

Jan Brewer

From: William Clague
Sent: Thursday, July 30, 2020 1:40 PM
To: Jan Brewer
Cc: Mitchell Palmer; Alex Nicodemi; Cheri Coryea; Karen Stewart; Sheila Ballesteros; Juliet Shepard
Subject: Interlocal Agreement for CARES Act Funding; CAO Matter No. 2020-0321
Attachments: Template for CARES Act Interlocal Agreement (CAO v1).docx

Jan:

Pursuant to the above Request for Legal Services you have asked this Office to review a draft template interlocal agreement (ILA) to provide funding to government agencies pursuant to the CARES Act. The following information is relevant to our response:

1. In response to the COVID-19 health emergency, the U.S. Congress has allocated substantial funds for assistance to provide economic support to those suffering from employment or business interruptions due to COVID-19-related business closures. This includes the authority to fund expenditures incurred to allow government entities to respond directly to the emergency, so long as funds are not used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the CARES Act.
2. The County has received an initial distribution of \$17.5 million in CARES Act funds (with an expected \$52.2 million to follow) pursuant to a Funding Agreement with the Florida Division of Emergency Management.
3. We have prepared draft documents and reviewed various staff-prepared documents to provide CARES Act funds to businesses and non-profits pursuant to RLS-2020-0317. This RLS seeks to set up a template ILA to provide CARES Act funding to various government offices, such as municipalities, constitutional officers, and judicial programs

We provide the following legal advice in response to the RLS:

1. Attached is a redlined revision to the ILA, providing for reimbursement to various "Agencies" for "Expenditures" that are eligible for funding pursuant to the CARES Act. While many of my suggested changes are intended for purposes of clarity and consistency, some are substantive. Please review the redline from a fiscal and business standpoint, paying particular attention to comments in the margins, to make sure that the document reflects the intent of the County Administration.
2. The County has approved other CARES Act programs by resolution, by which the Board delegated authority to staff to execute standard grant agreements. As I indicated to you in prior conversations, we advise against that practice for purposes of approving ILAs, as they are subject to statutory requirements that contemplate Board approval of each individual ILA. While we have no objection to the use of a resolution to establish funding guidelines for such transactions, it is not legally necessary to do so.
3. Please provide any requested changes to the ILA by redline in MS Word utilizing track changes.

Subject to the resolution of the above issues, we have no objection from a legal standpoint to the use of the template ILA. We express no opinion as to the business or policy judgment regarding the same.

This concludes our response to the RLS. Please contact me or Ms. Nicodemi if you have any questions or concerns.

William Clague, Chief Assistant County Attorney
Manatee County Attorney's Office
1112 Manatee Avenue West
Bradenton, FL 34205
(941)745-3750
william.clague@mymanatee.org

INTERLOCAL AGREEMENT

regarding

CARES ACT FUNDING

MANATEE COUNTY, FLORIDA

_____, FLORIDA

This Interlocal Agreement (“Interlocal Agreement” or “Agreement”) is made and entered into as of the ___ day of ____, 2020, by and between **Manatee County**, a political subdivision of the State of Florida, hereinafter referred to as the “County”, and the **Agency**, a municipal corporation, Constitutional Office, or Judicial Office created and existing under the laws of the State of Florida, hereinafter referred to as the “Agency”.

RECITALS

WHEREAS, on March 9, 2020, the Governor of the State of Florida issued Executive Order No. 20-52 in which the Governor declared that a State of Emergency exists in the State of Florida due to the COVID-19 pandemic; and

WHEREAS, on March 16, 2020, the Board of County Commissioners of Manatee County (“Board”) adopted Resolution No. R-20-098, declaring a County-wide Public Health Emergency pursuant to Section 2-13-17 of the Manatee County Code of Ordinances due to the COVID-19 pandemic; and

WHEREAS, on March 27, 2020, Congress passed and the President signed the “Coronavirus Aid, Relief, and Economic Security Act” (“CARES Act”); and

WHEREAS, on April 22, 2020, the U.S. Treasury Department issued Guidance (“Treasury Guidance”) for State, Territorial, Local, and Tribal Governments relating to payments made available under the CARES Act; and

WHEREAS, the Federal CARES Act, section 601(d) of the U.S. Social Security Act, created the Coronavirus Relief Fund and provided Florida with \$8,328,221,072, 55% of which was allocated to the State of Florida and 45% of which was allocated to counties, including \$17,500,000 (with an expected \$52,500,000 to follow) that has been allocated to the County pursuant to a CARES Act Funding Agreement (“Funding Agreement”) between the County and the Florida Division of Emergency Management (“Division”); and

WHEREAS, pursuant to the Funding Agreement, CARES Act funds allocated to the County may be used for, among other things, expenditures incurred to allow government entities such as the Agency to respond directly to the emergency, so long as funds are not used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the CARES Act; and

WHEREAS, Agency has requested that the County provide Agency with CARES Act funds to be used in accordance with the CARES Act, the Funding Agreement and Treasury Guidance, to fund the eligible expenditures incurred by the Agency more particularly described in Exhibit “A” attached hereto and incorporated herein by reference (the “Expenditures”); and

WHEREAS, Section 163.01, *Florida Statutes*, the “Florida Interlocal Cooperation Act”, permits the County and any public agency to enter into this Interlocal Agreement to exercise the powers, privileges and authority which they share in common and which each might exercise separately, in order to make the most efficient use of their powers; and

WHEREAS, the County and the Agency wish to enter into this Interlocal Agreement to establish their mutual rights and obligations with respect to joint participation in the funding of the Expenditures with CARES Act revenues received by the County pursuant to the Funding Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the County and the Agency agree as follows:

Article I
AUTHORITY

This Interlocal Agreement is entered into pursuant to the powers and authority granted to the parties hereto under the Constitution and laws of the State of Florida, including expressly (but not limited to) Sections 1 and 2 of Article VIII of the Constitution of the State of Florida, Chapters 125 and 166 of Florida Statutes and Section 163.01 of Florida Statutes.

Article II
COUNTY CONTRIBUTION TOWARD PROJECT
FUNDING

2.1 Eligible Expenditures. The Agency has identified the Expenditures as expenses which have been incurred due to COVID 19 that qualify in accordance with the CARES Act, the Treasury Guidance and the Funding Agreement. Expenditures may include expenses incurred prior to the effective date of this Interlocal Agreement so long

as they are otherwise eligible for CARES Act funding and comply with Section 2.3, hereof.

2.2 County Contribution Toward Funding. The County shall reimburse the Agency for actual costs incurred to pay Expenditures, in an amount not to exceed _____ dollars (\$_____).

2.3 Invoice and Payment. The County shall reimburse the Agency for Expenditures described in Section 2.2, within ninety (60) days of receipt of an application for payment that meets the requirements of this Section. The Agency applications for payment shall be submitted as written requests to the County Administrator and shall:

(i) identify all Expenditures funded by the Agency in accordance with with the following requirements:

- (1) only necessary Expenditures incurred by the Agency due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19) shall be included;
- (2) Expenditures shall not have been accounted for in the Agency budget most recently approved as of March 27, 2020; and
- (3) Expenditures shall have been incurred by the Agency during the period that begins on March 1, 2020 and ends on December 30, 2020;

(ii) demonstrate that all Expenditures reflect eligibility as defined within the Funding Agreement and the Treasury Guidance; and

(iii) include detailed invoices (indicated as paid with reference to date of payment and check number), copies of cancelled checks (front & back) and a completed W-9, and any other documentation acceptable to the County reasonably necessary to identify the Expenditures incurred and funded by the Agency.

The Agency shall apportion reimbursable costs on a submission schedule beginning on _____, and shall submit applications for payment no more frequently than once every three (3) weeks.

2.4 Use of County Payments. The Agency shall use the funds paid by the County to the Agency hereunder solely for the purpose of reimbursement for Expenditures as provided herein.

2.5 Reimbursement to County for Ineligible Expenditures. In the event that the State of Florida or the United States, or any department or agency thereof, determines that any Expenditure funded pursuant to this Agreement is ineligible for such funding for any reason, the Agency shall reimburse to the County one hundred percent (100%) of such

Expenditure and any interest thereon that is due and owing to the State of Florida or the United States. Once notified by the County of such a determination of ineligibility, the Agency shall pay such reimbursement to the County within thirty (30) days. The obligation of the Agency pursuant to this Section shall survive the termination of this Interlocal Agreement.

2.6. Records and Accounting. The Agency shall maintain records of the receipt and use of CARES Act funds in accordance with general accepted governmental accounting principles, and shall allow access to such records by the County, the Clerk to the Board of County Commissioners and their independent auditors, for purposes of verifying the legal use of CARES Act funds.

**Article III
TERM AND TERMINATION.**



3.1 Effective Date. This Interlocal Agreement shall take effect as of its date set forth above.

3.2 Termination. Unless terminated for cause in accordance with applicable law, this Interlocal Agreement shall terminate on **September 30, 2021.**

**Article IV
AMENDMENTS; ENFORCEMENT**

4.1 Amendments Generally. This Interlocal Agreement may be amended, and its material provisions may be waived, only by written instrument expressly approved for the County by the Board of County Commissioners and for **the Agency by _____**, and only if properly executed by all the parties hereto.

4.2. Enforcement. The parties to this Interlocal Agreement shall have all legal and equitable remedies provided by Florida law for enforcement hereof.

**Article V
MISCELLANEOUS PROVISIONS**

5.1 Validity. After consultation with their respective legal counsel, the County and the Agency each represents and warrants to the other its respective authority and power under Florida law to enter into this Interlocal Agreement, acknowledges the validity and enforceability of this Interlocal Agreement, and waives any future right of defense based on claim of illegality, invalidity or unenforceability of any nature. The Agency and the County each hereby represents, warrants and covenants to and with the other (i) that this Interlocal Agreement has been validly approved by its respective governing body at a duly held public meeting, or in the case of the Agency, by its duly authorized officer, and (ii) that

this Interlocal Agreement constitutes a legal, valid and binding contract enforceable against the respective party in accordance with the terms hereof (assuming the due authorization, execution and delivery hereof by the other party hereto).

5.2 No General Obligation; Availability of Funds.

A. Notwithstanding any other provisions of this Interlocal Agreement, the obligations undertaken by the parties hereto shall not be construed to be or constitute general obligations, debts or liabilities of the Agency, the County or the State of Florida or any political subdivision thereof within the meaning of the Constitution and laws of the State of Florida, but shall be payable solely in the manner and to the extent provided in or contemplated by the respective authorizing instruments and this Interlocal Agreement.

B. The County intends to fund the reimbursements to be made hereunder with legally available CARES Act funds. The obligations of the County to reimburse the Agency for Reimbursable Costs hereunder is subject to the discretion of the Board of County Commissioners to budget legally available funds, including without limitation CARES Act funds, as well as other revenues, in amounts sufficient to fund the reimbursements described in Article II, hereof. To the extent of any conflict between this subsection and any other provision of this Interlocal Agreement, this subsection shall control.

5.3 Indemnification. To the extent permitted by law, including without limitation Section 768.28, Florida Statutes and the dollar limitations set forth therein, and from legally available funds, each of the parties hereto (in such context, an “indemnifying party”) shall defend, indemnify and save harmless the other, its officers, agents, employees and assigns, from and against any and all liabilities, claims, damages, losses and expenses, including costs and attorney’s fees, arising out of or resulting from the negligent or wrongful acts or omissions of such indemnifying party, its officers, agents or employees, made in connection with the performance of the acts, duties, covenants and obligations contemplated in, or imposed pursuant to, this Interlocal Agreement.

5.4 Force Majeure. No party shall be liable for any failure to perform, or delay in the performance of, any obligation under this Interlocal Agreement if such failure is caused directly by hurricane, tornado, fire, earthquake, civil commotion or failure or disruption of utility services, or other like cause beyond the reasonable control of the party obliged to perform.

5.5 Ambiguities. Both parties have been allowed equal input regarding the terms and wording of this Interlocal Agreement and have had the benefit of consultation with legal counsel prior to its execution, such that all language herein shall be construed equally against the parties, and no language shall be construed strictly against its drafter.

5.6 Headings; Construction. The headings or captions of sections or

paragraphs used in this Interlocal Agreement are for convenience of reference only and are not intended to define or limit their contents, nor are they to affect the construction of or to be taken into consideration in interpreting this Interlocal Agreement. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine and neuter, singular or plural, as the identities of the party or parties, personal representatives, subcontractors, successors or assigns may require.

5.7 Severability. The provisions of this Interlocal Agreement are declared by the parties to be severable.

5.8 Governing Law; Venue. This Interlocal Agreement shall be governed by and construed in accordance with laws of the State of Florida, and venue for any action arising out of or related to this Interlocal Agreement shall be in the Circuit Court for the Twelfth Judicial Circuit in Manatee County, Florida.

5.9 Full Agreement; Filing with Clerk of Circuit Court. This Interlocal Agreement contains the entire agreement of the parties with respect to the matters addressed herein. Previous agreements and understandings of the parties with respect to such matters are null and void and of no effect. As required by Subsection 163.01(11) of Florida Statutes, this Interlocal Agreement and all amendments thereto shall be filed with the Clerk to the Circuit Court for Manatee County.

5.10 Notices. All notices, elections, requests and other communications hereunder shall be in writing and shall be deemed given in the following circumstances: when personally delivered; or three (3) business days after being deposited in the United States Mail, postage prepaid, certified or registered; or the next business day after being deposited with a recognized overnight mail or courier delivery service; or when transmitted by facsimile or telecopy transmission, with receipt acknowledged upon transmission; and addressed as follows (or to such other person or at such other address, of which any party hereto shall give written notice as provided herein):

If to County: Manatee County Administrator
 Manatee County Administration Center
 1112 Manatee Avenue, Suite 920
 Bradenton, Florida 34205
 Facsimile: (941)745-3790

With copies to: Manatee County Clerk of the Circuit Court
 Angelina Colonnese, Clerk
 1115 Manatee Avenue West
 Bradenton, Florida 34205
 Facsimile: (941)741-4082

And

Manatee County Attorney's Office
1112 Manatee Avenue West, Suite 969
Bradenton, Florida 34205
Attention: County Attorney
Facsimile: (941)749-3089

If to Agency: AGENCY ADDRESS

In all cases, notices shall be deemed delivered to a party only upon delivery of copies to the persons indicated above in the same manner as for the party being notified.

*[signature page to
follow]*

WHEREFORE, the County and the Agency have executed this Interlocal Agreement as of the date and year first above written.

MANATEE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
County Administrator



By: _____


ATTEST: _____, Clerk


EXHIBIT "A"
to
Interlocal Agreement
Description of Expenditures