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MEMORANDUM

TO: Mayor Mark D. Bogen

FROM: Rocio Blanco Garcia, Assistant County Attorney

DATE: October 16, 2019

RE: **Invitation to Mayor Bogen to Attend the Florida Mayors Summit on Flooding & Sea Level Rise in Washington, DC.**
CAO File: 19-05E (Gifts)

The American Flood Coalition ("AFC"), an organization that is the principal of a lobbyist registered with Broward County ("County"), requested your attendance at the Florida Mayors Summit on Sea Level Rise and Flooding, which will take place in Washington, DC, on October 21 – 22, 2019. AFC has offered to reimburse governmental entities for their mayors' travel and lodging expenses related to the conference, which are estimated at \$1,500.

In accordance with the procedures set forth in Section 18-63(b) of the County's Administrative Code, and given the strong public interest served by having County representation at the event (as further outlined below), the County Administrator accepted AFC's offer as a gift to the County. You have now inquired whether you may attend the event without incurring any reimbursement obligations.

Under the state and county codes of ethics, there are two primary restrictions on the acceptance of gifts. The first is that no gift may be solicited or accepted if it may reasonably be perceived to have been given to encourage you to take any action in your official capacity. The second restriction caps the value of gifts that may be accepted from certain donors.

Florida Law Caps:

Under Section 112.3148(4), Florida Statutes, absent any applicable exception, County Commissioners are "prohibited from knowingly accepting, directly or indirectly, a gift from a vendor doing business with the [County] . . . or [from] a lobbyist who lobbies the [County Commission,] or directly or indirectly on behalf of the partner, firm, employer, or principal of a lobbyist, if he or she knows or reasonably believes that the gift has a value in excess

of \$100 . . .". There is no monetary limitation on gifts from other sources. "Gift" is generally defined as anything of value for which equal or greater consideration is not given within 90 days. § 112.312(12).

County's Code Caps:

Under the Broward County Ethics Code, with certain exceptions not applicable here, Commissioners cannot accept any gift, directly or indirectly, from a lobbyist or vendor, which gift exceeds \$5. "Elected officials may accept gifts from other sources given to them in their official capacity . . . up to a maximum of \$50.00 per occurrence." The term "gift" is defined as under Florida Law. § 1-19(b), Broward County Code of Ordinances.

Your Attendance At The Conference Event Does Not Give Rise To Any Reimbursement Obligations:

The conference offers an opportunity to learn about efforts among state, local, and federal governmental entities to protect the residents and infrastructure in their respective jurisdictions against the impacts of flooding and sea level rise. As a coastal community, Broward County is directly impacted by flooding related to sea level rise, as well as from tropical storms, tidal surge, and other weather events. By having a County official at the conference, the County will benefit from the information learned at the event, as well as from contacts made with other government officials and stakeholders to coordinate advocacy efforts to address this critical public safety issue.

There is no indication whatsoever that AFC seeks County representation at the event to indirectly influence any future official actions. As such, the question of reimbursement turns on whether the coverage of travel and lodging expenses constitutes a gift to you. Because of the strong public purpose served by the County's attendance at the event and because the travel and lodging costs were accepted by the County Administrator in accordance with the County's Code, AFC's reimbursement of the County's cost for your travel and lodging for the conference is a gift to the County and not a gift to you. The fact that you will attend as the County's representative does not change the conclusion that you will not incur a reimbursement obligation.

Section 112.3148(6)(b) states that, "a [County Commissioner] may accept a gift having a value in excess of \$100 from...a county...if a public purpose can be shown for the gift...". Further, Section 112.3148(6)(a) states that, "[a]...county...may give, either directly or indirectly, a gift having a value in excess of \$100 to [a County Commissioner]...if a public purpose can be shown for the gift...".

The Rules of the Florida Commission on Ethics define a public purpose as "that which promotes the public health, safety, and welfare of the citizens of the State or a political

subdivision therein, rather than the welfare of a specific individual or class of persons.” Rule 34-13.320(2)(b), Florida Administrative Code.

As stated above, your attendance at the conference will add to the County's knowledge base about flooding and sea level rise and enhance the County's ability to advocate for policies and funding to address these issues. As such, attendance at the conference meets the Rule's public purpose requirement of promoting the public health, safety, and welfare of the people of Broward County.

For these reasons, the County may pay for the cost of your travel and lodging for the AFC conference; its doing so does not constitute an improper gift to you, and you do not have any reimbursement obligation resulting from your attendance at the conference.

Disclosure Obligations:

The Florida Commission on Ethics has consistently construed applicable state law as allowing public officers to travel at their agency's expense and then have their agency obtain reimbursement from a donor for their travel without it being considered a reportable or prohibited gift to the public official. Additionally, even if AFC's reimbursement of the County's costs for your travel to the conference were to be construed as a gift to you and not to the County, Section 112.312(12)(b)8, Florida Statutes, excludes "gifts provided directly or indirectly by a state, regional, or national organization which promotes the exchange of ideas between... governmental officials or employees, and whose membership is primarily composed of elected or appointed public officials or staff, to members of that organization or officials or staff of a governmental agency that is a member of that organization." AFC, of which Broward County became a member in December 2018, meets the definition provided in this subsection, and thus its reimbursement of the County's travel expenses would not be considered a reportable or prohibited gift under state law. In an abundance of caution and in the interest of transparency, however, it is recommended that:

1. By March 1, 2020, the County provide you a statement of each gift to you having a value in excess of \$100. The County should include the conference travel and lodging costs given to you from the County on this statement.
2. By July 1, 2020, you should report each gift having a value in excess of \$100 given by the County to you using Florida Ethics Commission Form 10. The conference travel and lodging costs given by the County to you should be included on this form.

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Please contact the County Attorney or me if we may be of further assistance on this matter.

/s/ Rocio Blanco Garcia
Rocio Blanco Garcia
Assistant County Attorney

cc: Andrew J. Meyers, County Attorney
Bertha Henry, County Administrator