

RESOLUTION NO. 2021- 2785

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA APPROVING AMENDMENT NO. 4 TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE TOWN OF SURFSIDE, THE CITY OF MIAMI BEACH, NORTH BAY VILLAGE, TOWN OF BAY HARBOR ISLANDS, BAL HARBOUR VILLAGE, AND THE MIAMI BEACH CHAMBER EDUCATION FOUNDATION, INC. TO FUND A NURSE ENHANCEMENT INITIATIVE FOR SCHOOL YEAR 2021/2022 FOR RUTH K. BROAD BAY HARBOR K-8 CENTER; PROVIDING FOR AUTHORIZATION AND IMPLEMENTATION OF THE AMENDMENT TO THE MOU; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (“Town”) entered into a Memorandum of Understanding (“MOU”) with the City of Miami Beach, North Bay Village, the Town of Bay Harbor Islands and Bal Harbour Village (“Participating Municipalities”), and the Miami Beach Chamber Education Foundation, Inc. (“MBCEF”), to fund and implement the Nurse Enhancement Initiative for the Ruth K. Broad Bay Harbor K-8 Center; and

WHEREAS, the MOU provides that Participating Municipalities will provide their proportionate share of funds for the Nurse Enhancement Initiative; and

WHEREAS, the MOU was amended by Amendment No. 2 to the MOU, executed on July 9, 2019, to extend the Nurse Enhancement Initiative for FY 2019-20 and set forth the proportionate share of funding for Participating Municipalities; and

WHEREAS, the MOU was amended by Amendment No. 3 to the MOU dated August 19, 2020 to extend the Nurse Enhancement Initiative for FY 2020-2021 and set forth the proportionate share of funding for Participating Municipalities; and

WHEREAS, the parties wish to further amend the MOU in order to assign the proportionate share of funding to Participating Municipalities for FY 2021-22, requiring the Town to contribute \$8,112.00, as set forth in Amendment No. 4 to the MOU (“Amendment”), attached hereto as Exhibit “A”; and

WHEREAS, the Town Commission finds that the Amendment is in the best interest and welfare of the Town and its residents and wishes to approve the Amendment in substantially the form attached hereto as Exhibit “A.”

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

Section 1. Recitals. That the above and foregoing recitals are true and correct and are hereby incorporated by reference.

Section 2. Approval of Amendment to MOU; Authorization. The Amendment between the Town, Participating Municipalities and MBCEF, substantially in the form attached hereto as Exhibit "A", is hereby approved. The Town Commission authorizes the Town Manager to execute the Amendment on behalf of the Town, together with such changes as may be approved by the Town Manager and Town Attorney as to form and legal sufficiency.

Section 3. Implementation. The Town Manager is authorized to take all action necessary to implement the purposes of this Resolution and the Amendment.

Section 4. Effective Date. This Resolution will become effective upon adoption.

PASSED AND ADOPTED this 11th day of May, 2021.

Motion by Vice Mayor Paul
Second by Commissioner Kesl.

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 N. McCready, MMC,
Town Clerk

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE TOWN OF SURFSIDE ONLY:**



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

**AMENDMENT NO. 4
TO THE MEMORANDUM OF UNDERSTANDING
AMONG
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 2021/2022**

Amendment No. 4 ("**Amendment**") is made and entered into this ____ day of _____, 2021, by and among the **City of Miami Beach, Florida ("CMB")**, 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; **North Bay Village ("NBV")**, a municipal corporation organized and existing under the laws of the State of Florida, having its principal place of business at 1666 John F. Kennedy Causeway, #3, North Bay Village, Florida 33141; the **Town of Bay Harbor Islands ("TBHI")**, a municipal corporation organized and existing under the laws of the State of Florida, having its principal place of business at 9665 Bay Harbor Terrace, Bay Harbor Islands, Florida 33154; the **Town of Surfside ("TS")**, a municipal corporation organized and existing under the laws of the State of Florida, having its principal place of business at 9293 Harding Avenue, Surfside, Florida 33154; **Bal Harbour Village ("BHV")**, a municipal corporation organized and existing under the laws of the State of Florida, having its principal place of business at 655 96th Street, Bal Harbour, Florida 33154; and the **Miami Beach Chamber Education Foundation, Inc. ("MBCEF")**, a Florida not-for-profit corporation, having its principal place of business at 100 16th Street, Suite 6, Miami Beach, Florida 33139 (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, Amendment No. 2 to the **MOU**, dated September 19, 2019, and Amendment No. 3 to the **MOU**, dated August 19, 2020 (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 executed Amendment No. 3 to the MOU, dated August 19, 2020, extending the Nurse Enhancement Initiative for the Participating Schools for the 2020-21 School Year; and

WHEREAS, due to the success of the Nurse Enhancement Initiative services, the Parties wish to provide the Nurse Enhancement Initiative for the 2021/2022 School Year; and

WHEREAS, a Nurse Enhancement Initiative should be established at the Participating Schools for School Year 2021/2022 as herein provided and pursuant to a separate agreement between MBCEF and TCT; and

WHEREAS, MBCEF shall provide funding to TCT for the 2021-2022 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.

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

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

3. On or before October 31, 2021 the Participating Municipalities shall provide their proportionate share of the funds for the 2021/2022 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 of the MOU. The Participating Municipalities' proportionate share of funding for the 2021/2022 School Year shall be paid by October 31, 2021, in the following amounts for 44 weeks, from October 1, 2021 to June 5th 2021 and August 1, 2021 to September 30, 2021:

- i) CMB shall provide 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;

a. Paragraph 7 of the MOU is hereby deleted in its entirety and replaced with the following:

7. In the event that any of the provisions in this MOU are not performed, or if the Nurse Enhancement Initiative is terminated, during a particular School Year, after funds have been disbursed 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 in the subsequent School Year, then MBCEF may, as directed by the Participating Municipalities in writing, hold any unused funds in escrow to be applied toward the Nurse Enhancement Initiative for the subsequent School Year. Any unused funds shall be credited toward each of the Participating Municipalities' proportionate share of the funding for the subsequent School Year.

b. A new paragraph 8 (Audit and Inspections) is hereby added to the MOU, as follows:

8. AUDIT AND INSPECTIONS

Upon reasonable verbal or written notice to MBCEF, and at any time during normal business hours (i.e. 9AM – 5PM, Monday through Fridays, excluding nationally recognized holidays), and as often as the City Manager may, in his/her reasonable discretion and judgment, deem necessary, there shall be made available to the City Manager, and/or such representatives as the City Manager may deem to act on CMB's behalf, to audit, examine, and/ or inspect, any and all other documents and/or records relating to all matters covered by this MOU. MBCEF shall maintain any and all such records at its place of business.

- c. A new paragraph 9 (Inspector General Audit Rights) is hereby added to the MOU, as follows:

9. INSPECTOR GENERAL AUDIT RIGHTS

- (A) Pursuant to Section 2-256 of the Code of the City of Miami Beach, CMB has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all CMB contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of CMB.
- (B) The Office of the Inspector General is authorized to investigate CMB affairs and empowered to review past, present and proposed CMB programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor CMB projects and programs. Monitoring of an existing CMB project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of MBCEF, its officers, agents and employees, lobbyists, CMB staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, CMB is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.
- (C) Upon ten (10) days written notice to MBCEF, MBCEF shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of MBCEF, their respective officers, agents and employees, lobbyists, CMB staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.
- (D) The Inspector General shall have the right to inspect and copy all documents and records in MBCEF's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.

- (E) MBCEF shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this MOU, for examination, audit, or reproduction, until three (3) years after final payment under this MOU or for any longer period required by statute or by other clauses of this MOU. In addition:
- i. If this MOU is completely or partially terminated, MBCEF shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
 - ii. MBCEF shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this MOU until such appeals, litigation, or claims are finally resolved.
- (F) The provisions in this section shall apply to MBCEF, its officers, agents, employees, subcontractors and suppliers.
- (G) Nothing in this section shall impair any independent right of CMB to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on CMB by MBCEF or third parties.

d. A new paragraph 10 (E-Verify) is hereby added to the MOU, as follows:

10. E-VERIFY

- (A) MBCEF shall comply with Section 448.095, Florida Statutes, "Employment Eligibility" ("E-Verify Statute"), as may be amended from time to time. Pursuant to the E-Verify Statute, commencing on January 1, 2021, MBCEF shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees during the Term of the MOU. Additionally, MBCEF shall expressly require any subcontractors performing work or providing services pursuant to the MOU to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract Term. If MBCEF enters into a contract with an approved subcontractor, the subcontractor must provide MBCEF with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. MBCEF shall maintain a copy of such affidavit for the duration of the MOU or such other extended period as may be required under this MOU.
- (B) TERMINATION RIGHTS.
- (1) If CMB has a good faith belief that MBCEF has knowingly violated Section 448.09(1), Florida Statutes, CMB shall terminate this MOU with MBCEF, for cause, and CMB shall thereafter have or owe no further obligation or liability to MBCEF.
- (2) If CMB has a good faith belief that a subcontractor has knowingly violated the foregoing Subsection 10(A), but MBCEF otherwise complied with such subsection, CMB will promptly notify MBCEF and order MBCEF to immediately terminate the MOU with the subcontractor. MBCEF's failure to terminate a subcontract shall be

an event of default under this MOU, entitling CMB to terminate MBCEF's contract for cause.

- (3) A contract terminated under the foregoing Subsection (B)(1) or (B)(2) is not in breach of contract and may not be considered as such.
- (4) CMB or MBCEF or a subcontractor may file an action with the Circuit or County Court to challenge a termination under the foregoing Subsection (B)(1) or (B)(2) no later than 20 calendar days after the date on which the contract was terminated.
- (5) If CMB terminates the MOU with MBCEF under the foregoing Subsection (B)(1), MBCEF may not be awarded a public contract for at least 1 year after the date of termination of this MOU.
- (6) MBCEF is liable for any additional costs incurred by CMB as a result of the termination of this MOU under this Section 10.

e. A new paragraph 11 (MBCEF's Compliance with Florida Public Records Law) is hereby added to the MOU, as follows:

11. MBCEF'S COMPLIANCE WITH FLORIDA PUBLIC RECORDS LAW

- (A) MBCEF shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.
- (B) The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of CMB.
- (C) Pursuant to Section 119.0701 of the Florida Statutes, if MBCEF meets the definition of "Contractor" as defined in Section 119.0701(1)(a), MBCEF shall:
 - (1) Keep and maintain public records required by CMB to perform the service;
 - (2) Upon request from CMB's custodian of public records, provide CMB with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
 - (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the MOU if MBCEF does not transfer the records to CMB;
 - (4) Upon completion of the MOU, transfer, at no cost to CMB, all public records in possession of MBCEF or keep and maintain public records required by CMB to perform the service. If MBCEF transfers all public records to CMB upon completion of the MOU, MBCEF shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If MBCEF keeps and maintains public records upon completion of the MOU, MBCEF shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to CMB, upon request from CMB's custodian of public records, in a format that is compatible with the information technology systems of CMB.

(D) REQUEST FOR RECORDS; NONCOMPLIANCE.

- (1) A request to inspect or copy public records relating to CMB's contract for services must be made directly to CMB. If CMB does not possess the requested records, CMB shall immediately notify MBCEF of the request, and MBCEF must provide the records to CMB or allow the records to be inspected or copied within a reasonable time.**
- (2) MBCEF's failure to comply with CMB's request for records shall constitute a breach of this MOU, and CMB, at its sole discretion, may: (1) unilaterally terminate the MOU; (2) avail itself of the remedies set forth under the MOU; and/or (3) avail itself of any available remedies at law or in equity.**
- (3) IF MBCEF fails to provide the public records to CMB within a reasonable time may be subject to penalties under s. 119.10.**

(E) CIVIL ACTION.

- (1) If a civil action is filed against MBCEF to compel production of public records relating to CMB's contract for services, the court shall assess and award against MBCEF the reasonable costs of enforcement, including reasonable attorneys' fees, if:**
 - a. The court determines that MBCEF unlawfully refused to comply with the public records request within a reasonable time; and**
 - b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that MBCEF has not complied with the request, to CMB and to MBCEF.**
- (2) A notice complies with subparagraph (1)(b) if it is sent to CMB's custodian of public records and to MBCEF at MBCEF's address listed on its contract with CMB or to MBCEF's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.**
- (3) If MBCEF complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.**

(F) IF MBCEF HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO MBCEF'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS MOU, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

CITY OF MIAMI BEACH
ATTENTION: RAFAEL E. GRANADO, CITY CLERK
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FLORIDA 33139
E-MAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV
PHONE: 305-673-7411

12. 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: _____
Alina T. Hudak, City Manager

Date: _____

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION



City Attorney



Date

04/23/2021

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: _____