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December 9, 2020

M E M O R A N D U M

TO: Eden Bentley, County Attorney

RE: Item G., Interlocal Agreement CARES Act Funding

The Board of County Commissioners, in regular session on December 8, 2020, approved to enter into an Interlocal Agreement between Brevard County Board of County Commissioners of Brevard County, Florida and Barefoot Bay Recreation District in respect to CARES Act funding.

Enclosed is the fully-executed Interlocal Agreement.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

for Donna Scott
Kimberly Powell, Clerk to the Board

/cld

Encl. (1)

cc: County Manager
Budget Office
Finance

INTERLOCAL AGREEMENT CARES ACT FUNDING

THIS INTERLOCAL AGREEMENT is made and entered into by and between the BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as "County," and Barefoot Bay Recreation District, an independent special district organized under the Laws of Florida, Chapter 83-204 and Brevard County Ordinance 84-05, as subsequently amended and codified in Chapter 98, Article III, Div. II of the Brevard County Code of Ordinances hereinafter referred to as "District."

RECITALS:

WHEREAS, the United States Congress passed and the President signed on March 27, 2020, the "Coronavirus Aid, Relief, and Economic Security Act (CARES Act) Act" to appropriate funding for a wide variety of needs and tremendous costs related to the coronavirus pandemic response to include an appropriation of \$150 billion to States, Tribal governments, and units of local government;

WHEREAS, funds were authorized to be allocated as a direct payment from the Department of the Treasury to certain units of local governments of a State that submit a certification for the purpose of receiving a direct payment;

WHEREAS, by relative population Brevard County was an eligible unit and submitted a certification and has received an appropriation of \$105 Million Dollars;

WHEREAS, in order to receive the allocation, the County was required to certify the funds will be used only in the County's response to COVID-19 and as further set forth herein;

WHEREAS, the County recognizes that the Special District will incur many of the same costs and needs the County will incur in responding to the COVID-19 pandemic and wishes to provide assistance to the District, in compliance with the CARES Act (including Guidance issued by the Department of Treasury) and as otherwise authorized by the Board of County Commissioners, as set forth herein; and

WHEREAS, this assistance will be of great benefit to the health, safety and welfare of the public.

NOW THEREFORE, the County and the District covenant and agree that they have full power and authority to enter into this Agreement and bind their respective governmental entities as follows:

SECTION 1. RECITALS.

The above recitals are true and correct and by this reference are hereby incorporated into and made an integral part of this Agreement.

SECTION 2. STATUTORY AUTHORITY. This Agreement shall be considered an Interlocal Agreement pursuant to the authority of Florida Statutes, Chapter 163, Part 1, 2020.

SECTION 3. CARES ACT REQUIREMENTS.

CARES Act funds may only be used to cover District expenses that:

- (a) are necessary expenditures incurred due to the public health emergency with respect to COVID-19; and
- (b) were not accounted for in the District's Budget most recently approved as of March 27, 2020; and
- (c) were or will be incurred during the period that began on March 1, 2020, and ends on December 30, 2020. The expense is incurred when the County has expended the funds to cover the expense or reimbursed the District for the expense.

The expenditure or reimbursement for expenditure must comply with the CARES Act and the Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments (and Answers to Frequently Asked Questions which supplement the Guidance) issued by the Department of Treasury.

Revenue replacement is not a permissible use of CARES Act funds under the terms of this Agreement.

The District will not receive any CARES Act funding for any expense or cost that is paid for or reimbursed by another source.

SECTION 4. RESPONSIBILITY FOR EXPENDITURE OF CARES ACT FUNDS.

- (a) The County, as the recipient of \$105 million dollars of CARES Act funds, is responsible for ensuring that all expenditures, including those made or incurred on behalf of the District, meet the requirements set forth in Section 3 above.
- (b) The County has no legal obligation to appropriate or set aside any CARES Act funding for the District. This Agreement does not create a contractual right to any expenditure for the District.
- (c) The District, by submitting a request for expenditure of CARES Act funds, represents to the County that the request, relevant budgetary background for the budget most

recently approved as of March 27, 2020, and associated documentation has been appropriately reviewed by its staff to determine that the expenditure meets the requirements set forth in Section 3 above.

- (d) The District understands that the County will be audited in the future both internally and by the federal government to evaluate the eligibility of expenditures; that if an expenditure made to or on behalf of the District is determined to be ineligible, the County may be required to reimburse or pay the federal government back for the ineligible expenditure; and that the District agrees to pay the County back to the extent that the federal government requires the County to reimburse the ineligible expenditure. The District shall remit such payment to the County within 30 calendar days from the date the County notifies the District, in writing, that the federal government has demanded the return of CARES Act funds expended by the County at the request of the District, subject to any applicable appeal of the federal government's eligibility determination.
- (e) The County will not be responsible for any expenditure it agrees to make on behalf of the District if it is disallowed by the federal government.
- (f) All decisions by the County for the expenditure of funds under this Agreement, from the County's CARES Act appropriation, are final and not subject to any grievance, appeal, or litigation administratively or otherwise. All decisions are solely within the discretion of the County.

SECTION 5. COUNTY GUIDELINES; PROCEDURE FOR REQUESTING FUNDS.

- (a) The Board of County Commissioners of Brevard County approved the use of CARES Act funds for certain Public Health and Safety programs at its regular meeting on May 5, 2020. It is the County's intent to reimburse the District for District expenditures for the same types of programs as approved by the Board at the May 5, 2020 meeting, which are eligible for CARES Act funding, or as may otherwise be approved by the Board in the near future.
- (b) The County will provide the District with the procedures for requesting CARES Act funds, no later than five business days from the District's execution of this Agreement, which may be adjusted from time to time. Any changes to the procedures provided by the County will be transmitted to the District as soon as approved by the County Manager. The District agrees to provide documentation requested by the County in order to justify requested expenditures incurred due to the public health emergency with respect to COVID-19.
- (c) As of the date of the District's execution of this Agreement, the District will coordinate with the County regarding any purchase for which the District requests

CARES Act funding. The County may elect to make the purchase directly and distribute the purchased supplies, commodities, etc., to the District.

- (d) All purchase orders or contracts, whether issued by the District or the County, shall include the OMB Uniform Guidance contract clauses and FEMA required contract clauses.

SECTION 6. NOTICES.

All Notices required under this Agreement, and as not otherwise directed herein, shall be in writing and delivered to the parties by United States mail, hand delivery, express mail or electronic mail (email) as follows:

- (a) District Representative:

John Coffey, Community Manager,
Barefoot Bay Recreation District
625 Barefoot Boulevard
Barefoot Bay, FL 32976
jcoffey@bbrd.org
(772)664-3141

- (b) County Representative:

Jill Hayes, Director, Budget Office
Brevard County Board of County Commissioners
2725 Judge Fran Jamieson Way
Bldg C
Viera, FL 32940
jill.hayes@brevardfl.gov
(321) 633-2153

SECTION 7. DEFAULT.

Either Party to this Agreement, in the event of any act of default by the other, shall have all remedies available to it under the laws of the State of Florida.

SECTION 8. SEVERABILITY

If any part of this Agreement is found to be invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can still be accomplished.

SECTION 9. EFFECTIVE DATE.

Pursuant to Chapter 163, Florida Statutes, the effective date of this Agreement shall be the date on which it is recorded with the Clerk of the Circuit Court in and for Brevard County.

SECTION 10. RECORDING.

Upon execution of this Agreement, the County shall record a fully executed original of this Agreement in the Public Records of Brevard County, Florida, and shall return a recorded original of the Agreement to the District representative listed in Section 6.

SECTION 11. TERMINATION.

Either party to this Agreement can terminate this Agreement, with or without cause, by furnishing thirty days prior written notice as provided for in Section 6. However, the parties agree the provisions of Section 4 survive any termination of this Agreement.

SECTION 12. ATTORNEYS FEES.

In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs.

SECTION 13. VENUE AND NON-JURY TRIAL.

Any legal action to enforce, interpret, or construe the terms of this Agreement, shall be in a court of competent jurisdiction in and for Brevard County, Florida and any trial shall be a non-jury trial.

SECTION 14. COMPLIANCE WITH STATUTES.

It shall be each party's responsibility to be aware of and comply with all federal, state, and local laws.


SECTION 15. ENTIRETY.

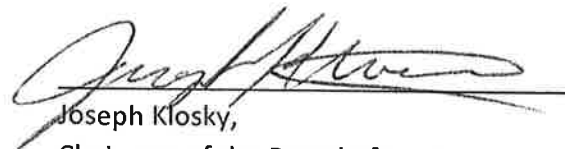
This Agreement represents the understanding and agreement of the parties in its entirety. There shall be no amendments to this Agreement unless such amendments are in writing and signed by both parties

In witness whereof, the parties hereto have set their hands and seals on the date and year written below.

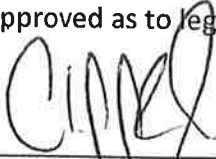
ATTEST:

BAREFOOT BAY RECREATION DISTRICT


Stephanie Brown, District Clerk


Joseph Klosky,
Chairman of the Board of Trustees
As approved by the Board on 12/4/2020

Approved as to legal form and content:



Attorney for the Special District
Clifford R. Repperger Jr.

ATTEST:



Scott Ellis, Clerk to the Board

**BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA**



Rita Pritchett, Chair

As approved by the Board on: 12/8/2020.

Approved as to legal form and content:

Attorney for the County