



BROWARD OFFICE OF THE INSPECTOR GENERAL

MEMORANDUM

To: Honorable Keith London, Mayor, City of Hallandale Beach
and Members, City of Hallandale Beach Commission

From: John W. Scott, Inspector General 

Date: May 16, 2018

Subject: **OIG Final Report Re: *City of Hallandale Beach Officials Committed Misconduct By Violating Florida's Sunshine and Public Records Law, Ref. OIG 17-006***

Attached please find the final report of the Broward Office of the Inspector General (OIG) regarding the above-captioned matter. The OIG has determined that City of Hallandale Beach officials committed misconduct by operating what amounts to be an arm of their government in violation of Florida's Sunshine and public records laws. Even though the Future Foundation's relationship to and function for the city required it to be treated like the city for purposes of Florida's open government laws, Mayor Joy Cooper and former commissioners Bill Julian and Anthony Sanders failed to do so.

Specifically, they committed misconduct by attending foundation board meetings that had not been noticed to the public. Mayor Cooper also violated Florida's public records law by refusing to provide the foundation's records to a city resident who requested the records through a public records request. Mayor Cooper's public records violation is particularly troublesome given the fact that, as late as April 2017, she continued to deny access to records even after receiving legal opinions advising her that the foundation was obliged to comply with the state's public records laws.

The Future Foundation received at least \$339,662.36—over half of which the city facilitated directly or indirectly. To date, the foundation has an aggregate remaining balance of \$99,969.25. Thus, we concluded that the foundation spent at least \$239,693.11 of largely public funds outside the public's view and reach, disrespecting the government transparency, government accountability, and public participation principles behind Florida's open government laws.

John W. Scott, *Inspector General*

One North University Drive, Suite 111 • Plantation, Florida 33324 • (954) 357-7873 • Fax (954) 357-7857

www.browardig.org • (954) 357-TIPS

In light of these open government violations, in accordance with our charter mandate, we are referring this matter to the Broward State Attorney's Office for whatever action it deems appropriate.

Attachment

cc: Honorable Beam Furr, Member, Broward County Board of County Commissioners
Honorable Barbara Sharief, Member, Broward County Board of County Commissioners
Roger M. Carlton, City Manager, City of Hallandale Beach
Individuals previously provided a Preliminary Report (under separate cover)

BROWARD OFFICE OF THE INSPECTOR GENERAL



FINAL REPORT

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OIG 17-006
May 16, 2018

*City of Hallandale Beach Officials Committed Misconduct
By Violating Florida's Sunshine and Public Records Laws*



BROWARD OFFICE OF THE INSPECTOR GENERAL

FINAL REPORT RE: *CITY OF HALLANDALE BEACH OFFICIALS COMMITTED MISCONDUCT BY VIOLATING FLORIDA'S SUNSHINE AND PUBLIC RECORDS LAWS*

SUMMARY

The Broward Office of the Inspector General (OIG) has concluded its investigation into concerns that city officials of the City of Hallandale Beach were violating Florida's open government laws in the administration of The Future Foundation, Inc., a non-profit charitable organization created, led, and administered by city officials and staff on city property. The Future Foundation received at least \$339,662.36, which included at least \$174,217.58 that the city facilitated, some of which came from city funds, employee payroll deductions, and private developers who sought city construction projects.¹ Our investigation determined that, indeed, city officials, none of which are a part of the current commission, committed misconduct by not conducting public business in open meetings and by not providing the foundation's public records upon request.

Even though the Future Foundation's relationship with the city subjected it to the state's open meetings (Sunshine) law, foundation president and city mayor Joy Cooper and foundation directors and former city commissioners Bill Julian and Anthony Sanders² participated in foundation board meetings that were never noticed to the public. Specifically, we found that during their most recent period of uninterrupted service, Mayor Cooper attended at least 26 of these meetings, former commissioner Julian attended at least two, and former commissioner Sanders attended at least two. In addition, Mayor Cooper led the foundation as president during the time when at least 14 board meetings were held but no minutes were taken.

The foundation's relationship with the city also subjected it to the state's public records law. Nonetheless, Mayor Cooper obstructed access to foundation documents that were requested by a member of the public while she cited the former city finance director and foundation treasurer's unfounded opinion that the Future Foundation was not subject to the public records law.

The foundation has been largely dormant since 2011. According to the minutes of the most recent board meeting, held on March 17, 2017, the gathered leadership that included Mayor Cooper, Mr. Julian, and Mr. Sanders voted to dissolve the Future Foundation and turn over its remaining assets to another city related non-profit organization. Yet, over ten months later, the foundation's bank records reflected that it still held \$99,969.25 in its accounts and that the only persons authorized to withdraw funds were still Mayor Cooper, former commissioner Sanders, and two former city employees.

¹ Despite the OIG's requests, neither the city nor the foundation could produce a complete set of Future Foundation records spanning the foundation's entire existence. The OIG's minimum estimates of what the Future Foundation received and expended are based on available bank records and records we received from the city and the foundation.

² Both Messrs. Julian and Sanders also served as vice mayor during some of the events reported here.

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The violations identified within this report illustrate the importance of government transparency, government accountability, and public participation in government decisions, as we reasoned that city officials, wearing the hat of foundation board members, made at least \$239,693.11³ in expenditures outside the public's view and reach.

In light of Mayor Cooper's and former commissioners Julian and Sanders's violations of Florida's open government laws, in accordance with our charter mandate, we are referring this matter to the Broward State Attorney's Office for whatever action it deems appropriate.

OIG CHARTER AUTHORITY

Section 10.01 of the Charter of Broward County empowers the Broward Office of the Inspector General to investigate misconduct and gross mismanagement within the Charter Government of Broward County and all of its municipalities. This authority extends to all elected and appointed officials, employees and all providers of goods and services to the County and the municipalities. On his own initiative, or based on a signed complaint, the Inspector General shall commence an investigation upon a finding of good cause. As part of any investigation, the Inspector General shall have the power to subpoena witnesses, administer oaths, require the production of documents and records, and audit any program, contract, and the operations of any division of the County, its municipalities and any providers. The Broward Office of the Inspector General is also empowered to issue reports, including recommendations, and to require officials to provide reports regarding the implementation of those recommendations.

RELEVANT GOVERNING AUTHORITIES

Florida Open Meetings (Sunshine) Law

Florida Constitution Article I, Section 24 - Declaration of Rights, Access to public records and meetings, provides in part:

- (b) All meetings . . . of any collegial public body of a . . . municipality . . . at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public

Section 286.011, Florida Statutes (referred to as the "Sunshine law") - Public meetings and records; public inspection; criminal and civil penalties, provides in part:

- (1) All meetings of any board or commission . . . of any county, municipal corporation, or political subdivision, except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, at which official acts are to be taken are declared to be public meetings open to the public at all

³ We took the total that the foundation received through the city or its efforts, \$339,662.36, and subtracted the aggregate bank balance of \$99,969.25 as of the end of December 2017, to arrive at this figure.

times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

- (2) The minutes of a meeting of any such board or commission of any such state agency or authority shall be promptly recorded, and such records shall be open to public inspection. . . .
- (3) (a) Any public officer who violates any provision of this section is guilty of a noncriminal infraction, punishable by fine not exceeding \$500.

(b) Any person who is a member of a board or commission or of any state agency or authority of any county, municipal corporation, or political subdivision who knowingly violates the provisions of this section by attending a meeting not held in accordance with the provisions hereof is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Florida Caselaw

The Florida Supreme Court has measured whether the Sunshine law applies to a given private entity through two tests. In 1971, the Court first introduced a “dominion and control” test, stating that “[t]he Legislature intended to extend application of the ‘open meeting’ concept so as to bind every ‘board or commission’ of the state, or of any county or political subdivision over which [the legislature] has dominion or control.” *City of Miami Beach v. Berns*, 245 So.2d 38, 40 (Fla. 1971). Then, in 1983, the Florida Supreme Court considered whether “decision-making authority” was delegated to the entity at issue in determining whether the Sunshine law applied. *Wood v. Marston*, 442 So.2d 934, 938 (Fla. 1983). And, the Court found that where a committee has been delegated decision-making authority, the committee's meetings must be open to public scrutiny. *Id.* at 939–40 (“To allow a review procedure to insulate the decision itself from public scrutiny invites circumvention of the Sunshine Law.”). On the other hand, an entity is not subject to the Sunshine law if the committee has only been delegated information-gathering or fact-finding authority without making recommendations or decisions to or for the delegating board. *Id.* at 940–41.

Florida Public Records Law

Florida Constitution Article I, Section 24 - Declaration of Rights, Access to public records and meetings, provides in part:

- (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes . . . counties, municipalities, and districts

Section 119.07, Florida Statutes - Inspection and copying of records; photographing public records; fees; exemptions, provides in part:

- (1) (a) Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records. . . .

Section 119.011, Florida Statutes – Definitions, provides in part:

- (1) “Agency” means any . . . municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law . . . and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.
- (12) “Public records” 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 by any agency.

Section 119.10, Florida Statutes – Violation of chapter; penalties, provides in relevant part:

- (1) Any public officer who:
- (a) Violates any provision of this chapter commits a noncriminal infraction, punishable by fine not exceeding \$500.
 - (b) Knowingly violates the provisions of s. 119.07(1) is subject to suspension and removal or impeachment and, in addition, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
- (2) Any person who willfully and knowingly violates:
- (a) Any of the provisions of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.
 - (b) Section 119.105 commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Florida Caselaw

Florida courts have established two general instances where documents in the possession of private entities must be produced as public records. The first instance is when a public entity delegates a statutorily authorized function to a private entity. In that instance, the records generated during

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that entity's performance of that duty become public records. The second is when a public entity contracts with a private entity for the provision of certain goods or services to facilitate the public agency's performance of its duties. Taken altogether, when the entity is acting on behalf of a public agency, the private entity's records may be public if the totality of the factors indicates a significant level of involvement by the public agency.

In determining whether a public agency's involvement with a private entity is significant enough to impose upon that private entity an obligation to disclose its records under Florida's public records law, the Florida Supreme Court considers a "totality of factors" known as the *Schwab* factors. *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So.2d 1029 (Fla.1992) ("*Schwab* "). The *Schwab* factors, include, but are not limited to:

- (1) the level of public funding;
- (2) commingling of funds;
- (3) whether the activity was conducted on publicly owned property;
- (4) whether services contracted for are an integral part of the public agency's chosen decision-making process;
- (5) whether the private entity is performing a governmental function or a function which the public agency otherwise would perform;
- (6) the extent of the public agency's involvement with, regulation of, or control over the private entity;
- (7) whether the private entity was created by the public agency;
- (8) whether the public agency has a substantial financial interest in the private entity; and
- (9) for whose benefit the private entity is functioning.

The Florida Supreme Court and the Florida Attorney General⁴ consistently advise private entities to consider the *Schwab* factors in evaluating whether their organizations are subject to the Public Records Act.

⁴ See, e.g., AGO 2011-01 (February 7, 2011), discussed in and attached to the attorney's opinion letter provided to Mayor Cooper on March 8, 2017, discussed below. (Exhibit 6)

INDIVIDUALS AND ENTITIES COVERED IN THIS REPORT

The Future Foundation, Inc.

The Future Foundation is a 501(c)(3) non-profit Florida corporation established in 1996 with its principal place of business in city hall. According to the organization's bylaws, the general nature of the purposes of the corporation is to "engage in charitable and philanthropic endeavors of all kinds..."

The foundation's bylaws as amended direct that the city's mayor as of the foundation's election date (every other March) serves as the organization's president. Further, the city's then current vice mayor, city manager, city attorney, director of human resources, and director of parks and recreation serve on the board of directors. The bylaws also specify that the three current commissioners, the city's remaining elected officials, also serve on the foundation's board. They further require the board to appoint city employees to fill the positions of secretary and treasurer. According to the Florida Department of State, the city's current director of parks and recreation is designated to be the foundation's secretary. Although the bylaws specify that a city employee be the treasurer, an outside CPA firm currently provides the foundation with functions the former treasurer carried out. The foundation is currently active, according to the Florida Secretary of State Division of Corporations; however, we are not aware that the organization has held any meetings, board or otherwise, or otherwise carried out any functions since March 17, 2017.

The City of Hallandale Beach Commission

The city's commission consists of five elected officials, a mayor and four commissioners, who elect a vice mayor from among themselves.

The most recent board meeting of the Future Foundation was held on March 17, 2017, at which time Ms. Cooper was mayor, Keith London was vice mayor, and Mr. Sanders, Michele Lazarow and Anabelle Taub were commissioners. The mayor and Commissioner Sanders participated in the March 17, 2017, meeting, along with then former commissioner Julian. The meeting prior to that was on May 29, 2013, at which time Mayor Cooper, Commissioner Julian, Commissioner Sanders, Commissioner A.L., and Commissioner Lazarow were serving on the commission. Of those officials attending that meeting, only Mayor Cooper and former commissioners Julian and Sanders attended.

None of those sitting on the city commission today participated in any Future Foundation meetings, decision making, or other action.

Joy Cooper

Ms. Cooper has served as a city elected official since 1999, when she was elected commissioner. She was elected mayor in 2003.⁵ By virtue of her status with the city, she began her tenure on the Future

⁵ On January 26, 2018, the Florida governor suspended Mayor Cooper from office due to her arrest on charges unrelated to the misconduct reported here. The city commission has appointed the vice mayor to serve as city mayor for the time being;

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Foundation's board of directors upon being elected commissioner and was elevated to president when she was elected mayor. Mayor Cooper declined the OIG's offer to give a formal interview.

Bill Julian

Mr. Julian is a former City of Hallandale Beach vice mayor and commissioner. He served on the city commission from 2001 until November 2010 and also served from November 2012 until November 2016. By virtue of his position as city commissioner and vice mayor, he was also on the Future Foundation's board of directors. He also declined to interview.

Anthony Sanders

Mr. Sanders is a former City of Hallandale Beach commissioner. He served as a commissioner from 2008 until his resignation in August 2017. By virtue of his position as city commissioner, he was also on the Future Foundation's board of directors. He declined the OIG's offer to interview.

INVESTIGATION

Investigation Overview

After viewing two February 2017 city commission meetings and hearing Mayor Cooper's responses to a resident's complaints about her failed attempts to receive Future Foundation records, the OIG became concerned that city officials may have engaged in misconduct. Ensuing interviews, reviews of records from the city and the foundation, and statements made by Mayor Cooper, both during commission meetings and in person, uncovered several facts that established good cause to initiate this investigation into possible open government violations. The OIG's investigation substantiated the misconduct. Despite the fact that the Future Foundation was subject to Florida's open government laws, city officials, namely Mayor Cooper and former commissioners Sanders and Julian, attended board meetings held without proper prior public notice and minutes in violation of Florida's Sunshine law.⁶ And Mayor Cooper violated Florida's public records law when she denied a Hallandale Beach resident's right to inspect the foundation's records following the resident's request.

The OIG investigation involved the review of documentation including city and foundation records provided by the city and Mayor Cooper, as well as records from the foundation's bank. The OIG observed several city commission meetings where officials and the public discussed and remarked on the Future Foundation. We also conducted interviews with numerous witnesses, including current and former city officials and employees and foundation vendors.

nonetheless, our investigation involved conduct and events that occurred while Ms. Cooper was mayor and, thus, we refer to her as Mayor Cooper in this report.

⁶ Other former city officials and employees also participated in Future Foundation meetings that did not comport with the Sunshine law; however, any misconduct by them ended in 2013 and all but one no longer serve the city.

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After providing a brief overview of the purpose behind Florida’s open government laws, we will discuss (1) why and how the Future Foundation was subject to, and city officials violated, the Sunshine law, (2) how the foundation was subject to and the mayor violated the public records law, (3) how these officials’ violations illustrate the purpose for the open government laws, and (4) the current status of the Future Foundation and the unspent public money it has retained.

Florida’s Open Government Laws: A Brief Overview

In an acknowledgement of the value of public discussion, as well as other benefits that come with a culture of transparency such as public trust and confidence in government decisions, Florida is widely known for its commitment to provide the public with unfettered access to government meetings and records. As the introduction to the Sunshine Manual notes, “In our state, transparency is not up to the whim or grace of public officials. Instead, it is an enforceable right of the people.”⁷

Florida has established some of the most comprehensive open government laws in the country, to include open meetings (Sunshine) and public records rights articulated in the Florida Constitution’s declaration of rights and codified in Florida statutes chapters 119 and 286.

The Sunshine law requires that meetings and certain other decision-making by governmental entities and the public and private agencies that act for them be (1) open to the public, (2) reasonably noticed to the public, and (3) memorialized by promptly produced minutes.

The Florida Supreme Court has made it clear that the Sunshine law was enacted to protect the public from “closed door” politics. Thus, it “must be broadly construed to effect its remedial and protective purpose.” *Wood v. Marston*, 442 So.2d 934, 938 (Fla. 1983). After all,

The right of the public to be present and to be heard during all phases of enactments by boards and commissions is a source of strength in our country. During past years tendencies toward secrecy in public affairs have been the subject of extensive criticism. Terms such as managed news, secret meetings, closed records, executive sessions, and study sessions have become synonymous with ‘hanky panky’ in the minds of public-spirited citizens. One purpose of the Sunshine Law was to maintain the faith of the public in governmental agencies. Regardless of their good intentions, these specified boards and commissions, through devious ways, should not be allowed to deprive the public of this inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made.

Board of Public Instruction of Broward County v. Doran, 224 So.2d 693, 699 (Fla. 1969).

⁷ Florida Office of the Attorney General (2018). *Government-in-the-Sunshine Manual and Public Records Law Manual*. Tallahassee: First Amendment Foundation.

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Accordingly, "The statute should be construed so as to frustrate all evasive devices." *Town of Palm Beach v. Gradison*, 296 So.2d 473, 477 (Fla. 1974).

The public records law requires governmental entities and the public and private agencies that act for to promptly acknowledge and the produce records, in response to requests from any source for records, within a reasonable time.

With the same goal of the promotion of public scrutiny and trust in government, the legislative objective of the public records law is to ensure that the people of Florida have the right to freely gain access to governmental records and can enforce that right.

The breadth of [the right to inspect public records] is virtually unfettered, save for the statutory exemptions designed to achieve a balance between an informed public and the ability of government to maintain secrecy in the public interest.

Lorei v. Smith, 464 So.2d 1330, 1332 (Fla. 2d DCA 1985).

Sunshine Misconduct by City Officials

The Future Foundation's Decision-Making was Subject to Florida's Sunshine Law

The city's relationship with the Future Foundation establishes that, since its inception, the foundation is and has been subject to Florida's open meetings laws.

The Future Foundation was the brain child of Hallandale Beach's city manager in 1996. According to the minutes taken at the May 21, 1996, city commission meeting, the commission charged the then city manager with seeking ways to raise funds. (Composite Exhibit 1) To that end, he stated his intention to form a non-profit corporation that would accept donations for education and cultural enhancement of the youth within the community. Further, the former city manager noted that this organization's specific programs and what it would fund, "noting that all would be subject to Commission review." The Future Foundation was formed in July 1996 to "engage in charitable and philanthropic endeavors of all kinds" (Composite Exhibit 1) P.L., the former city finance director and foundation treasurer, told us that the Future Foundation's purpose was to help children with cultural enrichment activities quicker than the city could.

According to the foundation's original 1997 bylaws, the city mayor was to be its president. The other officers, vice president, secretary, and treasurer, were not automatic appointments. The executive board was comprised of these four officers, the city manager, and another two to eleven members of the board of directors. The foundation's board of directors was to elect individuals to the executive board every other year at its March annual meeting and was to make appointments in the case of a vacancy. The foundation's board of directors, to be

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between thirteen and 25 in number, was comprised of the president, vice president, secretary, directors, and an ex-officio board. The city's vice mayor, city manager, city attorney, director of human resources, and director of parks and recreation, were all required to be directors and could also serve as officers.⁸ The ex-officio board was comprised of the three remaining city commissioners. The 1998 amendment to the bylaws required city employees to fill the positions of secretary and treasurer. In 2004, the board amended the bylaws to make the mayor the president, chief executive officer, chair of the executive board, and chair of the board of directors, with the authority to approve expenditures up to \$500.

Thus, after 2004 the foundation's bylaws required the following city officials and employees to serve on the executive board, charged with making the official decisions of the non-profit as president, vice president, secretary, treasurer, and directors: mayor, vice mayor, three commissioners, city manager, city attorney, director of human resources, and director of parks and recreation.

The Future Foundation's most recent filing with Florida's Division of Corporations, filed February 2, 2017, listed officers Joy Cooper (president and director), Anthony Sanders (director), and the city's parks and recreations director (secretary and director).

The foundation's principal address has always been the City of Hallandale Beach's address. The currently listed registered agent resigned his city attorney position in 2011. In accordance with the directives noted in the foundation's September 25, 1996, meeting minutes and an October 21, 1996, memorandum from the city's director of finance, at all times, the city maintained the foundation's auditing records and the city's finance department provided the foundation financial review (Composite Exhibit 2).

According to records obtained from the city, the foundation, the foundation's bank, and open sources, the Future Foundation received significant funding both directly from the city as well as indirectly through the city's efforts. Specifically, according to the city's vendor activity list dated March 2013, between March 3, 1998, and April 12, 2007, the city directly donated \$77,040 to the foundation using various individual city funds including the city's general fund, the law enforcement trust fund and the water and sewer fund (Exhibit 3). City employee contributions also funded the foundation. The city facilitated these contributions through biweekly payroll deductions which totaled at least \$19,360.51 between the time the foundation was established until at least August 2017 (Exhibit 3).⁹

⁸ The bylaws include that "The following positions shall serve as members of the Board of Directors and if appointed are entitled to hold Officer positions: The Vice Mayor of the City of Hallandale," and provide that "The Board of Directors shall be appointed for a two year term and serve as long as they choose to, subject of course to their re-appointment." Foundation Bylaws, Article V. Elections (and, presumably, re-appointments) were to be held by the board of directors at every other annual meeting held in March. Foundation Bylaws, Article VI. (Composite Exhibit 1)

⁹ The OIG did not investigate the propriety of any foundation expenditures, given their age, our lack of records, and the scope of this investigation being limited to current open government issues.

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The city participated in other activities to help fund the foundation. For instance, on several occasions, city staff and officials organized and hosted fundraising events and transferred monies from these events to the Future Foundation. We found it impossible to ascertain exactly which entity, the city or the foundation, was responsible for these activities, as they were conducted almost entirely by city staff and officials.

On one of these occasions, the rock duo Air Supply gave a concert, after which the city transferred \$19,294.45 to the foundation.¹⁰ We also found that the city secured the foundation a \$25,000 contribution from the developer of The Village at Gulfstream Park as part of the city's community benefit plan (Exhibit 4 at p. 15). The city required this contribution as part of the development agreement between the two parties. Thus, the city was either directly or indirectly responsible for at least \$174,217.58 of the foundation's funding—that is the \$149,217.58 reported on the vendor activity list plus the \$25,000 developer contribution.¹¹ We calculated the city's direct and indirect funding as follows:

OIG Table 1: Known City Transfers to the Future Foundation
December 13, 1996 to March 15, 2013¹²

SOURCE	AMOUNT
City funded donations	\$77,040.00
After-concert transfers	\$49,168.39
Employee payroll deductions	\$19,360.51
Other transfers	\$3,648.68
TOTAL	\$149,217.58

As the foundation reported having received \$339,662.36¹³ from 1996 through 2017,¹⁴ it appears that the city facilitated over half of the foundation's funding.

The Future Foundation obtained donations to support "various programs for disadvantaged children," but, more significantly, it disbursed those donations and made other expenditures on behalf of the foundation. As these expenditures must be approved by the foundation's board, led by city actors, it is without dispute that the city exercised decision-making authority through the foundation.

¹⁰ These deposits are reflected on page 3 of the vendor activity list as \$5,970.00 and \$13,324.45.

¹¹ The city also provided the foundation with in-kind services in the form of city staff and the use of city resources. This figure does not include the value of these in-kind services.

¹² See Exhibit 3. Our review of the foundation's bank records establish there was no income after March 15, 2013, other than payroll deduction and interest.

¹³ In order to get to this figure, this office drew from various financial records provided by the foundation such as its tax returns (where available), financial statements, contributions lists generated by the foundation, and bank records.

¹⁴ According the foundation's records, no significant contributions were made after 2010. From 2011-2017, only \$4,489.50 was reported.

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In sum, the foundation (1) was conceived and created by city officials and staff, (2) was led by city officials and staff, (3) was operated from within city premises, (4) was operated by city officials and staff with city resources, and (5) received a significant part of its funding directly and indirectly from the city. While the foundation’s involvement with the city needs only to satisfy one of the two tests described by Florida’s courts for the Sunshine law to apply, its operations satisfied both. The foundation was clearly subject to Florida’s Sunshine law under both the *Berns* “dominion and control” test and the *Marston* delegation of decision-making test

Cooper, Julian, and Sanders Attended Unnoticed Foundation Board Meetings

According to the Sunshine law, meetings of two or more members of a decision-making body where the members discuss matters on which foreseeable action may be taken by the body, must be: (1) open to the public, (2) noticed to the public, and (3) recorded through minutes. *Sarasota Citizens for Responsible Government v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010).

Even though its creators stated they would act in compliance with Sunshine requirements (Composite Exhibit 2 (September 25, 1996, minutes)), the record the OIG gathered¹⁵ clearly established that, after the foundation began operating in 1996, its board always met without the notice to the public and often without the recorded minutes that are both required by law. None of the 69 meetings we know about were noticed to the public—the most recent of which were March 17, 2017, and May 29, 2013, attended by Mayor Cooper and former commissioners Julian and Sanders. During their most recent periods of incumbency (the most recent time period of uninterrupted service), Mayor Cooper attended at least 26 unnoticed meetings as a board member (23 while mayor, 3 while a commissioner, and 11 before taking office),¹⁶ former commissioner Julian attended at least two unnoticed meetings, and former commissioner Sanders attended at least two unnoticed meetings.¹⁷ Of the 69 meetings we know about, 18 had no minutes at all. Fourteen of the unrecorded meetings were held during the time that Mayor Cooper led the foundation as its president.

Available records suggest that the mayor decided who would get notice, which never included the public. On December 19, 2008, the former parks and recreation director emailed the mayor, advising her how the bylaws constituted the board of directors, listing “the Vice Mayor, City Manager, City Attorney, Human Services Director, Parks and Rec Director and the 3 Hallandale Beach Commissioners.” (Exhibit 5) The former city parks and recreation director and foundation secretary specifically asked the mayor whether she should draft a letter to Vice Mayor London and Commissioner Sanders (to inform them of their Future Foundation board

¹⁵ We gleaned this from board meeting minutes, notices to the board, agendas to the board, and emails from the foundation and city.

¹⁶ Before she was elected commissioner, Ms. Cooper was nominated to the board of directors at the very first Future Foundation board meeting, which was on August 7, 1996, and she began attending with the second meeting.

¹⁷ Commissioner Julian was last in office from November 2012 to November 2016; Sanders from August 2008 to August 2017; and Cooper from 1999 (she was suspended on January 26, 2018).

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positions, we presume), forwarding a list of names for the mayor's review. While Mayor Cooper did not respond to the question about London and Sanders, she did reply, "Yes. Gulfstream [sic] should be added. [B.M.]. Should get an invite. [G.] [S.] need to be asked."¹⁸ Although she declined to give us a formal interview near the conclusion of this investigation, Mayor Cooper offered several explanations to us about the foundation's operations and records in the process of exchanging the foundation's records with us near the beginning of our review. During an April 5, 2017, phone call to arrange the service of an OIG letter of request, she said that the foundation's activities were winding down. She went on to explain that the foundation started becoming inactive about the time the OIG's office was created and that the board of directors had some concerns about their authority as elected officials to "mak[e] grants" to the foundation.¹⁹

When the mayor appeared at our office on April 17, 2017, to deliver foundation records in response to our request, she made additional remarks. In explaining the order of the files she was providing, she stated that the foundation had been inactive for the past several years because of the OIG's investigation into the city's community redevelopment agency (CRA).²⁰

And, during a May 23, 2017, phone call wherein an OIG special agent was arranging the return of the foundation's original records, Mayor Cooper stated that the Future Foundation never posted any public notices of any of its meetings because, according to her, it was not required to do so. She said that the foundation was not conducting any city business at its meetings and that the commissioners who were directors and/or officers of the company were not acting in their capacities as commissioners. Mayor Cooper further asserted that the current foundation attorney and all prior foundation attorneys had advised her that the foundation was not required to provide public notices of its meetings. She further claimed that she had a written opinion to that effect from an attorney and volunteered to provide the attorney's written opinion to this office.

But she did not provide us with any such opinion or the names of the attorneys who gave her such advice.

After we forwarded her a request specifically for written attorney opinions and any other records regarding the applicability of the Sunshine law to the Future Foundation, on June 16,

¹⁸ We note that [B.M.] is the name of the then-president of the Gulfstream Park Racing Association, Inc., according to the Florida Secretary of State Division of Corporations. [G.] was the last name of a former state representative and former commissioner for Hallandale Beach, and [S.] was the last name of a former state senator and former state representative representing Hallandale Beach.

¹⁹ The OIG became operational in mid-2011 and was given the authority to investigate, report, and prosecute violations of the Broward Code of Ethics for Elected Officials, Section 1-19 of the Broward County Code of Ordinances, which had a provision restricting charitable fundraising. Section 1-19 was made applicable to Broward's municipal elected officials in January 2012.

²⁰ The OIG reported its investigation into the city's CRA on April 18, 2013.

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2017, we received two items of interest. First was a letter from an attorney,²¹ dated March 8, 2017, wherein he applied the *Schwab* factors described above and concluded that the Future Foundation was subject to Florida's *public records* laws (Exhibit 6). Second was an email string that began with an email dated March 8, 2017, from that attorney to the mayor attaching his opinion and the mayor's reply of "City attorney thought no? Thank you will get them what I have it is not big deal anyway." The attorney replied, "I spoke with the city attorney. She agreed with my analysis." The mayor forwarded this reply to the city attorney, who explained in a March 10, 2017, email back to the mayor that the other attorney "was able to assess the relationship from the Foundation's perspective to reach the conclusion that the records should be produced. He expressed the same to me in a recent conversation and I agreed with his analysis." Nevertheless, in a March 29, 2017, email to the city attorney, the mayor wrote, "I do recall you stating it was your opinion that is was not public but since there were limited records to send them. it was not public but to send note and limited records" [sic] (Exhibit 7).

As noted above, during the mayor's May 2017 conversation with the OIG special agent, she stated that numerous foundation attorneys had advised that the Future Foundation was not subject to Sunshine law requirements and that she had a written opinion saying that, but she never did produce that opinion. However, we now know that, by the time of the phone call with us, the mayor did have a written opinion that the foundation was subject to the state's public records law.

Other records the OIG reviewed further contradict the mayor's assertion that she believed that the foundation was not subject to Florida's Sunshine laws.

First, she attended the September 25, 1996, Future Foundation board meeting when the then city manager specifically stated that, although the board of directors would make the foundation's decisions, the city would be charged with, among other things, "media notifications in accordance with Florida State Sunshine Law" (Composite Exhibit 2). Second, city records reflect that she participated in a January 7, 2015, training, conducted by a former city attorney, which had a specific section pertaining to the applicability of the Sunshine law to 501(c)(3) non-profit organizations. The city's video of that event established that, while discussing the presentation slide on the Sunshine law and 501(c)(3) organizations, the former city attorney instructed the elected officials in attendance that the Sunshine law applied to a hypothetical, non-profit organization that was created by the city and doled out grants to local schools. And third, on March 8, 2017, Mayor Cooper received the previously discussed attorney opinion. (Exhibit 6) While the opinion was limited to the foundation's public records obligations, Mayor Cooper was on notice that, as the foundation was considered acting on behalf of a public agency for purposes of public records, Sunshine law could be implicated as well. The attorney's opinion letter also attached a Florida Attorney General Opinion that concluded that a similarly situated non-profit corporation, created and administered by a municipality, was subject to the Sunshine law as well as public records law.

²¹ We learned that this attorney was counsel for and previously on the board of directors for the Friends of the Hepburn Center, another charitable organization for which the city provides funding.

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Mayor Cooper's attempt to avail herself of a non-existent opinion while in possession of an opinion that subjected the foundation to the other part of Florida's open government laws led us to conclude that the mayor was aware that her administration of the foundation ran afoul of Florida's Sunshine law. Notwithstanding, Mayor Cooper convened another unnoticed foundation board meeting nine days later.

Former commissioners Julian and Sanders also attended the January 7, 2015, training by the former city attorney, during which she instructed that a city-created 501(c)(3) that awards scholarships to students at local schools was subject to Sunshine requirements.

In sum, Mayor Cooper committed knowing violations of applicable Florida's Sunshine law by attending Future Foundation board meetings for which she knew there was no advance public notice and by presiding over board meetings for which she knew no minutes were produced. Former commissioners Sanders and Julian at the least committed civil infractions by attending unnoticed foundation board meetings as board members.

Public Records Misconduct by the Mayor

The Future Foundation's Records were Subject to Florida's Public Records Law

This section reviews the *Schwab* factors against facts mainly established in our above discussion on city officials' Sunshine misconduct, to ascertain whether the foundation was required to follow Florida's public records law. Recall that, in determining whether a private entity has an obligation to disclose its records in light of its involvement with a public entity, several factors are considered, including but not be limited to: (1) the level of public funding; (2) commingling of funds; (3) whether the activity was conducted on publicly owned property; (4) whether services contracted for were an integral part of the public agency's chosen decision-making process; (5) whether the private entity was performing a governmental function or a function which the public agency otherwise would perform; (6) the extent of the public agency's involvement with, regulation of, or control over the private entity; (7) whether the private entity was created by the public agency; (8) whether the public agency had a substantial financial interest in the private entity; and (9) for whose benefit the private entity was functioning.

Turning first to ***funding***, the city was both directly and indirectly responsible for a significant part of the foundation's funding. Indeed, more than half of the foundation's funding was a result of the city's endeavors. Although we did not observe any significant ***commingling of city funds*** with foundation funds other than the pass-through between the city collecting employee contributions and then disbursing the funds to the foundation, the foundation certainly ***conducted its activity on public property***. The Future Foundation's physical address is the city's address. Future Foundation business was conducted using city email addresses during city hours with city resources. Also, the foundation often held its board meetings on city property at the city's cultural center next to city hall.

Considering the significant amount of public funds contributed to the foundation, the **decision making process** of how to expend those funds should have been reserved for the city commission; however, it was delegated to the foundation's board. (Composite Exhibit 2 (September 25, 1996, minutes)) Furthermore, the foundation **performed a governmental function**. The OIG observes that philanthropy and community development are two of the many governmental functions of the city. Indeed, until suspended in early- to mid-2017, the city and the city's CRA sponsored a Community Benefit Partnership Grants Program to award funding to support programs and services to benefit the city's residents. The foundation was engaged in the same services.

The final four factors—***the extent of the public agency's involvement with the private entity, whether the private entity was created by the public agency, whether the public agency has a substantial financial interest in the private entity, and for whose benefit the private entity functioned***—are so intertwined in this case that we must address them together. The city created the foundation in 1996 to benefit the youth within the community. The city's stated purpose in forming the foundation, a non-profit corporation, was to permit the city to accept donations for a specific purpose, such as education and cultural enhancement of youth within the community. P.L. explained that the foundation's purpose was to fund grantees timelier than funding could be done through the city's normal processes.

The foundation's amended bylaws assigned specific officer positions within the foundation according to their standing within the city's commission. According to Florida's Division of Corporations, the foundation's current officers are Joy Cooper (president/director), Anthony Sanders (director), and the parks and recreations director (secretary/director). The foundation's principal address was at its inception, and continues to be, the City of Hallandale Beach's address and the foundation's registered agent is the city's former city attorney. The city was charged with not only maintaining the foundation's auditing records but the city's finance department was also charged with providing the foundation financial review in the form of in-kind services. Significantly, the city facilitated at least \$174,217.58 in funding to the foundation, over half of what we know it received in total. Considering these factors, it is clear that the city-created foundation was not only heavily involved with the city but that the city had a substantial financial interest in the foundation.

Given its history and relationship with the city, the Future Foundation has always had an obligation to adhere to Florida's public records law.

The Mayor Refused to Produce Future Foundation Records upon a Public Records Request

Subject to certain exemptions, Florida's public records law requires every person who has custody of a public record to permit the record to be inspected and copied by any person desiring to do so at any reasonable time, under reasonable conditions.

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Mayor Cooper committed misconduct by refusing to produce the foundation's records after a public records request from a resident. With the help of the foundation's former city finance director and foundation treasurer, the mayor limited the foundation's response to the request based on the claimed and unsupported conclusion that the foundation was only required by tax law to provide certain, limited records due to its non-profit status.

To understand how the violation came to be, some background information is necessary. On February 6, 2013, during public discussion at a city commission meeting, a Hallandale Beach resident who was a member of the city's grants advisory committee, which was charged with recommending which organizations should receive city contributions, posed several questions, some of which pertained to the foundation's finances. The city subsequently answered the questions and produced its vendor activity list reflecting its payments to the Future Foundation. It then instructed the requestor to obtain the records reflecting how the foundation spent its money from the foundation itself. (Exhibit 8)

On March 13, 2013, the resident filed another public records request to the city, this time focusing solely on the foundation. (Exhibit 9) This request asked for background information on the foundation as well as financial information. In response, the city produced the foundation's articles of incorporation, the foundation's bylaws, the city's internal tracking form, and the city's vendor activity list.

On May 16, 2013, clearly believing that there was an obligation to produce the records she sought, the resident filed with the city the public records request that we found to be the basis of Mayor Cooper's public records misconduct. In this request, the resident sought "10 year verification of: 1. Income into Future Foundation and where it has come from, 2. Expenses paid out by Future Foundation with copies of the front and back of checks and the explanation from the City for the expenses. 3. Ongoing balances of this account of [sic] during the past 10 years. 4. Are there multiple accounts [sic] for the Future Foundation? If so, I would like this information about ALL accounts for the Future Foundation..."²² (Composite Exhibit 10)

The email threads that follow show that, while the city was attempting to locate responsive records, it was also trying to determine where the foundation's records were. While the city provided what it could locate, it was evident that it was not in possession of the foundation's financial records. (Exhibit 11) The city ultimately determined that the foundation's records were in the physical possession of P.L., the former city finance director who had also served as the foundation's treasurer. (Exhibit 12)

On June 11, 2013, the city clerk forwarded the resident's public records request to P.L., who continued to function as the foundation's treasurer even though she was no longer a city employee. (Exhibit 13) P.L. replied to the clerk that, as a board member, she was limited to what she could provide. However, as she was also the foundation's CPA, she would have to

²² The resident intended her May 21, 2013, email to clarify her May 16, 2013 request.

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charge the resident \$115 per hour to respond to the request for portions of the request that were CPA-related.²³ She wrote,

I will try to interpret all [the resident] wants, determine if I (Board member) have it available or whether I (CPA) must produce it from CPA records. In addition, the files of non-profits are open for inspection, instead of copies. However it must be at my place of business in Pembroke Pines, at a time convenient to me, and at my standard (FF discount) billing rate.

Within the hour, P.L. emailed the mayor, advising her of the public records request. (Exhibit 14) In the email, she stated that, as the foundation is an independent organization, a public records request was not appropriate. However, “as a non-profit organization, the books are open to the public. And requests must go through a Board member of the organization.” Finally, P.L. explained that she would consider the request an open books request from the city and would be willing to take the same action she described to the city clerk. Within ten minutes, in two separate emails (one minute apart) Mayor Cooper replied, “She does not have any legal access to our non-profit records” and “She was told this.”²⁴ (Exhibit 15) Thus, although P.L.’s understanding of the tax law, giving the resident the right to open inspection of the foundation’s files, would have given the resident the ability to look at the records she sought and to which she had a state constitutional and statutory right to review, the mayor—without legal authority or assistance—obstructed even that access.

Later that evening, P.L. emailed the former city clerk, “Hold off. Mayor Cooper has instructed me to do nothing for now. I am waiting further information from her as to whether I should respond, or she will or whatever.” (Exhibit 16) By that time, however, the former city clerk had already told the resident that her request had been forwarded to P.L.

Two weeks later, on June 25, 2013, Mayor Cooper emailed the resident, forwarding a letter from P.L. that stated, “As the Future Foundation is an independently organized Not-For-Profit corporation, the public records request regulations that apply to the City do not apply to the Future Foundation.” The OIG found no evidence that either P.L. or the mayor, neither of whom is an attorney, sought or obtained any legal authority or assistance on which to make or forward this assertion. The letter listed tax returns and two tax forms that P.L. asserted the foundation was required to provide for inspection under tax law, free of charge, as well as a list of other financial records that were available, and the cost associated with producing them, “should

²³ Florida law limits costs for the production of public records to \$0.15 per single-sided page and \$0.20 per double-sided page for copies, reasonable charges for actual support staff time, and actual costs for production. §119.07 (4)(a), Florida Statutes

²⁴ We found no basis or evidence to support the mayor’s statement that the resident had no *legal* right to the records.

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[Mayor Cooper] want to go beyond the required documents” (Exhibit 17) After paying \$29.42, the resident received only the tax returns.²⁵

According to P.L.’s letter to Mayor Cooper, she also had custody of (and Mayor Cooper obstructed the resident’s access to) the following records:

- Cash receipts spreadsheets 2002-2013 to date
- Cash disbursements spreadsheets 2002-2013 to date
- Statement of Cash Receipts and Disbursements (Income Statement)
- Form 990 or 990-EZ for most of the years 2003-2009

Although the resident’s public records request called for these records, the mayor chose to withhold them.

In her interview, P.L. generally recalled the resident’s May 2013 public records request. She acknowledged the several emails she wrote regarding the request. She speculated that (but did not know whether) Mayor Cooper may have verbally discussed the request with the former city attorney, as their offices were close to each other. With respect to her assertions on rules and laws that applied to the resident’s public records request, she did not consult with an attorney. Instead, she made these assertions based on,

Just my general knowledge as a tax accountant, and classes I’ve taken, and my years of experience. I knew that there was some kind of specific rules about making public documents available to the public; because, it’s a 501(c)(3) type organization. So I researched and found the appropriate verbiage, so that I was able to - as best as possible - give at least my understanding or my access to information as to what the rules were about records requests of a 501(c)(3).

P.L. explained that she retained copies of foundation records that she needed to prepare its tax returns at her home office. After she retired from the city, she continued retaining the records as the foundation’s contracted CPA; however, she made sure to provide copies of everything she had to her client, the city.²⁶ P.L. maintained spreadsheets with the foundation’s finances as well as spreadsheets with the foundation’s cash receipts and disbursement records on the city computer.²⁷ When she retired in 2014, she sold the foundation account to another CPA. She

²⁵ P.L. related that former commissioner Julian informed her that the board of directors voted to release the tax returns. The OIG was not provided with any minutes for any meeting at which the board might have taken such action. Without minutes or an interview with former commissioner Julian, we could not establish how the subject was broached or who from the city if anyone attended any discussion about these records.

²⁶ In other parts of her interview, P.L. also referred to the foundation as her client.

²⁷ We did not find any emails where P.L. advised the city that it could find some of the foundation’s financial records on the city’s computer.

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transferred the foundation's tax files and supporting documents for all the years that she prepared the foundation's tax returns as its contracted CPA, which was from January 2013 through August 2014.

When advised by the OIG agent that, in response to our records request, Mayor Cooper had produced foundation records in the form of hard copy files and folders, some of which were in a blue container, P.L. recalled that, while she was the city finance director, she kept files for the foundation as well as other charities segregated in a file cabinet. She went on to state, "So when you described that blue thing, it sounds like [Mayor Cooper] went to the finance department and carted out those files."

The inference that Mayor Cooper all along had a set of the foundation's records, or at least a good portion of them, is sound. During his interview, the city clerk explained that, after several attempts to find foundation records in response to yet another, 2016 records request,²⁸ he ultimately found them in Mayor Cooper's office. The mayor stated during an April 17, 2017, commission workshop meeting that she had them. At the meeting, Vice Mayor London asked about the location of the foundation's financial records. Mayor Cooper described all the financial records she possessed and explained that the records' unavailability "wasn't a matter of not having access to it. It was a question of my fiduciary responsibility of being a president of a non-profit organization that was 501(c)(3)." She continued that, in any event, the records were then at the OIG's office.

Although Mayor Cooper declined a formal interview, we could glean her position on the matter from statements she made during records production, in emails, and in commission meetings where she discussed her view of the foundation's public records obligation. She refused to produce the foundation's records to the resident, claiming that the foundation is a non-profit organization not subject to Florida's public records law. However, there is no indication that she consulted with an attorney prior to refusing to comply with the resident's public records request.

What is as concerning is that the mayor did not change her position, at least not in public, even after she received legal opinions contrary to her own. Recall that, on March 8, 2017, the attorney Mayor Cooper consulted to provide an opinion on the foundation's public records obligation specifically advised her that the foundation is subject to the state's public records law, citing the *Schwab* factors and an Attorney General Opinion that the attorney described as "very similar" to the case of the foundation, which concluded that case's organization was subject to public records and Sunshine law.²⁹ Then on March 10, 2017, the city attorney advised that she agreed with the consulted attorney's analysis. Mayor Cooper did not inform either attorney that she had received contrary advice from a legal authority in the past. We presume this was because none existed.

²⁸ According to the clerk, the resident abandoned this public records request and intended to obtain copies from the vice mayor, who had requested a copy of what the city produced to the OIG.

²⁹ The attorney discontinued representing the foundation shortly after he gave this opinion, sometime between March 8, 2017 and May 30, 2017.

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But then the March 15, 2017, commission meeting happened. At that meeting, Mayor Cooper addressed the resident's 2016 public records request, asserting that she (the mayor) was waiting on a legal opinion from the foundation. But she already had one—one that apparently ran contrary to her desire. What is more, when the vice mayor asked about the foundation's records at a commission workshop meeting a month later, on April 17, 2017, Mayor Cooper remarked, "[i]t even goes back to this issue with the records. No disrespect to the [city attorney] or any attorneys in the audience, you go to five different attorneys and you get five different responses." While the mayor's remark suggests that there were divergent opinions on the matter, we found no divergence.³⁰ Even if there were any opinions, Mayor Cooper's denial of records to the resident would still have been misconduct, as she would have violated the city's public records request guidelines which instructed that all records requests determined to be inappropriate be coordinated with the city attorney and the city clerk. (Exhibit 18 (pp. 5-6))

Also of concern is Mayor Cooper's apparent overall disregard for the public's right to open inspection of a public entity's records. Remarks she made in response to calls to produce the foundation's records reflect her attitude toward public transparency. For instance, during a February 13, 2017 commission workshop meeting, Mayor Cooper declined providing the foundation's records because of her "obligation as the chair of a private board not to disclose." Then, on February 15, 2017, when the vice mayor encouraged that "[t]ransparency is the way to go," the mayor countered, "You have to ask the right questions." Such comments flout the spirit behind open government and evidence willful misconduct.

Since its inception, the Future Foundation has acted on behalf of the city; thus, it always has been subject to Florida's public records law. Mayor Cooper's refusal to produce the foundation's non-exempt records in response to a request amounted to a violation of that law.

The Open Government Law Violations Illustrate the Purpose behind Them

We made several observations during our investigation of the city officials' and staff's conduct in administering the Future Foundation that illustrate the importance of open government.

A review of the foundation's records showed an organization that continued the city's function of doling out grants to charitable organizations, except that the foundation operated outside the view of the public. Some of this activity included the receipt of multiple contributions from several local business interests that had business before the city commission or city CRA at some time, including at least the following:³¹

³⁰ The first and only opinion suggesting that the foundation was not subject to Florida's public records law that we have seen was provided by Mayor Cooper's personal attorney to us on July 26, 2017, after our efforts were well under way. That opinion did not reference many facts cited here that the OIG obtained from city records and city interviews that established how city officials and staff created, repeatedly funded, led, and managed the Future Foundation.

³¹ Due to incomplete financial records, we could not determine the total amount of contributions from these and other contributors. These figures were obtained from Future Foundation tax returns the OIG reviewed.

**OIG Table 2: Contributions to the Future Foundation
from Local Businesses with Known Business Before the City Commission
1998 to 2008**

LOCAL BUSINESS	CONTRIBUTION
Gulfstream Racing and Casino	\$22,500
Mardi Gras Gaming	\$20,000
TRG – Hallandale	\$10,000

While the foundation did have a grants committee—equally subject to the Sunshine law and headed by Mayor Cooper—that recommended grants for several schools and programs, this committee also operated outside the public view. The foundation provided minutes for only three grants committee meetings. Since the foundation did not publicly notice any of its meetings and did not reliably record minutes, we cannot discern how many grant committee meetings were convened. As the foundation could not produce minutes for at least 18 of its meetings, we (and the public) could not construct a complete picture to ascertain how the foundation decided to award its grants, what controls the committee had in place to monitor them, and the level of public participation, if any.

We note that the resident (whose questions began this investigation in the first place) belonged to the city's grants committee. That body recommended to the city commission which community and charitable organizations were worthy of receipt of city funding through community benefit partnerships. The commission made the final decisions about which organizations, such as the Future Foundation, would receive funding. The resident's attempts to know how the Future Foundation was further disbursing city funding was an effort to understand what was happening behind the veil of the separately created organization that was, in effect, city actors making further disbursements beyond what the city made in the Sunshine.

Notably, the foundation did not even notice commissioners who were, according to the bylaws, supposed to be on the board, such as Vice Mayor London³² and the other two then-sitting commissioners, Lazarow and Taub. This was even though the foundation had specifically advised former commissioner Julian of his role within the foundation when he became vice mayor. Indeed, on March 19, 2003, the foundation's marketing representative wrote a letter to Mr. Julian advising him that, as vice mayor, he was the vice president of the foundation and informing him of an upcoming meeting. (Exhibit 19) The foundation issued no such letter to Mr. London when he became vice mayor. Operating out of the sunshine, Mayor Cooper selectively followed foundation bylaws, which had the effect of excluding her political rivals on the city commission from participating in what were *de facto* city decisions.

³² We recognize that the city commission appointed Vice Mayor London as interim city mayor in February 2018. As London was the city's vice mayor when the events covered by this investigation occurred, we refer to him as the vice mayor in this report.

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We also made several concerning observations regarding the foundation's grants and expenditures overall. Starting with its grants, foundation records show that it made multiple donations, including a \$5,000 donation in December 2009 to Palms Center for the Arts, Inc. (PCA). The Future Foundation made these donations to PCA before and during the time that the city and CRA also made grants totaling approximately \$93,667 to PCA, an organization whose director we previously found probable cause to believe had misappropriated CRA funds to her personal use.³³

The foundation's records show that it also made donations to Palms of Hallandale Beach Weed and Seed—the predecessor to Palms Community Action Coalition (PCAC)—and later to PCAC itself. Foundation records indicate that it disbursed \$5,000 to Weed and Seed in late 2009 and wrote a \$500 check to PCAC on September 5, 2012. Although these donations appear innocuous, at the time the foundation made them, former commissioner Sanders's wife was employed by these organizations. We were further troubled to see that former commissioner Sanders, in his capacity as a director and authorized signatory for the foundation, personally signed the foundation check payable to PCAC along with Mayor Cooper.³⁴

The foundation's expenditures were also of interest. The bylaws granted the president authority to approve expenditures up to \$500; otherwise, the bylaws required two executive board signatures. However, we noted instances where officers violated these bylaws. For instance, on one occasion former Commissioner Sanders signed a check for \$500 to Hallandale Beach High School towards a field trip. He did so in violation of the two-signature rule and in the absence of board authority, as the board had last met over two years prior. When the field trip fell through and the teacher attempted to return the money, Mayor Cooper refused the refund and instructed the teacher to apply the money towards another activity. In essence, Mayor Cooper unilaterally approved a grant outside the public's view. On another occasion, it was clear that Mayor Cooper used her \$500 spending "authority," in violation of the foundation's bylaws, to pay a vendor for website design. After reviewing \$499 and \$500 checks that the foundation remitted to a website designer, the designer told the OIG that the foundation sometimes submitted partial payments of his invoices.

The record is replete with instances where the foundation violated its own bylaws. Open government laws encourage transparency and accountability. While we do not suggest that the administration of foundation business was unlawful beyond the violation of open government laws, these events moved us to question whether the foundation operated in a manner it would not have, had its activity been open to the public as the laws required.

³³ During the course of the investigation in OIG Matter 11-020, among other findings, we found probable cause to believe that PCA's president engaged in criminal conduct by misappropriating \$5,000 in city CRA funds intended for a specific program of PCA. Instead of using those funds for that program, she diverted the funds to her personal use. The Broward State Attorney's Office prosecuted her for that conduct. See our report dated April 18, 2013.

³⁴ The OIG investigated Commissioner Sanders for ethical misconduct and found that he repeatedly voted between 2013 and 2015 to favor PCAC in direct and indirect city funding totaling \$898,320, while at the same time PCAC made payments to his employer, wife, and sons. See our report in that matter, OIG 16-011, dated August 9, 2017.

The Current State of the Future Foundation

The Future Foundation has largely remained dormant since 2011, save for two board meetings it held in 2013 (around the time of the resident's public records request) and one meeting in 2017 during which a motion to dissolve the corporation passed (shortly after the OIG's inquiry became known). Thereafter, the foundation engaged in discussions with the Friends of the Hepburn Center, another 501(c)(3) non-profit organization with strong ties to the city, for the Future Foundation to transfer its cash balance upon dissolution.

However, as of the end of December 2017, the foundation's bank accounts held an aggregate balance of \$99,969.25,³⁵ and Mayor Cooper, former commissioner Sanders, and two former city employees were still the only individuals authorized to sign on the accounts.

On February 12, 2018, the Florida Department of Agriculture and Consumer Services informed the foundation that its solicitation of contributions registration had expired.

INTERVIEW SUMMARIES

As a part of the investigation, OIG Special Agents conducted numerous interviews. Significant interviews are summarized below:

1. Interviews of Hallandale Beach Resident

Around the time of her 2013 public records request, she was on the city's grants committee and sought information about the sources, uses and balance of the Future Foundation's funds. She was ultimately removed from the committee after she asked for details about the city's grants and the city's timetable for recipients to become self-supporting. The committee chairman told her that the Future Foundation was a "historical grant" and that no information was available to the committee.

Her prior public records requests were pending and only partially fulfilled by the city and the foundation.

In conjunction with her interview, the resident acknowledged twelve emails that chronicled her May 2013 and her November 2016 public records requests. They included:

- Her June 11, 2013, email to the former city clerk requesting foundation records. The email included a June 12, 2013, response from the clerk stating that the Future Foundation is a private company and that she would forward the request to company officials.

³⁵ Notably, during the foundation's ongoing dormancy, the aggregate balance of the foundation's bank accounts have remained over \$99,000. The fact that the foundation has done nothing with this amount of money over seven years calls into question the very purpose of the foundation, given P.L.'s explanation that the foundation was created to provide programs with timelier access to funding than going through city channels.

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- Her June 25, 2013, email to the clerk requesting that she contact former city finance director P.L. for assistance in obtaining records of the Future Foundation as the clerk had advised that P.L. had taken the foundation's records to her residence upon her retirement from the city.
- A June 25, 2013, email from foundation president Joy Cooper to the resident advising her that release of records would require approval of the Future Foundation Board of Directors and that the city had already provided her with its records of the Future Foundation.
- A June 25, 2013, email from former commissioner Julian to P.L. (with a copy to the resident) requesting P.L. to bring the Future Foundation records to a board meeting on June 28, 2013.
- A June 26, 2013, email from the resident to Julian notifying him of Cooper's assertion that she needed the Future Foundation's Board approval to release its records.
- A July 3, 2013, email from Julian to the resident providing P.L.'s residence and email addresses.
- A July 4, 2013, email from the resident to P.L. stating that the foundation board had approved her request for [tax] records.

P.L. subsequently forwarded the resident the foundation's 1997 IRS Form 1023, the 2010 IRS Form-990EZ, the 2011 IRS Form 990-N and the 2012 IRS Form 990-N.

The resident dropped her foundation request after August 12, 2013, when she was unable to obtain more records. In a Human Services Advisory Board meeting in November 2016, the Friends of the Hepburn Center director said that the city was planning to donate Future Foundation funds to the Friends of the Hepburn Center. The resident then submitted another public records request for foundation records to the city clerk on November 10, 2016, and an administrative assistant in the clerk's office told her that she would have to discuss it with Mayor Cooper.

Mayor Cooper stated at the February 13, 2017, commission workshop meeting that the Future Foundation had three bank accounts at the City National Bank branch in Hallandale Beach. She continued to be interested in determining the sources of deposits to the accounts, the expenditures from the accounts and the balances of the accounts over the past several years.

During the time she served on the city's grants committee, she did not know how the foundation distributed grant funds or who received them. The grants committee was neither tasked with nor performed any evaluation of oversight function for grants by the foundation. She has since learned that many foundation grantees were the same grantees that received grants from the city, the CRA, or both. When the grants committee assessed grants proposals to make recommendations to the

commission, she did not know that some prospective grantees had received or might receive funds from the foundation. Although the board only made recommendations, such information would have been a significant factor in her committee advisory role decisions. For example, she was never aware that not-for-profit organizations such as Eagles Wings or Palms Center for the Arts had received additional grant funds from the foundation.

As a resident and taxpayer of the city, she was interested in the city's funding of the foundation and the disposition of those funds.

Despite her multiple public records requests for records of such information, she received no information about the city funding of the foundation. Her efforts to obtain information about the foundation were met with resistance and yielded very few significant details. Despite her persistence in asking questions at commission meetings and making official public records requests, she has been unable to obtain answers to her basic questions about the foundation, such as the sources of its funding, the particular uses of its funding, the balances of its funds, and its plans for future operations and the disposition of its remaining funds.

2. Statements of Joy Cooper

Although Mayor Cooper declined to grant a formal interview, she made several statements to the OIG in the process of responding to our records requests.

On April 5, 2017, Mayor Cooper stated that the activities of the foundation were winding down. Further, she explained that the foundation became inactive at the time the OIG was created. She commented that the foundation's inactivity was also related to the directors' concerns about their authority as elected officials to "mak[e] grants" to the Future Foundation. She had a discussion concerning the possibility of the Future Foundation receiving an OIG Letter of Request with the city attorney, who advised her that the foundation was required to comply. She intended to adhere to the city attorney's guidance and provide the records.

On April 17, 2017, Mayor Cooper personally appeared at the Broward OIG office to deliver records. According to her, the records represented all the foundation records in her possession or otherwise available to her as president. She advised that, as of that day, she was waiting for some bank account statements that she requested. They would be provided as soon as they were available to her.

During the brief period that she presented the records and explained the order of the files, she also made several unsolicited verbal representations. Mayor Cooper advised that the foundation had been effectively inactive for the past several years, beginning with, and due to, the initiation of the OIG's investigation of the city's CRA and certain not-for-profit entities associated with the city and the CRA.

Mayor Cooper went on to explain that, in the past year, the directors had been working to reach an agreement with the Friends of the Hepburn Center for the transfer of the foundation's remaining balance. The delay in immediately transferring the funds was caused by her interest in ensuring that the funds would be utilized by the Hepburn Center for the same purposes for which the organization had been created. She stated that the foundation is entitled under its bylaws to transfer the funds to any IRS 501(c)(3) charity, including the Hepburn Center.

On May 23, 2017, Mayor Cooper again made unsolicited statements, including that the foundation never posted any public notices of any of its meetings because it was not required to. That was because the Future Foundation was not conducting any city business at its meetings. Further, the commissioners who were directors and/or officers of the company were not acting in their capacities as commissioners. Mayor Cooper further explained that the current company attorney and all prior company attorneys advised her the foundation was not required to provide public notice of the company's meetings. According to Mayor Cooper, she obtained a written opinion to that effect from a foundation attorney. She volunteered to provide the attorney's written opinion to the OIG.

Mayor Cooper again explained that the foundation was winding down its operation towards dissolution with a tentative plan to donate its remaining funds to the Friends of the Hepburn Center.

3. Statements made by Bill Julian

During a telephone conversation about the OIG's offer to interview, former Commissioner Julian advised that he did not understand the purpose of interviewing him, as the Future Foundation had had no operations or meetings for several years. When he was advised that the Broward OIG had minutes of a Future Foundation board meeting held on March 17, 2017, showing he attended and made motions at the meeting, former Commissioner Julian advised that he had experienced medical issues during that time and did not recall attending the meeting. Former commissioner Julian subsequently declined our offer to interview.

4. Interview of P.L.

P.L. was the former city finance director until she retired in late January 2013. For a couple of years after retiring from the city, she and her husband continued to operate their accounting business out of their home. In 2014, they sold the business, and in January 2015, they moved to Texas.

P.L. was also the treasurer of the Future Foundation, which entailed keeping the foundation's books and handling its tax returns. Other than tax records and supporting schedules that IRS and CPA rules required her to retain, P.L. did not retain any foundation records after ceasing her role and activities with the foundation approximately four years earlier.

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She likely attended the foundation meeting that occurred on May 29, 2013, as reflected in the minutes of the meeting. While she did not specifically remember whether she attended the June 2013 foundation meeting, she would not doubt any documentary evidence indicating that she did. Since she was already retired from the city, P.L.'s participation at both those meetings was as a favor to the foundation. Indeed, after her retirement from the city, she prepared the foundation's tax returns through her CPA business instead of as a city employee.

It was P.L.'s recollection that the foundation was conceived by a former city official, likely a mayor or city manager. The foundation's purpose was to help children with cultural enrichment activities in a timelier manner than could be accomplished by typical city processes.

The foundation's bylaws include direct instructions that the president is the city mayor, vice president is the vice mayor, and other city officials including the finance director, city attorney and maybe one other city position serve particular roles within the foundation. In P.L.'s view, that structure allowed the city to retain visibility over the foundation while at the same time helping the children in a timelier manner. She knew that the city routinely included amounts in its budget for donations to various organizations including the Future Foundation, the Friends of the Hepburn Center, the Police Athletic League and maybe a couple of other organizations that were not created by the city. She did not know which city funds were the source of the donations.

P.L. recalled being contacted about a public records request made to the city by a city resident. That request happened after her retirement so she could not provide the records that were maintained at the city. She could provide records in her custody that related to keeping the books and tax records; however, since she was retired from the city she needed to charge for her services. As such, she sent an email to Mayor Cooper on June 11, 2013, stating that she would charge a discounted rate of \$115 per hour for her work in providing the resident with the foundation's records.

Mayor Cooper's position concerning the resident's records request to the city was that the city and the foundation were separate entities so a records request to the city would not suffice. Instead, for the resident to obtain the foundation's records in the custody of P.L., the resident would need to submit a records request to the foundation. P.L. acknowledged having an email exchange with Mayor Cooper about the mayor's position, as reflected in her emails dated June 11, 2013. She probably also discussed the topic with the mayor over the phone at the same time.

P.L. reviewed an email she sent to the former city clerk on June 11, 2013, in which she told her, "Hold off. Mayor Cooper has instructed me to do nothing for now. I am awaiting further information from her as to whether I should respond, or she will or whatever." That email was likely prompted by Mayor Cooper's emails to her on the same day telling her that the resident did not have "legal access" to the foundation's records. She did not know why Mayor Cooper was instructing her (P.L.) on answering a public records request to the city instead of using the normal internal city process of notifying the city manager.³⁶ She speculated that Mayor Cooper may have

³⁶ P.L. explained that she forwarded those instructions to the city clerk.

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been confused since the foundation was a related but separate entity. Further, there may have been some concern about using city employees, on city time, to handle the request for the legally-separate entity. She did not know whether Mayor Cooper consulted with the city attorney about the issue. While she did not remember Mayor Cooper mentioning having consulted with the city attorney at that time, she suspected that Mayor Cooper may have since the mayor's office was close in proximity to the city attorney's office.

She sent the email to Mayor Cooper on June 18, 2013, in which she stated that she had received a request from the city for the foundation's records. The email included a list of federal tax documents which she told Mayor Cooper the foundation was required to make available to requestors at no charge. The email also included a list of categories of accounting and financial records which she had, if the mayor wanted to release more than what the tax law required, for which the foundation could charge fees of up to \$335.

P.L. did not particularly recall an email sent to her by former commissioner Julian, dated June 25, 2013, in which he asked whether she would attend a foundation meeting scheduled for June 28, 2013 and bring with her the records requested by the resident.

She acknowledged an email she sent to the former city clerk on June 27, 2013, in which she said that the foundation was obligated to release three years of tax returns and the original tax exemption application for free. She further stated in the email that she would follow the board and chairman's instructions to go beyond that which was required by law. She also said she intended to attend the foundation meeting on June 28, 2013. P.L. advised that, with her memory refreshed by the emails, she believed she had attended the meeting but did not know whether minutes of the meeting were recorded.

P.L. acknowledged an email from the resident to her husband's email address dated July 4, 2013, in which the resident advised that the foundation's board had approved sending the resident "the information that I have requested and that there is a charge of \$22 for this information." She also acknowledged an email from her (P.L.'s) husband to the resident on July 13, 2013, in which he told the resident that he forwarded the July 4, 2013 email to P.L. She also sent the resident an email on July 15, 2013, detailing the cost of providing the foundation's records to the resident, including the foundation's tax returns for 2010, 2011 and 2012, and Form 1023, at a cost of \$25.00. She vaguely recalled that the resident came to her house and picked up an envelope containing the documents described in the emails. Once she provided the documents to the resident, she was no longer involved in the records request.

P.L. explained that, in her emails, she cited to various rules and laws she believed were applicable to what the resident was requesting based on

Just my general knowledge as a tax accountant, and classes I've taken, and my years of experience. I knew that there was some kind of specific rules about making public documents available to the public; because, it's a 501(c)(3) type organization. So, I

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researched and found the appropriate verbiage, so that I was able to – as best as possible – give at least my understanding or my access to information as to what the rules were about records requests of a 501(c)(3).

She did not consult the city attorney or any other attorney about the issue when making her determination.

During the time she was treasurer, P.L. retained copies of foundation records necessary to prepare and file its tax returns in her home office. She retained the records in the event she had to respond to any IRS audits or inquiries. The records she retained included the foundation's financial statements, bylaws and various tax return information. After her retirement, she retained those records within the context of services provided by her accounting firm. However, in accordance with other CPA requirements, she provided copies of all the foundation's tax returns and related documents to her client, the city. As a result, the foundation files kept at the city also included a copy of the tax returns and any documents she created or used in preparation of the tax returns.

When she worked on the foundation's finances at the city, P.L. maintained spreadsheets on the city computer. When she prepared the foundation's tax returns, she printed copies of the spreadsheets and financial statements that she had created as a city employee doing work for the foundation and as a foundation board member. She then used those documents to prepare tax returns. She maintained cash receipts and disbursement records in Excel spreadsheets on the city computer. After she retired, she believed the city senior accountant or someone else whom she could not recall took over doing the foundation's cash receipts and disbursements on the Excel spreadsheets. That city employee provided her with the information to prepare the foundation's tax return until she sold the foundation account to another CPA in the summer of 2014.

In 2014, when her accounting firm sold the foundation account to another CPA, she gave the other CPA all the client files, including tax files and supporting documents for the time that she prepared tax returns as the contracted CPA for the foundation (not including the years she worked for the foundation as a city employee).

When the OIG agent described the hard copy files and folders that Mayor Cooper provided, a part of which were in a blue container, P.L. recalled that, when she was the finance director, she maintained some files for the foundation and other charities in a separate file cabinet. How Mayor Cooper delivered the files to the OIG, along with the description of the blue box, sounded like Mayor Cooper "went to the finance department and carted out those files."

P.L. further explained that foundation meetings were typically held in the city's cultural center building adjacent to city hall around lunch time because it was convenient for the foundation officers who were city officials. It also allowed them to minimize distraction from other city business. The board may have also held some meetings in the city manager's conference room on the second floor of city hall.

In the first years of her employment at the city, foundation meetings were usually scheduled during one meeting for a date and time certain for the next meeting. Meeting reminders may have been sent by email. In later years, when there was very little foundation activity, meaning no benefit concerts or similar activities, there were very few meetings. P.L. did not think foundation meetings were publicly noticed. She did not believe that the bylaws or IRS regulations required them to be publicly noticed. In P.L.'s view, IRS regulations determine whether an entity is tax exempt and therefore they determine the operation of the foundation. She did not recall the issue of public notice ever being addressed to, or by, any foundation attorneys, including the city attorneys. The foundation's attorneys rarely attended meetings because, they had higher priority meetings during the lunch hour.

P.L. understood that, as she was not a city employee, her acting as the foundation's treasurer between 2013 and 2014 was contrary to the foundation's bylaws. The city did not name a finance director for approximately one and a half years after she retired, and there was no one with financial expertise and knowledge of the foundation available to fill in, especially since the foundation became inactive. There was minimal need for anyone to handle treasurer functions except for preparing year-end tax returns and filings, which she was willing to do through her CPA business.

5. Interviews of Keith London

Vice Mayor London has been a city commissioner continuously since November 2006 when he was appointed to fill a vacant seat, except from November 2012 until November 2014 after he lost the mayoral election to Joy Cooper.

He did not recall ever receiving any notice or observing any posted public notices for any Future Foundation meetings. He did not know whether the Future Foundation held a board of directors meeting on March 17, 2017. He had not seen any notice, proposed agenda, or minutes of a meeting on that date. He also did not receive any letter notifying him that he was made a board member or vice president by virtue of his commissioner or vice mayor status, such as that prepared for former commissioner and Vice Mayor Julian.³⁷

In early 2017, Vice Mayor London became aware that the Broward OIG was making inquiries of city officials generally concerning the Future Foundation. Before that time, he had limited knowledge of the foundation because he deliberately avoided involvement with it. It had been his understanding that Mayor Cooper controlled the foundation, and he did not want to become involved in it or other entities under her control. He learned some information about the foundation because a local resident was actively attempting to get details about its operation. The resident asked him to assist her in getting the foundation's operational details.

He did not recall attending a foundation meeting prior to hearing about the OIG's inquiries about the foundation in early 2017. He thought he may have attended a meeting after that time, however,

³⁷ See Exhibit 19, the March 19, 2003, letter of invitation to Vice Mayor Julian.

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after further consideration, he believed that it may have been a meeting of The Friends of the Hepburn Center that he attended. He knew for certain that he did not attend the foundation meeting on March 17, 2017.³⁸

He did not know whether the city directly funded the foundation. He recalled that the city had required at least one developer to contribute funds to the foundation. In that instance, as in all similar city-mandated developer contributions, he questioned the accountability and effectiveness of the expended funds.

He had no information about the grants or other expenditures made by the foundation. He did not know whether the foundation's grants were made according to recommendations by a city or foundation grants committee. However, he had generally found that grants and donations made by the city and city-controlled entities were for the purpose of "political patronage." Most advisory boards and committees had historically been "stacked" by Mayor Cooper and commissioners that agreed with her priorities by allocating two appointments each to the mayor (Mayor Cooper) and the vice mayor (historically an ally of Mayor Cooper) and one each to the other three commissioners, resulting in a majority of appointments for Mayor Cooper and her allies. That practice helped perpetuate the patronage system. The system resulted in creation of many not-for-profit entities by residents who politically supported Mayor Cooper which were then granted money by Mayor Cooper and her allies on the commission. For those reasons, he was reluctant to appoint anyone that would have to participate in the "sham."

He knew that when some not-for-profit organizations in the city were seeking city grants, a condition of approval was that they obtain matching funds from another entity. He did not specifically recall whether any of the organizations claimed that grants from the foundation were their matching funds. He believed that any such arrangement would have been illegitimate because foundation funds were partially provided by the city also.

He remembered an effort by the resident to obtain the foundation's records from early 2013 through approximately mid-August 2013. He recalled that at the time he also submitted a request to the city for a duplicate copy of all records provided by the city to the resident in response to her request. That process occurred during the two years when he was out of office. Ultimately, neither the resident nor he received most of the records they sought. In that process, he learned that P.L. had possession of many of the records of the foundation at her home office.

In early 2017, the commission hired a new city manager and city attorney. At that time, the resident and he decided to renew efforts to obtain information and records about the foundation. He knew that the resident's renewed efforts included attending a series of city commission meetings and workshops at which she spoke during public participation to ask again for foundation records and information.

³⁸ During a brief break of this interview, Vice Mayor London checked his calendars and records and confirmed that he had not attended any foundation meetings.

Vice Mayor London believed that the use of city staff time, city facilities, city equipment and other city resources for the activities of a not-for-profit corporation was improper unless the corporation was officially approved and established by the city commission in a lawful manner. He also thought that if the corporation was properly approved and established by the commission, such that its operation and expenditure of city resources were also proper, then the records of the corporation would likely be covered by Florida public records laws.

He also believed that foundation meetings were likely covered by Florida Sunshine law requirements for public notice and open meetings, particularly if foundation directors, who were also elected city officials, discussed city funding of the foundation or using city resources for foundation functions, as both examples would be matters that would require a commission vote.

After learning that the OIG had made inquiries concerning the foundation, Vice Mayor London corresponded with A.A., who he thought was the foundation's attorney and was on the board of the Friends of the Hepburn Center. On May 1, 2017, he submitted a records request to A.A. for various meeting and financial records of the foundation. On the same date, A.A. replied that he would attempt to address his request, noting that he had only been retained by Mayor Cooper a few weeks earlier. A.A. further asked the vice mayor to approve additional expenditures to handle the records request as a foundation director. Soon thereafter but before receiving any records from A.A., he learned that A.A. discontinued representing the foundation. He did not know why.

6. *Interview of Michele Lazarow*

She has been a city commissioner since November 2012. She did not recall ever attending a Future Foundation meeting. She did not know if she was an officer or director of the foundation. She did not recall ever receiving a notice or, for that matter, ever observing posted public notices, for a foundation meeting. She did not know whether the foundation held a board of directors meeting on March 17, 2017.

7. *Interview of Anabelle Taub*

She has been a city commissioner since November 2016. She did not recall ever attending a Future Foundation meeting. She did not know if she was an officer or director of the foundation. She did not recall ever receiving a notice or, for that matter, ever observing posted public notices, for a foundation meeting. She did not know whether the foundation held a board of directors meeting on March 17, 2017.

8. *Interview of City Parks and Recreation Director*

The parks and recreation director began with the city in March 2012. Her knowledge and experience with the Future Foundation was extremely limited. The first time she heard about it was in May 2013. At that time, the former city manager asked her to attend a meeting of the foundation during lunchtime in the next room in the cultural center.

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Although she did not recall the exact date of the meeting, she concurred that the May 29, 2013, meeting minutes that listed her in attendance were correct. At that time, she did not know why the former city manager asked her to attend the meeting. Further, she did not fulfill any particular function at the meeting other than attending. She specifically recalled that she did not record or produce the minutes of the meeting. She generally recalled that the only significant topic of the meeting was a discussion about how to reactivate the foundation which had apparently been inactive for some time.

She had no other significant interaction with the foundation and did not recall attending any other meetings of the foundation.

The city manager made some comments and inquiries about the foundation in a city senior management meeting on February 16, 2017, apparently prompted by inquiries by a city resident. She was thereafter copied on an email exchange on that date in which senior city management attempted to determine the status of a \$25,000 payment that a 2007 development agreement between the city and the developer of the Village at Gulfstream Park required. She had no knowledge of, or involvement in, the situation that preceded her tenure with the city by several years, so she decided to make a simple search of the Florida Secretary of State's Sunbiz website to see what she could find out about the foundation. In her initial search, she was surprised to discover that she had been reported to the state as the foundation's secretary beginning in 2014.

The parks and recreation director did not know why she was listed as the foundation's secretary. She was certain that there was no motion made or vote taken to name her the secretary in the May 29, 2013, foundation meeting. At no time did anyone notify her that she was the foundation's secretary. She never took any actions or fulfilled any functions typically associated with the position, specifically, she never recorded or produced minutes for any foundation meetings. After discovering that she was listed in that position, she also noted that former parks and recreation director had been the foundation's former secretary. She never read the foundation's bylaws or other corporate documents.

After discovering that she was listed as the foundation's secretary without her notification or knowledge, she was uncomfortable with the situation and met with the city attorney. She asked how she could be removed from the position and followed the advice the city attorney gave her.

9. Interview of the City Clerk³⁹

The city clerk began his tenure in January 2015. In his current position, he supervises the deputy city clerk and an administrative assistant.

The City of Hallandale Beach Administrative Policy – Public Records Request Guidelines was originally issued in December 2004, with an effective date of January 1, 2005, and was most recently revised on July 19, 2012. It was the city's current policy governing the handling of public

³⁹ The City Clerk resigned effective March 14, 2018.

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records requests. He was not aware of any other city policies, guidelines, ordinances or resolutions governing the handling of public records requests by the city clerk.

During his tenure as city clerk, the city received two public records requests, other than Broward OIG requests, for records related to The Future Foundation, Inc. The first request was submitted by a city resident. The resident's request was followed by a request from Commissioner London, who asked that he be provided all the same records given to the resident. The clerk's records request log included an entry dated November 10, 2016, showing that the resident requested "Information about history and how much money is available in the Future Foundation. How it is being spent." Although the log does not contain a data field for noting the way that requests are received, he believed that the resident made her request in verbal comments during public participation at a city commission meeting. He did not know who entered the resident's request in the log. He recalled having personally witnessed the resident originally making her request during a meeting at which he was present, however, there may have also been subsequent verbal discussions with the resident to clarify her request.

When he heard the resident's comments and request at the city commission meeting, it was only the second time that he had encountered any reference to the foundation. The first was when he was cleaning an archives room in city hall and he saw some old tee-shirts with the foundation's name on them. He did not ask about the foundation at that point. After receiving the resident's request, he asked the deputy city manager, his direct supervisor, if she knew anything about it. She explained that the foundation was a fundraising organization which was spearheaded by the mayor and that other city staff members participated in its operation.

When the resident made her request to the city, he assumed that the city might have records related to the foundation. However, his initial search produced no responsive records. He began his search process by asking city department heads, including the finance director, to perform searches in their servers and files. He also searched the city clerk office's files and meeting minutes. No one responded that they had any foundation records. He verbally advised the resident that the city had no responsive records and recommended that she contact Mayor Cooper since she was the president of the foundation. At that time, he still thought that the foundation was an entity separate from the city.

He subsequently notified Mayor Cooper that the resident might contact her regarding the foundation. He recalled that Mayor Cooper's reaction was a perfunctory reply along the lines of "Okay" with no additional conversation about the foundation following that brief exchange.

After notifying the resident that the city did not have any foundation records, on March 1, 2017, he received a Letter of Request from the Broward OIG for foundation records. At that time, he categorized each type of record sought by the OIG and charged his deputy city clerk with leading the effort to respond to the request. The deputy city clerk contacted all departments, including the city attorney's office, which had not been contacted for the resident's request. The city attorney's office produced some records, which provided "bread crumbs" to other city departments to locate

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more records. Some records were also retrieved from Mayor Cooper's office. Ultimately, voluminous responsive records were submitted to the OIG.

At that time, he directed the deputy city clerk to contact the resident and advise her that foundation records had been located after the initial incorrect notification. The deputy city clerk contacted the resident to offer her the records with a quote for the cost of production. The resident advised the deputy city clerk that she did not want the records produced by the city clerk's office, rather, she would work with records provided to Commissioner London. The City Clerk explained that after the OIG submitted its records request, Commissioner London submitted a request for a duplicate copy of all records given to the OIG.

The City Clerk had a meeting with the department heads to express his displeasure with the belated discovery of foundation records. The city attorney was present at the meeting. He told those present in the meeting that he considered it unacceptable that only after the OIG requested the records did they make a productive effort to locate the records in their departments. After the city's first production of responsive records to the OIG, city staff continued to search and located additional records. The staff found these additional records by reviewing records already produced and following their trail. The additional records were turned over to the OIG.

He did not know that the foundation physically maintained records outside city hall. He believed that his responsibility was to locate and provide all responsive records within the physical possession of the city but not to check whether any existed outside city facilities. No one ever informed him that records located outside the city's facilities were covered by records requests.

It was his belief that the foundation was a not-for-profit organization similar to numerous other partners of the city that received financial assistance from the city. He had a couple of brief conversations with Commissioner London concerning the status of the resident's requests for records. He never discussed anything related to the foundation with any other city elected officials or the city manager.

The city clerk was present for multiple commission meetings in 2017 during which the resident made comments during public participation concerning her interest in obtaining information about the foundation. All the comments the resident made were a duplication of her request in November 2016. For that reason, the interaction with the resident concerning her 2016 request also addressed the comments she made in the 2017 meetings.

The city clerk confirmed that he did not attend any meetings or participate in any foundation activities. He never saw or heard about any public notices for foundation meetings. He did not know whether there were any foundation meetings since he began working for the city.

10. Interview of the Former City Clerk

The former city clerk began working for the city in December 2007 in the development services division. In August 2010, she was promoted to deputy city clerk and then to city clerk in November 2011. She remained the city clerk until January 2015.

When she began working for the city, the city finance director was P.L. When she started her tenure in the city clerk's office, there was an existing city policy for handling public records requests. Her immediate supervisor, the deputy city manager, charged her with updating the policy. She updated the policy with the former city attorney. That updated policy is entitled "Public Records Request Guidelines" issued on December 20, 2004, and revised on July 19, 2012. She considered that policy and Florida public records laws to be the authorities governing her handling of public records requests.

While she was the city clerk, she received at least one public records request for records of the Future Foundation. She was never a director or officer of the foundation and never attended any meetings of the foundation. In fact, she had almost no knowledge about it and did not think it was around any longer when she worked for the city.

The public records request form dated May 17, 2013, documented a records request from a resident for Future Foundation records. It was prepared by the administrative assistant. She did not know whose handwriting was at the bottom of the form but it was someone outside the city clerk's office. She believed that the notes were made by someone in the finance department after they spoke with the resident and performed a search for the foundation's records in that department. The form bears the initials of someone in the finance department. She speculated that the request was referred to the finance department after she consulted with her supervisor as that was her typical practice. Her supervisor may have also suggested that P.L. or Mayor Cooper might have some foundation records in their personal possession. The former city clerk recalled that P.L. was an officer of the foundation and a CPA, whom the foundation may have hired to do accounting.

As for her June 11, 2013, email to P.L.'s personal email address, the former city clerk told P.L. that she could choose to contact the resident directly concerning the foundation records because she understood that the foundation's records were not city records. Even though the resident's request was to the city, she was trained that she should neither create nor provide records that the city did not possess in response to requests. Accordingly, she referred the request to P.L. While she believed that she could have simply told the resident that the city had no responsive records, she decided to assist because she knew the resident was an interested and active resident of the city.

Upon reviewing P.L.'s June 11, 2013, email to Mayor Cooper wherein P.L., in part, writes, "So, after discussing with the City Clerk, I am considering this to be an open books request from the City, and that I am the Board member being requested for information," the former city clerk

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explained that, while she discussed the records request with P.L., she was not familiar with P.L.'s terminology "open books request." Concerning P.L.'s statement that the request was from the city to her, she did not know of any city authority to compel P.L. to provide the foundation's records to the city, or any private corporation's records for that matter, if the corporation were actually separate from the city.

At the time of the resident's requests and her interaction with P.L. about them, the former city clerk did not understand the relationship between the foundation and the city. She had heard and seen a few anecdotal things, such as some foundation tee-shirts in a city storage room that made her think that there may be some relationship there. She did not "dig deep" to understand the situation. Instead, she acted upon her understanding that public records requests did not require the city to produce records which it did not possess.

The former city clerk never discussed the city's relationship with the foundation with Mayor Cooper. In fact, she did not recall ever discussing anything about the foundation with her. She also did not recall discussing the resident's requests or anything at all about the foundation with the city attorney at that time. She did not think about discussing the resident's requests or the foundation with anyone other than her supervisor, from whom she took direction on all such matters.

Upon reviewing an email from her to the resident dated June 12, 2013, wherein she referred to a meeting a day earlier concerning the resident's records requests, the former city clerk recalled that the resident often visited city hall for various reasons. She probably encountered the resident in the building and briefly chatted about the status of the resident's request. She noted her email response to the resident contained a statement that, "since the Future Foundation is not 'a public agency' over with (sic) the City has any purview, I have forwarded your request to the Future Foundation." Her use of the language "not a public agency" indicated to her that she had received guidance from her supervisor because that terminology would have otherwise been unfamiliar to her at that time. Further, having read the email and refreshed her memory about the terminology, she would not exclude the possibility that the city attorney was involved in a discussion with her about the request although she had no specific recollection of such discussion. The one thing that she knew with a high degree of certainty about her use of the terminology was that it was conveyed to her in the form of a direction about how to proceed from her direct supervisor and/or the city attorney at that time.

The former city clerk reviewed her June 26, 2013, email to P.L. wherein the former city clerk noted that a foundation board meeting was scheduled for Friday, June 28, 2013, at 12 p.m. She did not recall the source of her knowledge about the meeting. She did not attend the meeting or know whether the meeting occurred. Vice Mayor Julian may have told her about the meeting. She did not know what transpired at the meeting, if it was held, or whether the resident received any of the foundation's records she was seeking at the meeting.

The office of the city clerk was responsible for posting public notices for meetings of the city commission, advisory boards, and committees. She did not post a public notice of the June 28,

2013, meeting. She was never instructed to and never did post a public notice for any foundation meeting. Other than that particular meeting, she did not know whether the foundation held any meetings during the time she worked for the city. It was possible that someone else posted notices about foundation meetings, as other city officials had a key to the bulletin board area at city hall where notices were physically posted, and others had access to post items on the city's website. However, she did not see or otherwise know about any.

11. Interview of the Deputy City Manager

The deputy city manager began working for the city in 1996 when she took a position as a management analyst in the city manager's office handling citizen complaints. She moved to Puerto Rico in 1998 and returned to the city in 2005 as the city manager administrator. In the same year, she was promoted to assistant city manager. In 2008, she was promoted to her current position of deputy city manager.

She heard about the foundation during her first stint with the city in the 1990's because every year it held a charity silent auction. After she returned to city in 2005, the foundation held a concert on the beach. She understood that the foundation was "an organization that the mayor ran." Three different individuals served as mayor throughout her time with the city. The most recent mayor was Mayor Cooper who was elected in the early 2000s.⁴⁰

The deputy city manager had almost no discussion with Mayor Cooper about the foundation. The only significant thing she recalled Mayor Cooper ever saying to her about the foundation was that she (Mayor Cooper) wanted to donate the foundation's funds to the Friends of the Hepburn Center. In the past few weeks since the mayor was suspended, the deputy city manager has been tasked with handling mail directed to her. As a result, the deputy city manager has seen a couple of the foundation's bank statements. She passed these statements to the city clerk because she thought that he might need to send them to the OIG.

Until recently, she did not know that the foundation's business address was city hall. After Mayor Cooper was suspended and she started handling mail addressed to the mayor, she received correspondence from the Florida Department of Agriculture for the foundation. The correspondence was a notice that the foundation's status as a 501(c)(3) organization was terminated and that it was no longer authorized to represent itself as such. It further admonished foundation officers and member to cease soliciting donations because they would not be tax-exempt. She forwarded the notice to the city manager.⁴¹

The deputy city manager never discussed the foundation with former commissioners Julian or Sanders, Mayor London, or former finance director P.L. Although she never discussed the foundation with the parks and recreation director, the director may have once commented that she

⁴⁰ There was one additional mayor that served during the time frame the deputy city manager was discussing.

⁴¹ The notice referenced the expiration of the foundation's state registration and the state's revocation of its right to solicit donations.

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was surprised to discover that she was the foundation's secretary. At one or more commission meetings in the past year, some commissioners said they were surprised to discover that the bylaws of the foundation included them as directors.

She knew that the foundation often held its board meetings at the city's cultural center building adjacent to city hall around lunch time. She had no recollection or estimate of the number of foundation board meetings held in the past several years.

The deputy city manager did not know the city had donated funds to the foundation. She did not know that city employees routinely performed work for the foundation during their regular work day from their city offices. She also did not know that some city employees made regular donations to the foundation by way of payroll deductions. One of the reasons she had limited knowledge about the foundation was that the city manager wanted nothing to do with it.

A resident made multiple requests for various public records over the years. She was asked about the foundation by someone on her staff, likely the city clerk, presumably because she had worked for the city for a long time.

Although she did not specifically recall the former city clerk consulting her about the resident's requests, if she was asked she would have advised her to act in accordance with state law and city policy. Her management philosophy, learned over many years of experience, was to hire qualified employees and delegate responsibility to them. That philosophy particularly applied to employees with duties requiring specific knowledge and expertise in a subject area, such as a city clerk's compliance with public records laws. She would have applied that philosophy to any interaction with the former or current city clerk concerning public records requests, including requests for foundation records.

The deputy city manager remembered an instance when the city received, and the city clerk coordinated a response to, a public records request for foundation records. She thought that the city clerk may have asked her for background information about the foundation. Her response would have been the same general information she previously described. Later, she learned that the city clerk did not find any responsive records in the city manager's office files. She was surprised by that result. She searched the digital files and found a folder of foundation records filed in the city manager's folder. She did not know why the city clerk initially thought that there were no records in the city manager's files. She suspected that the oversight may have been due to somebody being lazy in their response to the city clerk. She was very unhappy about the oversight.

The deputy city manager never saw any public notices for any foundation meetings. She did not recall receiving any emails or other notices that foundation meetings were scheduled. She was not generally involved in posting public notices for meetings. She did not know the specific requirements of state law for posting public notices of meetings.

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The deputy city manager never discussed anything about the foundation or public records requests for foundation records with any city attorney or anyone in the city attorney's office.

RESPONSE TO THE PRELIMINARY REPORT AND OIG COMMENT

In accordance with Section 12.01(D)(2)(a) of the Charter of Broward County, preliminary copies of this report were provided to the implicated parties for their discretionary written responses. The OIG received a response from Mayor Cooper which is attached and incorporated herein as Appendix A. We appreciate receiving the response.

Response of Joy Cooper

At the outset, Mayor Cooper argues that the OIG has no jurisdiction over the foundation. We have already responded to Mayor Cooper's challenge to our jurisdiction and we attach and incorporate that response as Appendix B. In short, while we agree that the charter does not confer upon the OIG authority over any private, not-for-profit corporate entity, we do, indeed, have authority over those who operate or profit from local government, that is, the officials, employees, and providers of the county and its municipalities. We again explain, as we did in 2013 when Mayor Cooper challenged our jurisdiction over Hallandale Beach's CRA, that one cannot avoid OIG oversight by spending tax payer funds through an entity that is independent in name only (OIG Final Report 11-020, at page 50).

Mayor Cooper also continues to insist that the foundation is not subject Florida's Open Government Laws. In support of her position, Mayor Cooper undertakes her own review of the Schwab factors and goes to great lengths to minimize the city's involvement with the foundation while wholly ignoring city officials' involvement with it. We note that Mayor Cooper's current view of the city's involvement in the Future Foundation starkly contrasts with her position in July 2012 when she was interviewed in conjunction with our investigation into the city's CRA. At that interview, Mayor Cooper explained that "the city has always been an integral [sic] part of [the Future Foundation]." Notwithstanding, we write to clarify, or put context to, some of Mayor Cooper's statements made in her response.

To the extent that Mayor Cooper suggests that employee payroll deductions should not be considered on the question of funding, we remind Mayor Cooper that the fact that the city facilitated employee payroll deductions to the foundation was not the **only** factor on which we based our determination that it was subject to the state's public records law. Instead, we properly based our determination on the totality of the city's (which includes city officials) relationship with the foundation.

Next, Mayor Cooper claims to have received years of informal opinions from attorneys indicating the foundation is not subject to the Florida Public Records Act prior to receiving the March 8, 2017 letter from an attorney hired by the foundation opining that the foundation was indeed subject to Florida's Public Records Law. Mayor Cooper also suggests that the city attorney was initially of the opinion that the foundation was not subject to the public records

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law, but changed her opinion after speaking to the foundation attorney. We note that Mayor Cooper has not provided the OIG with any such informal opinions. Further, a reading of the email which Mayor Cooper contends reflects the city attorney's initial advice that the foundation was not subject to the state's public records law does not support the contention. In that email, the city attorney did not submit that the foundation was not subject to the public records law but advised that, although the foundation could argue it is a separate entity, it should produce the records sought as other factors are considered to determine the foundation's public records obligation.

In sum, Mayor Cooper's response is an effort to minimize the impact of the facts we adduced during our investigation to the determination of whether the foundation is subject to Florida's Open Government Laws. In other words, Mayor Cooper does not take issue with the facts in this report but challenges the conclusions we reached based on those facts. We are troubled by Mayor Cooper's steadfast refusal to acknowledge the foundation's open government obligations.

CONCLUSION

City of Hallandale Beach officials committed misconduct by operating what amounts to be an arm of their government in violation of Florida's Sunshine and public records laws. Even though the Future Foundation's relationship to and function for the city required it to be treated like the city for purposes of Florida's open government laws, Mayor Cooper and former commissioners Julian and Sanders failed to do so.

Specifically, they committed misconduct by attending foundation board meetings that had not been noticed to the public. During their most recent uninterrupted period of public service, Mayor Cooper attended at least 26 such meetings, former commissioner Bill Julian attended at least two such meetings, and former commissioner Sanders attended at least two. In addition, the mayor served as the president of the foundation during the time that 14 meetings were held for which we could find no evidence of minutes being taken.

Mayor Cooper also violated Florida's public records law by refusing to provide the foundation's records to a city resident who requested the records through a public records request. Mayor Cooper's public records violation is particularly troublesome given the fact that, as late as April 17, 2017, she continued to deny access to records even after receiving legal opinions advising her that the foundation was obliged to comply with the state's public records laws.

The Future Foundation received at least \$339,662.36—over half of which the city facilitated directly or indirectly. To date, the foundation has an aggregate remaining balance of \$99,969.25. Thus, we concluded that the foundation spent at least \$239,693.11 of largely public funds outside the public's view and reach, disrespecting the government transparency, government accountability, and public participation principles behind Florida's open government laws.

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We found it particularly disturbing that even after the officials cited herein were put on notice that 501(c)(3) organizations like the foundation were subject to open government laws, they failed to seek and follow legal advice, and nonetheless thereafter denied public access to their meetings and records.

In light of these open government violations, in accordance with our charter mandate, we are referring this matter to the Broward State Attorney's Office for whatever action it deems appropriate.

OIG 17-006

COMPOSITE EXHIBIT 1

HALLANDALE CITY COMMISSION
REGULAR MEETING
MAY 21, 1996

MOTION BY VICE-MAYOR ROSS, SECOND BY COMMISSIONER STEIN, TO APPROVE THE APPOINTMENT OF HAROLD L. FINCH AS ALTERNATE MEMBER TO THE TRANSPORTATION ADVISORY BOARD. The motion carried by voice vote, 5/0.

- (3-095)
15. Acceptance of resignation of John McDowell from the Beautification Advisory Board. (Commissioner Stein) (see backup)

Commissioner Stein stated he urged Mr. McDowell to remain on the Board, however he resigned and Commissioner Stein indicated he already has a suitable replacement.

MOTION BY COMMISSIONER ROSENBERG, SECOND BY COMMISSIONER STEIN, TO ACCEPT THE RESIGNATION OF JOHN McDOWELL FROM THE BEAUTIFICATION ADVISORY BOARD. The motion carried by voice vote, 5/0.

- (3-109)
16. Discussion of establishing "Future Foundation", a non-profit corporation, to support disadvantaged youth as outlined in the backup report. If approved, authorize transfer of funds in the amount of \$1,000 from General Fund, Non-departmental, A/C #001-8010-519-3701, Contingency. (City Manager) (see backup) CAD 45/95

City Manager Intindola stated the Commission gave authority to the City Manager to seek ways to raise funds. The City Manager stated it was his intention to form a nonprofit corporation as a trust where people would be able to make donations for a specific purpose, such as in the area of education and the cultural enhancement of the youth within the community. He stated that support would come from donors like John Depp, Director of Public Works, Utilities and Engineering, who could obtain a considerable amount of collection paraphernalia from the entertainment industries. Professional sports franchises would also provide for these types of events, such as the Florida Panthers. The City Manager suggested holding an annual banquet in January at the Cultural Center to raise monies for a specific purpose. City Manager mentioned he was open to suggestions on the structure of the organization as well as the specific programs and what they would fund, noting that all would be subject to Commission review.

Commissioner Rosenberg asked whether or not this corporation would fund only residents of Hallandale. City Manager Intindola stated this matter was left open, as many students are nonresidents and should be included.

Commissioner Rosenberg inquired what was meant by the term "disadvantaged". City Manager Intindola said it was anyone who would not otherwise be able to attend or participate in the program unless some assistance were provided.

City Manager stated the corporation would work along the lines of sending children to various camps, such as computer, science and agricultural, as well as including a tutorial program. Commissioner Rosenberg supported that idea.

HALLANDALE CITY COMMISSION
REGULAR MEETING
MAY 21, 1996

MOTION BY COMMISSIONER ROSENBERG, SECOND BY MAYOR LANNER, TO APPROVE THE AGENDA ITEM AS PRESENTED BY STAFF.

Mayor Lanner stated there were many requests for food supplements and rent. He said money was needed for these requests, yet he stated that sending youngsters to camps and various programs was an excellent concept that can work in conjunction with the Human Resources Department and with Friends of the Hepburn Center.

Commissioner Cohen expressed his view that it was necessary to hire specialists to conduct programs. He also indicated he supported the suggestion because the City Manager was involved.

Commissioner Stein favored the suggestion by the City Manager for a Future Foundation but was concerned about effects on potential contributors. He felt it would be difficult to raise money. City Manager Intindola said that some of the programs are not ongoing and do not need continuous funding, such as for cultural enhancement and camps.

The motion was carried by voice vote, 5/0.

17. CITY ATTORNEY REPORT (3-406)

No new cases were filed and none dismissed; therefore, no significant change in litigation status.

MATTERS REQUIRING STAFF ON CALL

- (3-414)
7. Discussion of proposed Code amendments to Article XI, Off-Street Parking and Loading Requirements, relative to minimum parking space and other requirements as outlined in the backup report. (Staff: Director, Growth Management) (see backup) CADs 16/96, 45/94 and CMD 16/96
-
- TO BE HEARD FOLLOWING ITEM #17

Mark Kutney, Director of Growth Management, discussed reviewing each case on an individual basis and reducing part of the ratio by classification; however, he said it would not address smaller parcels throughout the City that may be converting from a car repair facility to a restaurant or something of that nature. He said the ratios would be used as a guideline or starting point.

Commissioner Stein asked if special districts would be excluded from these requirements. Mark Kutney said there were changes that needed to be addressed and commented that the specifics of that part of the amendment had not yet been discussed.

Commissioner Stein queried Mark Kutney as to what these Code amendments would provide by summarization in a one paragraph statement. Mark Kutney replied that "it would entail that the City of Hallandale recognizes that certain land development standards make redevelopment difficult to achieve, and by virtue

BY-LAWS
OF
THE FUTURE FOUNDATION INC.
a corporation not for profit operating
under the laws of the State of Florida

ARTICLE I

Name and Principal Office

Name. The name of this corporation shall be THE FUTURE FOUNDATION INC., hereinafter referred to as "FUTURE FOUNDATION". A corporation not for profit incorporated under the laws of the State of Florida.

Office. The principal office of the Corporation shall be located at 400 South Federal Highway, Hallandale Florida 33009.

ARTICLE II

Purpose

The general nature of the objects and purposes of this corporation are exclusively to engage in charitable and philanthropic endeavors of all kinds including the furtherance of good works and eleemosynary objectives and endeavors, within the meaning of Section 501(c)(3) of the Internal Revenue Code, or amendments, and to receive monies, profits and equipment and to use the property of the corporation of charitable purposes according to the by-laws and policies of the corporation, and to further other charitable works, and to that end may adopt and establish by-laws, and make all rules and regulations deemed necessary and expedient for the management of its affairs, in accordance with law and not inconsistent with these Articles of Incorporation; and to do all things necessary and incidental to the purposes of this Corporation and otherwise permitted by law and to:

- 1) To provide and expand opportunities for children under the age of eighteen (18).
- 2) To offer educational and cultural programs to the children.
- 3) To encourage and assist to identify, create and develop sources of funding available for Future Foundation sponsored programs.

ARTICLE III

Membership

Membership is open to all persons who have an interest in the charitable objectives of the Corporation. Membership applications shall be provided by the Executive Committee.

ARTICLE IV

Officers and Duties

1) President. Is the Chief Executive Officer, Chair of the Executive Board and Board of Directors; shall preside at all Executive Board and Corporate meetings. The Mayor of the City of Hallandale at the time of election of Corporate Officers shall be the Chairperson of the Executive Board and President of the Corporation. The President shall conduct all such meetings in accordance with the law, Articles of Incorporation, and these By-laws. The President is authorized to sign contracts, letters and documents on behalf of the Future Foundation with approval of the Board, or may designate other officers or Board members to do so as specific need arises. The President shall have the authority to approve expenditures up to \$5,000.

2) Vice President. Shall act in temporary absence on behalf of the President. The Vice President will assume the position of the President upon death, disability or resignation of the President, and shall serve in this capacity until the next annual meeting.

3) Secretary. Shall keep the minutes of the Corporation, and any and all special meetings. Shall keep a list of attendance and advise the Board of any vacancies, for reasons of inability by a member to continue serving, or for reasons of non-attendance at any two meetings during the fiscal year.

4) Treasurer. Shall keep a record of all monies received, all checks issued and all other monies (such as petty cash) dispensed. A written report shall be delivered to the Corporate Officers, Executive Board and Board of Directors.

ARTICLE V

Board of Directors

Board Officers.

1) President
2) Vice President
3) Secretary
4) Members of Board of Directors. The following positions shall serve as members of the Board of Directors and if appointed are entitled to hold Officer positions:

- a) The Vice Mayor of the City of Hallandale
- b) The City Manager of the City of Hallandale
- c) The City Attorney of the City of Hallandale
- d) The Director of Human Resources for the City of Hallandale
- e) The Director of Parks and Recreation for the City of Hallandale.

5) Ex-Officio Board of Directors. The Ex-Officio Board shall consist of three City of Hallandale Commissioners, excluding the Mayor and Vice Mayor.

Number. The Board of Directors for the Future Foundation shall be no less than thirteen (13) and no more than twenty-five (25).

Term of Office. The Board of Directors shall be appointed for a two year term and serve as long as they choose to, subject of course to their re-appointment.

Vacancies. Any vacancy which occurs on the Board of Directors for any reason shall be filled in the same manner as stated in the by-laws by the Board.

Removal. Any Board member may be removed from office by the affirmative vote of two-thirds (2/3) of all Board members in attendance at any regular meeting or special meeting called for that purpose. Any member proposed to be removed shall be entitled to at least five (5) days written notice by mail of the meeting in which such removal is to be voted upon and shall be entitled to appear before and be heard by the Board of Directors at such meeting. Any member of the Board of Directors absent from two (2) or more Board meetings during a fiscal year shall be reevaluated by the Board.

Meetings. The Board shall meet quarterly, in the months of June, September, December and March. The Board can meet more frequently should eight (8) members of the Board approve additional meetings, or upon call of the President.

Quorum at Meetings. The Board of Directors may conduct regular and special meetings provided eight (8) of the Board members are present. For meetings which eight members are not present, than items will be voted upon by the Executive Board.

Voting. There shall be no voting proxy at any Board of Directors meeting including the annual meeting.

Power and Responsibility of the Board of Directors. The Board of Directors will make decisions on any business that comes forth and has the authority to establish sub-committees based upon the program needs of The Future Foundation. The Board shall adopt a budget for the Corporation prior to the start of the Fiscal Year. In its policy-making role the Board is responsible for:

- Altering rescinding the by-laws of the Future Foundation.
- Amending the Articles of Incorporation of the Future Foundation.

ARTICLE VI

Executive Board

Board Officers.

- 1) President
- 2) Vice President
- 3) Secretary
- 4) Treasurer
- 5) Members of the Executive Board.

The City Manager of Hallandale shall serve on the Executive Board.

Number. The Executive Board shall be no less than seven (7) and no more than thirteen (13) members of the Board of Directors.

Term of Office. The Executive Board members shall be elected for a two year term and may be re-elected.

Vacancies. Any vacancy which occurs on the Executive Board for any reason shall be filled by the Board of Directors.

Election. The Executive Board shall be elected at the annual March meeting, every other year, by the Board of Directors.

Removal. Removal from the Executive Board shall occur in the same manner as the Board of Directors.

Meetings. The Executive Board shall meet when it is impractical for the full Board of Directors to meet and when matters demand immediate Board action.

Quorum at Meetings. The Executive Board may conduct regular and special meetings provided five (5) of the members are present.

Voting. There shall be no voting proxy at Executive Board meeting.

Power and Responsibility of the Executive Board. The Executive Board is autonomous, limited only by its legal responsibilities under the Articles of Incorporation, the By-laws, and contractual obligations to funding sources to accomplish the objectives of the programs. To fulfill this obligation, the Executive Board shall adhere to three (3) basic concepts:

1) It is fundamentally a policy-making body, as distinguished from that portion of the program charged with implementing and executing policy. The Executive Board shall observe, question and evaluate the operational functions of the program. In its policy-making role the Executive Board is responsible for:

- Establishing the goals of the Future Foundation and developing ways to meet the purpose of the corporation.
- Establishing major fiscal and program policies.
- Conducting self-evaluations of the Future Foundation programs.

2) The power of the Executive Board results from its group action. No individual member of the Executive Board has any authority over the programs, other than what is established by these By-laws.

3) The Executive Board shall have the power to enter into contractual agreements, letters and documents, and make financial decisions on behalf of the Future Foundation, to ensure the most efficient operation of the Corporation. The signature authority for these documents shall be as follows:

- Two of Three (3) members of the Executive Board, consisting of the Chairperson and two (2) members appointed by the Executive Board, shall have signature authority to execute payments, documents, legal agreements and financial reports, on behalf of The Future Foundation Inc.

ARTICLE VII

Finance Committee

Number. The Finance Committee for the Future Foundation shall consist of no less than three (3) and no more than five (5) members including the Treasurer.

Term of Office. The Finance Committee members shall be elected for one year term and serve as long as they choose to, subject of course to their re-election.

Election. The Finance Committee shall be elected at the annual meeting by the Board of Directors. Any vacancy which occurs on the Finance Committee for any reason shall be filled by the Board of Directors.

Removal. Removal from the Committee shall occur in the same manner as the Board of Directors.

Meetings. The Finance Committee shall meet based upon the needs of the Committee.

Quorum at Meetings. The Finance Committee may conduct regular and special meetings provided a majority of Committee members are present.

Power and Responsibility of the Finance Committee.

The Finance Committee shall submit to the Board of Directors at least one month prior to the fiscal year meeting a proposed budget for ensuing year, with a year end financial report showing income and expenses for the current year.

ARTICLE VIII

Finances

Fiscal Year. The Future Foundation budget shall be adopted for the fiscal year, starting July 1st and ending June 30th.

Budget Adoption. The Future Foundation budget shall be adopted by eight (8) members of the Board of Directors. If the Fiscal Year Budget cannot be adopted by the Board of Directors due to lack of the vote, then it shall be adopted by five (5) members of the Executive Board.

Checks. All checks issued must be co-signed by two of the three members of the Executive Board with signing authority.

Compensation. No Board member or Officer shall receive any compensation. Out-of-pocket expenses not specifically budgeted or authorized by the Executive Board prior to the expense occurring, may be paid by submittal of a proper voucher or invoice to the Treasurer for authorization of payment.

Investments. The Future Foundation shall have the right to retain all or any part of any funds or properties acquired by it; to invest and reinvest any funds held by it, according to the judgement of the Board of Directors or Executive Board, provided, however, that no action shall be taken by or on behalf of the Future Foundation if such action would result in the denial of the tax exemption under the Internal Revenue Code and its regulations as they now exist, or as they may hereafter be amended.

ARTICLE IX

Amendments

These by-laws may be altered, amended or repealed and new by-laws may be adopted by a majority of the Board of Directors, provided that at least five (5) days written notice is given of the intention to alter, amend or repeal or to adopt new by-laws at such meeting.

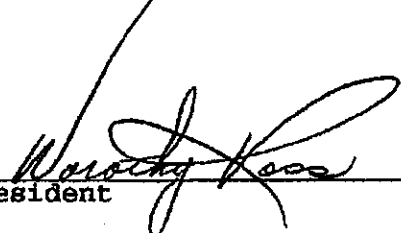
ARTICLE X

Exempt Activities

Notwithstanding any other provision on these by-laws, no member of the Board of Directors, officer, or representative of the Future Foundation shall take any action or carry on any activity by or on behalf of the Future Foundation not permitted to be taken or carried on by an organization exempt under Section 501 (c) (3) of the Internal Revenue Code and its regulations as they now exist or as they may be hereafter be amended.

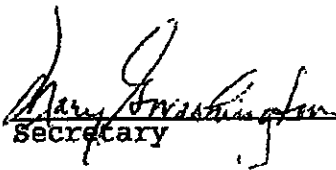
CERTIFICATE

IN WITNESS THEREOF, the Secretary of the corporation known as The Future Foundation Inc. does hereby certify that the above and foregoing by-laws were adopted by the Board of Directors of said corporation as the by-laws on the 18th day of December, 1997 and that they do now constitute the by-laws of said corporation.



President

Attest:



Secretary

CAD3896.002/12383

OIG 17-006

COMPOSITE EXHIBIT 2

MEETING MINUTES
BOARD OF DIRECTORS, FUTURE FOUNDATION INC.
CITY OF HALLANDALE
SEPTEMBER 25, 1996

The meeting of the Board of Directors of the Future Foundation Inc. was called to order at 11:00 a.m., Wednesday, September 25, 1996 by R. J. Intindola, City Manager. Present were the following individuals:

Bert Abell
Joy Cooper
Bob Greaver
John Hardwick
R. J. Intindola
Arnold Lanner
Linda Naughton

Harry A. Petersen
Rev. D. L. Poitier
Joseph Scavo
Denise Smith
Mary Washington
Rise Yevelson(*)

(* for Linda Lopez)

Mr. Intindola welcomed all present and introduced Charity Pape, Assistant to the City Manager, as the staff person who will assist with coordination of the Board's work. He also introduced Aleida Ruano, who will be responsible for the meeting minutes. Mr. Intindola proceeded to review the purpose and goals for the Future Foundation Inc. referenced in the Articles of Incorporation. He noted that the Foundation is a separate corporation, apart from the City of Hallandale. Though the City will oversee the accounting and audits, record keeping and media notification in accordance with Florida State Sunshine Laws, the Board of Directors will make the decisions.

Although the City of Hallandale currently serves about 200 children through its Tutorial Program at the Hepburn Center, funds have been limited and facilities are overcrowded. It is hoped that through the Future Foundation additional services for educational and cultural enhancement can be provided, and relieve some of the funding burden from the Friends of the Hepburn Center. Mr. Intindola stated that plans are underway to expand the Hepburn Center facility to add 5,000 square feet of primarily classroom space. Funding for the project will come from donations and a federal grant. Mayor Lanner also expanded on some of the particular services which he has seen at the Hepburn Center and noted that there is a waiting list of children for such services.

Board members heard from Mayor Arnold Lanner concerning the credentials of two nominees. Rev. D. L. Poitier moved that Alfred Rosner and Joanne Lanner be accepted as members of the Board of the Future Foundation Inc. Linda Naughton seconded the motion, and it passed unanimously.

Joy Cooper requested clarification of the purpose of the Foundation, which was explained by Mr. Intindola. The City will provide the facilities for any programs and equipment sponsored by the Foundation.

FUTURE FOUNDATION INC. BOARD MEETING MINUTES
September 25, 1996

2

Mr. Intindola suggested that the Foundation hold one major fund raising event per year. He went on to discuss the idea of a silent auction and proposed Friday, March 14, 1997 as the date for this event with tickets to be sold for \$50 in advance and \$60 at the door. The auction would consist of donated items, autographed items, memorabilia, etc.

Joy Cooper asked if solicitation letters will be drafted to gather donations for the auction. Charity Pape stated that Board members will be notified as to when drafted correspondence is complete and available for distribution. Ms. Cooper noted that she had contacts who would donate to the auction. Board members were encouraged to contact individuals and organizations they feel may contribute items and/or services for the auction. In order to eliminate duplication of efforts, members are to provide names of individuals or businesses they plan to contact.

The next Board meeting will be determined based on the dates and times provided by the members. The meeting adjourned at 11:45 a.m.

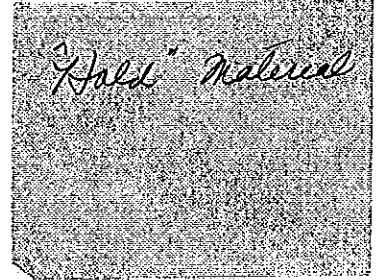
Notes submitted by: Aleida Ruano



Mary G. Washington, Secretary

*Learn file
must - future
Foundation*

CITY OF HALLANDALE, FLORIDA
MEMORANDUM



DATE: October 21, 1996

TO: Charity Pape, Assistant to the City Manager

FROM: Mark Antonio, Director of Finance *MA*

SUBJECT: Future Foundation

Pursuant to our conversation with the City Manager, the Finance Department is authorized by the Commission to provide in-kind services to the Future Foundation similar to the services provided to the Friends of the Hepburn Center. The Finance Department can review the bank reconciliations as completed by the treasurer and review transaction procedures, if desired. Any specific certified audit, however, cannot be completed by staff although I do not anticipate the foundation will need such services.

In regard to the setup for employee deductions, this procedure is in place and employees can fill out the normal deduction form to donate to the foundation. Based on the volume of donations, a check will be initially issued monthly and delivered to the treasurer, if appropriate.

If I can be of further assistance, please advise.

MA:ats

OIG 17-006

EXHIBIT 3

VENDOR ACTIVITY LISTING

VENDOR NUMBER 7266
VENDOR NAME BEGINS WITH .
VENDOR NAME CONTAINS . .

TRANSACTION SELECTION

CHECK YEAR 0000

FISCAL YEAR.. FROM: 1997 TO: 2013 PERIOD.. FROM: 00 TO: 99

DATE RANGE... FROM: /00/0000 TO: 99/99/9999 TYPES... EN AD X

FROM: 000-0000-000.00-00 TO: 999-9999-999.99-99

TYPE: R (O-ONLY, R-RANGE, S-SELECTIVE)

REPLACE PO NUMBER WITH VOUCHER NUMBER? (Y/N).. N

PRINT VENDORS WITHOUT TRANSACTIONS? (Y/N/O).. Y

INCLUDE VENDOR ADDRESS? (Y/N).. N

REPORT IN SUMMARY FORM? (Y/N).. N

PAIDROLL SUMMARY - Employee Contributions
Donation - Funds Donated from City as part of Annual Budget

PREPARED 3/19/13, 18:08:05
 PROGRAM GM370L
 CITY OF HALLANDALE BEACH

VENDOR ACTIVITY LISTING

PAGE 1
 ACCOUNTING PERIOD 17/1997

VENDOR/SEQ#/NAME/STATUS										ACCTG --- TRANSACTION ---		ENCUMBRANCE		TRANSACTION	
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01425		4/13	AP	1/09/13	0173828	20121026		PAYROLL SUMMARY	663-0000-218.01-38					22.50	
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PREPARED 3/19/13, 18:08:05
PROGRAM GM370L
CITY OF HALLANDALE BEACH

VENDOR ACTIVITY LISTING

PAGE 2
ACCOUNTING PERIOD 17/1997

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ACCOUNTING PERIOD 17/1997

VENDOR/SECH/NAME/STATUS											
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02811	7/09	AP		4/30/09	0145282	20090501	PAYROLL SUMMARY	663-0000-218.01-38			37.50
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02351	7/09	AP		4/03/09	0144622	20090403	PAYROLL SUMMARY	663-0000-218.01-38			37.50
02150	6/09	AP		3/20/09	0144315	20090320	PAYROLL SUMMARY	663-0000-218.01-38			37.50
02085	6/09	AP		3/12/09	0144124	031209	AIR SUPPLY CONCERT PROCEE	001-0000-229.55-00			13324.45
01955	6/09	AP		3/06/09	0144035	20090306	PAYROLL SUMMARY	663-0000-218.01-38			37.50
01752	5/09	AP		2/20/09	0143678	20090220	PAYROLL SUMMARY	663-0000-218.01-38			40.50
01574	5/09	AP		2/06/09	0143351	20090206	PAYROLL SUMMARY	663-0000-218.01-38			40.50
01393	4/09	AP		1/23/09	0143077	20090123	PAYROLL SUMMARY	663-0000-218.01-38			40.50
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01066	3/09	AP		12/26/08	0142402	20081226	PAYROLL SUMMARY	663-0000-218.01-38			40.50
00909	3/09	AP		12/12/08	0142079	20081212	PAYROLL SUMMARY	663-0000-218.01-38			40.50
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04156	10/08	AP		7/25/08	0135215	20080725	PAYROLL SUMMARY	663-0000-218.01-38			38.50
04067	10/08	AP		7/15/08	0135115	071508	TCKT MASTER RECEIPTS (JAZZ	001-0000-229.55-00			22705.90
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03945	10/08	AP		7/08/08	0134953	070808	JAZZ ON THE BEACH TICKET	001-0000-229.55-00			7167.04
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02215	6/08	AP		3/21/08	0132142	20080321	PAYROLL SUMMARY	663-0000-218.01-38			38.50
01990	6/08	AP		3/07/08	0131750	20080307	PAYROLL SUMMARY	663-0000-218.01-38			38.50
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01501	4/08	AP		1/25/08	0130781	20080125	PAYROLL SUMMARY	663-0000-218.01-38			38.50
01309	4/08	AP		1/11/08	0130436	20080111	PAYROLL SUMMARY	663-0000-218.01-38			38.50
01114	3/08	AP		12/28/07	0130208	20071228	PAYROLL SUMMARY	663-0000-218.01-38			38.50
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00034		1/08	AP	10/05/07	0128359	20071005	PAYROLL SUMMARY	663-0000-218.01-38		38.50
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04625		11/07	AP	8/10/07	0126185	20070810	PAYROLL SUMMARY	663-0000-218.01-38		38.50
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03946		9/07	AP	6/29/07	0125760	20070629	PAYROLL SUMMARY	663-0000-218.01-38		38.50
03736		9/07	AP	6/15/07	0125394	20070615	PAYROLL SUMMARY	663-0000-218.01-38		38.50
03506		9/07	AP	6/01/07	0120718	20070601	PAYROLL SUMMARY	663-0000-218.01-38		38.50
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03073		8/07	AP	5/04/07	0120675	20070504	PAYROLL SUMMARY	663-0000-218.01-38		38.50
02815		7/07	AP	4/20/07	0120654	20070420	PAYROLL SUMMARY	663-0000-218.01-38		38.50
02741	F22656	7/07	AP	4/12/07	0124052	DONATION 2007	DONATION LINE 13	130-6325-559.34-54	7500.00-	7500.00
02609		7/07	AP	4/06/07	0120633	20070406	PAYROLL SUMMARY	663-0000-218.01-38		38.50
02378		6/07	AP	3/23/07	0120613	20070323	PAYROLL SUMMARY	663-0000-218.01-38		38.50
02158		6/07	AP	3/09/07	0120593	20070309	PAYROLL SUMMARY	663-0000-218.01-38		38.50
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00033		1/07	AP	10/06/06	0118441	20061006	PAYROLL SUMMARY	663-0000-218.01-38		38.50
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05081	F21077	12/06	AP	9/20/06	0119002	DONATION 2006	MAIN SPONSOR FOR DEC. CON	130-6330-559.32-99	4000.00-	4000.00
05081	F21077	12/06	AP	9/20/06	0119002	DONATION 2006	MAIN SPONSOR FOR DEC. CON	001-8090-519.32-99	16000.00-	16000.00
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03872		10/06	AP	7/14/06	0116817	20060714	PAYROLL SUMMARY	663-0000-218.01-38		38.50
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03471		9/06	AP	6/16/06	0116099	20060616	PAYROLL SUMMARY	663-0000-218.01-38		38.50
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03020		8/06	AP	5/19/06	0115207	20060519	PAYROLL SUMMARY	663-0000-218.01-38		38.50
02817		8/06	AP	5/05/06	0114750	20060505	PAYROLL SUMMARY	663-0000-218.01-38		38.50
02602		7/06	AP	4/21/06	0114316	20060421	PAYROLL SUMMARY	663-0000-218.01-38		38.50
02393		7/06	AP	4/07/06	0114035	20060407	PAYROLL SUMMARY	663-0000-218.01-38		38.50
02187		6/06	AP	3/24/06	0113687	20060324	PAYROLL SUMMARY	663-0000-218.01-38		38.50

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01743		5/06	AP	2/24/06	0113018	20060224	PAYROLL SUMMARY	663-0000-218.01-38	38.50
01561		5/06	AP	2/10/06	0112635	20060210	PAYROLL SUMMARY	663-0000-218.01-38	38.50
01369		4/06	AP	1/27/06	0112288	20060127	PAYROLL SUMMARY	663-0000-218.01-38	38.50
01167		4/06	AP	1/13/06	0111973	20060113	PAYROLL SUMMARY	663-0000-218.01-38	38.50
00999		3/06	AP	12/30/05	0111716	20051230	PAYROLL SUMMARY	663-0000-218.01-38	38.50
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00616		3/06	AP	12/02/05	0110988	20051202	PAYROLL SUMMARY	663-0000-218.01-38	38.50
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00287		2/06	AP	11/04/05	0110504	20051104	PAYROLL SUMMARY	663-0000-218.01-38	38.50
00182		1/06	AP	10/21/05	0110311	20051021	PAYROLL SUMMARY	663-0000-218.01-38	38.50
00038		1/06	AP	10/07/05	0109976	20051007	PAYROLL SUMMARY	663-0000-218.01-38	38.50
04848		12/05	AP	9/23/05	0109584	20050923	PAYROLL SUMMARY	663-0000-218.01-38	77.00
04503		11/05	AP	8/25/05	0108936	AUGUST2005	PPE 08/19/05	663-0000-218.01-38	115.50
04033		10/05	AP	7/28/05	0108298	JULY 2005	PPE 07/22/05	663-0000-218.01-38	77.00
03362		9/05	AP	6/16/05	0107269	JUNE 2005	06172005 PAY DATE	663-0000-218.01-38	77.00
02944		8/05	AP	5/19/05	0106617	APRIL 2005	05022005	663-0000-218.01-38	75.00
02559		7/05	AP	4/21/05	0105900	APRIL 2005	DISBURSEMENTS APRIL CKS	663-0000-218.01-38	75.00
02173		6/05	AP	3/24/05	0105233	MARCH 2005	DISBURSEMENTS 3/25/05 CKS	663-0000-218.01-38	75.00
01765		5/05	AP	2/24/05	0104479	FEBRUARY 2005	DISBURSEMENTS 2/25/05 CKS	663-0000-218.01-38	175.00
01402		4/05	AP	1/27/05	0103807	JANUARY 2005	PAYROLL A/P CKS 1/28/05	663-0000-218.01-38	75.00
01029		3/05	AP	12/30/04	0103264	DECEMBER 2004	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38	112.50
00506		2/05	AP	11/18/04	0102308	NOVEMBER 2004	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38	75.00
00174		1/05	AP	10/21/04	0000000	OCTOBER 2004	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38	75.00
00177		1/05	AP	10/21/04	0101664	OCTOBER 2004	WRONG BANK CHNG TO 63	663-0000-218.01-38	75.00
00178		1/05	AP	10/21/04	0000000	OCTOBER 2004	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38	75.00
04638		12/04	AP	9/24/04	0100918	SEPT 2004	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38	75.00
04294		10/04	AP	8/27/04	0100285	AUGUST 2004	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38	75.00
03915		10/04	AP	7/30/04	0099598	JULY 2004	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38	112.50
03354		9/04	AP	6/18/04	0097554	JUNE 2004	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38	75.00
02999		8/04	AP	5/21/04	0096514	MAY 2004	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38	75.00
02605		7/04	AP	4/23/04	0096464	APRIL 2004	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38	75.00
02169		6/04	AP	3/26/04	0096415	MARCH 2004	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38	75.00
01862		5/04	AP	2/27/04	0095910	DECEMBER 2003	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38	85.00
01716	F14289	5/04	AP	2/13/04	0095678	FIRE DEP ADS(2)	2 ADS IN CALENDAR	001-2240-522.32-45	40.00-
01451		4/04	AP	1/30/04	0095079	JANUARY 2004	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38	127.50
01280	F14097	4/04	AP	1/13/04	0094914	DONATION 03/04	DONATION 03/04 WATER FUND	430-3390-533.34-54	2500.00-
01280	F14097	4/04	AP	1/13/04	0094914	DONATION 03/04	DONATION 03/04 POLICE LET	665-2120-521.34-54	2000.00-
01280	F14097	4/04	AP	1/13/04	0094914	DONATION 03/04	DONATION 03/04 GENERAL FU	001-8090-519.34-54	2500.00-
00939		12/04	AP	12/19/03	0094219	DECEMBER 2003	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38	85.00
00837	F13897	3/04	AP	12/08/03	0094159	120803	HALLANDALE BEACH CALENDAR	001-8090-519.32-99	250.00-
00837	F13898	3/04	AP	12/08/03	0094160	120803	1/2 PG. AD FOR CALENDAR F	001-1110-511.34-72	250.00-
00588		2/04	AP	11/21/03	0091964	NOVEMBER 2003	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38	85.00
00247		1/04	AP	10/24/03	0091916	OCTOBER 2003	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38	85.00
04832		12/03	AP	9/26/03	0091869	SEPTEMBER 2003	EMPLOYEE CONTRIBUTION	663-0000-218.01-38	85.00
04406		11/03	AP	8/29/03	0091289	AUGUST 2003	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38	127.50
03839		10/03	AP	7/18/03	0090299	JULY 2003	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38	95.00
03477		9/03	AP	6/20/03	0089518	JUNE 2003	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38	125.00
03118		8/03	AP	5/23/03	0088909	MAY 2003	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38	125.00
02758		7/03	AP	4/25/03	0088157	APRIL 2003	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38	120.00
02758		7/03	AP	4/25/03	0088156	SEPT 2002	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38	99.00

PREPARED 3/19/13, 18:08:05
 PROGRAM GM370L
 CITY OF HALLANDALE BEACH

VENDOR ACTIVITY LISTING

PAGE 6
 ACCOUNTING PERIOD 17/1997

VENDOR/SEQ#/NAME/STATUS										
ACCTG										
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02628		7/03	AP	4/15/03	0082487	SEPTEMBER 2002	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38		99.00-
02306		6/03	AP	3/28/03	0087176	FEBRUARY 2003	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38		125.00
01971		5/03	AP	2/27/03	0086419	FEBRUARY 2003	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38		125.00
01876	F11896	5/03	AP	2/19/03	0086354	DONATION 03	NON DEPT. FUND DONATION P	001-8090-519.34-54	2500.00-	2500.00
01876	F11896	5/03	AP	2/19/03	0086354	DONATION 03	WATER FUND DONATION PG377	430-3390-533.34-54	2500.00-	2500.00
01876	F11896	5/03	AP	2/19/03	0086354	DONATION 03	LAW ENFORCEMENT FUND PG26	665-2120-521.34-54	2000.00-	2000.00
01523		4/03	AP	1/31/03	0085699	JANUARY 2003	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38		197.50
00996		3/03	AP	12/19/02	0084666	DECEMBER 2002	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38		145.00
00656		2/03	AP	11/22/02	0084006	NOVEMBER 2002	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38		152.50
00287		1/03	AP	10/25/02	0083373	OCTOBER 2002	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38		140.00
04620		12/02	AP	9/27/02	0082487	SEPTEMBER 2002	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38		99.00
04069		11/02	AP	8/30/02	0081560	AUGUST 2002	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38		156.00
03616		10/02	AP	7/19/02	0080362	JULY 2002	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38		104.00
03243		9/02	AP	6/21/02	0079593	JUNE 2002	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38		104.00
02878		8/02	AP	5/24/02	0078869	MARCH 2002	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38		104.00
02490		7/02	AP	4/26/02	0000000	APRIL 2002	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38		104.00
02492		7/02	AP	4/26/02	0000000	APRIL 2002	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38		104.00-
02493		7/02	AP	4/26/02	0000000	APRIL 2002	FIX BATCH 2490	663-0000-218.01-38		104.00-
02494		7/02	AP	4/26/02	0000000	APRIL 2002	FIX BATCH 2490	663-0000-218.01-38		104.00
02496		7/02	AP	4/26/02	0078110	APRIL 2002	FIX BATCH 2490	663-0000-218.01-38		104.00
02150		6/02	AP	3/29/02	0077396	MARCH 2002	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38		151.00
01597		5/02	AP	2/15/02	0076381	FEBRUARY 2002	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38		30.00
01259		4/02	AP	1/18/02	0075703	JANUARY 2002	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38		104.00
00934		3/02	AP	12/21/01	0075084	DECEMBER 2001	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38		104.00
00651	F08703	2/02	AP	11/27/01	0074652	DONATION	DONATIONS (LN#6PG386)	430-3390-533.34-54	2500.00-	2500.00
00651	F08703	2/02	AP	11/27/01	0074652	DONATION	DONATIONS (LN#2PG274)	665-2120-521.34-54	2000.00-	2000.00
00651	F08703	2/02	AP	11/27/01	0074652	DONATION	DONATIONS (LN#5PG219)	001-8090-519.34-54	2500.00-	2500.00
00576		2/02	AP	11/21/01	0074464	NOVEMBER 2001	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38		104.00
00236		1/02	AP	10/26/01	0073767	OCTOBER 2001	EMPLOYEE CONTRIBUTIONS	663-0000-218.01-38		104.00
04401		12/01	AP	9/28/01	0072895		Payroll Ded. Future Found	663-0000-218.01-38		99.00
04000		11/01	AP	8/29/01	0072074		Payroll Ded. Future Found	663-0000-218.01-38		222.00
03223		10/01	AP	7/06/01	0070664		Payroll Ded. Future Found	663-0000-218.01-38		194.00
02557		8/01	AP	5/11/01	0069279		Payroll Ded. Future Found	663-0000-218.01-38		203.00
01869		6/01	AP	3/16/01	0067906		Payroll Ded. Future Found	663-0000-218.01-38		208.00
01181		4/01	AP	1/19/01	0066628		Payroll Ded. Future Found	663-0000-218.01-38		208.00
00838		3/01	AP	12/22/00	0066037		Payroll Ded. Future Found	663-0000-218.01-38		255.00
00241	F06260	1/01	AP	10/26/00	0064975	FUTUREFOUND	DONATIONS (LINE ITEM 6)	430-3390-533.34-54	2500.00-	2500.00
00241	F06260	1/01	AP	10/26/00	0064975	FUTUREFOUND	DONATIONS (LINE ITEM 2)	665-2120-521.34-54	2000.00-	2000.00
00241	F06260	1/01	AP	10/26/00	0064975	FUTUREFOUND	DONATIONS (LINE ITEM 5)	001-8090-519.34-54	2500.00-	2500.00
04263		12/00	AP	9/29/00	0064205		Payroll Ded. Future Found	663-0000-218.01-38		52.00
04095		12/00	AP	9/15/00	0063772		Payroll Ded. Future Found	663-0000-218.01-38		208.00
03435		10/00	AP	7/21/00	0062488		Payroll Ded. Future Found	663-0000-218.01-38		208.00
02819		8/00	AP	5/26/00	0061221		Payroll Ded. Future Found	663-0000-218.01-38		288.00
02103		6/00	AP	3/31/00	0059863		Payroll Ded. Future Found	663-0000-218.01-38		208.00
01410		5/00	AP	2/04/00	0058664		Payroll Ded. Future Found	663-0000-218.01-38		216.00
00721	F04753	3/00	AP	12/02/99	0057623	DONATION FF	DONATION - LINE #6	430-3390-533.34-54	2500.00-	2500.00
00721	F04753	3/00	AP	12/02/99	0057623	DONATION FF	DONATION - LINE #3	665-2120-521.34-72	4000.00-	4000.00
00721	F04753	3/00	AP	12/02/99	0057623	DONATION FF	DONATION - LINE #5	001-8090-519.34-54	2500.00-	2500.00
00242		1/00	AP	10/29/99	0056760		Payroll Ded. Future Found	663-0000-218.01-38		476.00
03043		9/99	AP	6/25/99	0053973		Payroll Ded. Future Found	663-0000-218.01-38		228.00
02708	F03967	8/99	AP	5/26/99	0053456	CAEGRANT*0528	CCC SPECIAL EVENTS--LI#9-	001-7225-572.34-72	3078.68-	3078.68

PREPARED 3/19/13, 18:08:05
 PROGRAM GM370L
 CITY OF HALLANDALE BEACH

VENDOR ACTIVITY LISTING

PAGE 7
 ACCOUNTING PERIOD 1771997

VENDOR/SEQ#/NAME/STATUS									
BATCH	P.O.#	ACCTG PER. CD	DATE	NUMBER	INVOICE NUMBER	DESCRIPTION	ACCOUNT NUMBER	ENCUMBRANCE AMOUNT	TRANSACTION AMOUNT
02522		8/99 AP	5/14/99	0053067		Payroll deductions thru	663-0000-218.01-38		175.00
01533		5/99 AP	2/19/99	0051255		Payroll Ded. Future Found	663-0000-218.01-38		210.00
00861		3/99 AP	12/24/98	0049260		Payroll Ded. Future Found	663-0000-218.01-38		210.00
00278	F03157	1/99 AP	10/27/98	0049428	DONATION #5	DONATION	430-3390-533.34-54	2500.00-	2500.00
00278	F03157	1/99 AP	10/27/98	0049428	DONATION #5	DONATION	665-2120-521.34-72	1000.00-	1000.00
00278	F03157	1/99 AP	10/27/98	0049428	DONATION #5	DONATION	001-8090-519.34-54	2500.00-	2500.00
00005		1/99 AP	10/02/98	0048625		Future Foundation	663-0000-218.01-20		240.00
03364		10/98 AP	7/24/98	0046948		Future Foundation	663-0000-218.01-38		224.00
02564		8/98 AP	5/15/98	0045415		FUTURE FOUNDATION DONATNS	663-0000-218.01-38		392.00
02652	F02643	8/98 AP	5/15/98	0045686	DONATION98	DONATION	430-3390-533.34-54	2500.00-	2500.00
02652	F02643	8/98 AP	5/15/98	0045686	DONATION98	DONATION	001-8090-519.34-54	2500.00-	2500.00
01743	F02350	6/98 AP	3/03/98	0044005	DONATION*2	DONATION FOR FUTURE FOUND	665-2120-521.34-72	1000.00-	1000.00
01571		5/98 AP	2/20/98	0043547		Acct. Bal as of 2/19/98	663-0000-218.01-38		256.00
00432		2/98 AP	11/14/97	0041704		PPE 11/07/97	663-0000-218.01-38		287.00
03754		11/97 AP	8/22/97	0039699		A/C Bal. 8/21/97	663-0000-218.01-38		287.00
02399		8/97 AP	5/02/97	0037353		Bal. through PPE 4/25/97	663-0000-218.01-20		216.00
01450		5/97 AP	2/13/97	0035825	DONATION1	REMITTANCE OF DONATIONS T	663-0000-218.01-38		249.00
00914		3/97 AP	12/27/96	0034839		PAYPERIOD ENDING 12/20/96	663-0000-218.01-38		226.00
00767		3/97 AP	12/13/96	0034570		Future Foundation	663-0000-218.01-38		964.00
VENDOR TOTAL -								80,118.68-	149,217.58

OIG 17-006

EXHIBIT 4

DEVELOPMENT AGREEMENT

RECORDED 07/20/07 12:00 PM
BROWARD COUNTY COMMISSION
DEPUTY CLERK 1923
#4, 19 Pages

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made and entered this 7th day of February, 2006, by and between **THE VILLAGE AT GULFSTREAM PARK, LLC** (the "**Developer**") whose mailing address is 901 South Federal Highway, Hallandale Beach, Florida 33009, and the **CITY OF HALLANDALE BEACH**, a municipal corporation of the State of Florida, whose mailing address is 400 South Federal Highway, Hallandale Beach, Florida 33009 (the "**City**").

WITNESSETH:

WHEREAS, Gulfstream Park Racing Association, Inc., is the (the "**Owner**") of that property located in the City of Hallandale Beach consisting of approximately 60.8 acres located at the southeast corner of Hallandale Beach Boulevard and Federal Highway, more particularly described on Exhibit "A" attached hereto (the "**Property**"); and

WHEREAS, the Developer is The Village at Gulfstream Park, LLC. (hereinafter referred to as "**Developer**"); and

WHEREAS, the **Developer** desires to develop the Property for construction of a Development of Regional Impact (DRI) and a Planned Local Activity Center ("PLAC") on the Property, with the permitted uses identified in paragraph 2 of this agreement (the "**Proposed Development**"); and

WHEREAS, the **Owner** submitted an application to the **City** for the DRI on May 14, 2004, which was found sufficient for review pursuant to Section 380.06, Florida Statutes, by the South Florida Regional Planning Council on January 18, 2006, and which issued its staff report on June 5, 2006; and

WHEREAS, the **City** has prepared an amendment to its Comprehensive Plan to create a new land use category, the Local Activity Center (the "LAC"), which land use category was approved on first reading by the **City** Commission on May 18, 2004 and on second reading on November 6, 2006; and

WHEREAS, the **City** has prepared a new zoning district, Planned Local Activity Center (the "PLAC"), to implement the LAC land use category for the purpose of allowing mixed use development in an urban setting that is focused on transit corridors; and the proposed PLAC was reviewed by the City of Hallandale Beach Planning and Zoning Board on May 3, 2006, which recommended its approval, and the **City** Commission approved the new zoning district on November 6, 2006; and

WHEREAS, the **Owner** has applied to the **City** for the rezoning of the Property to the PLAC zoning designation, and the proposed PLAC rezoning was reviewed by the City of Hallandale Beach Planning and Zoning Board on May 3, 2006, which recommended its approval, and the City Commission approved the rezoning of the Property on November 6, 2006; and

WHEREAS, the development of property under the PLAC zone requires, at Section 32-179(n), that the development be governed by a Development Agreement; and

WHEREAS, the City, and the **Developer** desire to enter into this Agreement to provide for the terms and conditions upon which the Property can be developed in accordance with the PLAC rezoning; and

WHEREAS, the proposed Village at Gulfstream Park Development of Regional Impact is located wholly within the City of Hallandale Beach, Broward County, Florida; and

WHEREAS, the City has considered and adopted a development order approving the proposed Village at Gulfstream Park Development of Regional Impact on November 6, 2006; and

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. **Recitations**. The recitations set forth above are true and correct are incorporated herein by this reference.

2. **Permitted Uses**. The Property may be developed with those uses permitted in the Planned Local Activity Center (PLAC) zoning district as of the date of this Agreement, as follows:

<u>Residential</u> :	1,500 multifamily dwelling units
<u>Hotel</u> :	500 keys
<u>Retail</u> :	750,000 square feet GLA
<u>Office</u> :	140,000 square feet GFA
<u>Movie Theater</u> :	2,500 seats

3. **Parking and Dimensional Requirements**. The development of the Property with the permitted uses shall be in accordance with the parking requirements, setbacks, heights, landscaping and other site development standards set forth in the Conceptual Site Plan and Design Guidelines (hereby incorporated herein by reference a copy of which is maintained by the City Clerk's Office) and the City Code of Ordinances.

4. **Special Conditions.** The Developer, its successors and assigns, shall comply with the conditions set forth in Exhibit "B" hereto, unless otherwise agreed to be waived by the City Manager. It is further understood and agreed that failure to fulfill any provision of this Agreement, or the conditions of zoning approval, may result in non-issuance of other regulatory approvals with respect to the Proposed Development, as applicable pursuant to Exhibit "B," until such time as all conditions of this Agreement are complied with, and that the City shall not be liable for any direct, indirect and/or consequential damages claimed for such non-issuance.

5. **Controlling Documents.** The Planned Local Activity Center (PLAC) Conceptual Site Plan and Design Guidelines and Development of Regional Impact (DRI) Development Order (hereby incorporated herein by reference a copy of which is maintained by the City Clerk's Office). This Agreement, the PLAC Conceptual Site Plan, the Design Guidelines, and the DRI Development Order shall be the Controlling Documents. There shall be strict adherence to this Agreement, subject to minor modification by the City Manager in accordance with the procedures set forth in the City's Zoning and Land Development Code or to provide relief from the literal terms of this Agreement in order to achieve the goals contemplated under this Agreement. In the event that the Conceptual Site Plan and Design Guidelines or any portion thereof is found to be in conflict with this Agreement, this Agreement shall control. In no event shall this Development Agreement supersede the requirements of the DRI Development Order; furthermore, the Parties acknowledge that Paragraph 6 of this Agreement is not in conflict with Paragraph 16 of the Development Order and thus remains effective. Developer recognizes that failure to develop the Property in accordance with the Controlling Documents, as they may be amended from time to time with the approval of the City, shall divest the Developer of the right to proceed under the PLAC zoning or DRI Development Order.

6. **Contributions to Affordable Housing.** Developer, as a measure of good will, has proposed to accelerate the first phase of affordable housing development (60 units, located off-site) irrespective of the timing of the first market rate residential development on the village at Gulfstream Park Project. The Commitment is contingent upon the following conditions:

1. A site of approximately 2 acres suitable to accommodate a minimum of 60 units is made available for development by the City, or conveyed to the Developer at a discounted cost to be negotiated at the time. Within six (6) months of signing the Development Agreement, the Developer will provide the City plans and a schedule for the Development of Affordable Housing. The land must be free of liens, environmental hazards and must be zoned with adequate density (and platted if necessary) as required to accommodate the contemplated development.

2. The City will work with the Developer to mitigate costs associated with the development of the Affordable Housing Project. The City will follow all Ordinances to achieve this.
3. The City shall agree to expedite and facilitate all required approvals.
4. The City shall agree to use commercially reasonable efforts to assist the Developer in order to seek applicable funding sources including but not limited to, grants, the First Time Homebuyer loans for residents, and the Community Workforce Housing Innovation Police Program (CWHIP).
5. The City Manager may, in the exercise of reasonable judgment, extend the scheduled completion of the affordable housing project in consideration of unforeseen delays or other circumstances affecting completion. The City Manager will notify the City Commission of any delays and provide sufficient justification as to the granting of the extension and why the delays occurred. Based upon the above conditions, the Developer will agree to construct the minimum 60 unit affordable housing development in accordance with the following schedule:
 - a. Substantial completion within three years of acquisition by the Developer of a site meeting the above conditions, provided that the three year period shall not commence until The Village at Gulfstream Park project has been approved and Developer commences construction of Phase I of the Project.

7. **Building Permits and Certificates of Occupancy.** The City agrees to issue to the Developer, upon approval of the Major Development Plan application, all required building permits, approvals or other required permits and Certificates of Occupancy for the construction, use and occupancy of the Proposed Development, subject to Developer's compliance with all applicable codes, ordinances, regulations, the Major Development Plan and this Agreement.

8. **Fees.** The Developer shall pay a \$29,000 fee to the City, within sixty (60) days of the execution of this Development Agreement for the City's cost of processing the Development of Regional Impact (DRI), Planned Local Activity Center (PLAC), Local Activity Center (LAC), and Land Use Plan Amendment (LUPA) approvals for the Project consistent with the City Fee Schedule in effect September 30, 2006.

9. **Enhancement of Local Employment.** In addition to the Minority Business Enterprise (MBE) and Small Business Enterprise (SBE) requirements contained in

Section 4, paragraph 7 of the Development Order, the Developer shall implement and/or invest in existing programs to provide services such as resume writing, interview training, and job fairs to enhance the probability that residents of the City shall obtain jobs created by the development of the project. These programs shall be designed so that the percentage of the minority population within the City is considered, for both employment and contracting opportunities, to the extent minority applications are submitted, in equal proportion to the number of jobs open for hiring at the entry level, managerial, supervisory, and in any other positions, unless there is a bona fide occupational qualification requiring a distinct and unique employment expertise which a minority applicant does not possess. Developer shall make these programs available to the Project tenants and encourage their participation. The Developer shall provide quarterly written reports to the City Manager concerning the goals, objectives, details, and implementation of the goals identified in this paragraph to include identification of businesses and residents who have participated in Developer sponsored programs and subsequent employment and contracting. Reports shall be in substantially the same form as the report attached as Exhibit C.

10. **Community Development District.** The City hereby agrees to cooperate in the creation of a Community Development District ("CDD") for the Property in accordance with the provisions of Chapter 190, Florida Statutes, since the financial feasibility and the commencement of the Project, including the corresponding obligations herein, rely upon the successful creation of the CDD for the purposes contemplated by the Developer. Any ad valorem rate established by the CDD will be independent of the ten (10) mills allowed by law to the City and shall not exceed three (3) mills. Accordingly, within thirty (30) days of the submission of a petition by the Developer to the City requesting its creation, the City shall initiate the process to establish the CDD.

11. **Release or Modification.** Any amendment to this Agreement shall not be approved unless all parties subject to this Agreement agree to the amendment and such amendment is incorporated into the Agreement. All amendments not requiring City Commission approval shall be subject to the final approval by the City Manager on behalf of the City.

12. **Binding Effect.** This Agreement shall be recorded in the Public Records of Broward County, Florida, and the provisions of this Agreement shall be binding upon the parties hereto and their respective successors and assigns as a covenant running with and binding upon the Property.

13. **Breach of Agreement.** In the event that the Developer has materially breached the Agreement, the Developer shall commence to cure the breach within thirty (30) days of notice by the City, unless this time is extended by the City Manager. If the Developer is unable or unwilling to cure the breach and abide by the Agreement, the City shall exercise its right to take appropriate legal action for the purpose of curing the breach and enforcing this agreement and Developer shall pay the City's attorney's fees

and costs. City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

14. **Hold Harmless.** Developer agrees to and shall hold the City, its officers, agents, employees, and representatives harmless from liability for damage or claims for damage for personal injury including death and claims for property damage which may arise directly or indirectly from the actions of the Developer, its contractors, subcontractors, agents, employees, or other persons acting on its behalf relating to the construction and completion of the project. Developer agrees to and shall defend the City and its officers, agents, employees, and representatives from actions for damages caused or alleged to have been caused by reason of Developer's actions in connection with the construction and completion of the project.

15. **Monitoring Official.** The City of Hallandale Beach City Manager or his designee is appointed as the City's monitoring official of this Agreement. The City's representatives shall monitor the activities specified in such a manner to ensure that all requirements of this Agreement are met.

16. **City Manager Authority:** In accordance with the City Code of Ordinances and the terms of this Agreement, the City Manager shall have the authority to revise and/or modify the terms and conditions of this Agreement, provided that any such determination by the City Manager to revise and/or modify this Agreement may be appealed to the City Commission by the Developer within thirty (30) days of the City Manager's decision.

17. **Force Majeure.** In the event that Developer or the City is delayed or hindered in or prevented from the performance required hereunder by reason of strikes, lockouts, labor troubles, failure of power, riots, insurrection, war, acts of God, or other reason of like nature not the fault of the party delayed in performing work or doing acts (hereinafter, "**Permitted Delay**" or "**Permitted Delays**"), Developer or the City, as the case may be, shall be excused for the period of time equivalent to the delay caused by such Permitted Delay. Notwithstanding the foregoing, any extension of time for a Permitted Delay shall be conditioned upon Developer seeking an extension of time by delivering written notice of such Permitted Delay to the City within ten (10) days of the event causing the Permitted Delay, and the maximum period of time which Developer may delay any act or performance of work due to a Permitted Delay shall be one hundred eighty (180) days.

18. **Notices.** Any notice, demand or other communication required or permitted under the terms of this Agreement shall be in writing, made by telegram, telex or electronic transmitter, Federal Express, Express Mail or other similar overnight delivery services or certified or registered mail, return receipt requested, and shall be deemed to be received by the addressee one (1) business day after sending, if sent by

telegram, telex or electronic transmitter; one (1) business day after sending, if sent by Federal Express, Express Mail or other similar overnight delivery service and three (3) business days after mailing, if sent by certified or registered mail. Notices shall be addressed as provided below:

If to the City: City of Hallandale Beach
Attn: City Manager
400 South Federal Highway
Hallandale Beach, FL 33009
(954)457-1300 – phone
(954)457-1342 – fax

With counterpart to: City of Hallandale Beach
Attn: City Attorney
400 South Federal Highway
Hallandale Beach, FL 33009
(954) 457-1325 – phone
(954) 457-1660 – fax

With counterpart to: City of Hallandale Beach
Attn: Development Services
400 South Federal Highway
Hallandale Beach, FL 33009
(954) 457-1375 – phone
(954) 457-1488 – fax

Developer: The Village at Gulfstream Park, LLC.
901 South Federal Highway
Hallandale Beach, Florida 33009

Attn: William P. Voegele

With counterpart to: FC Gulfstream Park, Inc.
Terminal Tower
50 Public Square, Suite 1010
Cleveland, OH 44113

Attn: Brian J. Ratner

With counterpart to: Attn: Edwin J. Stacker, Esq.
Akerman Senterfitt
350 E Las Olas Blvd Ste 1600
Fort Lauderdale Florida 33301

19. **Severability.** Invalidation of any provision of this Agreement shall not affect any other provision of this Agreement, which shall remain in full force and effect.

20. **Effective Date.** This Agreement shall become effective upon execution by all parties. The conditions precedent to the Developer's ability to develop the property are, without limitation, the adoption by the City of the LAC and its effective date; the adoption of the PLAC ordinance implementing the LAC; the rezoning of the Property to the PLAC zoning designation, the approval of the Development of Regional Impact development order, and any approvals that may be required under this Agreement.

[SEE NEXT PAGE FOR EXECUTION]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by the proper officers the day and year above written.

ATTEST: Eileen [Signature]
City Clerk

CITY:

D. Mike Good, City Manager

Approved as to Form
and Sufficiency
City Attorney

DEVELOPER:

The Village at Gulfstream Park, LLC., by its
Managing Member FC Gulfstream Park Inc.,

Witness: [Signature]
Print Name: Michelle Hunter

By: Brian G. Ratner
Print Name: Brian G. Ratner

Witness: [Signature]
Print Name: Andre McKenney

Title: Vice President
Address: Suite 1000 B. Terminal Tower 50 RStn Sq.
Clinton OH 44113

STATE OF Florida)
COUNTY OF Broward)

SS:

The foregoing Agreement was acknowledged before me this 17th day of Jan, 2007 by Brian Ratner as Vice President of FC Gulfstream Park Inc., on behalf of the corporation. He/she is personally known to me or produced _____ as identification, and [did] [did not] take an oath.

[NOTARIAL SEAL]

Notary: [Signature]
Print Name: Michelle Hunter
Notary Public, State of Florida
My commission expires: 3/26/2010

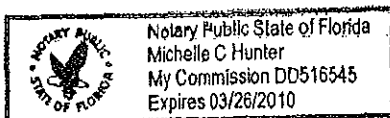


EXHIBIT A

LAND DESCRIPTION VILLAGE AT GULPSTREAM PARK EXHIBIT "A"

A portion of Lots 1, 3 and 4, Block 7, Lots 1 through 4, Block 10, and Lots 1 through 3, Block 15 all in MAP OF THE TOWN OF HALLANDALE, according to the plat thereof as recorded in Plat Book B, Page 13 of the Public Records of Dade County, Florida, also being portions of HALLANDALE PARK NO. 12, PART 2, according to the plat thereof as recorded in Plat Book 10, Page 17, portions of HOLLYDALE PARK, according to the plat thereof as recorded in Plat Book 11, Page 2 and portions of HALLANDALE PARK NO. 12, according to the plat thereof as recorded in Plat Book 12, Page 35, the three (3) previous plats being recorded in the Public Records of Broward County Florida and being particularly described as follows:

COMMENCING at the Southeast corner of Section 27, Township 51 South, Range 42 East, Broward County, Florida;

THENCE South $88^{\circ}01'22''$ West on the South line of said Section 27, a distance of 2,093.59 feet to the POINT OF BEGINNING;

THENCE continue South $88^{\circ}01'22''$ West on said South line of Section 27, a distance of 570.55 feet to the intersection with the East right-of-way line of South Federal Highway (U.S. 1) as shown on State of Florida Department of Transportation Right-of-Way Maps for State Road 5, Section 86010-2519, said point located on the arc of a non-tangent curve concave to the West, whose radius point bears North $79^{\circ}45'42''$ West;

THENCE on said East right-of-way line of South Federal Highway (U.S. 1) the following sixteen courses and distances;

1. Northerly on the arc of said curve having a radius of 3,909.83 feet; through a central angle of $05^{\circ}16'33''$, and an arc distance of 360.01 feet to a point of non-tangency;
2. South $85^{\circ}02'14''$ East, a distance of 0.85 feet;
3. North $07^{\circ}51'26''$ East, a distance of 99.85 feet to a point on the arc of a non-tangent curve concave to the West, whose radius point bears North $86^{\circ}49'11''$ West;

Prepared By
CALVIN, GLORDANO AND ASSOCIATES, INC.
1800 Eller Drive suite 600
Fort Lauderdale, Florida 33316
July 6, 2005
Revised August 3, 2005
Rev. September 26, 2005

Sheet 1 of 8 Sheets

4. Northerly on the arc of said curve having a radius of 3,743.00 feet, through a central angle of $05^{\circ}00'35''$, and an arc distance of 327.27 feet to a point of tangency;
5. North $01^{\circ}49'46''$ West, a distance of 32.91 feet;
6. South $88^{\circ}10'14''$ West, a distance of 4.50 feet to a point on the arc of a non-tangent curve concave to the West, whose radius point bears South $88^{\circ}14'02''$ West;
7. Northerly on the arc of said curve having a radius of 3,909.83 feet, through a central angle of $00^{\circ}03'48''$, an arc distance of 4.32 feet to a point of tangency;
8. North $01^{\circ}49'46''$ West, a distance of 1,521.75 feet;
9. North $02^{\circ}03'07''$ East, a distance of 67.65 feet;
10. North $01^{\circ}49'46''$ West, a distance of 200.25 feet;
11. North $43^{\circ}07'48''$ East, a distance of 38.89 feet;
12. North $01^{\circ}52'33''$ West, a distance of 106.00 feet;
13. South $88^{\circ}07'27''$ West, a distance of 10.97 feet;
14. North $66^{\circ}56'55''$ West, a distance of 23.16 feet;
15. North $01^{\circ}50'08''$ West, a distance of 555.82 feet;
16. North $33^{\circ}52'37''$ East, a distance of 40.03 feet to the intersection with the South right-of-way line of Hibiscus Street as shown on THE PROMENADE AT HALLANDALE, according to the plat thereof as recorded in P1st Book 112, Page 4 of the Public Records of Broward County, Florida;

THENCE North $88^{\circ}13'39''$ East on said South right-of-way line and its Easterly projection, a distance of 594.33 feet

THENCE South $01^{\circ}46'21''$ East, a distance of 10.00 feet;

THENCE North $88^{\circ}13'39''$ East, a distance of 110.41 feet;

THENCE South $01^{\circ}06'17''$ East, a distance of 29.83 feet;

THENCE South $01^{\circ}50'08''$ East, a distance of 414.60 feet;

Prepared By

CALVIN, GLORDANO AND ASSOCIATES, INC.

1800 Eller Drive suite 600

Fort Lauderdale, Florida 33316

July 6, 2005

Revised August 3, 2005

Rev September 26, 2005

Sheet 2 of 8 Sheets

THENCE North 88°09'52" East, a distance of 277.46 feet;

THENCE South 01°53'41" East, a distance of 1,205.42 feet to a point on the arc of a non-tangent curve concave to the Southeast, whose radius point bears South 08°25'32" East;

THENCE Southwesterly on the arc of said curve having a radius of 59.13 feet, through a central angle of 81°41'52", an arc distance of 84.31 feet to a point of tangency;

THENCE South 00°07'24" East, a distance of 34.90 feet;

THENCE South 88°09'52" West, a distance of 170.01 feet;

THENCE South 01°50'08" East, a distance of 226.96 feet to a point on the arc of a non-tangent curve concave to the East, whose radius point bears South 12°35'36" East;

THENCE Southerly on the arc of said curve having a radius of 116.08 feet, through a central angle of 158°29'04", and an arc distance of 321.09 feet to a point of non-tangency;

THENCE South 01°50'08" East, a distance of 315.49 feet;

THENCE South 88°09'52" West, a distance of 103.71 feet;

THENCE South 43°09'52" West, a distance of 276.44 feet;

THENCE South 01°50'08" East, a distance of 618.62 feet to the POINT OF BEGINNING;

Said lands lying in the City of Hallandale Beach, Broward County, Florida and containing 2,646,985 square feet (60.7664 acres), more or less. :

Prepared By :
CALVIN, GLORDANO AND ASSOCIATES, INC.
1800 Eller Drive suite 600
Fort Lauderdale, Florida 33316
July 8, 2005
Revised August 3, 2005
Rev September 26, 2005

Sheet 3 of 8 Sheets

NOTES:

1. Not valid without the signature and original embossed seal of a Florida licensed Professional Surveyor and Mapper.
2. Lands described hereon were not abstracted, by the surveyor, for ownership, easements, rights-of-way or other instruments that may appear in the Public Records of Broward County.
3. Bearings shown hereon are relative to the South line of the SE ¼ of Section 27-51-42 having a bearing of South 88°01'22" West.
4. The description contained herein and the attached sketch, do not represent a field Boundary Survey.

Prepared By :
CALVIN, GLORDANO AND ASSOCIATES, INC.
1800 Eller Drive suite 800
Fort Lauderdale, Florida 33318
July 6, 2005
Revised August 3, 2005
Rev September 28, 2005

Sheet 4 of 8 Sheets

EXHIBIT "B"

Conditions

- 1) The Developer shall pay to the City \$220,000 to provide landscaping and uplighting upgrades at US 1 Medians prior to the commencement of the median improvements by Developer.
- 2a) The Developer shall be responsible for pro-rata costs for physical improvements/upsizing based on the requirements of each phase and payable prior to the first Certificate of Occupancy of each phase necessary to accommodate the flows created by the Proposed Development, including, but not limited to new piping from the pump station(s) serving the Proposed Development and improvements to the Egret and/or SE 5th Street Lift Stations which shall be increased in size in order to accommodate the flows, including consultant costs for review/change of design. Any and all improvements shall be pursuant to the City's specifications and to the satisfaction of the City Engineer. Notwithstanding, for Phase I the Developer's pro-rata contribution shall not exceed \$200,000.
- 2b) The Developer shall pay pro-rata costs incurred by the City of Hallandale Beach to acquire additional sewer capacity in accordance with the Large User Agreement between the City of Hallandale Beach and the City of Hollywood. The pro-rata costs incurred shall be based on the requirements of each phase of the project and payable prior to the first Certificate of Occupancy of each phase. Developer shall pay their pro rata costs prior to issuance of the first Certificate of Occupancy for each phase of the project. Notwithstanding, for Phase I the Developer's contribution shall not exceed \$25,000.00.
- 3a) The Developer shall pay connection fees for water pursuant to Ordinance No. 2005-11, based on actual usage in each phase of the Village of Gulfstream Park project. The fee is not creditable toward other water/sewer impact fees.
- 3b) The Developer shall pay \$50,000.00 as its pro-rata costs for the extension of the 16 inch water line under US 1 in accordance with the City's specifications and to the satisfaction of the City Engineer, which shall be paid prior to the issuance of the first Certificate of Occupancy of Phase I.
- 3c) The Developer shall pay all Water Impact Fees in accordance with City Code.
- 4) The Developer shall cause to be designed and constructed an on-site sanitary sewer lift station as approved by the City Manager and to the satisfaction of the City Engineer in accordance with the City Code of Ordinances.

5) The Developer shall incorporate an approximate one (1) acre landscaped urban plaza into Phase I of the Project. Developer commits to including on site, in addition to the urban plaza, not less than two (2) acres of non contiguous publicly accessible open space to be incorporated concurrent with subsequent development. In addition, the Developer shall make a contribution in the amount of \$200,000 for the improvement of various City parks and recreation facilities prior to issuance of the first Certificate of Occupancy for Phase I of the project. The foregoing shall be deemed to satisfy the City's park, recreational, and open space requirements.

6) The Developer shall make the following contributions prior to completion of Phase I of the project to the City organizations on programs as follows: (a) Future Foundation - \$25,000.00, (b) Weed and Seed - \$50,000.00, (c) Police Athletic League (PAL) - \$25,000.00.

7) The Developer shall contribute prior to the issuance of the first Certificate of Occupancy for Phase I to the Historic Preservation Trust Fund in the amount of \$100,000.

8) The Developer shall provide to the City a sewer and water model study to consider the overall effect of the project on the City's utilities, which study shall be complete during the design phase of the development and prior to the commencement of construction for Phase I.

9) The Developer shall pay to the City prior to the issuance of the first Certificate of Occupancy for Phase I the amount of \$200,000.00 for improvements to 9th Street from US1 to Dixie Highway.

10) The Developer shall design, construct and place all onsite utilities underground in accordance with the City Code of Ordinances.

11) The Developer shall provide on-site Police and Emergency Medical Service (EMS) facilities in the form of a Police and EMS mini-station in a location and size to be mutually agreed upon. The Developer shall ensure the adequate provision for EMS and police services necessary to serve the Development, to the City's satisfaction. The Developer shall submit a site plan to the City Manager for review to identify unique space, equipment and/or facilities impacts that the project may generate.

12) The Developer shall ensure that stormwater runoff is retained within the project site in accordance with applicable regulations of the South Florida Water Management District, Broward County and the City of Hallandale Beach. Design, construct and maintain the stormwater management system for the project and any additions, expansions, or replacements to the stormwater management system to meet the following standards:

- 12a) Comply with the regulations and requirements of the South Florida Water Management District (SFWMD), Broward County Environmental Protection Department (EPD), and applicable local government comprehensive plan drainage level of service requirements for surface water management in effect at that time.
- 12b) Install pollutant retardant structures to treat all stormwater runoff at each of the new project outfall structures in accordance with the stormwater management system drainage permits and master drainage plan, and periodically remove accumulations as required by the stormwater permitting agencies.
- 12c) Use silt screens and aprons during any phase of project construction that may increase turbidity in adjacent surface waters.
- 12d) Mulch, spray, or grass exposed areas to prevent soil erosion, minimize air pollution and stormwater runoff.
- 13) The Developer shall provide and pay for the design and construction documents for a Pedestrian Bridge across Federal Highway to be built, owned, and operated by the City. The design of the bridge and the time table for the development of the drawings shall be mutually agreed upon. The costs of the design and construction document shall not exceed \$300,000. Developer will provide all necessary assistance in obtaining all required permits from the Florida Department of Transportation (FDOT) and any other agency requiring permits. To the extent that the eastern landing of the bridge extends outside of the public right of way the Developer shall make available space reasonably adequate to accommodate the bridge landing.
- 14) Prior to the completion of Phase I, the Developer shall cause to be installed ten (10) bus shelters, which shall be provided by the City, at locations determined by the City, and where electricity is required, the City shall extend the electricity. Additional transportation improvements are as provided in Condition 18 of the Development Order.
- 15) The Developer shall cause to be constructed all on-site water system improvements necessary for the Project.
- 16) The Developer shall pay Utility Impact Fees in accordance with the fee schedule of City Code.
- 17) Developer shall coordinate the development of the site in order to facilitate an ultimate connection of the proposed extension of Hibiscus Street to the east to US 1.

18) Developer shall contribute \$250,000 prior to the issuance of the first Certificate of Occupancy for Phase II for amenities and park improvements which the City may utilize for the proposed ten (10) acre park/tennis facility presently in negotiation between Magna Entertainment Corporation (MEC) and the City. If the proposed new tennis facility is not constructed, then the \$250,000 may be used in the City's discretion, for other public park purposes.

19) Developer agrees prior to issuance of the first certificate of occupancy of Phase II to donate to the City \$250,000 for quality of life issues that may arise due to development of the project which may include but is not limited to traffic, lighting, security, and other such items.

Phase 1

Enhancement of Local Employment Report

The Village at Gulfstream Park - PHASE 1

REPORT DATE:

Last Reporting Period

Employment Record

Construction Manager

[illegible][illegible]

PROJECT SUMMARY

PHASE I

TOTAL-TO-DATE

PARTICIPATION-TO-DATE

SUBTOTALS:	\$0	\$0	\$0	\$0
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OIG 17-006

EXHIBIT 5

Munden-Correa, Rebecca

From: JoyCooper@aol.com
Sent: Sunday, December 21, 2008 2:18 PM
To: Munden-Correa, Rebecca
Subject: Re: FF Board of Directors

Yes Gulfstream should be added
Bill Murphy.
Should get an invite.

Gibbons Sobie need to be asked.
In a message dated 12/19/2008 1:30:27 P.M. Eastern Standard Time, RMunden@hallandalebeachfl.gov writes:

Mayor,

Just checked the bylaws (article V).

Board of Directors is the Vice Mayor, City Manager, City Attorney, Human Services Director, Parks and Rec Director and the 3 Hallandale Beach Commissioners.

Would you like a letter drafted to Commissioners Sanders and London on your behalf?

I will also remove Bert and Commissioner Schiller.

Attached is the list if there are any other changes that need to be made just let me know and then I will forward to Mary Washington, so she has an updated list.

Thanks

Rebecca

Rebecca E. Munden-Correa, Director

Department of Parks and Recreation

City of Hallandale Beach

410 SE 3rd Street

Hallandale Beach, Florida 33009

(954)457-1452 phone

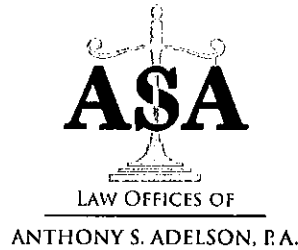
(954)457-1467 fax

rmunden@hallandalebeachfl.gov

PLEASE NOTE: Florida has a very broad public records law. Most written communications to or from

OIG 17-006

EXHIBIT 6



March 8, 2017

Joy Cooper
Via Email Only to: joy@mayorjoycooper.com

RE: Public Records Request to the Future Foundation, Inc.

Dear Joy,

This firm was asked to give an opinion as to whether The Future Foundation (hereinafter referred to as the "Foundation") a not for profit corporation, is subject to a Public Records Request under Chapter 119, Florida Statutes. We were advised that a Hallandale Beach resident had made a request, through the City Clerk, for copies of financial and other documents related to the Foundation. We were also advised that the same resident made a similar request in 2013, and the Foundation provided copies of financial and other documents to the resident at that time.

The question posed is whether or not the Foundation is subject to public records request under the Public Records Law, Chapter 119, Florida Statutes. In order to formulate our opinion we undertook a review of the articles of incorporation of the Foundation, as well as its bylaws. We also researched case law and Florida Attorney General opinions regarding this issue.

Based upon its governing documents, it appears that the purpose of the Foundation is to engage in charitable and philanthropic endeavors of all kinds. It is also clear that the Foundation was formed in 1996, by the then City Attorney for Hallandale Beach, and further that officers and directors of the Foundation are to be City of Hallandale Beach officials.

Florida Statute § 119.011(2) defines an agency as "any state, county, district, authority, or municipal, officer, department, division, board, bureau, commission,..... and *any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.* In order for a private nonprofit corporation, such as the Foundation, to be considered as an agency, the Foundation must be determined as acting on behalf of a public agency.

There are several factors the courts have looked at when determining whether a private entity falls within the scope of the Public Records Act. Those factors were considered in *News and Sun-Sentinel Company v. Schwab*, 596 So.2d 1029 (Fla. 1992) and included: 1) whether the public agency provided substantial public funding to the private entity; 2) whether there is a commingling of funds; 3) whether the activity is conducted on publicly-owned property; 4) whether the private entity plays an integral part in the public agency's decision-making process; 5) whether the private entity is

performing a government function; 6) the extent of the public agency's involvement with regulation or control over the private entity; 7) whether the private entity was created by the public agency; 8) whether the public agency has a substantial financial interest in the private entity; and 9) on whose behalf is the private entity functioning.

In addition, Advisory Legal Opinion –AGO 2001-01, issued by the Florida Attorney General on February 7, 2011 appears to address a very similar situation in the Village of Biscayne Park. In that matter, the Village attorney sought an opinion as to whether the Biscayne Park Foundation was subject to Sunshine and Public Records laws. The Attorney General opined that based upon the foundation's purpose, and its ties to the Village, it was subject to Sunshine and Public Records laws. A copy of that opinion is attached here. A review of the specific factors recited therein disclose a close similarity to the facts relevant to the Foundation.

Based upon the attached Attorney General's opinion, and the relevant case law, it appears that the Foundation is subject to Florida Public Records laws as contained in Chapter 119 of the Florida Statutes. As a result, the Foundation must respond to the request and provide documents as statutorily defined. Pursuant to §119.011(12), Florida Statutes (2016) *"Public records" 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 by any agency.*

Please let us know if there are any questions regarding the foregoing.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anthony Adelson', written in a cursive style.

Anthony S. Adelson
Attorney at Law



ATTORNEY GENERAL
PAM BONDI
FLORIDA OFFICE OF THE ATTORNEY GENERAL



Advisory Legal Opinion - AGO 2011-01

[Print Version](#)

Number: AGO 2011-01

Date: February 7, 2011

Subject: Sunshine/Public Records Law, nonprofit foundation

Mr. John J. Hearn

Law Offices of John J. Hearn, P.A.

1917 Northwest 81st Avenue

Coral Springs, Florida 33071

RE: PUBLIC RECORDS LAW - GOVERNMENT IN THE SUNSHINE LAW - MEETINGS - NON-PROFIT CORPORATIONS - FOUNDATIONS - MUNICIPALITIES - whether not-for-profit foundation is subject to Sunshine and Public Records Laws. s. 286.011, Fla. Stat.; Ch. 119, Fla. Stat.

Dear Mr. Hearn:

As Village Attorney for the Village of Biscayne Park, you have asked for my opinion on substantially the following questions:

1. Is the Biscayne Park Foundation, Inc., a not-for-profit foundation created by the Village of Biscayne Park, subject to Florida's Public Records Law, Chapter 119, Florida Statutes?
2. Is the Biscayne Park Foundation, Inc., a not-for-profit foundation created by the Village of Biscayne Park, subject to Florida's Government in the Sunshine Law, section 286.011, Florida Statutes?

In sum:

1. The Biscayne Park Foundation, Inc., is an "agency" for purposes of Chapter 119, Florida Statutes, and subject to the inspection and copying requirements thereof.
2. The Biscayne Park Foundation, Inc., is subject to and must comply with the requirements of section 286.011, Florida Statutes.

The Biscayne Park Foundation, Inc. ("the foundation"), is a 501(c)(3) charitable foundation and a not-for-profit organization that is

described on the village's website and in village publications as "the Village's fundraising arm." [1] The foundation is intended to enhance the village's opportunities to raise monies through special events, sponsorships, donations, and grants for the Village of Biscayne Park.

As provided in its Articles of Incorporation, the foundation is "organized exclusively for charitable and educational purposes." The articles describe the purposes for which the corporation was formed:

"1. To raise the educational and social levels of the residents of the Village of Biscayne Park, Florida, to foster and promote community-wide interest and concern for the history and preservation of the Village of Biscayne Park.

2. To aid, support, and assist by gifts, contributions, or otherwise, other corporations, community chests, funds and foundations organized and operated exclusively for charitable, educational or scientific purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation.

3. To do any and all lawful activities which may be necessary, useful, or desirable for the furtherance, accomplishment, fostering, or attaining of the foregoing purposes, either directly or indirectly, and either alone or in conjunction or cooperation with others, whether such others be persons or organizations of any kind or nature, such as corporations, firms, association, trusts, institution, foundations, or governmental bureaus, departments or agencies.

4. All of the foregoing purposes shall be exercised exclusively [sic] charitable and educational purposes in such a manner that the Corporation will qualify as an exempt organization under section 501(c) (3) of the Internal Revenue Code of 1986 or the corresponding provision of any future United States Internal Revenue law." [2]

According to information you have supplied, the foundation was created by the village, the village manager was the foundation's incorporator, and the principal office of the foundation is located at the village's administrative offices. The sole member of the foundation is the village commission. [3] The village commission nominates and appoints the foundation's board of directors and has the power to remove any member of the board. [4] In addition, vacancies occurring on the board during any term will be filled by the village commission. [5] However, once the board is appointed, the foundation's board exercises full control over the operations of the foundation. [6] The board appoints its own officers and ancillary boards and exercises removal power over those officers. [7] You state that the foundation receives no public funding.

Question One - Public Records Law

Chapter 119, Florida Statutes, the Public Records Law, provides the public access to certain governmental documents.[8] The law is to be construed liberally in favor of openness.[9] When there is any doubt, Florida's courts find in favor of disclosure.[10] The Public Records Law applies to all agencies, including any "business entity acting on behalf of any public agency." [11] The only agency records that are exempt from inspection and copying under the act are those that are provided confidentiality by statute or those that are expressly exempted by a statute or general or special law.[12]

Resolution of the question of whether a private entity is required to disclose records under the Public Records Law depends on consideration of a number of factors delineated by the Florida Supreme Court in *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.* [13] Moreover, notwithstanding consideration of these individual factors, it is the totality of factors that controls the determination.[14] A review of the factors described in the *Schwab* case and application of the facts relating to creation and operation of the Biscayne Park Foundation, Inc., support the conclusion that the foundation is an "agency," such that it must comply with Florida's Public Records Law.

In *News and Sun-Sentinel Company v. Schwab, Twitty & Hanser Architectural Group, Inc.*, [15] the Florida Supreme Court adopted a totality of factors test, which had been utilized by several district courts in determining whether a private entity was subject to Chapter 119, Florida Statutes. The test developed by the *Schwab* Court involved identifying links between the governmental agency and the private entity which should be considered in making the determination; however, no single factor is controlling on the question of whether an entity is subject to the Public Records Law. Rather, all of these factors must be reviewed and weighed in order to determine whether a private organization is an agency for purposes of Chapter 119, Florida Statutes:

"1. Creation - did the public agency play a part in the creation of the private entity?"

The Biscayne Park Foundation, Inc., was created by the Village of Biscayne Park to act on behalf of the village in financing and administering certain charitable, educational and scientific programs.

"2. Funding - has the public agency provided substantial funds, capital or credit to the private entity or is it merely providing funds in consideration for goods or services rendered by the public entity?"

You have advised that the foundation receives no funding from the village. Operation of the foundation appears to be conducted using funds generated through the foundation's fund-raising activities and through the receipt of grants and gifts to the corporation.

"3. Commingling of Funds - whether there is a commingling of funds."

The only funds available to the Biscayne Park Foundation, Inc., are those received by the foundation from its own fundraising activities or through grants and donations.

"4. Public Property - whether the activity is conducted on publicly-owned property."

While you have advised that the foundation "plans not to use Village facilities, equipment, materials or supplies," it appears that the village manager (so identified in the articles of incorporation for the foundation) is the incorporator and registered agent for the foundation; the principal office of the corporation is located at the administrative offices of the village and the foundation's mailing address is the village hall. Further, the email address for the foundation is that of the village clerk of Biscayne Park.

"5. Decision-making process - does the private entity play an integral part in the public agency's decision-making process?"

The foundation plays no apparent role in the village's decision-making process.

"6. Governmental Function - 'whether the private entity is performing a governmental function or a function which the public agency otherwise would perform.'" [16]

The foundation acts as the village's "fundraising arm" in financing and administering certain charitable, educational, and scientific programs of the municipality - a municipal function.

"7. Regulation - does the public agency regulate or otherwise control the private entity's professional activity or judgment?"

The village is the sole member of the foundation and retains considerable control, including the right to remove board members and fill vacancies on the board. Changes to the foundation's articles or bylaws must be approved by the village.

"8. Financial Interest - whether the governmental agency has a substantial financial interest in the private entity."

The village has no financial interest in the foundation as an investor, but has a substantial interest in the foundation and its activities in accomplishing the purposes of the foundation.

"9. Goals - is the goal of the private entity to help the public agency and the citizens served by the agency?"

The expressed goal of the foundation is the enhancement of opportunities for village residents through fundraising on the village's behalf.

A review of the *Schwab* factors as applied to the Biscayne Park Foundation, Inc., would put the foundation squarely in line with a number of Florida cases and Florida Attorney General Opinions[17] concluding that nonprofit entities such as the foundation are subject to the inspection and copying requirements of the Public Records Law.

Among the district court decisions relied on by the *Schwab* Court was that of the Second District Court of Appeal in *Sarasota Herald Tribune Company v. Community Health Corporation, Inc.*, [18] in which the court held that a nonprofit corporation created and funded by the public hospital district to operate as a side-by-side corporation to enhance the services provided by the public hospital was subject to the provisions of Chapter 119, Florida Statutes. However, both *Schwab* and the *Sarasota Herald-Tribune* cases considered private business concerns with a governmental agency as one of their clients.

Your factual situation is more analagous to those court cases that have considered the agency status of private entities providing services that would otherwise be provided by the government such as *Memorial Hospital-West Volusia, Inc. v. News - Journal Corporation*, [19] *Putnam County Humane Society, Inc. v. Woodward*, [20] *Prison Health Services, Inc. v. Lakeland Ledger Publishing Company*, [21] and *Stanfield v. Salvation Army*. [22] These cases were not business entities with a broad client base that were performing an isolated contract for a government client. These cases illustrate the principle that when a private entity undertakes to provide a service otherwise provided by the government, the entity is bound by the Public Records Law to the same extent that the government would be. [23]

Finally, the fact that a private entity is incorporated as a nonprofit corporation is not dispositive on the issue of its status under Chapter 119, Florida Statutes. The relevant question is whether the entity is "acting on behalf of" an agency. In the instant inquiry, the Biscayne Park Foundation, Inc., was created by the Village of Biscayne Park to act as an instrumentality on behalf of the village in financing and administering certain charitable, educational, and scientific programs. The village is the sole member of the foundation and retains considerable control, including the right to remove board members and fill vacancies on the board. The goals of the foundation are directed toward enhancing the quality of life in the community through fundraising on behalf of the Village of Biscayne Park which appears to constitute a municipal governmental purpose.

In light of the above and applying the "totality of factors" analysis developed by the Florida Supreme Court, I am of the opinion that the Biscayne Park Foundation, Inc., is an "agency" for purposes of Chapter 119, Florida Statutes, and subject to the inspection and copying

requirements thereof.

Question Two - Government in the Sunshine Law

Section 286.011, Florida Statutes, the Government in the Sunshine Law, provides in pertinent part:

"All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision . . . at which official acts are to be taken are declared to be public meetings open to the public at all times"

In determining which entities may be covered by the Sunshine Law, the courts have stated that it was the Legislature's intent to extend application of the law so as to bind "every 'board or commission' of the state, or of any county or political subdivision over which it has dominion and control." [24] In addition, when interpreting the Sunshine Law, the law should be liberally construed to give effect to its public purpose. [25]

Although private organizations are generally not subject to the Sunshine Law, open meetings requirements can apply if a public entity has delegated "the performance of its public purpose" to a private entity. [26] The Supreme Court of Florida recognized, in *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, [27] the "natural tension between the privatization of traditionally public services and this State's constitutional commitment to public access to records and meetings concerning public business" [28] and found, in that case, that the delegation of the performance of its public purpose by a public hospital to a private entity would result in the private actor being subject to section 286.011, Florida Statutes, and Article I, section 24(b), Florida Constitution. [29]

In a factual situation similar to the one you have presented, this office considered whether the Pace Property Finance Authority, Inc., which was created by a county and in which the county prescribed the duties of the authority and appointed its initial board of directors, was subject to the Government in the Sunshine Law. In Attorney General Opinion 94-34, the county retained control of the structure and organization of the authority, including, among other things, the power to remove and replace directors, amend the articles of incorporation, and approve any changes in the by-laws. The opinion noted that the authority and its board of directors were clearly subject to the dominion and control of the county and concluded that "as an authority created by the county and subject to its control, the Pace Property Finance Authority, Inc., and its board of directors are subject to the Government in the Sunshine Law."

Like the Pace Property Finance Authority, Inc., the Biscayne Park Foundation, Inc., was created as a nonprofit corporation to act as an

instrumentality on behalf of the Village of Biscayne Park and for its benefit in financing and administering certain charitable, educational, and scientific projects. The village commission created the authority, approved its articles of incorporation, and must approve any changes to the articles or the bylaws. The village appointed the members of the board of directors of the authority and continues to control removal and replacement of the board members. There is only one member of the corporation and it is the village itself. The combination of these factors leads me to conclude that the foundation is subject to the Government in the Sunshine Law.[30]

Accordingly, I am of the opinion that the Biscayne Park Foundation, Inc., is subject to and must comply with the requirements of section 286.011, Florida Statutes.

Sincerely,

Pam Bondi
Attorney General

PB/tgh

[1] See <http://www.biscayneparkfl.gov/index.asp>, Biscayne Park Foundation, and Village of Biscayne Park, Biscayne Park Foundation Board Member Application.

[2] "Corporate Purposes," Articles of Incorporation of Biscayne Park Foundation, Inc., executed April 10, 2007.

[3] See Bylaw I: Membership, Amended Bylaws of Biscayne Park Foundation, Inc., adopted September 14, 2010.

[4] *Id.* ss. 1, 3, and 5, Bylaw II: Board of Directors.

[5] See s. 4, Bylaw II, *supra* n.3.

[6] Bylaw II: Board of Directors, *supra* n.3.

[7] Bylaw III: Officers, *supra* n.3.

[8] Sections 119.01 and 119.07, Fla. Stat.

[9] *Woolling v. Lamar*, 764 So. 2d 765 (Fla. 5th DCA 2000), review denied, 786 So. 2d 1186 (Fla. 2001); *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302 (Fla. 3d DCA 2001).

[10] *City of St. Petersburg v. Romine*, 719 So. 2d 19 (Fla. 2d DCA 1998).

[11] Section 119.011(2), Fla. Stat.

[12] Section 119.071, Fla. Stat.; *Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979); *Miami Herald Publishing Co. v. City of North Miami*, 452 So. 2d 572 (Fla. 3d DCA 1984).

[13] 596 So. 2d 1029 (Fla. 1992).

[14] *Memorial Hospital-West Volusia, Inc. v. News-Journal Corp.*, 729 So. 2d 373, 379 (Fla. 1999) (citing *Schwab*, *id.* at 1031-32).

[15] 596 So. 2d 1029 (Fla. 1992).

[16] *Schwab*, *id.* at 1031.

[17] See, e.g., Op. Att'y Gen. Fla. 94-34 (1994) (Pace Property Finance Authority, Inc., created as a Florida nonprofit corporation by Santa Rosa County as an instrumentality of the county to provide assistance in funding and administration of certain governmental programs subject to Ch. 119, Fla. Stat.); Inf. Op. to Ellis, dated March 4, 1994 (rural health networks, established as nonprofit legal entities organized to plan and deliver health care services on a cooperative basis pursuant to s. 381.0406, Fla. Stat., subject to Ch. 119, Fla. Stat.); Op. Att'y Gen. Fla. 95-17 (1995) (South Florida Fair and Palm Beach County Expositions, Inc., created pursuant to Ch. 616, Fla. Stat., subject to Ch. 119, Fla. Stat.).

[18] 582 So. 2d 730 (Fla. 2d DCA 1991).

[19] 729 So. 2d 373 (Fla. 1999).

[20] 740 So. 2d 1238 (Fla. 5th DCA 1999).

[21] 718 So. 2d 204 (Fla. 2d DCA 1998).

[22] 695 So. 2d 501 (Fla. 5th DCA 1997).

[23] See *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302 (Fla. 3d DCA 2001).

[24] See, e.g., *Times Publishing Company v. Williams*, 222 So. 2d 470, 473 (Fla. 2d DCA 1969); *City of Miami Beach v. Berns*, 245 So. 2d 38 (Fla. 1971).

[25] See *Board of Public Instruction Of Broward County v. Doran*, 224 So. 2d 693 (Fla. 1969); *Wood v. Marston*, 442 So. 2d 934 (Fla. 1983) (statute should be broadly construed to effect its remedial and protective purposes). Cf. *Cape Coral Medical Center, Inc. v. News-Press Publishing Company, Inc.*, 390 So. 2d 1216, 1218, n.5 (Fla. 2d DCA 1980) (inasmuch as the policies behind Ch. 119, Fla. Stat., and s. 286.011, Fla. Stat., are similar, they should be read together); *Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983); *Krause v. Reno*, 366 So. 2d 1244, 1252 (Fla. 3d DCA 1979), for the proposition that when attempting

to apply the open government laws to private organizations, the courts look to Ch. 119 to determine the applicability of the Sunshine Law.

[26] *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So. 2d 373 (Fla. 1999). And see *Mae Volen Senior Center, Inc. v. Area Agency on Aging*, 978 So. 2d 191 (Fla. 4th DCA 2008), review denied, 1 So. 3d 172 (Fla. 2009) (area agencies on aging which are public or private nonprofit organizations designated by the Department of Elder Affairs to coordinate and administer department programs and to provide, through contracting agencies, services for the elderly within a planning and service area are subject to Ch. 119 and s. 286.011, Fla. Stat., when considering any contracts requiring the expenditure of public funds).

[27] 729 So. 2d 373 (Fla. 1999).

[28] *Id.* at 376.

[29] *Supra* n.27 at 383.

[30] And see Op. Att'y Gen. Fla. 04-44 (2004) (Sunshine Law applies to Prison Rehabilitative Industries and Diversified Enterprises [PRIDE], the nonprofit corporation established by state law to manage correctional work programs of the Department of Corrections). Cf. Inf. Op. to Martelli, dated July 20, 2009 (State Fair Authority created by statute as a public corporation, is subject to s. 286.011, Fla. Stat.). See also Ops. Att'y Gen. Fla. 98-55 (1998) (meetings of the board of directors of the Council on Aging of St. Lucie, Inc., a nonprofit organization incorporated pursuant to the "Community Care for the Elderly Act," must comply with the Sunshine Law); 98-42 (1998) (Florida High School Activities Association, Inc., having been legislatively designated as the governing organization of athletics in Florida public schools, is subject to the Sunshine Law); and 98-01 (1998) (Sunshine Law applies to board of trustees of insurance trust fund created pursuant to collective bargaining agreement between city and employee union).

Florida Toll Free Numbers:

- Fraud Hotline 1-866-966-7226
- Lemon Law 1-800-321-5366

OIG 17-006

EXHIBIT 7

Joy Cooper

From: Joy Cooper <joycooper@aol.com>
Sent: Wednesday, March 29, 2017 9:28 PM
To: jmerino@hallandalebaechfl.gov; jcooper@cohb.org
Cc: 'Joy Cooper'
Subject: RE: Future Foundation

Good evening,

I am just reviewing all emails. As of this email I have still not received such a request. Also I do recall you stating it was your opinion that it was not public but since there were limited records to send them. It was not public but to send note and limited records.

Since I have not had any response and I have conflicting reports I am asking for a written response and direction.

At best a clear public request of which records.

I do not want to have any issues and look for your response.

Thank you.

From: Joy Cooper [mailto:joy@mayorjoycooper.com]
Sent: Tuesday, March 28, 2017 3:38 PM
To: joycooper@aol.com
Subject: FW: Future Foundation

From: Merino, Jennifer []
Sent: Friday, March 10, 2017 9:22 AM
To: Joy Cooper < >
Subject: RE: Future Foundation

Mayor,

As I mentioned yesterday, when we initially spoke I explained that since the Future Foundation was a separate legal entity you may have an argument that, as a private entity you were not subject to public records requests. But, you will recall, I recommended you produce the documents because other factors are weighed to determine if you are nonetheless subject to public records due to your function and relationship with the public entity.

I expressed all this to Mr. Adelson's associate and, as counsel for the Future Foundation on this matter, he was able to assess the relationship from the Foundation's perspective to reach the conclusion that the records should be produced. He expressed the same to me in a recent conversation and I agreed with his analysis.

The good news is we are all on the same page and it doesn't seem like there are voluminous records, from what you have expressed to me.

Regarding the OIG request, as I stated yesterday, because the City is not legally the custodian of those particular records, the OIG has agreed to send a separate request to the Foundation. Mr. Adelson's conclusion would still apply.

Please let me know if you have any further questions. I have meetings most of the day, but will have my cell phone with me.

Sincerely,
Jennifer Merino
City Attorney

----- Original message -----

From: Joy Cooper < >
Date: 3/9/17 9:55 PM (GMT-05:00)
To: "Merino, Jennifer" < >
Subject: FW: Future Foundation

????

From: Anthony S. Adelson []
Sent: Wednesday, March 8, 2017 7:02 PM
To: Joy Cooper < >
Subject: RE: Future Foundation

I spoke with the city attorney. She agreed with my analysis.

Regards,
Anthony S. Adelson, Esq.

The Adelson Law Firm
501 Golden Isles Drive, Suite 203
Hallandale Beach, FL 33009
Tel: (954) 458-9238
Fax: (954) 862-5962
www.adelsonlawfirm.com

----- Original message -----

From: Joy Cooper < >
Date: 3/8/17 5:50 PM (GMT-05:00)
To: "Anthony S. Adelson, Esq." < >
Subject: RE: Future Foundation

City attorney thought no?

Thank you will get them what I have it is not big deal anyway.

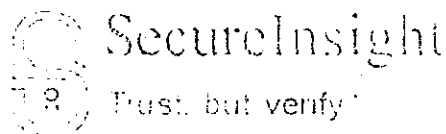
From: Anthony S. Adelson, Esq. []
Sent: Wednesday, March 8, 2017 9:12 AM
To:
Cc: 'Jimmy Fuentes' < >
Subject: Future Foundation

Please see the attached letter, and let me know if you have any questions.

Regards,
Anthony S. Adelson, Esq.

The Adelson Law Firm
501 Golden Isles Drive, Suite 101
Hallandale Beach, FL 33009
Tel: (954) 458-9238
Fax: (954) 862-5962
www.adelsonlawfirm.com

PLEASE NOTE OUR NEW SUITE NUMBER

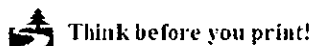


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This firm acts as a debt collector. This communication may be an attempt to collect a debt and any information obtained will be used for that purpose. If you notify this law firm in writing within thirty (30) days after receipt of the initial debt collection communication that the above debt (or any portion thereof) is disputed, this law firm will obtain verification of the debt from the Association and respond to you. Otherwise, we will assume the debt to be valid.

OIG 17-006

EXHIBIT 8



From: Frastai, Jennifer M.
Sent: Tuesday, February 19, 2013 1:35 PM
To: James, Sheena
Cc: Miller C., Renee; Rosemond, Daniel; Rafols, Nydia M
Subject: reponse to questions posed by Dr. Jufuy Selz - 2/6/3

Good Afternoon Sheena,

Attached please find the City's and CRA's response to the questions posed by Dr. Judy Selz at the last City Commission meeting dated February 6, 2012. Please forward to Dr. Selz via email. I will provide hard copies to you to provide to the CRA Board of Directors.

Thank you,

Jennifer

Jennifer M. Frastai

Assistant City Manager

City of Hallandale Beach

400 S. Federal Highway

Hallandale Beach, FL 33009

954-457-1304

954-457-1454 Fax



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1. How much tax payer money (City and County) has been given to each of the "Historic Grants",

Civic Association,
Hallandale Symphonic Pops, and
PAL

in the last five years?

City/CRA: See attached vendor activity listing (CRA account numbers begin with 130 and 630)

County: The City of Hallandale Beach cannot speak to any funds that may have been provided by the County to the future Foundation.

2. How much tax payer money (City and County) has been given to Future Foundation in the past 10 years?

City/CRA: Please see attached vendor activity listing information detailing City funding expended to the Future Foundation. (CRA account numbers begin with 130 and 630)

County: The City of Hallandale Beach cannot speak to any funds that may have been provided by the County to the future Foundation.

Why is this Grant not listed on any materials I have received while working on the Grants Community Advisory Board?

The Future Foundation did not apply for a FY 13 Community Partnership Grant nor have they been awarded any funds under the program.

What do they do with the money? Is this a duplication of other services in our community? Since the Mayor, some previous and some current Commissioners appear to be the Board of Directors, who is accountable?

The Future Foundation is an Independent Non Profit organization. For inquiries regarding how the Future Foundation utilizes their funds and/or their accountability please contact the Future Foundation.

3. Are there other "charities" that the City of Hallandale Beach gives tax payer dollars to, that are not listed under: Historic Grants, City of Hallandale Community Grants and CRA Grants?

City: At the February 6, 2013 City Commission meeting, the City Commission passed the following motion:

MOTION BY COMMISSIONER JULIAN, SECONDED BY COMMISSIONER LAZAROW, TO APPROVE A DONATION IN THE AMOUNT OF \$1000 TO THE KIWANIS CLUB OF HALLANDALE BEACH FOR THE ORGANIZATION'S 8TH ANNUAL PASTA DINNER WHICH WILL BE HELD ON FEBRUARY 29, 2013.
The Motion carried on a 5/0 Voice vote.

CRA: There are no other "Charities" that the Hallandale Beach CRA gives to organizations other than the CRA Community Partnership Grants and Historic grants.

OIG 17-006

EXHIBIT 9

CITY OF HALLANDALE BEACH
OFFICE OF CITY CLERK

13 MAR 14 PM 4:41

CITY OF HALLANDALE BEACH, FLORIDA
OFFICE OF CITY CLERK
400 South Federal Highway, Room 239
Hallandale Beach, Florida 33009
(954)457-1340 FAX (954)457-1342
PUBLIC RECORDS REQUEST FORM
(FOR INTERNAL USE ONLY)

Date 3/13/13

Describe the Public Record(s) being requested:

Future Foundation Inc.

*Any document
showing*

- Background information on what they do & mission
- How long have they been in existence?
- How they utilize City funding and how they help the community - How much does the City fund annually?

Please indicate below the preferred method for contact and transmission of records requested.

Telephone/Fax: _____

Email address: judy selz @ bellsouth.net

Additional Information (name, address, etc.) (OPTIONAL) _____

You may attach additional information if desired.

Name of Department(s) Providing Records: Parks/CM/Finance

Suspense Date: _____

(Completed by Department Fulfilling Request)

Research Time _____ hours _____ minutes @ _____ hourly rate \$ _____

Number of Photocopies @ \$0.15 _____ @ \$0.20 _____

Number Audio/Video Tapes/DVDs (\$10.00 charge) _____

*Note: If the estimated cost to fulfill this request is greater than \$20, please notify the City Clerk's Office before continuing to process this request. We need to verify that the requestor is willing to pay.

Department Director Approval of Records Submitted _____ Date _____

City Clerk Approval (if applicable) _____ Date _____

City Attorney Approval (if applicable) _____ Date _____

(Completed by Department)

Total Amount Due \$ _____ Payment Received by: _____ Date: _____

How provided and Date Provided _____

"City Attorney and City Clerk approval only required when necessary"

Pursuant to F.S. 119, written requests for public records are not required neither is the requestor required to identify him/herself, provide an address or telephone number.

OIG 17-006

COMPOSITE EXHIBIT 10

Winfield, Robert

From: Robert Selz <judyselz@bellsouth.net>
Sent: Thursday, May 16, 2013 10:52 PM
To: Frastai, Jennifer M.
Subject: Public Request for Information

Dear Jennifer,

Thank you again for the information you provided about various City "charities".

This e-mail is again, a request for Public Records Information but at this time limited to issues around the Future Foundation files.

I want to do this prior to the next commission meeting which gives you more than two weeks to compile the information I am requesting.

What you have sent me appears to only be the expenditures for Future Foundation.

In addition I am looking for the details and backup material for the expenditure items you listed including copies of the front and back of checks.

In the files I expect to see the documentation regarding the Future Foundation donations to the water fund, the police and general fund as these expenditures are listed on the print out you provided me.

The information you provided is only expenditures, and did not include where the money has come from for this fund. Please show the income to this City Trust account. Have any funds from the County been deposited into this account?

I expect that all the information that I am requesting will be in that file.

Who are the contact(s) that the City has on file and who are the Board of Directors? Please provide me a list of names with the contact information of the Board of Directors.

I thank you in advance for your cooperation and time. Please contact me by phone (954-454-5568) if you have any questions or do not understand any part of my public records request.

Judy

Dr. Judith Selz

The content of this e-mail (including any attachments) is strictly confidential and may be commercially sensitive. If you are not, or believe you may not be, the intended recipient, please advise the sender immediately by return e-mail, delete this e-mail and destroy any copies.

From: Robert Selz [mailto:judysselz@bellsouth.net]
Sent: Tuesday, May 21, 2013 9:09 AM
To: James, Sheena; Talmadge, Chris; Cabrera, Gail
Subject: Public Records Request- Future Foundation

Good morning!

Our public request--essentially is: 10 year verification of:

1. Income into Future Founation and where it has come from,
2. Expenses paid out by Future Foundation with copies of the front and back of checks and the explanation from the City for the expenses.
3. On going balances of this accountof during the past 10 years.
4. Are there multiple accunts for the Future Foundation? If so, I would like this information about ALL accounts for the Future Foundation.

In the files I expect to see the documentation regarding the Future Foundation TO the water fund, the police and general fund as these expenditures are listed on the print out you have provided to me already. Please contact me and let me know when these materials are together so I can view them.

I am also requesting the names of the Board members and the contact person and how I may contact them if I have any questions.

I expect this information prior to the next commission meeting since I requested this information from Jennifer on April 23, 2013.

Thank you.

Judy

Dr. Judith Selz

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Winfield, Robert

From: Schanz, Cathie
Sent: Tuesday, May 21, 2013 9:28 AM
To: James, Sheena
Cc: Munden-Correa, Rebecca; Sphar, Louise
Subject: RE: Public Records Request- Future Foundation

We will check our files and let you know what we find.

Cathie Schanz, CPRE
Hallandale Beach Parks and Recreation Director

From: James, Sheena
Sent: Tuesday, May 21, 2013 9:27 AM
To: Schanz, Cathie
Cc: Munden-Correa, Rebecca
Subject: FW: Public Records Request- Future Foundation

Hi Cathie:

Please see below public records request. Can your staff help with providing any of this information?

Please let me know.

Thanks

Sheena D. James, MBA, CMC
City Clerk
City of Hallandale Beach
400 South Federal Highway
Hallandale Beach, FL 33009
Ph#: (954) 457-1339
Fax#: (954) 457-1342

sjames@hallandalebeachfl.gov



 Think before you print!

OIG 17-006

EXHIBIT 11

Winfield, Robert

From: Robert Selz <judyselz@bellsouth.net>
Sent: Thursday, May 23, 2013 4:54 PM
To: Cabrera, Gail
Subject: Re: FW: Future Foundation's check

Hi Gail, Thanks for the copy of the front and back of 9/22/06 check from the City to Future Foundation for \$20,000.that appeared to combine two separately listed checks. I am still missing check #0124052 that was written 4/12/07 for \$7,500. As part of this Public Request, I am also requesting the backup for the authorization, explanation or recquisition for all these 3 expenditures.
Thank you again.

Judy

Dr. Judith Selz

--- On **Thu, 5/23/13**, Cabrera, Gail <gblyth@hallandalebeachfl.gov> wrote:

From: Cabrera, Gail <gblyth@hallandalebeachfl.gov>
Subject: FW: Future Foundation's check
To: "judyselz@bellsouth.net" <judyselz@bellsouth.net>
Date: Thursday, May 23, 2013, 2:54 PM

Hi Judy:

I am sorry to tell you that we can only provide you a copy of the front and back of check 119002 (the second and third items on the Future Foundation vendor activity listing). The first check on the page must have been misfiled, because the person with the files was unable to locate it. Furthermore, because these transactions were so long ago, the paper copies are no longer available either. We are only required to keep the records for a few years - three if I'm not mistaken – but we do keep them for longer. But we do not keep them for six years, which is the most recent check.

As we discussed earlier this week, even if this backup had been available, it would not have shown you anything about the Future Foundation activities, both income and expenditures. For that information, you would need to obtain copies of their transactions and records.

Please let me know if there is anything else I can do to assist you.

Gail Cabrera

Senior Accountant

City of Hallandale Beach

954-457-1365



From: Robert Selz [mailto:judysselz@bellsouth.net]
Sent: Thursday, May 23, 2013 8:17 AM
To: Cabrera, Gail
Subject: Future Foundation -Public Records Request

Hi Gail,

I realized the best way to get a complete picture of the Future Foundation would be to have the copies of the checks issued by the City--to the Future Foundation. Since, as you indicated in your e-mail of 5/20/13, you do not have copies of the checks before October 2004, there are only three checks involved. Please send me copies (by e-mail) of the front and back of those 3 checks and the backup information and their authorization.

If you have any questions--please call me at 954-454-5568.

Thank you.

Judy

Dr. Judith Selz

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OIG 17-006

EXHIBIT 12

Winfield, Robert

From: Albornoz, Baloidi
Sent: Monday, May 20, 2013 2:54 PM
To: Cabrera, Gail
Subject: RE: Future Foundation records

Gail,

She did take the Future Foundation files.

From: Cabrera, Gail
Sent: Monday, May 20, 2013 2:40 PM
To: Albornoz, Baloidi
Subject: Future Foundation records

Baloidi, do we have any of these in Patty's office? Or did she take everything with her when she left?

Thanks.

Gail Cabrera
Senior Accountant
City of Hallandale Beach
954-457-1365



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OIG 17-006

EXHIBIT 13

RE: Public Records Request- Future Foundation

From: **Patty Ladolcetta** (pladolcetta@hotmail.com)
Sent: Tue 6/11/13 1:31 PM
To: James, Sheena (sjames@hallandalebeachfl.gov)

Sheena:

Wow, she wants a lot of old information. As Board member of the organization I can only provide so much. As CPA for the organization, (they voted to hire my accounting firm to do the taxes and accounting), if I have to kick into that mode, the FF pays a discounted rate of \$115 per hour. I would not hesitate to bill Mrs. Selz the same discounted rate, plus printing and postage to send it.

I will try to interpret all she wants, determine if I (Board member) have it available or whether I (CPA) must produce it from CPA records. In addition, the files of non-profits are open for inspection, instead of copies. However it must be at my place of business in Pembroke Pines, at a time convenient to me, and at my standard (FF discount) billing rate.

How would you suggest I respond once I review things, directly to her by email or back to you, as though the City is requesting the information? Along with an estimated cost, if necessary, of course.

Patty

From: sjames@hallandalebeachfl.gov
To: PLADOLCETTA@HOTMAIL.COM
Subject: FW: Public Records Request- Future Foundation
Date: Tue, 11 Jun 2013 14:04:07 +0000

Good Morning Patty,

I hope you are well?

Per our conversation last week, below please find the records request from Ms. Judy Selz regarding expenditures from the Future Foundation.

If you choose to, please feel free to respond to her directly.

Thank you,

Sheena D. James, MBA, CMC

City Clerk

City of Hallandale Beach

400 South Federal Highway

Hallandale Beach, FL 33009

Ph#: (954) 457-1339

Fax#: (954) 457-1342

sjames@hallandalebeachfl.gov



From: Robert Selz [mailto:judysselz@bellsouth.net]
Sent: Tuesday, May 21, 2013 9:09 AM
To: James, Sheena; Talmadge, Chris; Cabrera, Gail
Subject: Public Records Request- Future Foundation

Good morning!

Our public request--essentially is: 10 year verification of:

1. Income into Future Founation and where it has come from,
2. Expenses paid out by Future Foundation with copies of the front and back of checks and the explanation from the City for the expenses.
3. On going balances of this accountof during the past 10 years.
4. Are there multiple accunts for the Future Foundation? If so, I would like this information about ALL accounts for the Future Foundation.

In the files I expect to see the documentation regarding the Future Foundation TO the water fund, the police and general fund as these expenditures are listed on the print out you have provided to me already. Please contact me and let me know when these materials are together so I can view them.

I am also requesting the names of the Board members and the contact person and how I may contact them if I have any questions.

I expect this information prior to the next commission meeting since I requested this information from Jennifer on April 23, 2013.

Thank you.

Judy

Dr. Judith Selz

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OIG 17-006

EXHIBIT 14

RE: FutureFoundation Invoice

From: **Patty Ladolcetta** (pladolcetta@hotmail.com)
Sent: Tue 6/11/13 2:21 PM
To: Cooper, Joy (jcooper@hallandalebeachfl.gov)

Joy:

On May 29th, I sent you and Renee and Cathy Schanz a copy of the most recent By-laws that I had in my files. However, it is somewhat outdated, and a committee was supposed to be formed, consisting of Renee, yourself (I think) and others to review and update the by-laws. I am not on that committee. I have not heard whether that committee has met, or completed their revisions. I know the I have not received a copy of the revised version since our last meeting, so I presume the revisions have not been discussed with the remaining members of the board and approved. Therefore I have nothing to provide to the web designer to post to the website. I don't believe it would be prudent to post the old document, just to pay to upload another one shortly, once the committee has completed its revisions and the board has approved it.

I also have not received a copy of the minutes, and I must admit, I do not recall nor is it in my notes whether this expenditure you are requesting was discussed and approved. And it is in excess of your \$500 authority as President/Chairperson.

On another topic:

The City received a Public Records Request (PRR) from Mrs./Dr. Selz. It is asking for quite a lot of information about and from the Future Foundation (FF), going ten years back, and requesting LOTS of copies of checks. In addition, since the FF is an independent organization separate from the City; a PRR to the City for FF records would not be appropriate. However, as a non-profit organization, the books are open to the public. And requests must go through a Board member of the organization.

So, after discussing with the City Clerk, I am considering this to be an open books request from the City, and that I am the Board member being requested for information. I would not be answering to Mrs. Selz PRR, but to the City's request. However, I would be willing, if Sheena believes appropriate, to respond directly to Mrs. Selz or invite her to inspect the books, at my (home) office in Pembroke Pines. And should I need to produce any information, as CPA, that is not readily available to provide, as Board member, I will charge her the agreed upon discounted rate of \$115 per hour. Also, some of what she is asking for doesn't exist, either, or I do not have, which I would also communicate, either to the City or to Mrs. Selz directly.

Is this satisfactory, or would you suggest some other means of satisfying her quandry? Do you believe that a phone conversation would be appropriate, which might save us all a lot of time and trouble? And, as President/Chairperson, do you approve of my providing the information and handling everything directly?

Let me know what you think. If you would like to contact me directly, my phone number is 954-436-8733 (office).

Take care, Patty

From: jcooper@hallandalebeachfl.gov
To: pladolcetta@hotmail.com
Subject: Fw: FutureFoundation Invoice
Date: Mon, 10 Jun 2013 20:30:12 +0000

Hi this is invoice for all web changes and renewal. For domain please get check to me so we can do updates.

Thanks also send bylaws to him as well and copy me.

Joy

From: Nelson Santiago [mailto:ns@picassoelstein.com]
Sent: Monday, June 10, 2013 03:42 PM
To: Cooper, Joy; Joy Cooper
Subject: FutureFoundation Invoice

See attached.

Nelson Santiago | The **Branding** Experts | www.PicassoEinstein.com | Telephone: (786) 405-9790

Twitter: [@PicassoEinstein](https://twitter.com/PicassoEinstein) | E4i Blog: [@E4iIndependence](http://E4iIndependence.com) | E4i Resource Group: [@E4iIndependence](http://E4iIndependence.com)



Creativity and Intelligence Become One

Additional Services: SoleSites.com | ResidentSites.com

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OIG 17-006

EXHIBIT 15

Re: FutureFoundation Invoice

From: **Cooper, Joy** (jcooper@hallandalebeachfl.gov)
Sent: Tue 6/11/13 2:30 PM
To: 'pladolcetta@hotmail.com' (pladolcetta@hotmail.com)

She was told this

From: Cooper, Joy
Sent: Tuesday, June 11, 2013 02:29 PM
To: 'pladolcetta@hotmail.com' <pladolcetta@hotmail.com>
Subject: Re: FutureFoundation Invoice

She does not have any legal access to our non profit records

From: Patty Ladolcetta [mailto:pladolcetta@hotmail.com]
Sent: Tuesday, June 11, 2013 02:21 PM
To: Cooper, Joy
Subject: RE: FutureFoundation Invoice

Joy;

On May 29th, I sent you and Renee and Cathy Schanz a copy of the most recent By-laws that I had in my files. However, it is somewhat outdated, and a committee was supposed to be formed, consisting of Renee, yourself (I think) and others to review and update the by-laws. I am not on that committee. I have not heard whether that committee has met, or completed their revisions. I know the I have not received a copy of the revised version since our last meeting, so I presume the revisions have not been discussed with the remaining members of the board and approved. Therefore I have nothing to provide to the web designer to post to the website. I don't believe it would be prudent to post the old document, just to pay to upload another one shortly, once the committee has completed its revisions and the board has approved it.

I also have not received a copy of the minutes, and I must admit, I do not recall nor is it in my notes whether this expenditure you are requesting was discussed and approved. And it is in excess of your \$500 authority as President/Chairperson.

On another topic:

The City received a Public Records Request (PRR) from Mrs/Dr. Selz. It is asking for quite a lot of information about and from the Future Foundation (FF), going ten years back, and requesting LOTS of copies of checks. In addition, since the FF is an independent organization separate from the City; a PRR to the City for FF records would not be appropriate. However, as a non-profit organization, the books are open to the public. And requests must go through a Board member of the organization.

So, after discussing with the City Clerk, I am considering this to be an open books request from the City, and that I am the Board member being requested for information. I would not be answering to Mrs. Selz PRR, but to the City's request. However, I would be willing, if Sheena believes appropriate, to

<https://bay173.mail.live.com/mail/PrintMessages.aspx?cpids=ef60950e-d2c4-11e2-89fb-0...> 6/26/2013

OIG 17-006

EXHIBIT 16

Winfield, Robert

From: James, Sheena
Sent: Wednesday, June 12, 2013 1:52 PM
To: Patty Ladolcetta
Subject: RE: PRR for Future Foundation

Thanks Patty!

Sheena D. James, MBA, CMC

City Clerk

City of Hallandale Beach

400 South Federal Highway

Hallandale Beach, FL 33009

Ph#: (954) 457-1339

Fax#: (954) 457-1342

sjames@hallandalebeachfl.gov



Hallandale Beach
PROGRESS. INNOVATION. OPPORTUNITY.



Think before you print!

From: Patty Ladolcetta [mailto:pladolcetta@hotmail.com]
Sent: Tuesday, June 11, 2013 7:12 PM
To: James, Sheena
Subject: PRR for Future Foundation

Hold off. Mayor Cooper has instructed me to do nothing for now. I am awaiting further information from her as to whether I should respond, or she will or whatever.

Patty

The content of this e-mail (including any attachments) is strictly confidential and may be commercially sensitive. If you are not, or believe you may not be, the intended recipient, please advise the sender immediately by return e-mail, delete this e-mail and destroy any copies.

OIG 17-006

EXHIBIT 17

**Record request.**

Tuesday, June 25, 2013 9:16 PM

From: "Joy Cooper" <joycooper@aol.com>

To: "<judyselz@bellsouth.net>" <judyselz@bellsouth.net>

Dear Mrs Selz,

I have recently received this letter from Future Foundation CPA. As President of this organization I cannot release all information without approval of the board. I know you have received information from city that they have from previous years. I can make sure you get what is required by law without charge or if you desire the rest it would require board approval and you would be required to pay the cost as explained.

Please let me know how you would like this matter handled.

Thank you

Joy

Dear President Cooper:

I have received a request from the City for certain documents and information of the Future Foundation that were requested to them in the form of a public records request from Dr. Judith Selz. As the Future Foundation is an independently organized Not-For-Profit corporation, the public records request regulations that apply to the City do not apply to the Future Foundation.

The Internal Revenue Service requirements for public inspection of records of "Exempt organizations" (non-for-profit entities) states in Publication 557 the following, paraphrased somewhat:

An exempt organization must make available for public inspection, upon request and without charge, a copy of its original and amended annual information returns (tax returns-forms 990 series). Each information return must be made available from the date it is required to be filed, or is actually filed. An original return does not have to be made available if more than 3 years have passed from the date the return was required filed. That is, form 990 series and all schedules, attachments, and supporting documents filed with the IRS. This does not include the names and addresses of contributors.

In addition, an exempt organization must also make available for public inspection its application for tax-exempt status (form 1023). And any letters or documents issued by the IRS concerning the application.

In short, we are only required to make available for inspection (no mention is specifically made of providing hard copies-only make available for inspection) by the public, at no charge, the following:

1. Annual forms 990 or 990-EZ for years 2012, 2011, and 2010,
2. Form 1023 application document
3. The response from the IRS as to acceptance of the application and our exempt status.

I currently have available, should you want to go beyond the required documents the following:

- a. Cash receipts spreadsheets 2002-2013 to date
- b. Cash disbursements spreadsheets 2002-2013 to date
- c. Statement of Cash Receipts and Disbursements (Income Statement)
- d. Form 990 or 990-EZ for most of the years 2003 - 2009

We are required to make available items 1-3 without charge. However items a-d would cost an estimated \$35 for printing of the spreadsheets/returns, plus my time of no less than 1 hour and no more than 2 hours at my rate of \$150 per hour. A maximum charge of \$335.

I await your response as to further action.

Thanks,

Patty

Sent from my iPad

OIG 17-006

EXHIBIT 18

**CITY OF HALLANDALE BEACH
ADMINISTRATIVE POLICY**

DATE OF ISSUE:	<u>December 20, 2004</u>	NO.:	<u>2016.008/R02</u>
EFFECTIVE DATE:	<u>January 1, 2005</u>	SUBJECT:	<u>Public Records Request Guidelines</u>
REVISION DATE:	<u>July 19, 2012</u>		

APPROVED: _____
Renee C. Crichton, City Manager

Cross Reference: Florida Statute Chapter(s) 119, 257 and 288.057

I. PURPOSE/INTENT

The City of Hallandale Beach fully embraces the tenets set forth in the Public Records Law, Chapter 119, Florida Statutes, governing the public's right to access records held by the agency. In support of the broad public right to access public records, the City of Hallandale Beach incorporates the following guidelines to inform agency staff about implementation of the Public Records law within the City of Hallandale Beach and to provide uniformity in the receipt of public records requests, their processing, approval and release/transmittal as well as the collection of fees, if applicable, for producing the records.

This document outlines policies, responsibilities, and describes procedures for providing access to public records. It should be applied to all activities which involve public records requests. These guidelines complement, but do not replace, the requirements under the Public Records Law.

II. DEFINITIONS

For a complete list of definitions involving public records, please see Florida Statute 119.011 "Definition"

- A. Custodian/Provider Department = Any City department/staff maintaining custody of the requested public record and the actual department which will be providing the records upon request.
- B. Public Record = means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other material, regardless of physical form or characteristics or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency (S. 119.01, F.S.).
- C. Public Records Coordinator(s) = departmental staff assigned the responsibility of receiving, tracking and processing Public Records requests on behalf of the provider department.

- D. Public Records Exemptions = Public records which are presently provided by law to be confidential or exempt/prohibited from public review as defined in the Florida Public Records Law.
- E. Public Record Retention Period = the time period public records are retained in accordance with the Florida Public Records Law as provided in the General Records Schedule for Local Government Agencies and other applicable records schedules.
- F. Records that are "Not Readily Available" or require "Extensive Use" = records that are not easily retrievable and/or will require more than (15) minutes of staff time to locate, copy or otherwise make available; and may require additional review in order to determine whether they contain exempt information.
- G. Records that are "Readily Available" = records that are easily retrievable, regularly disseminated to the public and can be located, copied, or otherwise made available within fifteen (15) minutes; and do not require additional review in order to determine whether they contain exempt information.
- H. Schedule of Fees & Charges = Fee Book annually approved by the City Commission which includes fees for copying public records and charging of clerical and supervisory time associated with producing the requested public record. Fees for copying and producing public records requests are regulated by Florida Statute.

III. POLICY/PROCEDURES

A. Guidelines:

1. Agency held records, except those specifically precluded from disclosure by statutory exemption, shall be available, in any form and format used by the agency, to all citizens for inspection and/or copying under the supervision of the records coordinator or designee during normal business hours.
2. The widest possible access to existing public records is encouraged by distribution via email or making copies of those records available for a fee not to exceed the actual cost of duplication, and, if the nature or volume of public records requested to be inspected, examined, or copied requires extensive use of agency resources, the minimal additional cost to cover such extensive use of agency resources shall be charged.
3. Innovative practice to enhance the public's right of access to public records shall be encouraged.
4. The City of Hallandale Beach shall assure that future information technology resources used to manage, store, or maintain public records adequately, provide for the rights of the requestor to access public records under Chapter 119, Florida Statutes.

B. Responsibilities**1. Departments, Divisions, and Offices:**

- a. When the public records are shared such that a single department cannot clearly be identified, the City Clerk's office shall be responsible for coordination.
- b. *Ensure that the request is clearly understood; if not then the provider shall request clarification directly from the requestor; and*
- c. In conjunction with the City Attorney's Office, identify the types of public records and public record information under their custody which are exempt from inspection and/or examination.

2. Directors and Supervisors shall:

- a. Be knowledgeable of the public access activities occurring within their responsible areas;
- b. Be knowledgeable of the Statutory Exemptions that relate to documents/records under their Department's purview;
- c. Designate one or more staff member(s) as 'Public Records Coordinator(s)' for the respective department by completing the designation form attached to this policy as Attachment One;
- d. Calculate the costs incurred when their department's information technology resources, clerical or supervisory staff, or both, are used to respond to public records requests as set forth in the 'Schedule of Fees & Charges.'
- e. Ensure actual cost of duplication and/or extensive use charges are applied to public records requests only when it is cost-effective to do so; and
- f. Ensure adequate staff training is provided in the requirements of the Public Records Law and the policies set forth in these guidelines, with particular attention to staff's responsibility for maintaining the confidentiality of exempt information or records.

C. Public Records Request(s)

The following procedures govern the receipt, processing, approval and release/transmittal of public records requests:

1. Receiving Public Records Requests

- a. Any employee/provider shall accept Requests for Public Records in writing, by electronic mail, by telephone, by facsimile or in person. If

the request is insufficient to identify the records sought, the provider should help the requestor clarify the request. The employee/provider may ask the requestor to complete the "Public Records Request" form (Attachment Two) to assist in defining or documenting the facts necessary for completing the records request; however, the requestor is not obligated to complete a form as a condition for obtaining the public records requested. If an employee receives a Public Records Request, the employee shall forward said request to their department's Public Records Coordinator within twenty-four (24) hours of receipt for follow-up action.

- b. The Public Records Request Form may be made available to the public by placement on the City's web site, at the public service counters of all departments and facilities, in the City Clerk's Office or in other locations as determined by the City Manager.
- c. Requests for records should be accepted and records made accessible for inspection or duplication during the City of Hallandale Beach's normal business hours.
- d. The provider shall endeavor to complete all requests for records that are READILY AVAILABLE promptly (within twenty-four (24) business hours of receipt). Requests for records that are NOT READILY AVAILABLE shall be completed as soon as practicable based on the complexity of the request.
- e. If the request is anticipated to take longer than two (2) business days to fulfill, the provider shall inform the requestor of the reason for the delay, the estimated turnaround time and estimated cost for fulfilling the request. The requestor must agree to the cost and pay the required deposit (See Section 7.E.) prior to staff performing any work.
- f. Receipt of all Public Records Requests received via email, facsimile or other form of electronic media must be acknowledged immediately; and the requestor shall be advised of the status of their request (e.g. in process, unclear or inappropriate - See Section III.C.6. below for a list of inappropriate requests).

2. Requests Submitted to Custodial/Provider Department

- a. If City department maintaining records i.e. Custodial/Provider Department receives the request, the provider department should begin processing the request promptly and the 'Public Records Request Tracking Log' (Excel spreadsheet) (Attachment Three) shall be completed within twenty-four (24 hours) for tracking purposes. Public Records Request Tracking Logs shall be maintained on the Fileserver1 City Common (\\Fileserver1\city common folder\City Clerk\Public Records Request Tracking Logs) and is readily accessible by appropriate staff as necessary (Note: Only appropriate staff will have 'edit rights.' Citywide staff will have 'read only access'. A new log/spreadsheet shall be created by the City Clerk on or before

January 1st of each year.

3. Requests Submitted to Non-Custodial/Non-Provider Department

- a. If a Non-Custodial/Non-Provider City department receives a public records request on behalf of the provider department; the request should be forwarded to the custodial/provider department immediately for processing. Public records requests may be forwarded to the custodial/provider department via e-mail, inter-office mail, facsimile etc. Upon receipt of the request by the custodial/provider department, the steps listed above in Section III.C.2 shall be followed.

4. Requests for Multi-Departmental Records/City Clerk's Office

- a. If the Public Records Request is submitted through the City Clerk's Office, it shall be logged and routed to the provider department(s) immediately for processing. Requests shall be submitted on the attached Public Records Request Form. If the request is not initially submitted on the Public Records Request Form, the provider shall complete the form and/or attach it to the request for processing.
- b. Requests for multi-departmental records should be promptly forwarded to the City Clerk for coordination. The City Clerk's Office will log in the request and forward the request to the departments responsible for producing the requested record(s). A suspense date for producing the record will be assigned by the City Clerk's Office based on the complexity of the request. The departments shall produce the requested records and submit to the City Clerk's Office in accordance with the suspense date.

5). Requests for Litigation Records

- a. Records requests which involve litigation matters shall be forwarded to the City Attorney by the City Clerk.

6). Inappropriate Records Requests

- a. Records requests which are determined to be inappropriate shall be coordinated with the City Attorney and the City Clerk. Examples of inappropriate requests include, but are not limited to, the following:
 - i. A request in the form of an interrogatory or question requiring the City to provide written or oral answers or information which may or may not be derived from the City's public records, instead of a request for the actual production of public records; or
 - ii. A request that asks the City to confirm or deny a fact or other matter concerning City business or information contained in a public record of the City; or
 - iii. A request that the City produce a City employee to answer

questions relating to public records, or information contained in the City's public records, or information concerning City business; or

- iv. A request that requires the City to create a document in order to respond to a request; or
- v. A request that asks the City to format or reformat City records into a format that the records are not regularly maintained in by the City, and to provide the records in a different format or private e-mail stored in the City's computer system or in a City owned computer; or
- vi. A request that is illegible, unclear, vague, or is insufficient to identify the records requested, or cannot otherwise be understood by the Clerk; or
- vii. A "Standing" request that demands future copying or production (i.e., "please forward all future meeting minutes..."); or
- viii. A request for records that is statutorily exempt from disclosure under the Florida Public Records Act, Chapter 119, Florida Statute, as amended, or any other state or federal law, as amended from time to time (See Attachment Four for a list of current statutory exemptions).

7. Requests for Exempt Records (also see Section III.D)

- a. Documents that contain exempt information will be redacted by the provider prior to the release of documents to satisfy a public records request. Occasionally, a requestor may need to review records directly. The City shall permit records to be inspected, copied and photographed, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records of that department. Due to exemptions to Chapter 119 of the Florida Statutes, there may be sensitive information the public is not authorized to see and must be redacted prior to viewing.

However, the following documents shall be routed through the City Clerk's Office to the City Attorney's Office for review prior to said release:

- Personnel files
- Risk Management and Workman's Compensation files
- Business/proprietary information protected under the Economic Development exemptions (F.S. 288.075)
- Executive Session transcripts (not to be released until litigation is complete)
- Litigation files (not to be released until litigation complete)
- Copies of payroll records

- Copies of legal fee invoices

D. Public Records Exemptions

The City of Hallandale Beach is responsible for protecting information defined as confidential or as otherwise exempt from public inspection or copying under the Public Records law. All exemptions to the Public Records Law can be found in the Florida Statutes Chapter 119.071; however Attachment Four = Lists Common Public Records Exemptions.

The following standards and controls should be followed to prevent the inadvertent or unauthorized release of confidential and exempt information. If it is determined the public records request (in whole or in part) is exempt from public review or the information is not available because the records have been destroyed in accordance with Record Retention Schedules, or the information requested was never a part of City records, the provider shall inform the City Clerk's Office who will, in conjunction with the City Attorney's Office advise the provider of the statutory exemption which prevents disclosure. Providers are responsible for informing the requestor when requests cannot be filled due to an exemption which prevents disclosure. Upon request, the provider must provide the basis for this exemption and its statutory citation. If this response is requested in writing, this response will be drafted by the City Clerk's Office. The City Attorney's Office will review the City Clerk's response to the requestor to ensure the reason stated for denial of producing the records is legally sufficient.

1. Confidential information shall be redacted (extracted) from records by the provider prior to public release or examination of the nonexempt portions.
2. Future data processing systems which are expected to maintain or provide access to confidential or sensitive records should be designed with redaction capabilities so that only nonexempt portions of records can be extracted and made available to a public records requestor. Redaction shall be a component in the redesign of existing systems.

E. Fee Collection

If charges for copying records, personnel time and other fees are assessed for production of the records, per the Schedule of Fees & Charges "Copying Fees-City Documents", the provider department shall complete the appropriate section of the Public Records Request form and/or attach additional cost breakdowns if necessary. **It shall be the City's policy to provide up to ten (10) pages of READILY AVAILABLE records free of charge to the requestor.**

NOTE: Agencies may also collect a reasonable service charge, in addition to actual cost fees, when a request for public records requires the extensive use of information technology resources and/or clerical or supervisory assistance. Public Records Requests requiring **up to ten (10) pages and/or more than fifteen (15) minutes** to locate, copy or otherwise make available the requested

Calculating Extensive Use

material, is a diversion of resources which is susceptible to extensive use service charges.

****NOTE:** In calculating labor costs, the Agency shall utilize staffing at the lowest possible hourly rate that can accurately fulfill the request. The staff time shall be calculated as follows:

Example-**Extensive Use Charge** (hourly rate _____ x #_____ of hours = \$ _____ (See Public Records Request Form = Attachment Two)

1. When all allowable fees/charges applicable to a particular public records request can be calculated in advance, they should be collected prior to the provider investing significant information technology resources and/or clerical or supervisory assistance.
2. Where actual costs and extensive use fees will exceed twenty dollars (\$20.00) and/or cannot be immediately determined due to the nature of the request, the provider shall give an estimated cost for producing the records and inform the requestor that the actual cost may vary. If the requestor accepts the cost estimate, the provider may require a "deposit" before filling the public records request. Any requestor having an account delinquent more than thirty (30) days will be required to pay in advance the estimated cost for providing the public records documents requested. Cost overages will be billed the balance; extra monies will be refunded. Once the records are ready the provider shall release the records upon collection of the payment due.
 - a. No sales tax is to be charged for a public records request.
 - b. The provider shall prepare an invoice of the charges due from the requestor (See Attachment Five). This electronic invoice may be found on the Fileserver1 City Common Folder (\\Fileserver1\city common folder\City Clerk\Public Records Request Tracking Logs\Invoice).
 - c. Payments may be accepted by the Cashier in the Finance Department in the form of Cash, Money Order, Check and/or Credit Card. All Checks should be made payable to the City of Hallandale Beach; all payments are to be made at the Cashier by the requestor, whom shall show proof of payment in exchange for the requested records. (Also refer to Administrative Policy #3003.007, as amended for processing cash receipts at remote locations.)
 - d. **Electronic Records** If the record(s) is/are to be provided to the requestor via electronic mail (e-mail) and is subject to Extensive Use charges (see Section E(1)(2)), the provider shall request payment from the requestor in advance and shall only release the requested records once payment is received. Voluminous records may also be provided electronically on compact disk (CD) at a cost of \$10 per CD

or as priced in the City's fee booklet. Other electronic media such as flash/thumb drives or other similar devices may also be utilized for transmission of public records at the expense of the requestor.

- e. The date of release or fulfillment, medium of transmittal and the amount of payment received (if any) for public records shall be logged on the Public Records Request Tracking Log.

G. Fee/Charges Waivers

Fees or charges may be waived between the City of Hallandale Beach and other government agencies when the recurring exchanges or data sharing between agencies negates the need to apply these fees.

IV. ADDITIONAL INFORMATION, REQUIREMENTS/RESPONSIBILITIES

The City Clerk's Office is responsible for updating this policy.

ATTACHMENT ONE

CITY OF HALLANDALE BEACH, FLORIDA MEMORANDUM

DATE: <date>
TO: <Insert name of City Clerk>, City Clerk
FROM: <name, title of department director>
SUBJECT: Designation of Public Records Coordinator

Pursuant to Administrative Policy No.2016.008 Public Records Request Guidelines, as may be revised from time to time, the <Insert Name of Department> designates the following individual(s) as its Public Records Coordinator(s):

NAME

<name of designee>

TITLE

<job title of designee>

cc: City Manager's Office

Personnel File

ATTACHMENT TWO

CITY OF HALLANDALE BEACH, FLORIDA
 OFFICE OF CITY CLERK
 400 South Federal Highway, Room 238
 Hallandale Beach, Florida 33009
 (954)487-1340 FAX (954)487-1342
PUBLIC RECORDS REQUEST FORM
 (FOR INTERNAL USE ONLY)

Date: _____

Describe the Public Record(s) being requested:

Please indicate below the preferred method for contact and transmission of records requested.

Telephone/Fax: _____

Email address: _____

Additional information (name, address, etc.) (OPTIONAL) _____

You may attach additional information if desired.

Name of Department(s) Providing Records: _____

Suspense Date: _____

(Completed by Department Fulfilling Request)

Research Time _____ hours _____ minutes @ _____ hourly rate \$ _____

Number of Photocopies @ \$0.15 _____ @ \$0.20 _____

Number Audio/Video Tapes/DVDs (\$10.00 charge) _____

*Note: If the estimated cost to fulfill this request is greater than \$20, please notify the City Clerk's Office before continuing to process this request. We need to verify that the requestor is willing to pay.

Department Director Approval of Records Submitted _____ Date _____

City Clerk Approval (if applicable) _____ Date _____

City Attorney Approval (if applicable) _____ Date _____

(Completed by Department)

Total Amount Due \$ _____ Payment Received by: _____ Date: _____

How provided and Date Provided _____

*City Attorney and City Clerk approval only required when necessary¹²

Pursuant to F.S. 119, written requests for public records are not required neither is the requestor required to identify him/herself, provide an address or telephone number.

JAN - DEC (YEAR)[illegible]

ATTACHMENT FOUR

PUBLIC RECORDS EXEMPTIONS (F.S. 119.071)

- Exam questions and answer sheets for licensure, certification or employment.
- Sealed bids, proposals or replies to competitive solicitation until the decision is made or 30 days after opening, whichever is earlier.
- If all bids are rejected, and solicitation is reissued, rejected bids remain exempt until a decision is made or the solicitation is withdrawn, up to 12 months.
- Financial statements required of prospective bidder in order to prequalify.
- Record prepared by an agency attorney that reflects mental impression and prepared exclusively in anticipation of imminent civil or criminal litigation or adversarial administrative proceedings.
- Data processing software under a licensing agreement that prohibits its disclosure
- U.S. Census Bureau address information.
- Criminal intelligence and criminal investigative information received by the police department.
- Information revealing surveillance techniques or procedures of personnel.
- Substance of a confession of a person arrested.
- Identity of a confidential informant.
- Complaints and other records which relate to a discrimination complaint in connection with hiring practices and other personnel decisions until a probable cause finding is made.
- Criminal intelligence or investigative information:
 - a. Any information which reveals the identity of the victim of child abuse.
 - b. Any information which reveals the identity of the victim of any sexual offense.
 - c. A photograph, videotape or image of any part of the body of the victim of a sexual offense.
- Criminal intelligence or investigative information that reveals the personal assets of the victim of a crime.
- Any document that reveals the identity, home or employment address and phone number, or personal assets of the victim of a crime.

- Any information in a videotaped statement of a minor who is alleged to be, or who is the victim of sexual battery.
- Records, information, photographs, etc., relating to the physical security of any facility.
- Building plans, blueprints, etc., which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility or other structure owned or operated by the City.
- Building plans, blueprints, etc., which depict the internal layout or structural elements of an attraction and recreations facility, entertainment or resort complex, industrial complex, retail and service development, office development or hotel or motel development.
- Social security numbers of all current and former employees.
- Medical information pertaining to a prospective, current or former officer or employee which, if disclosed, would identify the officer or employee.
- Personal identifying information of a dependent child of an officer or employee which child is insured by a group insurance plan.
- Any information revealing undercover personnel.
- Home address, telephone number, social security numbers and photographs, their spouses and children and the names and locations of schools and day care facilities attended by those children for the following:
 - a. Active or former law enforcement personnel
 - b. Firefighters
 - c. Current or former code compliance officers
 - d. Current or former Assistant United States Attorneys
- Bank account numbers and debit, charge, and credit card numbers held by the City.
- Information that identifies or locates a child in a city-sponsored recreation program or the parent or guardian of such child.
- Records of a telecommunications company which contain the name address and phone number of subscribers.
- Information regarding ridesharing agreements.
- Medical history records and information related to health or property insurance provided to the City to participate in a government housing assistance program.
- Biometric identifying information of an applicant or recipient of paratransit services.

- Any information furnished for the purpose of being provided with emergency notification by the City.
- All complaints or other records relating to a discrimination complaint for the sale or rental of housing, the provision of brokerage services or the financing of housing until a probable cause finding is made/
- Audit report of an internal auditor and investigative report of the inspector general until the report or investigation becomes final.
- Any data, record, or documents used directly or solely by a city-owned utility to prepare and submit a bid relative to the sale, distribution, or use of any service, commodity or tangible personal property to any customer or prospective customer.
- Business information provided by the owner of a business to a governmental condemning authority as part of an offer of business damages.
- Proprietary confidential business information obtained from a telecommunications company or franchise cable company for the purposes of imposing fees, and includes maps, plans, billing and payment records, or trade secrets.
- Proprietary confidential business information provided to an industrial development authority created in accordance with Part III of Chapter 159.

ATTACHMENT FIVE

(ATTACHMENT FIVE)
Public Records Request Invoice

<department name>
Public Records Requests



Date: <insert date>

<insert requestor name>

<u>Account #</u>	<u>Account Name</u>	<u>Check/Cash</u>
001-0000-341.40-00	Certification/Copying	\$0.00
<u>Total:</u>		<u>\$0.00</u>

OIG 17-006

EXHIBIT 19

March 19, 2003

The Honorable William Julian
Vice Mayor
City of Hallandale Beach
400 S. Federal Highway
Hallandale Beach, FL 33009

Dear Vice Mayor Julian:

Congratulations to you for your appointment as the Vice Mayor of the City of Hallandale Beach. In conjunction with serving as the Vice Mayor, according to the By-Laws of the Future Foundation, you shall also serve as the Vice President.

A Board of Directors Meeting has been scheduled for Thursday, April 10, 2003 at 3:00 p.m. in Room 219 of the City of Hallandale Beach Municipal Complex, located at 400 South Federal Highway in Hallandale Beach. It is intended to introduce you to the Board members at this meeting, therefore it is requested you attend.

The meeting will also include introductions of our new President, Board Member, Mike Good, City Manager, and Marketing Representative. Attached is a copy of the Agenda and backup information. The Board will be requested to approve the Proposed Budget for Fiscal Year 2003, and review the results from the fund raising events and 2002 Year End.

Your attendance will be greatly appreciated.

Sincerely,

Charity Good
Marketing Representative

OIG 17-006

APPENDIX A

From: **Larry Davis** <larry@larrysdavislaw.com>
Date: Thu, May 10, 2018 at 1:06 PM
Subject: Response from Joy Cooper / Future Foundation
To: "Breece, Carol" <cbreece@broward.org>
Cc: Joy Cooper <joycooper@aol.com>

Good afternoon Jodie,

Please consider this email and the attached letter a response to the "Preliminary Report" dated April 11, 2018.

It remains our position the Foundation is not a public entity subject to Sec. 286.011, F.S. (the "Sunshine Law") or Ch. 119, F.S. (the "Florida Public Records Act"). Moreover, for the reasons set forth herein, the OIG does not have legal jurisdiction over the Foundation and should not be expending public resources and/or public funds pursuing this matter any further.

The OIG's jurisdiction is set forth in Section 10.01(B)(1) of the Broward County Charter. This section expressly provides, as follows:

(1) The authority of the Inspector General shall extend only over the following:

(a) All elected and appointed officials ("Officials") and employees ("Employees") of the Charter Government of Broward County ("County") and of all municipalities, including any city, town, or village duly incorporated under the laws of the state within Broward County ("Municipalities"); and

(b) All entities and persons (other than employees of the County or any Municipality) that provide goods or services to the County or any Municipality under contract for compensation ("Providers"), but solely with respect to the provision of such goods or services.

The Foundation, as a private, not-for-profit corporate entity, is not an "elected or appointed official" and does not provide goods or services to Broward County or any municipality pursuant to a contract for compensation. Since the Foundation is not included within either of these provisions, the OIG does not have any jurisdiction to pursue this matter.

As you know, I had the privilege of serving on the Broward County Charter Review Commission ("CRC"). In this capacity, I served as a member of the CRC's Ethics Subcommittee (the "Subcommittee"). Throughout 2017, the Subcommittee considered a number of recommendations from your office, including a proposal to expand the jurisdiction of the OIG to include any entity or person that receives funding for any specified use from Broward County or any municipality ("Grantees"). As you recall, this proposal was ultimately rejected by the CRC.

The Preliminary Report references the funds that the Foundation has received from the City of Hallandale Beach ("City") over the years. The mere receipt of such funds does not subject the Foundation to the Sunshine Law or the Florida Public Records Act. Furthermore, if the OIG truly had jurisdiction over the Foundation as a result of the funding it has received from the City, there would have been no need for your office to request that the CRC propose an amendment to the Broward County Charter seeking to expand the OIG's jurisdiction to include Grantees such as the Foundation. In other words, it appears your office agrees you do not currently have jurisdiction over entities, such as nonprofits, that receive funding from the county or any municipality.

We respectfully request retract the Preliminary Report. Thank you for your consideration.

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Larry S. Davis
1926 Harrison St.
Hollywood, FL. 33020
Phone: 954-927-4249
Fax: 954-927-1653

LAW OFFICES
LARRY S. DAVIS, P.A.

1926 HARRISON STREET
HOLLYWOOD, FLORIDA 33020

TELEPHONE (954) 927-4249
TELEFAX (954) 927-1653

May 10, 2018

Office of the Inspector General
1 N University Dr Ste 111
Plantation, FL 33324-2020

RE: Preliminary Report - City of Hallandale Beach / The Future Foundation, Inc.

Dear Inspector General:

Our office represents Joy Cooper as the former president of The Future Foundation, Inc. ("Foundation") in this matter. Please consider this letter a response to your "Preliminary Report" dated April 11, 2018.

The Foundation was formed as a private nonprofit corporation in 1996, by the then City Attorney for the City of Hallandale Beach ("City"). The initial officers and directors of the Foundation were both City officials and interested citizens. According to the By-Laws of the Foundation, it was set up "to engage in charitable and philanthropic endeavors of all kinds" for children under the age of eighteen. Ms. Cooper was not an elected official at the time of the formation of the Foundation.

The Foundation solicited mostly private money to provide educational and cultural programs to the children of Hallandale Beach. These programs included art, music, and martial arts lessons. Funding provided directly by the City was relatively minor compared to the overall revenues raised by the Foundation.¹ Moreover, the mere receipt of public funds by private, non-profit corporations is not by itself sufficient to bring the organization within the scope of Florida's

¹ Although the Office of the Inspector General lumps together funds directly provided by the City with funds provided through payroll deductions of employees and private donations by developers, we do not believe the payroll deductions nor the private donations should be considered when assessing the relatively small level of funding provided *directly* by the City. Indeed, a payroll deduction by an employee made to the United Way does not mean the United Way is now somehow subject to Florida's public records laws simply due to the employee contribution. Nor should a donation to a nonprofit organization by a private citizen who may have business with the City result in that donation being categorized as originating from the City.

Sunshine Law or Public Records requirements. *See generally, News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992).

Chapter 119 - Public Records Act

In order for a private nonprofit corporation to be subject to Florida's Public Records Act, the entity must be acting on behalf of a public agency. Florida Statutes §119.011(2) defines an agency subject to the Public Records Act as any "....public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

To determine whether an entity is acting on behalf of a public agency falling within the scope of the Public Records Act, the courts have developed a "totality of factors" test ("*Schwab*" test). The factors considered include, but are not limited to: 1) the level of public funding; 2) commingling of funds; 3) whether the activity was conducted on publicly owned property; 4) whether services contracted for are an integral part of the public agency's chosen decision-making process; 5) whether the private entity is performing a governmental function or a function which the public agency otherwise would perform; 6) the extent of the public agency's involvement with, regulation of, or control over the private entity; 7) whether the private entity was created by the public agency; 8) whether the public agency has a substantial financial interest in the private entity; and 9) for whose benefit the private entity is functioning. *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992).

All the factors must be reviewed in order to determine whether a private organization is subject to the Public Records Act:

1. The level of public funding. Although the City did contribute funding to the Foundation many years ago, the majority of the revenues of the Foundation came from private donations.
2. The commingling of funds. At no point were funds ever commingled with any other entity. The Foundation has always kept its accounts separate.
3. Whether the activity was conducted on publicly owned property. A mailbox and meetings were held at the City Hall and then moved to the Cultural Center. There is no office for the Foundation.
4. Whether services contracted for are an integral part of the public agency's chosen decision-making process. The Foundation plays no role in the City's decision-making process.

5. Whether the private entity is performing a governmental function or a function which the public agency otherwise would perform. The Foundation provides cultural and educational programs to children of Hallandale Beach.
6. The extent of the public agency's involvement with, regulation of, or control over the private entity. Although many City officials serve on the Board of the Foundation, the City has no control whatsoever over the Foundation. There is no action that can be taken by the City that would effect a fundamental change in the Foundation.
7. Whether the private entity was created by the public agency. The City initiated the process to organize the Foundation, but then ceded all control immediately to the Foundation itself upon incorporation.
8. Whether the public agency has a substantial financial interest in the private entity. Aside from infrequent donations by the City, the last of which occurred many years ago, the City has no financial interest in the Foundation.
9. Whose benefit the private entity is functioning. The Foundation works to provide educational and cultural programs to the children of Hallandale Beach. These programs include music and martial arts lessons, arguably activities not within the scope of the City's responsibilities.

A review of the *Schwab* factors makes it abundantly clear the Foundation is not subject to the Florida Public Records Act as the City's only major role in the Foundation occurred over twenty years in the past and since that time, the City has little to no part in the business of the Foundation.

After years of informal opinions from attorneys indicating the Foundation is not subject to the Florida Public Records Act, on March 8, 2017, an attorney submitted a written opinion letter opining the Foundation is subject to a Public Records Request under Chapter 119, Florida Statutes. After listing the factors of the *Schwab* test, the attorney also cited an Advisory Legal Opinion AGO 2011-01² issued by the Florida Attorney General to determine the Foundation appears to be subject to the Florida Public Records Act. The attorney reasoned the Foundation is similar to the entity listed in AGO 2011-01, therefore the Foundation is subject to the Public Records Act.³ We believe the attorney's reasoning and conclusion are fundamentally flawed.

² erroneously cited as AGO 2001-01 in the letter.

³ On March 10, 2017, the City Attorney for Hallandale Beach indicated in an email that although she originally opined the Foundation was a separate legal entity not subject to public records requests, she revised her opinion after speaking with the author of the written opinion to conclude the Foundation should comply with Public Records Requests under Chapter 119. The City Attorney did not include any detailed analyses of the issue in the email that led her to her revised opinion.

The Advisory Legal Opinion cited by the attorney concluded a particular non-profit private corporation was subject to the Public Records Act. Although there are similarities between the Foundation and the entity listed in AGO 2011-01, the conspicuous difference between the Foundation and the private entity at issue in AGO 2011-01 is the private entity was controlled by the public entity which created it. The public entity was the SOLE member of the board of the private entity and exercised COMPLETE dominion and control over the private entity's articles and bylaws. That is not the case with the Foundation. The Foundation is self-governing and may reorganize, dissolve, or conduct business at any time without any direction or input from the City whatsoever.

Considering the Foundation is a completely separate private entity working to provide nonessential programs to children, the Foundation is clearly not subject to Florida's Public Records Act.

Chapter 286 - Sunshine Law

Chapter 286 states in part:

“All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision...at which official acts are to be taken are declared to be public meetings open to the public at all times....” *Fla. Stat. 286.011*

In general private organizations are not subject to the Sunshine Law. However if a public entity has delegated “the performance of its public purpose” to a private entity or the private entity is under “the dominion and control” of the public entity, the private organization may be required to abide by the requirements of the Sunshine Law. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 1999).

In AGO 2011-01, the private entity in question was opined to be operating on behalf of and under the dominion and control of the public entity that created it. Indeed, the public entity was the sole member of the board of the private entity and the public entity retained all control as to any changes made to the organization. Accordingly, AGO 2011-01 opined the public entity had delegated the performance of its public purpose to the private entity and the private entity was therefore subject to the Sunshine Law.

Notwithstanding the Foundation was created over twenty years ago by the City, the structure of the Foundation was intended and indeed immediately became self-governing and self-funding. The City has no authority to enact any changes whatsoever to the Foundation. The City cannot pass an action dissolving the Foundation, nor can it pass any ordinances making any changes to the Foundation in the least. There is no action the City can take to effect any control over the Foundation, nor does the Foundation act on behalf of the City to perform a public purpose that

otherwise would be performed by the City, namely providing music and martial arts lessons to children.

The Foundation, which has been mainly dormant for many years, is not subject to Florida's Sunshine Law nor is it subject to Florida's Public Records Act.

We urge you to correct your preliminary report to reflect this information.

Yours Truly,

/s/ Larry S. Davis_____.

Larry S. Davis, Esq.

larry@larrysdavislaw.com

OIG 17-006

APPENDIX B



BROWARD OFFICE OF THE INSPECTOR GENERAL

January 23, 2018

Mr. Larry S. Davis
Law Offices of Larry S. Davis, P.A.
1926 Harrison Street
Hollywood, Florida 33020

Dear Mr. Davis:

This letter is in reply to yours dated January 18, 2018, with the subject "Joy Cooper / The Future Foundation, Inc.," and addresses your position that the Broward Office of the Inspector General (OIG) lacks legal jurisdiction to investigate a private, not-for-profit corporate entity.

The Broward County Charter (BCC) Sec. 10.01(B)(1) does not confer upon the OIG authority over any private, not-for-profit corporate entity. Neither does it confer authority over any political subdivision or local governmental agency. But, as you also observe, it does confer authority over those who operate or profit from local government, that is, the officials, employees, and providers of the county and its municipalities.

We liken your concern to those of persons who have posited that we do not have authority to investigate Community Redevelopment Agencies (CRAs). In response to an OIG preliminary report issued on April 18, 2013, Mayor Cooper questioned our authority to investigate activities of the city's CRA. Our final report in that matter observed, "[T]he OIG has authority over all municipal officials in identifying mismanagement of public resources. A CRA is a dependent special district created by the municipality and controlled by the elected officials of the municipality. Through the CRA, municipal officials spend the resources of the municipal taxpayers. ... A municipality cannot avoid OIG oversight by spending tax payer funds through an [entity] that is independent in name only." (OIG Final Report in 11-020, at page 50) Of course, the OIG also has authority over all municipal officials in identifying misconduct as well as gross mismanagement. BCC Sec. 10.01(A)(1), (B)(2), (B)(3).

As a sitting member of the Charter Review Commission (CRC), you may recall the OIG's April 17, 2017, letter to the CRC, in which we wrote, "Where the CRAs are operated solely through the action of elected officials who appoint themselves as CRA directors, and there is no limitation on the subject areas of OIG inquiry regarding Officials and Employees, the charter expressly gives us the authority to investigate, report, and refer on their conduct in their CRA capacity."

John W. Scott, *Inspector General*

One North University Drive, Suite 111 • Plantation, Florida 33324 • (954) 357-7873 • Fax (954) 357-7857
www.browardig.org • (954) 357-TIPS

Similarly, municipal officials and employees cannot avoid OIG oversight by spending tax payer funds or otherwise engaging in any municipal affairs through any private, not-for-profit corporate entity.

Please feel free to contact me if you wish to discuss this matter.

Sincerely,



Carol "Jodie" Breece
General Counsel