

INTERLOCAL AGREEMENT BY AND BETWEEN

LEE COUNTY, FLORIDA

And

THIS AGREEMENT is made and entered into, by and between Lee County, a political subdivision and Charter County of the State of Florida, hereinafter referred to as the "COUNTY" and Estero, hereinafter referred to as the "MUNICIPALITY".

RECITALS

WHEREAS, Section 163.01, Florida Statutes, authorizes local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities; and

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

WHEREAS, the CARES Act, in part, amends the Social Security Act (42 U.S.C. 601) by establishing the Coronavirus Relief Fund in the amount of \$150 billion dollars for payments to States, Tribal governments and units of local government based on their populations, with no State receiving less than \$1.25 billion dollars; and

WHEREAS, the MUNICIPALITY requests and the COUNTY agrees, to provide funding to the MUNICIPALITY for eligible expenditures under the CARES Act relating to COVID-19, pursuant to the terms and conditions specified herein; and

WHEREAS, the United States Department of Treasury disbursed \$2,472,413,692 of CARES Act funds directly to counties with a population in excess of 500,000; and

WHEREAS, Lee County accepted CARES Act funding from the United States Department of the Treasury; and

WHEREAS, this Interlocal Agreement is consistent with CARES Act guidelines of providing fast and direct economic assistance for American workers, families, small business, and preserves jobs for American industries; and

WHEREAS, these funds serve important mutual interests of both the COUNTY and the MUNICIPALITY.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the COUNTY and the MUNICIPALITY agree as follows:

ARTICLE 1
CARES Act Funding

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, Section 601(d) of the Social Security Act, established the \$150 billion Coronavirus Relief Fund. The United States Department of Treasury made payments from the Fund to States and eligible units of local government. The CARES Act requires that payments from the Coronavirus Relief Fund only be used to cover expenses that: (1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19); (2) were not accounted for in the budget most recently approved as of March 27, 2020 for the State or government; and (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

The COUNTY agrees to provide financial assistance to the MUNICIPALITY in an amount not to exceed \$478,157. The MUNICIPALITY must use this financial assistance for expenses eligible under 601(d) of the Social Security Act, specifically the Coronavirus Relief Fund to mitigate financial hardships incurred because of COVID-19 during the Term. The MUNICIPALITY shall review the United States Department of Treasury website for updates on CARES Act funding to ensure usage of the funds complies with the most updated Coronavirus Relief Fund guidance.

This Agreement is subject to the requirements of 2 C.F.R. §200.331.

ARTICLE 2
Term of Agreement

This Agreement is effective starting March 1, 2020, and ends on March 1, 2021, unless terminated earlier in accordance with this Agreement.

ARTICLE 3
Representations

This Agreement is entered into based on the following representations:

- A. The MUNICIPALITY represents that it is fully qualified and eligible to receive this funding for the purposes identified herein;
- B. The COUNTY has received these funds from the United States Department of Treasury and has the authority to distribute these funds to the MUNICIPALITY upon the terms and conditions set forth herein.

ARTICLE 4
Payment and Reporting Requirements

All payments made under this Agreement shall be on a reimbursement basis. These reimbursement monies are from CFDA 21.019. In order to obtain reimbursement for expenditures, the MUNICIPALITY must file with the COUNTY its request for reimbursement and any other information required to justify and support the payment request. The reimbursement requests are due on or before October 1, 2020 and again on January 2, 2020. Payment requests must include a certification, signed by an official who is authorized to legally bind the MUNICIPALITY, which reads as follows:

By signing this request, I certify to the best of my knowledge and belief that the request is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the reimbursement. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730 and 3801–3812).

These funds must be spent in accordance with the guidance on the United States Treasury’s website <https://home.treasury.gov/policy-issues/cares/state-and-local-governments>. MUNICIPALITY is required to review the website for updates to ensure compliance with the most updated CRF guidance.

The COUNTY shall verify all documentation received prior to expending funds under this Agreement and may request additional documentation, if needed. Reimbursements will only be made for expenditures that the COUNTY provisionally determines are eligible under the CARES Act. The COUNTY retains the right to deny any request for funds under this Agreement if in the COUNTY’S sole discretion the request is not for and documentation does not substantiate an eligible expenditure. However, the COUNTY’S provisional determination that an expenditure is eligible does not relieve the MUNICIPALITY of its duty to repay the COUNTY for any expenditures that are later determined by the COUNTY or the Federal government to be ineligible.

The COUNTY shall not honor requests for payment after January 2, 2021 and will not be liable for non-payment of a late request. All refunds and return of improper payments due to the COUNTY under this Agreement are payable to Lee County by electronic transfer. All funding under this Agreement is subject to availability and the amount of consideration may be reduced.

ARTICLE 5 Records and Audit

The MUNICIPALITY and any of its subcontractors providing any services required to be performed by the MUNICIPALITY under this Agreement, shall maintain adequate records and accounts, including but not limited to property, personnel and financial records, and supporting documentation to assure a proper accounting for all COUNTY funds received under this Agreement as outlined in the U.S. Department of Treasury Memorandum for Coronavirus Relief Fund Recipients dated July 2, 2020, or as maybe amended. MUNICIPALITY shall provide any documentation requested by COUNTY to supplement any required reporting. The COUNTY and its authorized agents shall have the right, and the MUNICIPALITY and its subcontractors, as applicable, will permit the COUNTY and its authorized agents, to examine all such records, accounts and documentation and to make copies thereof, and excerpts or transcriptions therefrom, and to audit all contracts, invoices, materials, accounts and records relating to all matters covered by this Agreement, including but not limited to personnel and employment records for the Audit Period. All such records, accounts and documentation shall be made available to the COUNTY and its authorized agents for audit, examination or copying purposes at any time during normal business hours and as often as the COUNTY may deem necessary during the Audit Period. The COUNTY’S right to examine, copy and audit shall pertain likewise to any audits made by any other agency, whether local, state or federal. The MUNICIPALITY shall ensure that any subcontractor providing any services under this Agreement shall recognize the COUNTY’S right to examine, inspect and audit its records, accounts and documentation in connection with its provision of services required to be provided by the MUNICIPALITY under this Agreement. If an audit is begun by the COUNTY or other agency whether local, state or federal, during the Audit Period, but is not completed by the end of the Audit Period, the Audit Period shall be extended until audit findings are issued.

If an audit shows that all or any portion of the funds disbursed were not spent in accordance with the conditions of and in strict compliance with the Agreement, the MUNICIPALITY will be held liable for reimbursement to the COUNTY of all funds not spent in accordance with these applicable regulations and Agreement within thirty (30) days after the COUNTY has notified the MUNICIPALITY of such non-compliance. This Article 5 shall survive the expiration or earlier termination of this Agreement.

ARTICLE 6
Default

- A. If any of the following events occur (“Events of Default”), the County may exercise any of its remedies set forth in Article 7. However, the COUNTY may make payments or partial payments after any Events of Default without waiving the right to exercise such remedies, and without becoming liable to make any further payment.
1. If any warranty or representation made by the MUNICIPALITY in this Agreement is or becomes false or misleading in any respect, or if the MUNICIPALITY fails to keep or perform any of the obligations, terms or covenants in this Agreement and has not cured them in timely fashion, or is unable or unwilling to meet its obligations under this Agreement;
 2. If any documents required by this Agreement have not been submitted to the COUNTY or been submitted with incorrect, incomplete or insufficient information;
 3. If the MUNICIPALITY has failed to perform and complete on time any of its obligations under this Agreement.

ARTICLE 7
Remedies

If an Event of Default occurs, then the COUNTY may, after thirty (30) days written notice to the MUNICIPALITY and upon the MUNICIPALITY’S failure to cure within those thirty (30) days, exercise one or more of the following remedies, either concurrently or consecutively:

- A. Terminate this Agreement, provided that the MUNICIPALITY is given at least thirty (30) days prior written notice of the termination. The notice shall be effective when placed in the United States, first class mail, postage prepaid, by registered or certified mail-return receipt requested, to the address listed below;
- B. Withhold or suspend payment of all or any part of a request for payment;
- C. Require that the MUNICIPALITY refund to the COUNTY any monies used for ineligible purposes under the laws, rules and regulations governing the use of these funds.
- D. Exercise any other rights or remedies that may be available under law. If the COUNTY waives any right or remedy in this Agreement or fails to insist on strict performance by the MUNICIPALITY, it will not affect, extend or waive any other right or remedy of the COUNTY, or affect the later exercise of the same right or remedy by the COUNTY for any other default by the MUNICIPALITY.

ARTICLE 8
Indemnification

To the extent permitted by Fla. Stat. §768.28, the MUNICIPALITY shall indemnify, hold harmless, and defend the COUNTY and the Lee County Board of County Commissioners, and the respective agents and employees of the COUNTY and the Lee County Board of County Commissioners (all of the foregoing, collectively, the "Indemnified Parties") from and against any and all liabilities, losses, claims, damages, demands, expenses or actions, either at law or in equity, including court costs and attorneys' fees, that may hereafter at any time be made or brought by anyone on account of personal injury, property damage, loss of monies, or other loss, allegedly caused or incurred, in whole or in part, as a result of any negligent, wrongful, or intentional act or omission, or based on any act of fraud or defalcation by the MUNICIPALITY, its agents, subcontractors, assigns, heirs, and employees during performance under this Agreement. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity applies. Nothing herein will be construed as consent by the COUNTY to be sued by third parties in any matter arising out of this Agreement.

The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9
Termination

The COUNTY may terminate this Agreement for cause after thirty (30) days written notice. Cause may include misuse of funds, fraud, lack of compliance with applicable rules, laws and regulations.

The COUNTY may terminate this Agreement for convenience or when it determines, in its sole discretion that continuing the Agreement would not produce beneficial results in line with the further expenditure of funds, by providing the MUNICIPALITY with thirty (30) days prior written notice.

The parties may agree to terminate this Agreement for their mutual convenience through a written amendment of this Agreement. The amendment will state the effective date of the termination and the procedures for proper closeout of this Agreement.

In the event this Agreement is terminated, the MUNICIPALITY will not incur new obligations for the terminated portion of this Agreement after they have received the notification of termination. Costs incurred after receipt of the termination notice will be disallowed. The MUNICIPALITY will not be relieved of liability to the COUNTY because of any breach of this Agreement by the MUNICIPALITY. The COUNTY may, to the extent authorized by law, withhold payments to the MUNICIPALITY for the purpose of set-off until the exact amount of damages due the COUNTY from the MUNICIPALITY is determined.

ARTICLE 10
Dispute Resolution

In the event of a dispute related to any performance or payment obligation arising under this Agreement, the Parties shall exhaust COUNTY administrative dispute resolution procedures prior to filing a lawsuit or otherwise pursuing legal remedies.

In the event that COUNTY administrative dispute resolution procedures are exhausted, either Party to this Agreement may notify the other Party in writing that it wishes to commence formal dispute resolution with respect to any unresolved problem under this Agreement. The Parties agree to submit the dispute to a Florida Certified Circuit Court Civil Mediator for mediation, within sixty (60) days following the date of this notice. In the event that any dispute cannot be resolved by mediation, the dispute may be filed as a civil action in the Circuit Court of the Twentieth Judicial Circuit of Florida, in and for Lee County, Florida, which is the sole venue for any such civil action.

ARTICLE 11
Public Records Law

Florida's Public Records Law provides a right of access to the records of the state and local governments as well as to private entities acting on their behalf. Unless specifically exempted from disclosure by the Legislature, all materials made or received by a governmental agency (or a private entity acting on behalf of such an agency) in conjunction with official business which are used to perpetuate, communicate, or formalize knowledge qualify as public records subject to public inspection.

IF THE MUNICIPALITY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (239) 533-2112, PRRCUSTODIAN@LEEGOV.COM OR LEE COUNTY CUSTODIAN OF PUBLIC RECORDS 2115 SECOND ST., FORT MYERS, FL 33901.

ARTICLE 12
Governing Laws

This Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and venue shall be in Lee County, Florida.

ARTICLE 13
Compliance With Applicable Laws

The MUNICIPALITY shall comply with the requirements of all applicable statutes, rules and regulations pertaining to or regulating the provision of this Agreement.

ARTICLE 14
Assignment

This Agreement may not be assigned nor subcontracted in whole or in part without the prior written consent of the COUNTY.

ARTICLE 15
Headings

Article headings have been included in the Agreement solely for the purpose of convenience and shall not affect the interpretation of any of the terms of this Agreement.

ARTICLE 16
Severability

In the event any section, sentence, clause, or provision of this Agreement is held to be invalid, illegal or unenforceable by a court having jurisdiction over the matter, the remainder of the Agreement shall not be affected by such determination and shall remain in full force and effect.

ARTICLE 17
Survivability

Any term, condition, covenant or obligation which requires performance by either party subsequent to termination of this Agreement shall remain enforceable against such party subsequent to such termination.

ARTICLE 18
Third Party
Beneficiaries/Independent Contractor

This Agreement is for the benefit of the COUNTY and the MUNICIPALITY. No third party is an intended beneficiary so as to entitle that person to sue for an alleged breach of this Agreement. It is agreed that nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing a relationship of co-partners between the Parties, or as constituting MUNICIPALITY, including its officers, employees, and agents, the agent, representative, as employees of COUNTY for any purpose or in any manner whatsoever. The Parties are to be and will remain independent contractors with respect to all matters pertinent to this Agreement.

ARTICLE 19
Modifications

This writing embodies the entire agreement and understanding between the parties hereto and there are no other agreements and/or understandings, oral or written, with respect to the subject matter hereof, that are not merged herein and superseded hereby. This Agreement may only be amended or extended by a written instrument executed by the COUNTY and the MUNICIPALITY expressly for that purpose.

ARTICLE 20
Notice

Any notices required or permitted to be given hereunder shall be sent by United States certified mail, return receipt requested, or by overnight delivery service or personal delivery with signature verification, to the attention of the following representatives of the parties:

COUNTY:
Roger Desjarlais, County Manager
P.O. Box 398
Fort Myers, FL 33902

Or to the following address for overnight delivery service or personal delivery:

Roger Desjarlais, County Manager
2115 Second St
Fort Myers, FL 33901

MUNICIPALITY:

IN WITNESS WHEREOF, the MUNICIPALITY and the COUNTY respectively, have caused this Agreement to be executed by their duly authorized representatives

ATTEST:
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Brian Hamman, Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

County Attorney's Office

MUNICIPALITY:

BY: _____