

**RESOLUTION NO. 2020-2722**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE TOWN OF SURFSIDE AND THE FLORIDA STATE LODGE FRATERNAL ORDER OF POLICE TO PROVIDE 1% HAZARD PAY TO FIRST RESPONDERS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, on March 12, 2020, the Town Commission of the Town of Surfside (“Town”) adopted Resolution No. 2020-2676, declaring a local state of emergency due to the Novel Coronavirus Disease 2019 (“COVID-19”); and

**WHEREAS**, on March 27, 2020, President Trump signed the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”) into law; and

**WHEREAS**, among other things, the CARES Act includes a \$150 billion Coronavirus Relief Fund for local governments to cover expenses that are necessary expenditures incurred due to the COVID-19 public health emergency; and

**WHEREAS**, the State of Florida was allocated \$8.328 billion from the Coronavirus Relief Fund, of which Miami-Dade County (the “County”) received \$474 million; and

**WHEREAS**, at the August 4, 2020, Special Meeting of the County Board of County Commissioners (the “BCC”), the BCC allocated a total of not-to-exceed \$100,000,000 in CARES Act funds for municipalities in the County, which included funds for a one percent (1%) hazard pay supplement for first responders; and

**WHEREAS**, on August 25, 2020, the Town Commission adopted Resolution 2020-2713 approving an Interlocal Agreement with the County for reimbursement of necessary expenses incurred due to COVID-19 pursuant to the CARES Act; and

**WHEREAS**, the Town desires to enter into a Memorandum of Understanding between the Town and the Florida State Lodge Fraternal Order of Police (the “MOU”), in substantially the form attached hereto as Exhibit “A,” in order to provide first responders with a one percent (1%) hazard pay supplement; and

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

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

**Section 1. Recitals Adopted.** Each of the above-stated recitals are hereby adopted, confirmed and incorporated herein.

**Section 2. Approval and Authorization.** The Town Commission hereby approves the MOU, in substantially the form attached hereto as Exhibit “A.” The Town Manager is authorized to execute the MOU in substantially the form attached hereto as Exhibit “A.”

**Section 3. Implementation.** The Town Manager and/or designee is hereby authorized to take any and all action necessary to implement the purposes of this Resolution and the MOU.

**Section 4. Effective Date.** This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED this 13<sup>th</sup> day of October, 2020.

Motion By: Commissioner Kesl  
Second By: Commissioner Velasquez

**FINAL VOTE ON ADOPTION:**


Commissioner Charles Kesl	<u>YES</u>
Commissioner Eliana R. Salzhauer	<u>YES</u>
Commissioner Nelly Velasquez	<u>YES</u>
Vice Mayor Tina Paul	<u>YES</u>
Mayor Charles W. Burkett	<u>YES</u>

  
\_\_\_\_\_  
Charles W. Burkett, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Sandra McCready, MMC  
Town Clerk

**APPROVED AS TO FORM AND LEGALITY FOR THE USE  
AND BENEFIT OF THE TOWN OF SURFSIDE ONLY:**

  
\_\_\_\_\_  
Weiss Serota Helfman Cole & Bierman, P.L.  
Town Attorney

**MEMORANDUM OF UNDERSTANDING BETWEEN  
TOWN OF SURFSIDE AND  
FLORIDA STATE LODGE FRATERNAL ORDER OF POLICE**

This Memorandum of Understanding is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by and between the TOWN OF SURFSIDE, a Florida Municipal Corporation (the “Town”) and FLORIDA STATE LODGE FRATERNAL ORDER OF POLICE (the “Union”). The Town and the Union are collectively referred to as the “Parties.”

**WHEREAS**, the Union serves as the exclusive bargaining agent for Town employees that are considered “first responders” as that term may be defined by the County, as described in this MOU; and

**WHEREAS**, the terms and conditions of employment for the Town’s “first responders” are governed by a Collective Bargaining Agreement covering the period October 1, 2019 through September 30, 2022 (the “CBA), including wages; and

**WHEREAS**, the Coronavirus (“COVID-19”) is a respiratory illness that has led to a declaration of a public health emergency locally, state-wide and nationally, and has required a considerable expenditure of governmental resources; and

**WHEREAS**, the federal Coronavirus Aid, Relief, and Economic Security (“CARES”) Act was passed in March 2020 which, among other things, appropriated federal monies for local units of governments to cover expenditures incurred due to the COVID-19 pandemic; and

**WHEREAS**, the CARES Act specifically appropriated federal monies to Miami-Dade County (the “County”) to mitigate the economic impact of COVID-19; and

**WHEREAS**, on July 27, 2020, the County approved the disbursement of federal monies to municipalities within its geographic region to provide what the County referred to as a one percent (1%) hazardous pay supplement or the “1% Hazard Pay” to first responders, in recognition of their tireless work during the pandemic despite the health risk and exposure; and

**WHEREAS**, the Town’s “first responders” are eligible for the 1% Hazard Pay; and

**WHEREAS**, state law mandates that any adjustment to wages requires mutual agreement between the Town and the Union; and

**WHEREAS**, the Parties agree that the first responders covered by the CBA shall receive the 1% Hazard Pay in accordance with the provisions herein.

**NOW, THEREFORE**, the Parties agree as follows:

1. The foregoing recitals are true and correct and are incorporated herein by reference.
2. Effective March 1, 2020 through the end of the declared emergency, but no later than December 30, 2020 (the “Relevant Period”), bargaining unit employees that

meet the definition of “first responders”, as defined herein, may be eligible to receive a temporary 1% supplemental pay increase (which the County called “Hazard Pay”) based on their base pay for the performance of any necessary actions taken to respond to COVID-19. This means that the work for which payment is due under this MOU must be completed during the Relevant Period.

3. For the purposes of this MOU, based on a FAQ dated August 7, 2020 from the County, a “first responder” means sworn law enforcement officers, state-certified firefighters and corrections officers. The eligible bargaining unit positions are enumerated on the attached list, but the parties also agree that this definition remains subject to further modification based on additional definitional guidance/direction from the County.
4. The 1% Hazard Pay applies only to personal services that are substantially dedicated to mitigating or responding to COVID-19, but it is presumed that all hours actually worked by first responders relate to such services unless the Town determines that specific circumstances indicate otherwise and/or if the County provides further guidance that may also limit the scope of how this 1% Hazard Pay shall be applied or paid. The 1% pay adjustment shall be paid for hours physically worked by the employee dedicated to mitigating or responding to the COVID-19 public health emergency or hours directly related to a COVID-19 absence, if permissible [Families First Coronavirus Response Act (FFCRA) leave, Sick Injury for COVID-19, Workers’ Compensation Leave for COVID-19]. Because the 1% Hazard Pay may only be based on hours actually worked, employees shall not receive this supplemental pay if they are not in pay status or on any unworked paid hours (e.g., vacation, sick, jury duty, etc.), unless the employee’s absence is directly related to COVID-19 [Families First Coronavirus Response Act (FFCRA) leave, Sick Injury for COVID-19, Workers’ Compensation Leave for COVID-19]. Additionally, the 1% pay adjustment is not to be paid on any leave payouts such as DROP or separation payouts.
5. The 1% Hazard pay shall not be incorporated when calculating the employees’ regular base rate of pay for any other type of payment (e.g., leave payout) unless mandated by law.
6. The 1% Hazard Pay increases eligible bargaining unit employees’ base salary, which means that this adjustment to their salary will be used for all wage calculation purposes (e.g., tax obligations) during the Relevant Period.

7. The 1% Hazard Pay is a nonregular payment and, therefore, is not “compensation” under the defined benefit pension plan as set forth in Section 2-171 of the Town Code.
8. The funding source for the 1% Hazard Pay exclusively comes from the CARES Act funding disbursements provided by the County and, therefore, will be cost neutral to the Town. The Town shall not be obligated to make up the difference due to any County disbursement shortfall, even if it results in employees receiving an amount less than 1%, though the Town will endeavor to request sufficient funding. Under any circumstances where there is a shortfall in the County disbursements that results in any failure to cover 100% of the costs related to this 1% Hazard Pay, the Union agrees that insufficient funding shall not be subject to the grievance/arbitration procedure in the CBA, nor will the Union or any employees have the right to appeal or otherwise challenge the Town’s decision to stop making any of these payments due to a funding shortfall. Furthermore, if any payments made to employees pursuant to this MOU are not reimbursed by the County, the Town shall recoup the unreimbursed amount from the employees who received payment (“the Overpaid Amount”). In such case, the Overpaid Amount will be recouped from the impacted employees in installments using a timeframe agreeable by the parties, provided full recoupment occurs no later than September 30, 2021.
9. The Parties have had the opportunity to consult with legal counsel of their choosing prior to executing this MOU.
10. This MOU shall become effective upon ratification (though retroactively applied) by the bargaining unit employees represented by the Union and by the Town Commission, whichever occurs later. In the event that this MOU is not fully ratified for any reason, it shall have no force or effect upon either party.
11. Other than as specifically set forth herein, this MOU does not modify the CBA.
12. The parties agree that this MOU represents the Parties’ entire agreement with regards to this subject matter, and that it cannot be amended or modified without express written consent of the Parties.

**FLORIDA STATE LODGE  
FRATERNAL ORDER OF POLICE**

**TOWN:**

**TOWN OF SURFSIDE, a Florida  
municipal corporation**

By: \_\_\_\_\_  
Vincent Castiglia,  
FOP Staff Representative

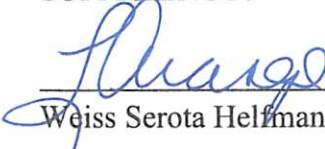
By: \_\_\_\_\_

Date Executed: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Sandra McCready, MMC, Town Clerk

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

  
\_\_\_\_\_  
Weiss Serota Hellman Cole & Bierman, P.L.