

RESOLUTION NO. 2021- 2786

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING A DONATION AGREEMENT WITH THE GERALD B CRAMER FAMILY FOUNDATION INC. PROVIDING FOR A \$100,000 DONATION FOR TOWN TENNIS CENTER UPGRADES AND ADDITIONAL TENNIS CLASS EXPENDITURES; PROVIDING FOR AUTHORIZATION; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (“Town”) Parks and Recreation Department (“Department”) provides recreational and leisure opportunities to residents and visitors to build a strong sense of community within the Town and to increase the social, cultural, and physical well-being of residents and visitors; and

WHEREAS, the Gerald B Cramer Family Foundation Inc. (the “Donor”), a not-for-profit 501(c)(3) private foundation, desires to contribute to the continued success of the Department by donating \$100,000 to the Department for the purpose of performing upgrades to the Town Tennis Center and/or for additional funding for Town tennis class expenditures (the “Donation Purposes”); and

WHEREAS, Donor and Town desire to enter into a donation agreement for the Donation Purposes in substantially the same form attached hereto as Exhibit “A” (the “Donation Agreement”); and

WHEREAS, the Town Commission finds that the Donation Agreement is in the best interests of the Town and its residents, and the public health and welfare.

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

Section 1. Recitals. The above Recitals are true and correct and incorporated herein by this reference.

Section 2. Approval of the Donation Agreement. The Donation Agreement with the Donor is approved. The Town Manager is hereby authorized to execute the Donation Agreement

in substantially the form attached hereto as Exhibit "A," subject to approval by the Town Attorney as to form, content, and legal sufficiency.

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

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

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

Motion by Commissioner Kesl
Second by Vice Mayor Paul

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>



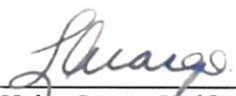
Charles W. Burkett, Mayor

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

DONATION AGREEMENT
FOR THE
TOWN OF SURFSIDE, FLORIDA

THIS DONATION AGREEMENT (“**Agreement**”), is made effective this _____ day of _____, 2021, by and between the **TOWN OF SURFSIDE**, a Florida municipal corporation, located at 9293 Harding Avenue, Surfside, Florida 33154 (the “**Town**”), and **GERALD B CRAMER FAMILY FOUNDATION INC.**, a 501(c)(3) private foundation (the “**Donor**”). Hereinafter, the Town and/or Donor may be referred to individually as a “**Party**” or collectively as the “**Parties**.”

WITNESSETH:

WHEREAS, the Town’s Parks and Recreation Department provides recreational and leisure opportunities to residents and visitors to build a strong sense of community within the Town and to increase the social, cultural, and physical well-being of residents and visitors; and

WHEREAS, Donor is appreciative of the services, functions, and activities that the Town’s Parks and Recreation Department provides residents and visitors; and

WHEREAS, consequently, Donor desires to contribute to the continued success of the Town’s Parks and Recreation Department by offering a \$100,000 donation to the Town for the purpose of supporting the Town’s Parks and Recreation Department (the “**Donation**”).

NOW, THEREFORE, in consideration of the mutual covenants and undertakings of Donor and the Town, and other good and valuable consideration, the Parties covenant and agree as follows:

1. **Recitals**. The foregoing recitals are true and correct and are incorporated herein by this reference.
2. **Payment of Donation; Purpose of Donation**. Subject to the conditions set forth herein, Donor shall deliver the Donation in the amount of \$100,000 to the Town. Town hereby covenants, confirms, and agrees that the Donation will be used and expended by the Town at a rate of \$20,000 per fiscal year solely for tennis center related upgrades and additional tennis class expenses incurred by the Town.
3. **Term**. The term of this Agreement shall commence upon execution of this Agreement (“**Execution Date**”) and shall thereafter continue until all required Donations are made by Donor and received and expended by Town, as provided herein.
4. **Remedies**. In the event of Donor’s default under this Agreement, Town shall be entitled to any and all remedies under Florida law. In the event Town defaults under this Agreement, Donor shall have all remedies under Florida law. No default shall be deemed to occur unless

the respective Party fails to cure a failure of performance within thirty (30) days after written notice from the other Party.

5. **Recording.** Neither this Agreement, nor any notice or memorandum of this Agreement, shall be recorded in the official records of Miami-Dade County, Florida. The Agreement shall be binding upon and benefit the Parties and their successors and authorized assigns.
6. **Tax Matters.** Donor understands that the Donation may enable Donor to claim a deduction for purposes of United States federal income tax, but recognizes that it must contact and confer with its own tax attorneys or accountants for matters regarding any entitlement to a tax deduction and/or benefit, if any, record keeping requirements, and limitations on the amount of any tax deduction, as well as related issues.
7. **Entire Agreement.** This Agreement, and any exhibits annexed hereto, constitute the entire agreement and understanding of the Parties to this Agreement with respect to the subject matter of this Agreement, and supersedes all prior discussions, correspondence, oral and written agreements, commitments or understandings, restrictions, representations or warranties among the Parties to the Agreement concerning the subject matter of this Agreement other than those set forth herein or herein provided for.
8. **Notices/Authorized Representatives.** Any notices required by this Agreement shall be in writing and shall be deemed to have been properly given if transmitted by hand-delivery, by registered or certified mail with postage prepaid return receipt requested, or by a private postal service, addressed to the parties (or their successors) at the addresses listed on the signature page of this Agreement or such other address as the party may have designated by proper notice.
9. **Public Records.**
 - 9.1. Donor agrees to keep and maintain public records in Donor's possession or control in connection with Donor's performance under this Agreement. The Town Manager or her designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of the Donor involving transactions related to this Agreement. Donor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Donor shall 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 Agreement, and following completion of the Agreement until the records are transferred to the Town.
 - 9.2. Upon request from the Town's custodian of public records, Donor shall provide the Town 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 by Chapter 119, Florida Statutes, or as otherwise provided by law.
 - 9.3. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.

- 9.4. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Donor shall be delivered by the Donor to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Donor shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Donor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 9.5. Donor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.
- 9.6. **Notice Pursuant to Section 119.0701(2)(a), Florida Statutes.** IF THE DONOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DONOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records:	Sandra McCready, MMC
Mailing address:	9293 Harding Avenue Surfside, FL 33154
Telephone number:	305-861-4863
Email:	smccready@townofsurfsidefl.gov

10. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, as an Agreement made, and entered into, and to be performed in Miami- Dade County, Florida.
11. **Jurisdiction & Venue.** The Parties to this Agreement expressly consent to the jurisdiction of and agree to suit in any State court of general jurisdiction in Miami- Dade County Florida, and further agree that venue shall lie exclusively in Miami-Dade County, Florida, concerning any litigation between the Parties which may arise out of or concern this Agreement. Further, the Parties hereby waive any right to trial by jury in any such litigation.
12. **Amendments & Waivers.** No amendment, supplement, modification, or waiver of this Agreement shall be binding unless executed in writing by all of the Parties hereto. No waiver of any of these provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided. The Town Manager shall act for Town hereunder.
13. **Assignment and Successors.** Donor shall not assign its obligations and benefits hereunder without the prior written consent of the Town, which consent shall not be unreasonably withheld, conditioned or delayed, provided that Donor may make such assignment to any of Donor's affiliated companies. In the event Town gives its consent to assignment of this Agreement, the assignment shall not be valid unless and until a fully executed Agreement is entered into between the Town and assignee.

14. Miscellaneous.

- 14.1. All of the Parties to this Agreement have participated fully in the negotiation and preparation hereof, and, accordingly, this Agreement shall not be more strictly construed against any one of the Parties hereto.
- 14.2. In the event any term or provision of this Agreement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.
- 14.3. In the event of any litigation between the Parties under this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and court costs at all trial and appellate levels.
- 14.4. In construing this Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, the use of any gender shall be held to include every other and all genders, and captions and paragraph headings shall be disregarded.
- 14.5. Except as otherwise expressly provided herein, each Party shall be responsible for its own costs in connection with this Agreement, including, without limitation, attorney's fees.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK. SIGNATURE PAGE
FOLLOWS.]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year as first stated above.

TOWN OF SURFSIDE

DONOR

By: _____
Andrew Hyatt
Town Manager

Attest:

By: _____
Sandra McCready, MMC
Town Clerk

Approved as to form and legal sufficiency:

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

Addresses for Notice:

Andrew Hyatt
Town of Surfside
Attn: Town Manager
9293 Harding Avenue
Surfside, FL 33154
305-861-4863 (telephone)
305-993-5097 (facsimile)
ahyatt@townofsurfsidefl.gov (email)

With a copy to:

Weiss Serota Helfman Cole & Bierman, P.L.
Attn: Lillian Arango, Esq.
Town of Surfside Attorney
2525 Ponce de Leon Boulevard, Suite 700
Coral Gables, FL 33134
larango@wsh-law.com (email)

By: _____

Name: _____

Title: _____

Entity: Gerald B Cramer Family Foundation Inc.

Addresses for Notice:

_____ (telephone)
_____ (facsimile)
_____ (email)

With a copy to:

_____ (telephone)
_____ (facsimile)
_____ (email)