

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF NORTH MIAMI AND
ALLIANCE FOR A HEALTHIER GENERATION -
HEALTHY OUT-OF-SCHOOL TIME**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into this ____ day of _____, 2015, by and between the **City of North Miami**, a Florida municipal corporation, having its principal office at 776 NE 125th Street, North Miami, FL 33161 (“City”) and the **Alliance For a Healthier Generation, Inc.**, a foreign non-profit corporation registered and authorized to do business under the laws of the State of Florida, having its principal office at 606 SE 9th Avenue, Portland, Oregon 97214 (“Alliance”). The City and the Alliance shall collectively be referred to as the “Parties”, and each may individually be referred to as a “Party”.

RECITALS

WHEREAS, the Alliance is a not-for-profit entity founded by the American Heart Association and the Clinton Foundation to reduce the prevalence of childhood obesity and to empower kids to develop lifelong, healthy habits; and

WHEREAS, the Alliance would like to provide support for out-of-school recreation program staff who work with participating children (“Participants”) Monday through Friday, from 2:00 pm through 6:00 pm at the following locations: Sunkist Grove Community Center, 12500 NW 13 Avenue, North Miami, FL 33167; and Griffing Community Center, 12220 Griffing Boulevard, North Miami, FL 33161 (“out-of-school time sites”);

WHEREAS, the City Manager desires to support and facilitate Alliance’s commitment to improve the health, safety, welfare, and quality of life for children residing in our City.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, the Parties hereto agree as follows:

ARTICLE 1 – TERM

1.1 The term of this MOU shall commence on September 22, 2015, and continue through August 30, 2016, unless earlier terminated with or without cause, by either Party. This MOU is subject to renewal in writing for an additional term of one (1) year, on a year-to-year basis with the mutual written consent of the Parties.

ARTICLE 2 – RESPONSIBILITIES OF THE PARTIES

2.1 In addition to the conditions and responsibilities stated elsewhere in this MOU, Alliance agrees to the following:

2.1.1 Designate a Healthy Out of School Time (“HOST”) Manager as the primary contact for out-of-school time sites.

2.1.2 Provide support, training and tools for the out-of-school time sites for program support and implementation, including the Six Step Program (attached hereto as Exhibit “A”).

2.1.3 Broker local, state and national resources to support out-of-school time sites in implementing an Action Plan (attached hereto as Exhibit "B").

2.1.4 Celebrate the achievements of out-of-school time sites in meeting the Healthy Out-of-School Time Framework (attached hereto as Exhibit "C").

2.1.5 Provide site and organizational data from online inventories and/or action plans upon request, in accordance with the Alliance Data Sharing Policy (attached hereto as Exhibit "D").

2.1.6 Alliance shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the HOST program services under this MOU, to prevent damage, injury or loss to participants or anyone else.

2.2 In addition to the conditions and responsibilities stated elsewhere in this MOU, the City agrees to the following:

2.2.1 Designate site-level and organization/leadership-level contacts for the Alliance.

2.2.2 Permit the Alliance, to the extent allowed by Florida law, to share site and organizational names for general coordination and promotional purposes.

2.2.3 Complete the out-of-school time sites intake form.

2.2.4 Participate in and provide space for all training workshops (as outlined in the Communication Plan (attached hereto as Exhibit "E")).

2.2.5 Communicate regularly with the HOST Manager as outlined in the Communications Plan.

2.2.6 Complete the Six Step Process by:

a) Identifying a team of 3 to 5 people who will actively participate in the Healthy Out-of-School Time Initiative's Six Step Process.

b) Completing the inventory on the HOST Website by November 28, 2015.

c) Selecting Action Plan goals using the online Action Plan tool and developing a detailed Action Plan that is aligned with the Healthy Out-of-School Time Framework by December 31, 2015.

d) Documenting at least one success story that demonstrates implementation of the Action Plan and submit by June 30, 2016. Complete required Alliance Consent and Release Forms as part of initial intake process and/or as needed.

2.3 Participate with Alliance for Healthier Generation evaluation activities as requested, including at least one annual staff survey as well as other formal or informal requests for feedback or data verification as needed.

ARTICLE 3 – RECORDS

3.1 Alliance shall maintain all HOST program related records for a period of three (3) years after the termination or completion of this MOU, including but not limited to the following:

3.1.1 A current roster with all Participants' names, addresses, and phone numbers.

3.1.2 Completed and executed Release and Waiver of Liability Forms for each Participant.

3.1.3 A log of comments or complaints when received pertaining to HOST program services and related activities.

3.1.4 Copies of all comments and/or complaints received in writing, relating in any way to the Program.

3.2 HOST Manager, HOST staff members, and any other members of Alliance who will have direct contact with Participants must complete and submit to the City Department of Parks and Recreation Manager or its designee, a Level II Background Investigation as required by Section 397.451, Florida Statutes.

3.3 Alliance agrees that any news release or other type of publicity pertaining to the program must recognize the City as a partner in this endeavor.

ARTICLE 4 – INSURANCE

4.1 Throughout the term of this MOU, Alliance shall maintain the following insurance policies:

4.1.1 Comprehensive General Liability Insurance in an amount not less than One Million Dollars and no cents (\$1,000,000.00) combined single limit for bodily injury and property damage. The policy shall be endorsed to include the City and its officers, agents and employees as additional insured, with all necessary endorsements showing the City as a first party insured.

4.1.2 Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$500,000 combined single limit for bodily injury and property damage.

4.1.3 The Comprehensive General Liability Insurance coverage as required above shall include those classifications listed in Standard Liability Insurance Manuals, which are applicable to the operations of Alliance in the performance of the MOU.

4.1.4 All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida and executed by duly licensed agents

upon whom service of process may be made in Miami-Dade County, Florida. All policies shall have a general policy holders rating of "A" or better and a financial rating no less than "X" as reported by Best's Key Rating Guide, published by A. M. Best Company, latest edition. The City of North Miami shall also be included as additional insured for general and auto liability. A valid certificate of insurance shall be provided to the City's Risk Management Division during the course of this contract. The City of North Miami shall be notified within 30 days of any notice of cancellation or non-renewal of insurance policies applicable to this contract. Alliance will also ensure that adequate replacement coverage is secured to avoid any coverage gaps in the event of cancellation or non-renewal.

ARTICLE 5 - TERMINATION

5.1 If the Alliance fails to comply with any term or condition of this MOU, or fails to perform any of its obligations hereunder, then Alliance shall be in default. The City shall have the right to terminate this MOU in the event the Alliance fails to cure a default within five (5) business days after receiving Notice of Default. Alliance understands and agrees that termination of this MOU under this section shall not release Alliance from any obligations accruing prior to the effective date of termination.

ARTICLE 6 - INDEPENDENT CONTRACTOR

6.1 Alliance is being engaged by the City as an independent contractor, and not as an agent or employee of the City. Accordingly, Alliance shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the City, nor any rights generally afforded classified or unclassified employees of the City. Alliance further understands that Florida workers' compensation benefits available to employees of the City, are not available to Alliance. Therefore, Alliance agrees to provide workers' compensation insurance, as required by Florida law, for any employee or agent of Alliance rendering HOST program services to Participants under this MOU.

ARTICLE 7 - CONFLICTS OF INTEREST

7.1 Alliance represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this MOU and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this MOU.

7.2 Alliance covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this MOU has any personal financial interest, directly or indirectly, with Alliance. Alliance further covenants that, in the performance of this MOU, no person having such conflicting interest shall be employed.

ARTICLE 8 - CITY'S RIGHT TO TERMINATE MOU

8.1 The City shall have the right to terminate this MOU, in its sole discretion at any time, with or without cause, upon thirty (30) calendar-days written notice to Alliance. The City shall not be liable to Alliance for any compensation, or for any consequential or incidental damages.

ARTICLE 9 - NOTICES

9.1 All notices, demands, correspondence and other communications between the Parties shall be deemed sufficiently given under the terms of this MOU when dispatched by registered or certified mail, postage prepaid, return receipt requested, addressed as follows or as the same may be changed from time to time:

For Alliance: Alliance for a Healthier Generation
Julie Satterwhite
Chief Operating Officer/Chief Financial Officer
606 SE 9th Avenue
Portland, OR 97214

To City: City of North Miami
Attn: City Manager
776 N.E. 125th Street
North Miami, Florida 33161

With a copy to: City Attorney
City of North Miami
776 N.E. 125th Street
North Miami, Florida 33161

9.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

9.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

ARTICLE 10 - INDEMNIFICATION

10.1 Alliance shall defend, indemnify and hold harmless the City, its officers and employees from and against any and all claims, costs, losses and damages including, but not limited to reasonable attorney's fees, caused by the negligent acts or omissions of Alliance, its officers, directors, agents, partners, subcontractors, employees and managers in the performance of HOST program services under this MOU.

ARTICLE 11 – CITY'S LIMITATION OF LIABILITY

11.1 The City desires to enter into this MOU only if in so doing the City can place a limit on the City's liability for any cause of action arising out of the MOU, so that its liability will never exceed the agreed sum of One Thousand Dollars (\$1,000.00). Alliance expresses its willingness to enter into this MOU with Alliance's recovery from the City for any action or claim arising from this MOU to be limited to a maximum amount of One Thousand Dollars (\$1,000.00).

11.2 Accordingly, and notwithstanding any other term or condition of this MOU, Alliance agrees that the City shall not be liable to Alliance for damages in an amount in excess of One Thousand Dollars (\$1,000.00), for any action or claim for breach of contract or for any action or claim arising out of this MOU.

11.3 Nothing contained in this MOU is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Chapter 768, Florida Statutes (2015). Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

ARTICLE 12 - FORCE MAJEURE

12.1 A "Force Majeure Event" shall mean an act of God, act of governmental body or military authority, fire, explosion, power failure, flood, storm, hurricane, sink hole, other natural disasters, epidemic, riot or civil disturbance, war or terrorism, sabotage, insurrection, blockade, or embargo. In the event that either Party is delayed in the performance of any act or obligation pursuant to or required by the MOU by reason of a Force Majeure Event, the time for required completion of such act or obligation shall be extended by the number of days equal to the total number of days, if any, that such Party is actually delayed by such Force Majeure Event. The Party seeking delay in performance shall give notice to the other Party specifying the anticipated duration of the delay, and if such delay shall extend beyond the duration specified in such notice, additional notice shall be repeated no less than monthly so long as such delay due to a Force Majeure Event continues. Any Party seeking delay in performance due to a Force Majeure Event shall use its best efforts to rectify any condition causing such delay and shall cooperate with the other Party to overcome any delay that has resulted.

ARTICLE 13 - JESSICA LUNSFORD ACT

13.1 In accordance with the requirements of Sections 435.04 and 435.05, Florida Statutes (2015) as well as with the requirements of HB 1877, The Jessica Lunsford Act (2005), effective September 1, 2005, as amended, and to the extent required by applicable law, Alliance agrees that all of its employees who provide or may provide HOST program services under this MOU have completed all background screening requirements as outlined in the above-referenced statutes. Alliance agrees to bear any and all costs associated with acquiring the required background screenings. Alliance agrees that it has an ongoing duty to maintain and update this list as new employees are hired and in the event that any previously screened employee fails to meet the statutory standards. Alliance further agrees to notify the City immediately upon becoming aware that one of its employees, who was previously certified as completing the background check, and meeting the statutory standards, is subsequently arrested or convicted of any disqualifying offense.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

14.1 No waiver or breach of any provision of this MOU shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

14.2 The City reserves the right to inspect or audit the records of the Alliance as they pertain to this MOU, at any time during the term of the MOU and for a period of three years after the MOU is terminated or completed.

14.3 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this MOU, shall survive completion of the HOST program services and termination or completion of the MOU.

14.4 Should any provision, paragraph, sentence, word or phrase contained in this MOU be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this MOU shall remain unmodified and in full force and effect or limitation of its use.

14.5 This MOU shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

14.6 This MOU constitutes the sole and entire agreement between the Parties. No modification or amendments hereto shall be binding on either Party unless in writing and signed by both Parties.

14.7 Alliance agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

14.8 HOST program services shall not be subcontracted, transferred, conveyed, or assigned under this MOU in whole or in part to any other person, firm or corporation without the prior written consent of the City.

14.9 This MOU shall be binding upon the Parties herein, their heirs, executors, legal representatives, successors and assigns.

14.10 Alliance agrees that it shall not discriminate as to race, sex, color, creed, national origin, or disability, in connection with its performance under this MOU.

14.11 The Alliance understands that the City and the public shall have access, at all reasonable times, to all documents and information pertaining to City contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.

14.12 All other terms, conditions and requirements contained in the RFP, which have not been modified by this MOU, shall remain in full force and effect.

14.13 Alliance shall assume full responsibility for any damage to any areas, land or property, whether public or private, resulting from the Alliance's performance under this MOU.

14.14 In the event of any dispute arising under or related to this MOU, the prevailing Party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this MOU, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

~~14.15 This MOU may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same MOU.~~

IN WITNESS WHEREOF, the Parties have executed this MOU by their respective proper officers duly authorized the day and year first written above.

ATTEST:

Corporate Secretary or Witness:

By: Rebekah Morse

Print Name: Rebekah Morse

Date: 10/15/15

Alliance for a Healthier Generation, a foreign not-for profit corporation,
"Alliance":

By: Julie Satterwhite

Print Name: Julie Satterwhite

Date: 10/15/15

ATTEST:

By: [Signature]

Michael A. Etienne, Esq.
City Clerk

City of North Miami, a Florida municipal corporation: "City"

By: [Signature]

Arthur H. Sorey, III
Interim City Manager

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

[Signature]
Roland C. Galgos, Esq.
Interim City Attorney