



To: Dona Spain, Historical Resources & Cultural Arts Director for the City of Coral Gables
ElizaBeth Guin, Historic Preservation Coordinator for the City of Coral Gables

From: Cristina M. Suarez, Deputy City Attorney for the City of Coral Gables

Approved: Miriam Soler Ramos, City Attorney for the City of Coral Gables *MSR*

RE: Legal Opinion Regarding Supplemental Funding for Restoration (MacFarlane Homestead Project)

Date: October 12, 2018

You have inquired whether the City Commission can authorize supplemental funding for the restoration of two homes pursuant to the MacFarlane Homestead Subdivision Local Historic District Rehabilitation Grant Program (the "MacFarlane Homestead Project") which is supported by the General Obligation Bond Building Better Communities Affordable Housing Grant Program ("BBC GOB Program") of Miami-Dade County (the "County"). In sum, yes, the City is contractually bound to pay for any costs beyond the amount of the grant funding in order to complete the restoration of these two homes, as set forth more fully below, and under these circumstances, it would be appropriate to seek Commission ratification for the additional funding. Moreover, the restoration of these homes benefits the neighborhood, serves a public purpose, and promotes the City's governmental objective of historic preservation.

As you are well aware, the MacFarlane Homestead Subdivision District was locally designated by the City of Coral Gables in 1989, and its boundaries were expanded and contributing and non-contributing properties updated in 1998. The Historic District was listed in the National Register of Historic Places ("National Register") in 1994 for its significance in the areas of Architecture, Community Planning and Development, and Ethnic Heritage. It is the only historic district listed in the National Register within the City of Coral Gables. The properties within the MacFarlane Homestead Subdivision, most of which were built during the late 1920s and 30s, are representative of a vernacular type of architecture not seen elsewhere in Coral Gables.

In March 2015, per Resolution No. 2015-28, the City Commission authorized the execution of an Interlocal and Grant Agreement ("Interlocal Agreement") with the County in order to receive grant funds in the amount of \$592,308.00. In compliance with the BBC GOB Program, to be eligible for grant funding, the owners of the homes had to occupy and use the home as their exclusive principal residence and meet the income qualifications in the County's Affordable Housing Restrictive Covenant, in addition to satisfying other County requirements. Pursuant to these requirements, two homes, located at 129 Frow

Avenue and 110 Oak Avenue, were selected for rehabilitation through the MacFarlane Homestead Project. It is my understanding that the project is nearing completion, but that the total expenses by the City exceed the total amount of grant funds from the County's BBC GOB Program. Pursuant to the express terms of the Interlocal Agreement, "[c]ost overruns are the sole responsibility of the [City]." Thus, the City is bound, under the terms of the Interlocal Agreement, to pay any additional funds necessary to complete the project. While there is no provision in the City Code that directly addresses this type of situation, it is similar to consideration of a change order request or contract modification which can be approved by the City Manager if it does not exceed 15 percent of the original contract amount. See Sec. 2-764(a) of the City Code. Thus, arguably, City Commission approval may not strictly be required if the additional funding is less than 15% of the original grant amount. However, under these particular circumstances and in the interest of transparency, it would be appropriate to present this issue to the City Commission for its ratification.

Furthermore, pursuant to Resolution No. 2015-28 approving the Interlocal Agreement, the City Commission has acknowledged the City's interest in "providing support to low and moderate income households in this area" and recognized that the rehabilitation of these homes "will benefit the neighborhood and serve a public good." In addition, this office has previously opined that the restoration of these local historic landmarks "serves a public purpose and promotes the City's governmental objective of historic preservation." CAO 2016-051.

Finally, funding is available from an appropriate source because pursuant to Resolution No. 2010-255, the developer of the original Gables Gateway project which is now known as "Gables Ponce" contributed \$200,000 to the City "to promote affordable/attainable housing within the City" as a payment in lieu of renting fifteen percent of the project's units at "attainable/affordable" rental rates. While the \$200,000 fell into fund balance and was not assigned, use of those funds for this purpose is appropriate and consistent with the intention of the City Commission.

This opinion is issued pursuant to section 2-252(e)(1) and (8) of the City Code.

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