

**FUNDING AGREEMENT BETWEEN
SARASOTA COUNTY, FLORIDA
AND
CITY OF NORTH PORT
FOR
SARASOTA CARES PROGRAM REIMBURSEMENT**

THIS FUNDING AGREEMENT, hereinafter referred to as "Agreement", is made and entered into as of the date of execution by both parties, by and between SARASOTA COUNTY, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY" and CITY OF NORTH PORT, hereinafter referred to as "CITY."

WHEREAS, the Coronavirus Disease 2019 ("COVID-19") is an infectious acute respiratory illness capable of spreading rapidly among humans and capable of causing severe illness and death; and

WHEREAS, on March 27, 2020, the President of the United States signed into law the *Coronavirus Aid, Relief, and Economic Security Act*, Public Law 116-136, hereinafter referred to as the "CARES Act", to facilitate the provision of federal assistance and relief in response to the COVID-19 pandemic; and

WHEREAS, Title V of the CARES Act established the "Coronavirus Relief Fund" and appropriated \$150 billion in such fund for Fiscal Year 2020 to provide direct assistance to state, tribal, territorial, and local governments to fund certain necessary and allowable expenses incurred due to the public health emergency with respect to COVID-19; and

WHEREAS, on June 10, 2020, the Governor of the State of Florida announced that the State would disburse up to \$1.275 billion in Coronavirus Relief Funds to counties with a population below 500,000 using a phased approach through the Florida Division of Emergency Management, herein referred to as "FDEM"; and

WHEREAS, on July 23, 2020 the County and FDEM entered into FDEM CARES Act Funding Agreement No. Y2263 providing Coronavirus Relief Funds to the County either directly or on a reimbursement basis and pursuant to which the County may provide financial assistance to those individuals and entities impacted by the COVID-19 pandemic; and

WHEREAS, on October 1, 2020 the County in recognizing the financial impacts of COVID-19 on the public sector entities within Sarasota County, established an allocation of financial assistance for these public sector entities to receive reimbursement from County of certain COVID-19 related expenses as established through the Sarasota CARES Program.

NOW, THEREFORE, in consideration of the promises and the mutual benefits to be derived here from, the COUNTY and the CITY do hereby agree as follows:

SECTION 1. RECITALS.

The above recitals are true and correct and are hereby incorporated herein by reference and made a part of this Agreement.

SECTION 2. GENERAL.

In performing under this Agreement, the CITY does hereby agree to fully comply with the terms and conditions set forth in this Agreement and all attachments and exhibits hereto and all other applicable federal, state, and local laws, rules, regulations, and guidance.

SECTION 3. TERM.

- A. This Agreement shall begin upon execution by both Parties (the "Effective Date") and shall remain in effect until May 1, 2021 (the "Termination Date") unless terminated earlier in accordance with Section 9 hereof, except that the provisions contained within Sections 7, 8, 9, 12 and 13 shall survive the termination of this Agreement.
- B. The CITY shall be eligible for reimbursement for eligible and allowable costs as defined in Section 4 hereof and where submitted by CITY and approved by COUNTY.

SECTION 4. COSTS; COST REIMBURSEMENT; SUPPORTING DOCUMENTATION.

- A. Subject to the terms and conditions of this Agreement, the COUNTY shall pay the CITY, on a cost reimbursement basis, up to a maximum of Two Million Twenty-Two Thousand Six Hundred Ninety-Four Dollars and Zero Cents (\$2,022,694.00) under this Agreement for eligible and allowable costs, as further defined in Section 4.B., hereof. Advance payment of funds to the CITY under this Agreement shall not be permitted.
- B. Eligible and allowable costs are defined as costs that:
 - 1. are necessary expenditures incurred due to the public health emergency with respect to COVID-19;
 - 2. were not accounted for in the budget most recently approved as of March 27, 2020 (the date of enactment of the CARES Act) for the state or government with exception of "public health and safety" employee payroll and fringe, as defined by the U.S. Treasury; and
 - 3. were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020;
 - 4. are costs borne by the CITY to be related to the COVID-19 pandemic, which may include the following expenses: employee payroll and associated fringe, personal protective equipment (PPE), COVID-19 testing, supplies and equipment necessary to facilitate interacting with members of the public and social distance requirements, adapt the organization to COVID-19, or to otherwise comply with recommended CDC guidelines.

Costs that do not satisfy all of the above-required conditions shall be ineligible for reimbursement under this Agreement. All costs filed for reimbursement by CITY to COUNTY shall be supported by appropriate levels of support documentation to substantiate the claim.

- C. Accounting. CITY's accounting and financial management system shall be sufficient to permit the preparation of reports required in connection with this Agreement, if applicable, and the tracing of funds to a level of expenditures adequate to establish that such funds have been used pursuant to the terms of this Agreement.
- D. Duplication of Benefit. CITY hereby certifies and affirms that the expenses to be reimbursed under this Agreement shall not result in a prohibited duplication of the benefits obtained by CITY, any sub-sub recipient (as defined in 2 C.F.R. §§ 200.92-93), or any individual or entity that is a beneficiary of such projects and/or activities from other Non-Title V CARES Act programs, other local, state, or federal funding sources (e.g. the Stafford Disaster Relief and Emergency Assistance Act, etc.), private insurance, or other private organizations. CITY acknowledges and agrees that it has an affirmative obligation to promptly identify and report any duplication of benefits to the COUNTY. In the event that the CITY recovers costs incurred under this Agreement and reimbursed by the COUNTY from another source, the CITY shall reimburse the COUNTY for all recovered funds originally provided under this Agreement. Interest on any refund shall be calculated based on the prevailing rate used by the State Board of Administration. Interest shall be calculated from the date(s) the payment(s) are recovered by the CITY to the date repayment is made to the COUNTY by the CITY.

SECTION 5. PROCESSING OF REIMBURSEMENT REQUESTS.

- A. The CITY shall request reimbursement from the COUNTY for costs incurred by CITY under this Agreement for which actual payment has been made. All reimbursement requests shall be submitted to the COUNTY's Contact for the Agreement, as identified under Section 11, no later than January 31, 2021.
- B. Upon determination by the COUNTY that the reimbursement request is sufficient, the COUNTY shall, at its sole discretion, transmit the funds subject to the reimbursement request to the CITY in a manner agreed to between the COUNTY and CITY.

SECTION 6. FUNDING.

The COUNTY's performance and obligation to pay CITY under this Agreement is expressly contingent upon the COUNTY's approval of the eligibility of all expenditures, the availability of all U.S. Treasury Coronavirus Relief Funds expended and reimbursed to the COUNTY from the State of Florida, and the availability of budgeted and appropriated funds by the COUNTY.

SECTION 7. INDEMNIFICATION.

To the extent allowed by Florida law, the CITY shall pay on behalf of or indemnify and hold harmless the COUNTY from and against any and all claims, actions, damages, fees, fines, penalties, defense costs, suits or liabilities which may arise out of any act, neglect, omission or default of the CITY arising out of or in any way connected with the CITY (or CITY officers, employees, agents, volunteers and sub-contractors, if any) performance or failure to perform under the terms of this Agreement (this section will remain in effect beyond the Period of the Agreement). The foregoing indemnification does not constitute a waiver of CITY sovereign immunity beyond the limited waiver provided in accordance with the terms of Section 768.28, Florida Statutes.

SECTION 8. DEFAULT; TERMINATION; FORCE MAJEURE.

- A. Termination for Cause. The COUNTY may terminate this Agreement for cause at any time if any covenant, warranty, or representation made by CITY in this Agreement or in any application materials for funding submitted to the COUNTY in connection with this Agreement shall at any time be false or misleading in any respect, or in the event of the failure of the CITY to comply with the terms and conditions of this Agreement. Prior to termination, the COUNTY shall provide fifteen (15) days written notice of its intent to terminate and shall provide the CITY an opportunity to consult with the COUNTY regarding the reason(s) for termination.
- B. Termination for Convenience. This Agreement may be terminated for convenience by either Party upon providing the non-terminating Party with twenty (20) days written notice.
- C. Force Majeure. The CITY shall not be liable for delay in performance or failure to complete the reimbursement of COVID-19 expenditures, in whole or in part, due to the occurrence of any contingency beyond its control, including war or act of war whether an actual declaration thereof is made or not, act of terrorism impacting travel in the United States, insurrection, riot or civil commotion, act of public enemy, epidemic, quarantine restriction, storm, flood, drought or other act of God, or act of nature or any act of any governmental authority which prohibits reimbursement of COVID-19 expenditures from proceeding as described in the Agreement and incorporated references and which the CITY has exercised reasonable care in the prevention thereof. However, lack of planning for normal and expected weather conditions for the time of year the reimbursement of COVID-19 expenditures is to be filed shall not constitute an act of God excusing a delay (i.e. hurricane season). Any delay or failure due to the causes stated shall not constitute a breach of the Agreement; however, the COUNTY shall have the right to determine if there will be any reduction to the amount of funds due to the CITY after consideration of all relevant facts and circumstances surrounding the delay in performance or failure to complete the reimbursement of COVID-19 expenditures within the terms of the Agreement. Upon demand of the COUNTY, the CITY must furnish evidence of the causes of such delay or failure.

SECTION 9. REMEDIES; FINANCIAL CONSEQUENCES.

- A. In the event that a task, deliverable, or activity to be performed under this Agreement is deemed unsatisfactory by the COUNTY, the CITY shall re-perform same, at no additional cost to the COUNTY, within twenty (20) days of being notified of the unsatisfactory task, deliverable, or activity, or within such other timeframe as is specified in writing by the COUNTY. If such task, deliverable, or activity is not satisfactorily performed within the specified timeframe, the COUNTY may, in its sole discretion, terminate this Agreement for cause in accordance with Section 9 hereof.
- B. If the CITY materially fails to comply with the terms and conditions of this Agreement, including any federal or state statutes, rules, policies, or regulations, applicable to this Agreement, the COUNTY may, in its sole discretion, take one or more of the following actions:

1. Temporarily withhold cash payments to the CITY pending correction of the deficiency by the CITY or more severe enforcement action by the COUNTY or FDEM.
 2. Disallow (i.e. deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
 3. Wholly or partly suspend or terminate this Agreement.
 4. Initiate suspension or debarment proceedings as authorized under COUNTY policies and procedures or recommend such a proceeding be initiated by FDEM.
- C. The Parties acknowledge and agree that the remedies provided in this Section 9 are separate and apart from the indemnification provisions set forth in Section 7 hereof and that sovereign immunity shall not be a defense to any of the contractual obligations imposed on the Parties in this Section.

SECTION 10. NOTICE.

All notices and written communication between the Parties shall be sent by electronic mail, U.S. Mail, a courier delivery service, or delivered in person. Notices shall be considered delivered when reflected by an electronic mail read receipt (or when receipt is otherwise acknowledged), a courier service delivery receipt, other mail service delivery receipt, or when receipt is acknowledged by recipient. Any and all notices required by this Agreement shall be delivered to the Parties' respective addresses identified in Section 11. This Section shall not preclude routine communication by the Parties by other means.

SECTION 11. CONTACTS.

All notices required or permitted under this Agreement shall be directed to the following addresses:

COUNTY

Steve Hyatt, Grant Fiscal Analyst
Sarasota County Government
Office of Financial Management
1660 Ringling Blvd. Suite 480
Sarasota, Florida 34236
Shyatt@scgov.net

CITY

Kimberly Ferrell, Finance Director
City of North Port
Finance Department
4970 City Hall Boulevard, Third Floor
North Port, Florida 34286
Kferrell@cityofnorthport.com

Either Party may change the above-described contact information by giving notice of such change to the other party pursuant to Section 10 hereof.

SECTION 12. RECORDS; ACCESS TO RECORDS AND PERSONNEL.

- A. CITY shall retain all records generated under this Agreement for five (5) years after final payment by COUNTY.
- B. CITY shall comply with the Florida Public Records Law, codified at Chapter 119, F.S. Records made or received in conjunction with this Agreement are public records under Florida law. CITY shall keep and maintain public records generated by the CITY in association with its performance of this Agreement.
- C. This Agreement may be unilaterally canceled by the COUNTY for refusal by the CITY to either provide to the COUNTY upon reasonable request, or to allow inspection and copying of, all public records made or received by the CITY in conjunction with this Agreement and subject to disclosure under Chapter 119, F.S.
- D. **IF THE CITY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUBRECIPIENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE COUNTY'S CUSTODIAN OF PUBLIC RECORDS BY TELEPHONE AT:**

**Sarasota County
Public Records Office
1660 Ringling Boulevard
Sarasota, FL 34236
Phone: 941-861-5886
Email: prr@scgov.net**

- E. The CITY acknowledges and agrees that the COUNTY, FDEM, or their authorized representatives, shall have timely and unrestricted access to any pertinent books, documents, papers, and records, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, in order to make audits, inspections, investigations, excerpts, transcripts, or other examinations as authorized by law. This also includes timely and reasonable access to the CITY personnel for the purpose of interview and discussion related to such documents. In the event any work is subawarded or subcontracted, the CITY shall similarly require each subrecipient and subcontractor to maintain and allow access to such records for audit purposes.
- F. The COUNTY, FDEM, or their authorized representatives shall have the right during normal business hours to conduct announced and unannounced onsite and offsite physical visits of the CITY and their subcontractors corresponding to the duration of their records retention obligation for this Agreement.
- G. The rights of access in this Section are not limited to the required retention period for the applicable records but last as long as the records are retained.
- H. The CITY agrees that if any litigation, claim, or audit is started before the expiration

of the record retention period established above, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

SECTION 13. MISCELLANEOUS.

- A. Assignment. No assignment, delegation, transfer, or novation of this Agreement, or any part hereof, may be made unless in writing and signed by both Parties.
- B. Execution in Counterparts. This Agreement, and any Amendments or Change Orders thereto, may be executed in multiple counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by email delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.
- C. Interpretation; Severability. This Agreement shall be construed in accordance with the laws of the State of Florida. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.
- D. Entire Agreement; Joint Preparation. This Agreement represents the entire agreement of the Parties. Any alterations, variations, changes, modifications or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, duly signed by each of the Parties hereto, and attached to the original of this Agreement, unless otherwise provided herein. The Parties represent and agree that they have jointly negotiated this Agreement and have had the opportunity to consult with and be represented by their own competent counsel. This Agreement is therefore deemed to have been jointly prepared by the Parties and no part hereof shall be construed more severely against one of the Parties than the other.
- E. Venue. Venue for any litigation arising from this Agreement shall be in Sarasota County, Florida.
- F. Non-Discrimination. The City of North Port, Florida does not discriminate on the basis of race, color, national origin, sex, age, disability, family or religious status in administration of its programs, activities, or services. The Parties shall not administer this Agreement in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual's race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed, the day and year last written below.

SARASOTA COUNTY, FLORIDA

By: _____

Print Name and Title

Date: _____

Approved by the City Commission of the City of North Port, Florida on _____, 2021.

CITY OF NORTH PORT, FLORIDA

By: _____
Giselle "Jill" E. Luke
Mayor

ATTEST

Heather Taylor, CMC
City Clerk

APPROVED AS TO FORM AND CORRECTNESS

Amber L. Slayton
City Attorney