's proposed retention of an outside investigator for discussion by the full city commission; provided that the item must be placed on the agenda of the next city commission meeting immediately following the administrator's issuance of the LTC.

- (b) The administrator may determine, upon conclusion of the investigation and review of the written summary, that:
 - (1) The complaint has no validity;
 - (2) The respondent charged in the complaint has not engaged in or is not engaging in the alleged unlawful discriminatory practice; and/or
 - (3) The complaint is not within the jurisdiction of the City of Miami Beach Human Rights Ordinance.

Such determination shall be issued in writing. With respect to the written determination, "issued" shall be defined as the date signed by administrator. Upon issuance, the administrator's findings of fact, determination and order may not be amended or withdrawn except upon the agreement of the parties or, by the administrator, in response to an appeal taken pursuant to subsection 62-62(d) below; provided, however, that the administrator may correct clerical mistakes or errors arising from oversight or omission.

- (c) If, upon conclusion of the investigation and review of the written summary, the administrator finds that probable cause exists for the allegations made in the complaint, such determination shall also be made in writing. Upon issuance, the written determination shall be furnished promptly to the complainant and respondent.
- (d) Determination of no probable cause; appeal from and dismissal. If a determination is made by the administrator that no probable cause exists for the allegations made in the complaint, the complainant shall have the right to appeal such determination to the committee within 30 days of the issuance of the written determination, by filing a written statement of appeal with the committee. The committee shall promptly deliver a copy of the statement to the administrator and the respondent, and shall, at a duly noticed meeting of the committee, promptly consider and act upon such appeal by either:
 - (1) Affirming the administrator's determination, or
 - (2) Remanding it to the administrator with appropriate instructions.

In the event no appeal is taken or such appeal results in affirmance, or if remanded on appeal (and on remand), the administrator still determines that no probable cause exists, the determination of the administrator shall be final; the complaint shall be closed with a ministerial finding of no probable cause or no jurisdiction; the complainant and the respondent shall be promptly notified, in writing; and the complaint shall be dismissed.

Sec. 62-63. Mediation.

- (a) If a determination is made by the administrator that probable cause exists to believe that an unlawful discriminatory practice has occurred, or is occurring, the administrator shall first endeavor to resolve the complaint by mediation. At his or her election, the administrator may serve as the mediator, or (in consultation with the city attorney) the administrator may appoint an independent mediator to act as a neutral third person to encourage and facilitate the resolution of the complaint. The independent mediator shall be an individual who shall

have been determined by the administrator and city attorney to have the knowledge, skills, and abilities to perform in such capacity as mediator. In the event that the administrator appoints an independent mediator, the costs for mediation shall be shared equally by the complainant and the respondent.

- (b) The mediator shall attempt to mediate the dispute and to report to the administrator and the city attorney on the results of the mediation efforts within 120 days of commencement of mediation.
- (c) The terms of the mediation shall be reduced to writing in the form approved by the mediator, and must be signed and verified by the complainant and respondent, and approved by the mediator. The mediation agreement shall constitute an agreement between the complainant and respondent; shall be for mediation purposes only; and shall not constitute an admission by any party that the law has been violated.
- (d) If the respondent complies with the recommendations under the mediation agreement, the matter shall be deemed settled and terminated and no further proceedings with regard to the complaint need be taken.

Sec. 62-64. Proceeding before hearing examiner; decision and order.

- (a) In the event mediation fails to resolve a complaint, or after 120 days have passed from commencement of mediation, the administrator shall refer the complaint to the city attorney. The city attorney shall prosecute the complaint before a hearing examiner. The hearing shall be conducted pursuant to the procedures set forth in section 30-72; provided, however, that if the city attorney determines that there is no legal basis for a complaint to be filed, or for the proceedings to continue, the complaint shall be dismissed, and a statement of the reasons therefor shall be filed with the administrator, with copies furnished to the complainant and respondent. The city attorney's determination shall be final.
- (b) For purposes of this article, the hearing examiner shall be selected by the city's chief special master, and shall have the knowledge, skills and abilities to perform in such capacity as special master with regard to hearing the particular complaint. At his or her election, the chief special master may either select one of the city's sitting special masters, or a hearing examiner pro tempore, appointed by the chief special master from a list approved by the city commission (and having the knowledge, skills and abilities to perform in the capacity of special master with regard to hearing the particular complaint).
- (c) The committee, after notice of the date of hearing from the hearing examiner, shall, appoint two members of the committee who have not otherwise been involved in the charge, investigation, fact-finding, or other resolution and proceedings on the merits of the case, who have not formed an opinion on the merits of the case, and who have no pecuniary, private or personal interest or bias in the matter, to hear the case with the hearing examiner. The committee designated representatives, shall act in an advisory capacity to the hearing examiner. The hearing examiner shall preside over the hearing, serve as the chair, and make all evidentiary rulings; provided, however, that following conclusion of the hearing but prior to the hearing examiner's ruling on the case, as provided in subsection 62-64(d) below, the designated committee members shall issue their non-binding advisory recommendation to the hearing examiner as to whether, based on the evidence presented, a violation of this article has occurred.
- (d) Within ten days of the conclusion of the hearing, the hearing examiner shall issue written findings of fact and conclusions of law, and a determination as to whether a violation of this

article has occurred. Copies shall be sent by certified mail to the complainant and the respondent, with copies also sent to the administrator, city attorney, and the committee.

Sec. 62-65. Penalties; compliance investigation.

- (a) Any person(s) found in violation of this article shall be subject to the following penalties:
 - (1) For a first finding of an unlawful discriminatory practice within a five-year period, up to \$1,000.00;
 - (2) For a subsequent finding of an unlawful discriminatory practice within a five-year period, up to \$5,000.00; and
 - (3) Notwithstanding subparagraphs (1) and (2), for a finding of an unlawful discriminatory practice which is irreparable or irreversible in nature, up to \$15,000.00.
- (b) In determining the amount of the fine, the hearing examiner shall consider the following factors:
 - (1) The gravity of the violation;
 - (2) Any actions taken by the violator to correct the violation; and
 - (3) Any previous violations committed by the violator.
- (c) In addition to the fines which may be imposed in subsection (a), the following penalties may also be applied:
 - (1) In the event of a finding of discrimination in either public accommodations, housing, or employment, a letter may be sent asking that the alleged offender desist from the actions complained of.
 - (2) In the event of a finding of discrimination in public accommodations where the alleged offender holds a license to sell alcoholic beverages, the hearing examiner may request that the administrator refer the violation to the appropriate state agency to determine whether due cause exists under applicable state law to revoke such license.
 - (3) In the event of a finding of discrimination in either public accommodations, housing, or employment where the alleged offender holds an occupational license issued by the city or is doing business with the city pursuant to a contract, the hearing examiner may request that the administrator direct the appropriate city department to conduct an investigation to determine whether due cause exists to revoke such license or contract.
 - (4) In the event of a finding of discrimination in either public accommodations, housing, or employment, the hearing examiner may request that the administrator direct the appropriate city department to conduct an investigation to determine whether the alleged offender has violated any other city ordinance which applies to the alleged discriminatory conduct.
 - (5) In the event of a finding of discrimination in either public accommodations, housing, or employment, the hearing examiner may request that the administrator refer the alleged discriminatory practice to the appropriate and applicable state and/or federal agency(ies) for further investigation, action, and handling (including, without limitation, determination by such appropriate/applicable agency(ies) as to whether the alleged offender has violated any state or federal law which applies to the alleged discriminatory conduct).
- (d) The hearing examiner may reduce a fine imposed pursuant to this article in accordance with the procedures contained in chapter 30 of this Code.

- (e) Compliance investigation. Not later than one year from the date of a mediation agreement or findings after hearing, and at any other times (in his or her discretion) the administrator shall investigate, or may direct the committee to investigate, whether the respondent is complying with the terms of such agreement or recommendations.

Sec. 62-66. Additional remedies.

The procedures prescribed by this article do not constitute an administrative prerequisite to another action or remedy available under other law. Further, nothing in this article shall be deemed to modify, impair, diminish, limit or otherwise affect any right or remedy conferred by local, state or federal law.

DIVISION 3. REGULATIONS

Sec. 62-86. Discrimination in employment.

It is an unlawful discriminatory practice for an employer to fail to hire or refuse to hire or to discharge any individual applicant, employee, or independent contractor, or otherwise to discriminate against any individual with respect to that individual's compensation, terms, conditions or privileges of employment because of such individual's actual or perceived classification category.

Sec. 62-87. Discrimination in public accommodations.

- (a) It is an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, resort or amusement because of the actual or perceived classification category of any person directly or indirectly to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof, that are afforded the other customers, or directly or indirectly to publish, circulate, issue, display, place, maintain, post or mail any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of actual or perceived membership in any classification category or that the patronage of any person actually or perceived as belonging to any particular classification category is unwelcome, objectionable or not acceptable, desired or solicited.
- (b) The production of or proof of the display or maintenance of any such written or printed notice or advertisement purporting to relate to any place of public accommodation shall be presumptive evidence that such display or maintenance was authorized by the person maintaining and operating such place of public accommodation.

Sec. 62-88. Discrimination in housing.

- (a) *Because of actual or perceived classification category.* In connection with any of the transactions set forth in this section affecting a housing accommodation, it shall be unlawful for any person, owner, financial institution, real estate broker or any representative of the above to engage in any of the following acts because of the actual or perceived classification category of a prospective buyer, renter, lessee or any person associated therewith:
 - (1) To refuse to sell, purchase, rent, lease, finance, negotiate or withhold any housing accommodation or to evict a person;

- (2) To discriminate against a person in the terms, conditions or privileges of the sale, purchase, rental or lease of any housing accommodation, or in the furnishing of facilities or services in connection therewith;
- (3) To refuse to receive or transmit a bona fide offer to sell, purchase, rent or lease any housing accommodation;
- (4) To represent to a person that any housing accommodation is not available for inspection, sale, purchase, rental or lease when in fact it is so available, or to refuse to permit a person to inspect any housing accommodation;
- (5) To refuse to lend money, whether or not secured by mortgage, or otherwise refuse to make funds available for the purchase, acquisition, construction, alteration, improvement, repair or maintenance of any housing accommodation or to impose different terms or conditions of such financing or refuse to provide title or insurance relating to the ownership or use of any interest in any housing accommodation;
- (6) To make, publish, print, circulate, post, mail or cause to be made, published, printed, circulated, posted or mailed any notice, statement or advertisement, or to announce a policy, or to sign or to use a form of application for the sale, purchase, rental, lease or financing of any housing accommodation, or to make a record of inquiry in connection with the prospective sale, purchase, rental, lease or financing of any housing accommodation that indicates any discrimination or any intent to discriminate;
- (7) To discriminate in any financial transaction involving real property because of its location, i.e., to "red-line";
- (8) To offer, solicit, accept or use a listing of any housing accommodation for sale, purchase, rental or lease with the understanding that a person may be subjected to discrimination in connection with such sale, purchase, rental, lease, or the furnishing of facilities or services in connection therewith;
- (9) To induce directly or indirectly, or attempt to induce directly or indirectly, the sale, purchase, rental, lease or the listing for any of the above, of any housing accommodation by representing that the presence or anticipated presence of a person actually or perceived to be a member of a particular classification category will or may result in:
 - a. The lowering of property values in the area;
 - b. An increase in criminal or antisocial behavior in the area; or
 - c. A decline in the quality of the schools serving in the area;
- (10) To make any representations concerning the listing for sale, purchase, rental or lease, or the anticipated listing for sale, purchase, rental or lease of any housing accommodation for the purpose of inducing or attempting to induce any such listing for any of the above transactions;
- (11) To engage in or hire to be done, or to conspire with others to commit acts or activities of any nature, the purpose of which is to coerce, cause panic, incite unrest, or create or play upon fear with the purpose of either discouraging or inducing or attempting to induce the sale, purchase, rental, lease or listing of any housing accommodation on any basis prohibited by this article;
- (12) To aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by this article, or to obstruct or prevent any person from complying with the provisions of this article or any order issued hereunder;

- (13) To resist, prevent, impede or interfere with the mediator in the lawful performance of his duties under this article;
- (14) To canvass to commit any unlawful practice prohibited by this article;
- (15) To deny or withhold any housing accommodation from a person on any basis prohibited by this article; or
- (16) To deny any qualified person access to or membership in or participation in any multiple-listing service, real estate brokers' organization, or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against such person in the terms or conditions of such access, membership or participation on any basis prohibited by this article.

(b) *Because of disability.*

- (1) In connection with the design and construction of covered multifamily dwellings submitted for building permit on or after March 1, 1990, and first occupied after March 13, 1991, it shall be unlawful to fail to design and construct those housing accommodations in such a manner that:
 - a. The public use and common use portions of such dwelling are readily accessible to and usable by handicapped persons;
 - b. All the doors designed to allow passage into and within all premises within such housing accommodations are sufficiently wide to allow passage by persons in wheelchairs; and
 - c. All premises within such accommodations contain the following features of an adaptive design:
 - 1. An accessible route into and throughout the dwelling;
 - 2. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;
 - 3. Reinforcements in the bathroom walls to allow later installation of grab bars; and
 - 4. Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space.
- (2) As used in this subsection, "covered multifamily dwelling" means:
 - a. A building that consists of four or more housing units and has an elevator; or
 - b. The ground floor units of a building that consists of four or more housing units and does not have an elevator.
- (3) Conformance with the appropriate specifications of the American National Standards Institute for buildings and facilities providing accessibility and usability for physically handicapped persons, commonly cited as ANSI A117.1 (1986), suffices to satisfy the requirements of subsection (1)a. through c. of this section.

Sec. 62-88.1. Discrimination in public services.

No individual shall, by reason of actual or perceived race, color, national origin, religion, sex, intersexuality, sexual orientation, gender identity, marital and familial status, age, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation, nor any qualified individual with a disability shall, by reason of disability, be

excluded from participation in or be denied the benefits of the public services of the city, or be subjected to discrimination by the city.

Sec. 62-89. Retaliation, coercion, interference, obstruction or prevention of compliance with this article.

It is an unlawful discriminatory practice for a person to conspire to:

- (1) Retaliate or discriminate against a person because such person has opposed a discriminatory practice or because such person has made a charge, filed a complaint, testified, assisted or participated in an investigation, proceeding or hearing under this article;
- (2) Aid, abet, incite or coerce a person to engage in an unlawful discriminatory practice;
- (3) Willfully interfere with the performance of a duty or the exercise of a power by the administrator, board or one of its staff members or representatives; or
- (4) Willfully obstruct or prevent a person from complying with the provisions of this article or an order issued under this article.

Sec. 62-90. Use of municipal facilities.

The use of municipal facilities in the city shall be regulated pursuant to the provisions of this section. The purpose and intent of this section is to establish legislative and administrative policies for the nondiscriminatory use of municipal facilities, which shall be defined as any and all city-owned and operated facilities including buildings, parks, fields, and any other facility now or in the future owned, controlled, leased, or operated by the city. All organizations, clubs, and individuals wishing to obtain any fee waiver to use municipal facilities shall confirm in writing as follows:

I [name of organization, club, or person] the [title] of [name of organization or club], certify that I/my organization or club does not discriminate in its membership or policies based on actual or perceived race, color, national origin, religion, sex, intersexuality, sexual orientation, gender identity, familial and marital status, age, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, political affiliation, or disability.

Sec. 62-91. Municipal funds.

Municipal funding of organizations or clubs shall be regulated pursuant to this section. The purpose and intent of this section is to establish legislative and administrative policies for the award of municipal funds to organizations or clubs that do not discriminate in their membership or policies. All organizations or clubs wishing to obtain municipal funding shall confirm in writing as follows:

I [name of organization or club] the [title] of [name of organization or club], certify that my organization/club does not discriminate in its membership or policies based on actual or perceived race, color, national origin, religion, sex, intersexuality, sexual orientation, gender identity, familial and marital status, age, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, political affiliation, or disability.

Sec. 62-92. Posting.

- (a) Every person being the owner, lessee, sub-lessee, assignee, or managing agent of a public accommodation subject to the Miami Beach Human Rights Ordinance shall post and maintain at such public accommodation, in a conspicuously and easily accessible and well-lighted place where it may be readily observed by those seeking or visiting such public accommodation, a notice furnished by the City of Miami Beach indicating the substantive provisions of the Human Rights Ordinance relative to public accommodations, the place where complaints may be filed, and such other information as the City of Miami Beach deems pertinent.
- (b) Every employer subject to the Miami Beach Human Rights Ordinance shall post and maintain at its offices, places of employment or employment training centers, in a conspicuously and easily accessible and well-lighted place customarily frequented by employees and applicants for employment, notices furnished by the City of Miami Beach indicating the substantive provisions of the Human Rights Ordinance relative to employment, the place where complaints may be filed and such other information as the City of Miami Beach deems pertinent.
- (c) Every person, owner, financial institution, real estate broker or any representative of the above who interacts with prospective buyers, renters, or lessees of housing or housing accommodations, or any person associated therewith, shall post and maintain in a conspicuously and easily accessible and well-lighted place where it may be readily observed by those seeking or visiting the housing unit or business establishment, a notice furnished by the City of Miami Beach indicating the substantive provisions of the Human Rights Ordinance relative to housing and housing accommodations, the place where complaints may be filed, and such other information as the City of Miami Beach deems pertinent.
- (d) Every department or facility of the City of Miami Beach where City employees provide services or access shall post and maintain at such department or facility, in a conspicuously and easily accessible and well-lighted place where it may be readily observed by those seeking or visiting such department or facility, a notice furnished by the City of Miami Beach indicating the substantive provisions of the Human Rights Ordinance relative to public benefits and services, the place where complaints may be filed, and such other information as the City of Miami Beach deems pertinent.
- (e) Posting of the notices required in this section is deemed to be an important educational tool to provide residents of and visitors to Miami Beach with vital information concerning their rights under the City's Human Rights Ordinance, so the Administrator is authorized and directed to enforce its provisions. For a period of one year following the effective date of this section, violators of its requirements shall be issued one warning by City of Miami Beach Code Compliance officers or by the Administrator upon complaint, or upon recommendation by a majority vote of the Miami Beach Human Rights Committee. Subsequent violations shall be punished, if not remedied within five calendar days, by fine as described in Section 62-92(f).
- (f) One year after the effective date of this section, penalties for violations of subsections 62-92(a) and 62-92(b) shall [be] assessed (except against the City of Miami Beach) by City of Miami Beach Code Compliance officers or by the Administrator upon complaint, or upon recommendation by a majority vote of the Miami Beach Human Rights Committee as follows:
 - (1) For the first violation: A fine of \$50.00.

- (2) For the second violation: A fine of \$100.00.
- (3) For the third violation: A fine of \$150.00.
- (4) For the fourth and any subsequent violation: A fine of \$200.00.
- (g) Penalties shall be assessed by service of a notice of violation, served personally or by certified mail upon the property owner, business owner, or upon a manager present at the premises.
- (h) Any person receiving a notice of violation pursuant to this section may request, within 15 days of receipt of the notice, an administrative hearing before a special master, appointed as provided in article II of chapter 30, to appeal the decision of the city inspector or the Administrator resulting in the issuance of the notice. The special master shall hold a hearing and shall hear testimony and evidence from the code inspector or the Administrator and the alleged violator. All testimony shall be under oath and shall be recorded. Formal rules of evidence shall not apply, but fundamental due process shall be observed and shall govern said proceedings. At the conclusion of the hearing, the special master shall issue findings of fact based on evidence and conclusions of law and shall issue an order affording the proper relief consistent with the powers granted in Section 30-72. Failure to appeal within the prescribed time period shall constitute a waiver of the violator's right to an administrative hearing. A waiver of the right to an administrative hearing shall be treated as an admission of the violation, and fines and penalties may be assessed accordingly.
- (i) Timely filing of a notice of appeal pursuant to this section shall toll the imposition of collection procedures until 30 days after the issuance of a written determination by the special master. Any costs or penalty amounts due the city pursuant to such determination must be received by the city within 30 days after the issuance of the determination, or collection procedures may be commenced, as provided by this chapter or under state law.

DIVISION 4. EXCEPTIONS

Sec. 62-111. Employment.

- (a) Notwithstanding any other provision of this article:
 - (1) It is not an unlawful discriminatory practice for an employer to hire and employ employees on the basis of that individual's actual or perceived classification category in those certain instances where such actual or perceived classification category is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and
 - (2) It is not an unlawful discriminatory practice for a school, college, university or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled or managed by a particular religion or by a particular religious corporation, association or society or if the curriculum of such school, college, university or other educational institution or institution of learning is directed toward the propagation of a particular religion. However, this exception will not apply if such institution restricts membership in its organization on the basis of race, color or national origin.
- (b) Notwithstanding any other provision of this article:
 - (1) It is not an unlawful discriminatory practice for any employer to apply different standards of compensation, or different terms, conditions or privileges of employment

pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of one's actual or perceived classification category;

- (2) It is not an unlawful discriminatory practice for an employer to give and to act upon the results of any professionally developed ability test, provided that such test, its administration or action upon the results, is not designed, intended or used to discriminate because of one's actual or perceived classification category.
- (c) Nothing contained in this article shall be interpreted to require any employer to grant preferential treatment to any individual or to any group because of the actual or perceived classification category of such individual or group, on account of an imbalance that may exist with respect to the total number or percentage of persons of any actual or perceived classification category employed by any employer in comparison with the total number of percentage of persons of such actual or perceived classification category in any community, state, section or any other area, or in the available work force in any community, state, section or other area.
- (d) This article shall not apply to a religious corporation or association, educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities.
- (e) Notwithstanding any other provisions of this article, it is not an unlawful discriminatory practice for an employer to consider an individual's religion when making a decision concerning that individual if the employer demonstrates that the reason for considering that individual's religion is that he is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

Sec. 62-112. Housing

- (a) Nothing in this article shall prohibit a religious organization, association, society or any nonprofit charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society from limiting or from advertising the sale, rental or occupancy of housing it owns or operates for other than a commercial purpose to persons of the same religion or from giving preference to such persons. However, this exception shall not apply if such religious organization, association, society or any nonprofit, charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization restricts membership in its organization on the basis of actual or perceived race, color or national origin; nor shall anything in this article prohibit a private club not in fact opened to the public, which as an incident to its preliminary purpose provides lodgings it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.
- (b) No provision in this article regarding familial status shall apply to housing for older persons.
 - (1) As used in this subsection, "housing for older persons" means housing:
 - a. Provided under any local, state or federal program that the administrator determines is specifically designed and operated to assist elderly persons as defined in the local, state or federal program;
 - b. Intended for and solely occupied by persons 62 years of age or older; or

- c. Intended for and occupied by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the administrator shall develop regulations that require at least the following factors:
 - 1. The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons or, if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons;
 - 2. That at least 80 percent of the housing is occupied by at least one person 55 years of age or older per unit; and
 - 3. The publication of and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.
- (2) Housing shall not fail to be considered housing for older persons if:
 - a. A person who resides in such housing on or after the effective date of the ordinance from which this article is derived does not meet the age requirements of this subsection, provided that any new occupant meets such age requirements; or
 - b. One or more units are unoccupied, provided that any unoccupied units are reserved for occupancy by persons who meet the age requirements of this subsection.
- (c) Nothing contained in this article shall preclude the seller, developer, condominium association, lessor, property owner, or that person's authorized agent from setting forth reasonable rules, regulations, terms and conditions pertaining to the sale, lease or disposal of that person's property provided such rules, regulations, terms and conditions are not based on actual or perceived race, color, religion, sex, intersexuality, sexual orientation, gender identity, national origin, age, disability, familial status, marital status, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation, and provided there is no conflict with the affirmative provisions set forth in this article. Furthermore, nothing in this article shall preclude reasonable rules, regulations, or terms and conditions pertaining to the safe and prudent use by minors of facilities and amenities provided in conjunction with real property.

Sec. 62-113. Public accommodations.

- (a) Nothing in this article shall be applied to a religious organization, association or society or any nonprofit institution or organization operating, supervised or controlled by or in conjunction with a religious organization, association or society from limiting facilities and accommodations it owns or operates for other than a commercial purpose to persons of the same religious organization or from giving preference to such persons. However, this exception shall not apply if such religious organization, association, society or any nonprofit, charitable or educational institution or organization operated, supervised or controlled by or in conjunction with a religious organization restricts membership in its organization on the basis of race, color or national origin.
- (b) Nothing in this article shall prohibit the limiting of the use of kindergartens, nurseries, day care centers, theaters and motion picture houses to persons of a particular age group.

SECTION 2. CODIFICATION

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Miami Beach City Code. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 3. REPEALER

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 4. SEVERABILITY

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the 23 day of May, 2020.

PASSED AND ADOPTED this 13 day of May, 2020.

ATTEST:

78 5/21/2020
Rafael E. Granado, City Clerk

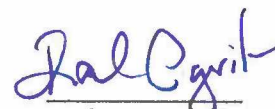

Dan Gelber, Mayor



(Sponsored by Commissioner Steven Meiner)

Underlines denote additions
Strikethrough denotes deletions

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION


City Attorney
fcb

2-4-2020
Date

MIAMI BEACH

COMMISSION MEMORANDUM

TO: Honorable Mayor and Members of the City Commission
FROM: Raul J. Aguila, City Attorney
DATE: May 13, 2020

9:05 a.m. Second Reading Public Hearing

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 62 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED, "HUMAN RELATIONS," BY AMENDING ARTICLE II, ENTITLED "DISCRIMINATION," BY AMENDING SECTION 62-86 ENTITLED "DISCRIMINATION IN EMPLOYMENT," TO EXTEND EMPLOYMENT PROTECTIONS TO INDEPENDENT CONTRACTORS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

RECOMMENDATION

On February 15, 2020, at the City Commission meeting, the above-referenced Ordinance passed on First Reading with no revisions. The Ordinance is now submitted for consideration by the Mayor and City Commission for Second Reading/Public Hearing.

Applicable Area

Not Applicable

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?

No

Does this item utilize G.O. Bond Funds?

No

Legislative Tracking

Office of the City Attorney/Office of the City Manager

Sponsor

Commissioner Steven Meiner

ATTACHMENTS:

Description

- ▢ Memorandum
- ▢ 1st Rdg. Ord.

MIAMI BEACH

OFFICE OF THE CITY ATTORNEY
RAUL AGUILA, CITY ATTORNEY

COMMISSION MEMORANDUM

TO: MAYOR DAN GELBER
MEMBERS OF THE CITY COMMISSION
JIMMY L. MORALES, CITY MANAGER FIRST READING

FROM: RAUL J. AGUILA, CITY ATTORNEY 

DATE: February 12, 2020

SUBJECT: AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 62 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED, "HUMAN RELATIONS," BY AMENDING ARTICLE II, ENTITLED "DISCRIMINATION," BY AMENDING SECTION 62-86 ENTITLED "DISCRIMINATION IN EMPLOYMENT," TO EXTEND EMPLOYMENT PROTECTIONS TO INDEPENDENT CONTRACTORS; AND PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

Pursuant to the request of Commissioner Steven Meiner, the above-referenced Ordinance is submitted on First Reading for consideration by the Mayor and City Commission at the February 12, 2020 City Commission meeting.

The United States is in the middle of an independent labor explosion. As of 2016, the Bureau of Labor Statistics estimates that there are 15 million independent workers in the United States, and that number has been on a mostly steady growth track since 2000. In 2017, Fiverr, an online marketplace for freelance services, conducted a study analyzing the growth of businesses without any payroll among tech, artistic and professional service occupations, including lawyers with private practices, solo contractors like plumbers, or software engineers, and artists. Fiverr found that between 2011 and 2015, the number of these solo businesses grew 11 percent across the 15 major metro areas measured.

In the Miami metropolitan area, which includes Broward and Palm Beach counties, this group zoomed ahead 23 percent—and their revenues grew even faster, at a rate of 32 percent. This workforce now comprises 2.13 percent of the Miami's economy in 2016, the most for any major metro. Additionally, Miami metropolitan area ranked as the fourth biggest market for independent professionals in the country.

However, despite their rapidly growing numbers, independent workers also face unique challenges, such as limited legal protections. Legal protection for self-employed professionals varies wildly across the United States depending on whether they are independent contractors or run their own corporations. For example, under federal law, a contract worker lacks the right to sue for sexual harassment or gender discrimination, for example, because workplace civil rights laws do not apply. Currently, only New York City, California, Washington and Pennsylvania extend other workplace protections to contractors.

Currently, Section 62-86 of the City Code prohibits employers from discriminating against any individuals on any basis articulated in Section 62-33 of the City Code, with respect to that individual's compensation, terms, conditions or privileges of employment because of such individual's actual or perceived classification category. However, Section 62-86 does not explicitly provide for protections for independent contractors.

The City of Miami Beach prides itself on being a diverse community, and a leader in adopting policies of inclusiveness, and has demonstrated a long history of opposing discrimination based on gender. As such, the City has an important government interest in protecting independent contractors and providing them with legal protections under the City Code.

This amendment will not significantly impact the City. There could potentially be new claims by independent contractors against the City for discrimination, but the City already follows a policy for not discriminating on the basis of protected characteristics. As such, any potential uptick is expected to be negligible. In addition, there may be new complaints by independent contractors filed with the City against private employers, requiring City staff to investigate these additional complaints.

Notwithstanding the amendments to Sections 62-31 and 62-86, the entire Human Rights Ordinance has been included for your review and reference.

RA/RR/FA/ps