

## **MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding ("MOU") is made this \_\_\_\_ day of \_\_\_\_\_, 2018 ("Effective Date"), by and between the WELLINGTON COMMUNITY FOUNDATION, INC, a Florida not for profit corporation ("WCF"), whose address is 12794 Forest Hill Blvd., Ste. 19F, Wellington, FL 33414, and THE VILLAGE OF WELLINGTON, a political subdivision of the State of Florida ("VOW"), having a mailing address at 12300 Forest Hill Blvd., Wellington, Florida 33414.

### **RECITALS**

**WHEREAS**, VOW, through its Community Services Department, funds, participates in, and completes certain community projects and activities, subject to budgets approved by its Council; and

**WHEREAS**, these projects generally fall into four primary functions of (a) Neighborhood Services, (b) Community Outreach for Senior Services and Programming, (c) Community Outreach for Youth Services and Programming, and (d) Community Development Block Grant Programming; and

**WHEREAS**, within the four primary functions of the VOW Community Services Department, there are specific projects that are directed to VOW seniors and children, such as Senior Housing Rehabilitation programs, Senior "Aging in Place" Home Modification programs, Youth Summer Camp Scholarships, and Youth Summer Internships; and

**WHEREAS**, WCF is a 501(c)(3) not for profit corporation whose mission is to benefit the residents of the Village of Wellington, with a focus on Wellington seniors and children, by supporting and improving their quality of life through community projects, fundraising initiatives, and donations; and

**WHEREAS**, WCF, in furtherance of their mission, would like to partner with VOW on certain community projects and activities that meet WCF's mission statement and goals by providing a percentage of the budgeted amount of the projects, where the percentage will be agreed to between VOW and WCF on a project-by-project basis.

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated herein by reference.
2. **Effective Date and Term.** This MOU shall take effect upon the date listed above and shall remain in effect for five (5) years, subject to the terms of cancellation below.
3. **Responsibilities and Duties.**
  - a. VOW's Community Services Department will present projects to WCF that it believes comply with WCF's mission and goals. Likewise, WCF may present such projects to VOW for consideration.

- b. WCF and VOW will give due and reasonable consideration to any presented projects. If both parties agree to proceed with a project, agree to the budget for the project, and agree to WCF's percentage of contribution, WCF shall be obligated to provide the agreed-to percentage of the agreed-to budgeted amount within thirty (30) days of completion of the project.
  - c. Wellington's Village Manager or designee will approve project participation on behalf of the Village of Wellington.
  - d. WCF's obligations with respect to any project with VOW shall be limited to providing funding at the agreed-to percentage of the agreed-to budget amount.
  - e. On a semi-annual basis, the VOW Community Services Department shall provide to WCF a report on all projects completed that utilized WCF funds.
  - f. Subject to WCF's compliance with VOW's Standards for Unofficial Use of Village Seal and VOW's written approval, WCF will be permitted to use this relationship in its advertising and fundraising.
  - g. WCF and VOW will endeavor to mutually cooperate in researching and applying for grant opportunities from outside sources that meet with both VOW's and WCF's mission and goals. WCF and VOW are free to obtain any other grants for their respective projects not covered by the terms of this MOU.
  - h. All communications between WCF and VOW with respect to this paragraph must be communicated in writing by the WCF Board President and with the Community Services Director or other VOW employee designated by the Village Manager.
4. **Cancellation.** This MOU may be cancelled by either party, at any time, for any reason or no reason whatsoever. At the time of cancellation, any funds owed by WCF to VOW for projects it notified that it would participate in shall be paid within 30 days. Any cancellation notice shall be sent in the manner specified below.
5. **Notices.** Except for those communications provided for in paragraph 3 above, every other notice, instruction, or other communication ("Notices") required or permitted by the terms hereof, shall be in writing and shall be sent by (a) personal delivery, (b) certified mail or registered mail - return receipt requested, or (c) overnight third-party delivery service, with delivery confirmation. All notices shall be sent to the following addresses:

To WCF: Wellington Community Foundation  
12794 Forest Hill Blvd.  
Suite 19F  
Wellington, FL 33414

With copy to: Michael S. Smith, Esquire  
Lesser, Lesser, Landy & Smith PLLC  
101 Northpoint Parkway  
West Palm Beach, FL 33407

To VOW: Village of Wellington  
Attn: Village Manager  
12300 Forest Hill Blvd.  
Wellington FL 33414

With copy to: Village Attorney  
Village of Wellington  
12300 Forest Hill Blvd.  
Wellington FL 33414

Notice shall be deemed to have been given as of the date (a) it is personally delivered or (b) the certified or registered mail is received, as evidenced by the return of the return receipt, (c) the overnight delivery is received, as evidenced by the confirmation of the overnight delivery service. The parties may change their respective notice address(es) set forth above by providing the other parties with written Notice (5) business days in advance of the change.

6. **Counterparts.** This MOU may be executed in any number of counterparts, each of which when executed and delivered shall be an original, and such counterparts shall together constitute one and the same instrument. For purpose of this MOU, a facsimile or similar electronic transmission of a counterpart signed by a party hereto shall be regarded as an original signed by such party for all purposes.
7. **Governing Law.** This memorandum, and the rights and obligations of the parties hereunder, shall be governed and construed in accordance with the laws of Florida. The parties hereby irrevocably consent to the exclusive jurisdiction and venue of the state courts in Palm Beach County, in the State of Florida, for any and all claims and causes of action arising from or related to this Agreement.
8. **Attorneys' Fees.** If either party defaults in the performance of any of the terms or provisions of this Agreement and by reason thereof the other party employs the services of an attorney to enforce performance of the covenants, or to perform any service based upon defaults, then in any of said events the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and all expenses and costs incurred by the prevailing party pertaining thereto (including costs and fees relating to any appeal) and in enforcement of any remedy.
9. **Liability.** The parties to this MOU and their respective officers and employees shall not be deemed to assume any liability for the acts, omissions and negligence of the other party. Further, nothing herein shall be construed as a waiver of sovereign immunity by the Village, pursuant to §768.28, Florida Statutes.
10. **Severability.** It is understood and agreed by the parties that if any part, term, or provision of this Memorandum is held by the courts to be illegal or in conflict with any part of the laws of Florida, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

11. **Amendment.** This MOU shall not be modified or amended except by written agreement duly executed by the parties hereto.

12. **Entirety of Agreement.** This MOU represents the entire understanding between the parties and supersedes all other negotiations, representations, or agreements, written or oral, relating to this MOU.

**IN WITNESS WHEREOF**, the parties hereto, by their duly authorized representatives, have executed this Memorandum of Understanding on the dates shown below to be effective the day and year first shown above.

**WELLINGTON COMMUNITY FOUNDATION, INC.**

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

Position: \_\_\_\_\_

**VILLAGE OF WELLINGTON,**

By: \_\_\_\_\_  
Anne Gerwig, Mayor

**ATTEST:**

By: \_\_\_\_\_  
Chevelle D. Nubin, Village Clerk

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

By: \_\_\_\_\_  
Laurie S. Cohen, Village Attorney