

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE COUNTY OF ORANGE HEALTH CARE AGENCY
AND
THE CITY OF FULLERTON
FOR THE PROVISION OF
HOMELESS SHELTER BEDS AND HOMELESS SERVICES

This Memorandum of Understanding (MOU) is entered into by and between the County of Orange, acting through its Health Care Agency (HCA), hereinafter referred to as “COUNTY,” and the City of Fullerton, a municipal corporation, hereinafter referred to as “City”. COUNTY and the City may be referred to individually as “Party” and collectively as “the Parties.”

WHEREAS, on February 26, 2020, the County Health Officer declared a local health emergency based on an imminent and proximate threat to public health from the introduction of a novel coronavirus (named “COVID-19”) in Orange County (the “COVID-19 Emergency”); and

WHEREAS, on March 2, 2020, the Board of Supervisors adopted Resolution No. 2020-11 ratifying the local health emergency declared by the COUNTY’s Health Officer; and

WHEREAS, on March 4, 2020, the Governor of the State of California declared a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS, on March 13, 2020, the President of the United States issued a Proclamation on Declaring a National Emergency Concerning the COVID-19 Outbreak; and

WHEREAS, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was passed by Congress and signed into law by the President of the United States on March 27th, 2020; and

WHEREAS, the CARES Act established the Coronavirus Relief Fund and COUNTY received an allocation of funds from the Coronavirus Relief Fund under section 601(a) of the Social Security Act, as added by section 5001 of the CARES Act; and

WHEREAS, the CARES Act provides that payments from the Coronavirus Relief Fund may only be used to cover costs that (1) are necessary expenditures incurred due to the public health emergency with respect to the 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 local government; and (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020; and

WHEREAS, the Department of Treasury has issued guidance that COUNTY may transfer funds to a unit of government within its borders provided that the transfer qualifies as a necessary expenditure incurred due to the public health emergency and meets the other criteria of section 601(d) of the Social Security Act; and

WHEREAS, the relationship between COUNTY and City, with regard to this MOU, is based upon the following: COUNTY and City have been working cooperatively to assist and address issues related to homelessness. City has selected a homeless shelter site to address homelessness and has committed to build the Fullerton Navigation Center Shelter Site. In response to the COVID-19 pandemic emergency, the Parties have decided to enter into this MOU whereby COUNTY will administer Coronavirus Act, Relief, and Economic Security Act (CARES Act) funding related to City's improvement, enhancement and operation of the Site to ensure the new Fullerton Navigation Center is modified to accommodate COVID-19 guidance from CDC and local public health departments; and

WHEREAS, in order to provide funds for City to improve, enhance and operate the Site for homeless individuals in response to the COVID-19 pandemic emergency, the Parties have agreed that COUNTY shall transfer the grant amount described herein to City; and

WHEREAS, this financial MOU is a legally binding agreement based on the promises of the Parties.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises herein contained, the Parties hereto agree as follows:

1. TERM

The term of this MOU shall commence on August 1, 2020, and end on December 30, 2020, unless earlier terminated pursuant to the provisions of Paragraph 20 of this MOU; however, the Parties shall be obligated to perform such duties as would normally extend beyond this term, including, but not limited to, obligations with respect to indemnification, reporting, records maintenance, and confidentiality.

2. PURPOSE

This MOU establishes the relationship between COUNTY and City in the administration of CARES Act funding for City's improvement, enhancement, and operation of the Site in a manner that will ensure the Site complies with the COVID-19 guidance from CDC and local public health department. In response to the COVID-19 pandemic emergency, COUNTY had transitioned the armory cold weather, overnight shelter program into a 24/7 homeless shelter. The Site will be used for sheltering persons experiencing homelessness or at risk of homelessness during the COVID-19 pandemic emergency who were participating in the armory cold weather, overnight shelter program and for providing medical services to COVID-19 symptomatic persons experiencing homelessness or at risk of homelessness. All Program participants' enrollment shall be documented in a manner consistent with federal and state laws and regulations, including privacy laws.

3. USE OF GRANT AMOUNT

3.1 City must use the grant amount provided under this MOU to pay for eligible expenses 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 by City as of March 27, 2020; and (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

CFDA#	FAIN#	Program/ Service Title	Federal Funding Agency	Federal Award Date	Federal Award Indirect Rate	Amount	R&D Award (Y/N)
21.019	SLT0123	Coronavirus Relieft Fund	US Department of Treasury	April 22, 2020	10%	\$544,133,764.90	N

3.2 City must utilize the grant amount in accordance with all Federal and State laws, including but not limited to 42 U.S.C. § 801, subsection (d), and all applicable regulations and guidelines, including guidance issued by the Department of Treasury regarding costs that are payable from Coronavirus Relief Funds, which includes but is

not limited to Guidance for State, Territorial, Local, and Tribal Governments dated April 22, 2020 (Exhibit A) and Coronavirus Relief Fund Frequently Asked Questions Updated as of May 28, 2020 (Exhibit B).

4. POPULATION TO BE SERVED

For the purpose of this MOU, the Site shall serve eligible participants. Eligible participants are defined as a person/household who is considered to be homeless only when he/she/they lack(s) a fixed, regular and adequate nighttime residence and reside(s) in a place not meant for human habitation, such as cars, parks, sidewalks, abandoned buildings, motels, or other shelters, or for reference as further defined in 24 Code of Federal Regulations (CFR) Part 578.3 and 576.2.

5. THE CITY RESPONSIBILITIES

5.1 City shall ensure the project meets the criteria set forth in this MOU:

5.1.1 City shall be responsible for acquiring and complying with all necessary land use approvals and permits, and licenses required for the renovation and/or operation of the Site including but not limited to performing design, construction, and operation and maintenance of the Site. City shall provide COUNTY copies of all permits and approvals upon request of COUNTY. The renovation and operation of the Site governed by this MOU only covers eligible expenses under Paragraph 3 that are required to ensure the new Fullerton Navigation Center is built to accommodate COVID-19 guidance from CDC and local public health department, including social distancing for sleeping, eating and social areas; congregation areas; intake and entrance/access areas, and any other areas where individuals may gather as part of the program.

5.1.2 City agrees to transition the total Fullerton armory/ winter shelter located at independence park census to the Fullerton navigation center for ongoing shelter and support services.

5.1.3 City shall be responsible for operating the shelter for participants referred to the Site by COUNTY as outlined in this MOU.

5.1.4 Except as otherwise agreed upon by the Parties, City shall control the management and operation plan for the Site. City may contract with a non-profit provider for operation of the Site as permitted in Paragraph 11 of this MOU. City shall include in their referral process COUNTY as an approved referral agency for individuals experiencing homelessness.

5.1.5 Within thirty (30) days of execution of this MOU, City shall provide a timeline for the Site that provides anticipated dates and milestones of the project.

5.1.6 City shall provide monthly updates on the status of improvements, repairs, enhancements and operation of the Site under this MOU until December 30, 2020 or sooner upon completion of services.

5.1.7 City shall work in partnership with COUNTY to be a “Good Neighbor”. In being a “Good Neighbor”, City shall inform the public about the positive aspects of the project, be responsive to community concerns, and work closely with city/local governmental agencies to minimize the impact of the project on the surrounding neighborhood.

5.1.8 For informational purposes, City shall submit its policies and procedures to COUNTY for the project including but not limited to, all aspects of the project, design, and enhancement of the Site.

6. COUNTY RESPONSIBILITIES

6.1 County shall make the First Payment thirty (30) days from the Effective Date of this MOU, upon receipt of an approved invoice. Subsequent payments will be made according to Payment Schedule in the table below.

<u>Payment Schedule</u>	
First Payment (COVID-19 renovations & Operational Costs) - 30 Days From Effective Date	\$648,000
Second Payment (Operational Costs) - October 1, 2020	\$148,000
Third Payment (Operational Costs) - November 1, 2020	\$148,000
Fourth Payment (Operational Costs) - December 1, 2020	\$148,000
Maximum Obligation	\$1,092,000

6.2 City shall submit invoices to COUNTY for payment that are dated no earlier than the dates set forth in the payment schedule in Subparagraph 6.1. County shall have net 30 days from the date of an approved invoice or the date the County receives an approved invoice, whichever is later, to make payment. Payment under Subparagraph 6.1 shall occur only if the invoice is for costs that are eligible expenses under, and used in a manner consistent with, Paragraphs 3 and 8. City shall provide supporting documentation to COUNTY that identifies the reasonable costs and demonstrates how the costs were or will be used in a manner consistent with Paragraphs 3 and 8. City shall maintain this supporting documentation consistent with the requirements of Paragraph 17.

6.3 If City has not spent any portion of the grant amount it has received under this MOU by December 30, 2020, City shall return to COUNTY by February 1, 2021 the amount remaining unspent as of December 30, 2020.

6.4 COUNTY makes no commitment to fund this MOU beyond the terms set forth herein.

6.5 Any payments made by COUNTY shall not preclude the right of COUNTY from thereafter disputing the costs were used in a manner inconsistent with Paragraphs 3 and 8 and seeking reimbursement of such costs as provided in Paragraph 8.

6.6 The provisions of this paragraph 6 shall survive termination or expiration of this MOU.

7. STATUTES AND REGULATIONS APPLICABLE TO CARES ACT FUNDING

7.1 City must comply with all applicable requirements of State, Federal, and County of Orange laws, executive orders, regulations, program and administrative requirements, policies and any other requirements governing this MOU. City must comply with applicable State and Federal laws and regulations pertaining to labor, wages, hours, and other conditions of employment. City must comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this MOU. These requirements include, but are not limited to:

7.1.1 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) Circulars: City must comply all Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) Circulars.

7.1.2 Single Audit Act: Since Federal funds are used in performance of this MOU, City must, as applicable, adhere to the rules and regulations of the Single Audit Act (31 USC Sec. 7501 et seq.), OMB Circular A-133 and any administrative regulation or field memoranda implementing the Act.

7.1.3 Political Activity Prohibited: None of the funds, materials, property or services provided directly or indirectly under this MOU may be used for any partisan political activity, or to further the election or defeat of any candidate for public office. Funds provided under this MOU may not be used for any purpose designed to support or defeat any pending legislation or administrative regulation.

8. COMPLIANCE WITH GRANT REQUIREMENTS

To obtain the grant funds, the Department of the Treasury required an authorized representative of COUNTY to agree to certain promises regarding the way the grant funds would be spent. This certification is attached hereto as Exhibit C. By signing this certification, COUNTY made material representations to the Department of Treasury in order to receive payments from the Department of Treasury pursuant to section 601(b) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, div. A, Title V (Mar. 27, 2020). In accordance with Paragraph 13, City shall indemnify, defend, and hold harmless the County of Orange for any sums the State or Federal government contends or determines City used in violation of the certification. City shall immediately return to COUNTY any funds COUNTY or any responsible State or Federal agency, including the Department of Treasury, determines City has used in a manner that is inconsistent with Paragraph 3 of this MOU. The provisions of this paragraph shall survive termination or expiration of this MOU.

9. FACILITIES

9.1 It is mutually understood that the City site is located at the following address: 3535 West Commonwealth Avenue, Fullerton CA ("Site").

9.2 City and COUNTY may mutually agree in writing to add, change, modify, or delete

location(s) as necessary to best serve the needs of COUNTY and eligible participants to be served under this MOU.

10. NON-DISCRIMINATION

10.1 In the performance of this MOU, City agrees that it shall not engage nor employ any unlawful discriminatory practices in the admission of eligible participants, provision of services or benefits, assignment of accommodations, treatment, evaluation, employment of personnel, or in any other respect, on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, military and veteran status, or any other protected group, in accordance with the requirements of all applicable federal or State laws.

10.2 City shall furnish any and all information requested by COUNTY and shall permit COUNTY access, during business hours, to books, records, and accounts in order to ascertain City's compliance with the requirements under this MOU.

10.3 Non-Discrimination in Service Delivery

10.3.1 City shall comply with Titles VI and VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; the Food Stamp Act of 1977, as amended, and in particular 7 Code of Federal Regulations (CFR) section 272.6; Title II of the Americans with Disabilities Act of 1990; California Civil Code Section 51 et seq., as amended; California Government Code (CGC) Sections 11135-11139.5, as amended; CGC Section 12940 (c), (h), (i), and (j); CGC Section 4450; Title 22, California Code of Regulations (CCR) Sections 98000-98413; the Dymally-Alatorre Bilingual Services Act (CGC Section 7290-7299.8); Section 1808 of the Removal of Barriers to Interethnic Adoption Act of 1996; and other applicable federal and State laws, as well as their implementing regulations (including Title 45 CFR Parts 80, 84, and 91; Title 7 CFR Part 15; and Title 28 CFR Part 42), and any other law pertaining to Equal Employment Opportunity, Affirmative Action, and Nondiscrimination, as each may now exist or be hereafter amended. City shall not implement any administrative methods or procedures which would have a discriminatory effect or which would violate the California Department of Health Care (CDSS), Manual of Policies and Procedures (MPP) Division 21, Chapter 21-100. If there are any violations of this Paragraph, CDSS shall have the right to invoke fiscal sanctions or other legal remedies in accordance with California Welfare and Institutions Code (WIC) Section 10605, or CGC Sections 11135-11139.5, or any other laws, or the issue may be referred to the appropriate federal agency for further compliance action and enforcement.

10.3.2 City shall provide any and all eligible participants desirous of filing a formal complaint any and all information as appropriate:

10.3.2.1 Pamphlet: "Your Rights Under California Welfare Programs"
(PUB 13)

10.3.2.2 Discrimination Complaint Form

10.3.2.3 Civil Rights Contacts

State Civil Rights Contact
California Department of Health Care
Civil Rights Bureau
P.O. Box 944243, M.S. 15-70
Sacramento, CA 94244-2430
Federal Civil Rights Contact
U.S. Department of Health and Human Services
Office of Civil Rights
50 U.N. Plaza, Room 322
San Francisco, CA 94102

11. SUBCONTRACTS

- 11.1 City shall not subcontract for services under this MOU without the prior written consent of COUNTY. If COUNTY consents in writing to a subcontract, in no event shall the subcontract alter, in any way, any legal responsibility of City to COUNTY. All subcontracts must be in writing and copies of same shall be provided to COUNTY. City shall include in each subcontract any provision COUNTY may require.
- 11.2 City and its subcontractor(s) shall establish and maintain accurate and complete financial records related to services provided under the terms of this MOU. Such records may be subject to the satisfaction of COUNTY, and to the examination and audit by COUNTY or designee, for a period of ten (10) years or until any pending audit is completed.

12. CONFIDENTIALITY

- 12.1 COUNTY and City agree to maintain confidentiality of all records pursuant to WIC Sections 827 and 10850-10853, the CDSS MPP, Division 19-000, and all other provisions of law, and regulations promulgated thereunder relating to privacy and confidentiality, as each may now exist or be hereafter amended.
- 12.2 City shall inform all of its employees, agents, subcontractors, and all other individuals performing services under this MOU of this provision and that any person violating the provisions of said California state law may be guilty of a crime.
- 12.3 City agrees that any and all subcontracts entered into shall be subject to the confidentiality requirements of this MOU.

13. INDEMNIFICATION

- 13.1 City shall indemnify, defend with counsel approved in writing by COUNTY, and hold U.S. Department of Health and Human Services, the State, COUNTY, and COUNTY's elected and appointed officials, officers, employees, agents, and those special districts and agencies which COUNTY's Board of Supervisors acts as the governing Board ("COUNTY INDEMNITEES") harmless from any claims, demands, or liability of any kind or nature, including, but not limited to, personal injury or property damage, arising from or related to the services, products, or other performance provided by City pursuant to this MOU and arising from or related to

City's receipt of the grant amount under this MOU, including any claims that the grant amount paid by COUNTY under this MOU was not used consistent with the restrictions on the use of Coronavirus Relief Funds (42 U.S.C. § 801) and the regulations and guidance issued by the Department of Treasury regarding the use of such funds. If judgment is entered against City and COUNTY by a court of competent jurisdiction because of the concurrent active negligence of COUNTY or COUNTY INDEMNITEES, City and COUNTY agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.

13.2 The provisions of Paragraph 13.1 shall survive the termination or expiration of this MOU.

14. SECURITY

14.1 City shall have policies and procedures in place for the effective management of Security Breaches, as defined below. In the event of any actual, attempted, suspected, threatened, or reasonably foreseeable circumstance City experience or learn of that either compromises or could reasonably be expected to comprise COUNTY data through unauthorized use, disclosure, or acquisition of COUNTY data ("Security Breach"), City shall immediately notify COUNTY of its discovery. After such notification, City shall, at its own expense, immediately:

14.1.1 Investigate to determine the nature and extent of the Security Breach.

14.1.2 Contain the incident by taking necessary action, including, but not limited to, attempting to recover records, revoking access, and/or correcting weaknesses in security.

14.1.3 Report to COUNTY the nature of the Security Breach, COUNTY data used or disclosed, the person who made the unauthorized use or received the unauthorized disclosure, what City have done or will do to mitigate any harmful effect of the unauthorized use or disclosure, and the corrective action City have taken or will take to prevent future similar unauthorized use or disclosure.

14.1.4 COUNTY, at its sole discretion and on a case-by-case basis, will determine what actions are necessary in response to the Security Breach and who will perform these actions. Actions may include, but are not limited to: notifications; investigation and remediation costs, including notification of all whose personal information was disclosed; outside investigation; forensics; counsel; crisis management; and credit monitoring. In the event COUNTY determines City will conduct additional action(s), City shall bear the costs. In the event COUNTY conducts additional actions(s) arising out of or in connection with a Security Breach, City shall reimburse COUNTY for costs associated with legally required actions.

15. NOTIFICATION OF INCIDENTS, CLAIMS, OR SUITS

15.1 City shall report to COUNTY, in writing within twenty-four (24) hours of occurrence, the following:

- 15.1.1 Any accident or incident arising from or relating to services performed under this MOU that involves injury or property damage which may result in the filing of a claim or lawsuit against City.
- 15.1.2 Any injury to an employee of City that occurs on COUNTY property.
- 15.1.3 Any loss, disappearance, destruction, misuse, or theft of any kind whatsoever of COUNTY property, monies, or securities entrusted to City under the term of this MOU.

16. REPORTS

- 16.1 Progress Report. On October 5, 2020, City shall provide a report to COUNTY that: (1) identifies the eligible expenses paid from the grant amount as of September 30, 2020; (2) demonstrates how City used the grant amount consistent with the use requirements of Paragraph 3; and (3) identifies the balance of the grant amount that City has received but not spent.
- 16.2 Progress Report. On November 20, 2020, City shall provide a report to COUNTY that: (1) identifies the eligible expenses paid from the grant amount as of November 15, 2020; (2) demonstrates how City used the grant amount consistent with the use requirements of Paragraph 3; and (3) identifies the balance of the grant amount that City has received but not spent.
- 16.3 Final Report. Upon the earlier of City's expenditure of the entire grant amount under this MOU or January 5, 2021, City shall provide a report to COUNTY that: (1) identifies the eligible expenses paid from the grant amount as of December 30, 2020; (2) demonstrates how City used the grant amount consistent with the use requirements of Paragraph 3; and (3) identifies the balance of the grant amount that City has received but not spent, if any.
- 16.4 City shall provide a certification signed by its chief executive officer with each report required under this MOU that the statements contained in the report are true and that the expenditures described in the report comply with the uses permitted under Paragraph 3.
- 16.5 City shall provide additional reports as reasonably requested by COUNTY. In the additional reports, COUNTY may require City provide any documentation COUNTY needs in order to comply with COUNTY's requirements under the guidance issued by the Department of Treasury regarding reporting requirements, which includes but is not limited to Coronavirus Relief Fund Reporting and Record Retention Requirements dated July 2, 2020 (Exhibit D).
- 16.6 City shall maintain supporting documentation for the reports required by this MOU consistent with the requirements of Paragraph 17.

17. RECORDS

17.1 Records Maintenance

City shall keep all COUNTY data provided to City during the term(s) of this MOU for

a minimum of ten (10) years from the date of final payment under this MOU or until all pending COUNTY, State, and federal audits are completed, whichever is later. These records shall be stored in Orange County, unless City requests and COUNTY provides written approval for the right to store the records in another county. Notwithstanding anything to the contrary, upon expiration or termination of this MOU, City shall relinquish control with respect to COUNTY data to COUNTY in accordance with Paragraph 20.

17.2 Public Records

Notwithstanding Paragraph 12, to the extent permissible under the law, all records, including, but not limited to, reports, audits, notices, claims, statements, and correspondence, required by this MOU may be subject to public disclosure. COUNTY is not liable for any such disclosure.

17.3 Records Inspection

At any time during normal business hours and as often as either COUNTY, Inspector General acting pursuant to the Inspector General Act of 1978, or the Auditor General of the State of California may deem necessary, City must make available for examination all of its records with respect to all matters covered by this MOU. COUNTY, Inspector General, and the Auditor General of the State of California each have the authority to audit, examine and make excerpts or transcripts from records, including all City's invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this MOU. With respect to inspection of City's records, COUNTY may require that City provide supporting documentation to substantiate City's expenses with respect to City's use or expenditure of the grant amount.

18. NOTICES

All notices, requests, claims correspondence, reports, statements authorized or required by this MOU, and/or other communications shall be addressed as follows:

COUNTY:

County of Orange Health Care Agency
Procurement and Contracts Services
405 W. 5th St. Ste. 600
Santa Ana, CA 92701

The City of Fullerton:

Attn: Kenneth Domer, City Manager
303 W. Commonwealth Ave
Fullerton, CA 92832

All notices shall be deemed effective when in writing and deposited in the United States mail, first class, postage prepaid and addressed as above. Any communications, including notices, requests, claims, correspondence, reports, and/or statements authorized or required by this MOU, addressed in any other fashion shall be deemed not given. The Parties each may designate by written notice from time to time, in the manner aforesaid, any change in the address to which notices must be sent.

19. CONFLICT OF INTEREST

City shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of COUNTY. This obligation shall apply to City and to City's employees, agents, and subcontractors associated with accomplishing work and services hereunder. City efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence COUNTY staff or elected officers from acting in the best interests of COUNTY.

20. TERMINATION

- 20.1 COUNTY may terminate this MOU without penalty, immediately with cause or after thirty (30) days' written notice without cause, unless otherwise specified. Notice shall be deemed served on the date of mailing. Cause includes, but is not limited to, any breach of this MOU, any partial misrepresentation whether negligent or willful, fraud on the part of City, discontinuance of the services for reasons within City's reasonable control, and repeated or continued violations of County ordinances unrelated to performance under this MOU that, in the reasonable opinion of COUNTY, indicate a willful or reckless disregard for County laws and regulations. Exercise by COUNTY of the right to terminate this MOU shall relieve COUNTY of all further obligations under this MOU.
- 20.2 In the event of termination of this MOU, cessation of business by City, or any other event preventing City from continuing to provide services, City shall not withhold the COUNTY data or refuse for any reason, to promptly provide to COUNTY the COUNTY data on such media as reasonably requested by COUNTY, even if COUNTY is then or is alleged to be in breach of this MOU.
- 20.3 The obligations under this MOU utilize COUNTY resources, for which funding, or portions of funding, may be contingent upon the State and/or federal budget; receipt of funds from and/or obligation of funds by the State and/or Federal Government; and inclusion of sufficient funding for the services hereunder in the budget approved by the COUNTY's Board of Supervisors for each fiscal year covered by this MOU. If such approval, funding, or appropriations are not forthcoming, or are otherwise limited, COUNTY may immediately terminate, reduce, or modify this MOU without penalty.
- 20.4 If any term, covenant, condition, or provision of this MOU or the application thereof is held invalid, void, or unenforceable, the remainder of the provisions in this MOU shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

21. SIGNATURE IN COUNTERPARTS

The Parties agree that separate copies of this MOU may be signed by each of the Parties, and this MOU will have the same force and effect as if the original had been signed by all Parties.

City represents and warrants that the person executing this MOU on behalf of and for City is an authorized agent who has actual authority to bind City to each and every term, condition and obligation of this MOU and that all requirements of City have been fulfilled to provide such actual authority.

22. GENERAL PROVISIONS

- 22.1 Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between COUNTY and any participant participating in this program, or any of City's agents or employees.
- 22.2 This MOU represents the entire understanding of the Parties with respect to the subject matter. No change, modification, extension, termination or waiver of this MOU, or any of the understandings herein contained, shall be valid unless made in writing and signed by duly authorized representatives of the Parties hereto.
- 22.3 This MOU has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this MOU, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the Parties specifically agree to waive any and all rights to request that an action be transferred for trial to another county.
- 22.4 City warrant that City's personnel who are subject to individual registration and/or licensing requirements, have all necessary licenses and permits required by the laws of the United States, State of California, County of Orange, and all other appropriate governmental agencies to perform the services described in this MOU, and agrees to maintain, and require its personnel to maintain, these licenses and permits in effect for the duration of this MOU. City must notify COUNTY within one (1) business day of any change in license or permit status (e.g., becoming expired, inactive, etc.).
- 22.5 In the performance of this MOU, City shall comply with all applicable laws and regulations of the United States, State of California, County of Orange, and County of Orange Health Care Agency, and all administrative regulations, rules, and policies adopted thereunder, as each and all may now exist or be hereafter amended.
- 22.6 In the performance of this MOU, City may neither delegate its duties or obligations nor assign its rights, either in whole or in part, without the prior written consent of COUNTY. Any attempted delegation or assignment without prior written consent shall be void.
- 22.7 In any action or proceeding to enforce or interpret any provision of this MOU, each Party shall bear its own attorney's fees, costs, and expenses.
- 22.8 The various headings, numbers, and organization herein are for the purpose of convenience only and shall not limit or otherwise affect the meaning of this MOU.

WHEREFORE, the Parties hereto have executed the Memorandum of Understanding in the County of Orange, California.

DocuSigned by:
By: Clayton Chan, M.D., PhD
Dr. Clayton Chan, M.D., PhD
County of Orange Health Care Agency
Director
Dated: 7/28/2020

DocuSigned by:
By: Kenneth Damer
Name: Kenneth Damer
Title: City Manager
The City of Fullerton
Dated: 7/28/2020

APPROVED AS TO FORM:

DocuSigned by:
By: Richard D. Jones
Name: Richard D. Jones
Title: City Attorney
The City of Fullerton
Dated: 7/28/2020

ATTEST:

DocuSigned by:
By: Lucinda Williams
Name: Lucinda M. Williams
Title: City Clerk
The City of Fullerton
Dated: 7/28/2020

Approved As To Form
HCA Counsel
County of Orange, California

DocuSigned by:
By: Brittany McLean
Deputy
Dated: 7/28/2020

Exhibit A

Coronavirus Relief Fund
Guidance for State, Territorial, Local, and Tribal Governments
April 22, 2020

The purpose of this document is to provide guidance to recipients of the funding available under section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). The CARES Act established the Coronavirus Relief Fund (the “Fund”) and appropriated \$150 billion to the Fund. Under the CARES Act, the Fund is to be used to make payments for specified uses to States and certain local governments; the District of Columbia and U.S. Territories (consisting of the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands); and Tribal governments.

The CARES Act provides that payments from the Fund may only be used to cover costs 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 (the date of enactment of the CARES Act) for the State or government; and
3. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.¹

The guidance that follows sets forth the Department of the Treasury’s interpretation of these limitations on the permissible use of Fund payments.

Necessary expenditures incurred due to the public health emergency

The requirement that expenditures be incurred “due to” the public health emergency means that expenditures must be used for actions taken to respond to the public health emergency. These may include expenditures incurred to allow the State, territorial, local, or Tribal government to respond directly to the emergency, such as by addressing medical or public health needs, as well as expenditures incurred to respond to second-order effects of the emergency, such as by providing economic support to those suffering from employment or business interruptions due to COVID-19-related business closures.

Funds may not be used to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify under the statute. Although a broad range of uses is allowed, revenue replacement is not a permissible use of Fund payments.

The statute also specifies that expenditures using Fund payments must be “necessary.” The Department of the Treasury understands this term broadly to mean that the expenditure is reasonably necessary for its intended use in the reasonable judgment of the government officials responsible for spending Fund payments.

Costs not accounted for in the budget most recently approved as of March 27, 2020

The CARES Act also requires that payments be used only to cover costs that were not accounted for in the budget most recently approved as of March 27, 2020. A cost meets this requirement if either (a) the cost cannot lawfully be funded using a line item, allotment, or allocation within that budget *or* (b) the cost

¹ See Section 601(d) of the Social Security Act, as added by section 5001 of the CARES Act.

is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation.

The “most recently approved” budget refers to the enacted budget for the relevant fiscal period for the particular government, without taking into account subsequent supplemental appropriations enacted or other budgetary adjustments made by that government in response to the COVID-19 public health emergency. A cost is not considered to have been accounted for in a budget merely because it could be met using a budgetary stabilization fund, rainy day fund, or similar reserve account.

Costs incurred during the period that begins on March 1, 2020, and ends on December 30, 2020

A cost is “incurred” when the responsible unit of government has expended funds to cover the cost.

Nonexclusive examples of eligible expenditures

Eligible expenditures include, but are not limited to, payment for:

1. Medical expenses such as:
 - COVID-19-related expenses of public hospitals, clinics, and similar facilities.
 - Expenses of establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity, including related construction costs.
 - Costs of providing COVID-19 testing, including serological testing.
 - Emergency medical response expenses, including emergency medical transportation, related to COVID-19.
 - Expenses for establishing and operating public telemedicine capabilities for COVID-19-related treatment.
2. Public health expenses such as:
 - Expenses for communication and enforcement by State, territorial, local, and Tribal governments of public health orders related to COVID-19.
 - Expenses for acquisition and distribution of medical and protective supplies, including sanitizing products and personal protective equipment, for medical personnel, police officers, social workers, child protection services, and child welfare officers, direct service providers for older adults and individuals with disabilities in community settings, and other public health or safety workers in connection with the COVID-19 public health emergency.
 - Expenses for disinfection of public areas and other facilities, *e.g.*, nursing homes, in response to the COVID-19 public health emergency.
 - Expenses for technical assistance to local authorities or other entities on mitigation of COVID-19-related threats to public health and safety.
 - Expenses for public safety measures undertaken in response to COVID-19.
 - Expenses for quarantining individuals.
3. Payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

4. Expenses of actions to facilitate compliance with COVID-19-related public health measures, such as:
 - Expenses for food delivery to residents, including, for example, senior citizens and other vulnerable populations, to enable compliance with COVID-19 public health precautions.
 - Expenses to facilitate distance learning, including technological improvements, in connection with school closings to enable compliance with COVID-19 precautions.
 - Expenses to improve telework capabilities for public employees to enable compliance with COVID-19 public health precautions.
 - Expenses of providing paid sick and paid family and medical leave to public employees to enable compliance with COVID-19 public health precautions.
 - COVID-19-related expenses of maintaining state prisons and county jails, including as relates to sanitation and improvement of social distancing measures, to enable compliance with COVID-19 public health precautions.
 - Expenses for care for homeless populations provided to mitigate COVID-19 effects and enable compliance with COVID-19 public health precautions.
5. Expenses associated with the provision of economic support in connection with the COVID-19 public health emergency, such as:
 - Expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures.
 - Expenditures related to a State, territorial, local, or Tribal government payroll support program.
 - Unemployment insurance costs related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.
6. Any other COVID-19-related expenses reasonably necessary to the function of government that satisfy the Fund's eligibility criteria.

Nonexclusive examples of ineligible expenditures²

The following is a list of examples of costs that would *not* be eligible expenditures of payments from the Fund.

1. Expenses for the State share of Medicaid.³
2. Damages covered by insurance.
3. Payroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

² In addition, pursuant to section 5001(b) of the CARES Act, payments from the Fund may not be expended for an elective abortion or on research in which a human embryo is destroyed, discarded, or knowingly subjected to risk of injury or death. The prohibition on payment for abortions does not apply to an abortion if the pregnancy is the result of an act of rape or incest; or in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

Furthermore, no government which receives payments from the Fund may discriminate against a health care entity on the basis that the entity does not provide, pay for, provide coverage of, or refer for abortions.

³ See 42 C.F.R. § 433.51 and 45 C.F.R. § 75.306.

4. Expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds.
5. Reimbursement to donors for donated items or services.
6. Workforce bonuses other than hazard pay or overtime.
7. Severance pay.
8. Legal settlements.

Exhibit B

**Coronavirus Relief Fund
Frequently Asked Questions
Updated as of May 28, 2020**

The following answers to frequently asked questions supplement Treasury’s Coronavirus Relief Fund (“Fund”) Guidance for State, Territorial, Local, and Tribal Governments, dated April 22, 2020, (“Guidance”).¹ Amounts paid from the Fund are subject to the restrictions outlined in the Guidance and set forth in section 601(d) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”).

Eligible Expenditures

Are governments required to submit proposed expenditures to Treasury for approval?

No. Governments are responsible for making determinations as to what expenditures are necessary due to the public health emergency with respect to COVID-19 and do not need to submit any proposed expenditures to Treasury.

The Guidance says that funding can be used to meet payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. How does a government determine whether payroll expenses for a given employee satisfy the “substantially dedicated” condition?

The Fund is designed to provide ready funding to address unforeseen financial needs and risks created by the COVID-19 public health emergency. For this reason, and as a matter of administrative convenience in light of the emergency nature of this program, a State, territorial, local, or Tribal government may presume that payroll costs for public health and public safety employees are payments for services substantially dedicated to mitigating or responding to the COVID-19 public health emergency, unless the chief executive (or equivalent) of the relevant government determines that specific circumstances indicate otherwise.

The Guidance says that a cost was not accounted for in the most recently approved budget if the cost is for a substantially different use from any expected use of funds in such a line item, allotment, or allocation. What would qualify as a “substantially different use” for purposes of the Fund eligibility?

Costs incurred for a “substantially different use” include, but are not necessarily limited to, costs of personnel and services that were budgeted for in the most recently approved budget but which, due entirely to the COVID-19 public health emergency, have been diverted to substantially different functions. This would include, for example, the costs of redeploying corrections facility staff to enable compliance with COVID-19 public health precautions through work such as enhanced sanitation or enforcing social distancing measures; the costs of redeploying police to support management and enforcement of stay-at-home orders; or the costs of diverting educational support staff or faculty to develop online learning capabilities, such as through providing information technology support that is not part of the staff or faculty’s ordinary responsibilities.

Note that a public function does not become a “substantially different use” merely because it is provided from a different location or through a different manner. For example, although developing online instruction capabilities may be a substantially different use of funds, online instruction itself is not a substantially different use of public funds than classroom instruction.

¹ The Guidance is available at <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>.

May a State receiving a payment transfer funds to a local government?

Yes, provided that the transfer qualifies as a necessary expenditure incurred due to the public health emergency and meets the other criteria of section 601(d) of the Social Security Act. Such funds would be subject to recoupment by the Treasury Department if they have not been used in a manner consistent with section 601(d) of the Social Security Act.

May a unit of local government receiving a Fund payment transfer funds to another unit of government?

Yes. For example, a county may transfer funds to a city, town, or school district within the county and a county or city may transfer funds to its State, provided that the transfer qualifies as a necessary expenditure incurred due to the public health emergency and meets the other criteria of section 601(d) of the Social Security Act outlined in the Guidance. For example, a transfer from a county to a constituent city would not be permissible if the funds were intended to be used simply to fill shortfalls in government revenue to cover expenditures that would not otherwise qualify as an eligible expenditure.

Is a Fund payment recipient required to transfer funds to a smaller, constituent unit of government within its borders?

No. For example, a county recipient is not required to transfer funds to smaller cities within the county's borders.

Are recipients required to use other federal funds or seek reimbursement under other federal programs before using Fund payments to satisfy eligible expenses?

No. Recipients may use Fund payments for any expenses eligible under section 601(d) of the Social Security Act outlined in the Guidance. Fund payments are not required to be used as the source of funding of last resort. However, as noted below, recipients may not use payments from the Fund to cover expenditures for which they will receive reimbursement.

Are there prohibitions on combining a transaction supported with Fund payments with other CARES Act funding or COVID-19 relief Federal funding?

Recipients will need to consider the applicable restrictions and limitations of such other sources of funding. In addition, expenses that have been or will be reimbursed under any federal program, such as the reimbursement by the federal government pursuant to the CARES Act of contributions by States to State unemployment funds, are not eligible uses of Fund payments.

Are States permitted to use Fund payments to support state unemployment insurance funds generally?

To the extent that the costs incurred by a state unemployment insurance fund are incurred due to the COVID-19 public health emergency, a State may use Fund payments to make payments to its respective state unemployment insurance fund, separate and apart from such State's obligation to the unemployment insurance fund as an employer. This will permit States to use Fund payments to prevent expenses related to the public health emergency from causing their state unemployment insurance funds to become insolvent.

Are recipients permitted to use Fund payments to pay for unemployment insurance costs incurred by the recipient as an employer?

Yes, Fund payments may be used for unemployment insurance costs incurred by the recipient as an employer (for example, as a reimbursing employer) related to the COVID-19 public health emergency if such costs will not be reimbursed by the federal government pursuant to the CARES Act or otherwise.

The Guidance states that the Fund may support a “broad range of uses” including payroll expenses for several classes of employees whose services are “substantially dedicated to mitigating or responding to the COVID-19 public health emergency.” What are some examples of types of covered employees?

The Guidance provides examples of broad classes of employees whose payroll expenses would be eligible expenses under the Fund. These classes of employees include public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. Payroll and benefit costs associated with public employees who could have been furloughed or otherwise laid off but who were instead repurposed to perform previously unbudgeted functions substantially dedicated to mitigating or responding to the COVID-19 public health emergency are also covered. Other eligible expenditures include payroll and benefit costs of educational support staff or faculty responsible for developing online learning capabilities necessary to continue educational instruction in response to COVID-19-related school closures. Please see the Guidance for a discussion of what is meant by an expense that was not accounted for in the budget most recently approved as of March 27, 2020.

In some cases, first responders and critical health care workers that contract COVID-19 are eligible for workers’ compensation coverage. Is the cost of this expanded workers compensation coverage eligible?

Increased workers compensation cost to the government due to the COVID-19 public health emergency incurred during the period beginning March 1, 2020, and ending December 30, 2020, is an eligible expense.

If a recipient would have decommissioned equipment or not renewed a lease on particular office space or equipment but decides to continue to use the equipment or to renew the lease in order to respond to the public health emergency, are the costs associated with continuing to operate the equipment or the ongoing lease payments eligible expenses?

Yes. To the extent the expenses were previously unbudgeted and are otherwise consistent with section 601(d) of the Social Security Act outlined in the Guidance, such expenses would be eligible.

May recipients provide stipends to employees for eligible expenses (for example, a stipend to employees to improve telework capabilities) rather than require employees to incur the eligible cost and submit for reimbursement?

Expenditures paid for with payments from the Fund must be limited to those that are necessary due to the public health emergency. As such, unless the government were to determine that providing assistance in the form of a stipend is an administrative necessity, the government should provide such assistance on a reimbursement basis to ensure as much as possible that funds are used to cover only eligible expenses.

May Fund payments be used for COVID-19 public health emergency recovery planning?

Yes. Expenses associated with conducting a recovery planning project or operating a recovery coordination office would be eligible, if the expenses otherwise meet the criteria set forth in section 601(d) of the Social Security Act outlined in the Guidance.

Are expenses associated with contact tracing eligible?

Yes, expenses associated with contract tracing are eligible.

To what extent may a government use Fund payments to support the operations of private hospitals?

Governments may use Fund payments to support public or private hospitals to the extent that the costs are necessary expenditures incurred due to the COVID-19 public health emergency, but the form such assistance would take may differ. In particular, financial assistance to private hospitals could take the form of a grant or a short-term loan.

May payments from the Fund be used to assist individuals with enrolling in a government benefit program for those who have been laid off due to COVID-19 and thereby lost health insurance?

Yes. To the extent that the relevant government official determines that these expenses are necessary and they meet the other requirements set forth in section 601(d) of the Social Security Act outlined in the Guidance, these expenses are eligible.

May recipients use Fund payments to facilitate livestock depopulation incurred by producers due to supply chain disruptions?

Yes, to the extent these efforts are deemed necessary for public health reasons or as a form of economic support as a result of the COVID-19 health emergency.

Would providing a consumer grant program to prevent eviction and assist in preventing homelessness be considered an eligible expense?

Yes, assuming that the recipient considers the grants to be a necessary expense incurred due to the COVID-19 public health emergency and the grants meet the other requirements for the use of Fund payments under section 601(d) of the Social Security Act outlined in the Guidance. As a general matter, providing assistance to recipients to enable them to meet property tax requirements would not be an eligible use of funds, but exceptions may be made in the case of assistance designed to prevent foreclosures.

May recipients create a “payroll support program” for public employees?

Use of payments from the Fund to cover payroll or benefits expenses of public employees are limited to those employees whose work duties are substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

May recipients use Fund payments to cover employment and training programs for employees that have been furloughed due to the public health emergency?

Yes, this would be an eligible expense if the government determined that the costs of such employment and training programs would be necessary due to the public health emergency.

May recipients use Fund payments to provide emergency financial assistance to individuals and families directly impacted by a loss of income due to the COVID-19 public health emergency?

Yes, if a government determines such assistance to be a necessary expenditure. Such assistance could include, for example, a program to assist individuals with payment of overdue rent or mortgage payments to avoid eviction or foreclosure or unforeseen financial costs for funerals and other emergency individual needs. Such assistance should be structured in a manner to ensure as much as possible, within the realm of what is administratively feasible, that such assistance is necessary.

The Guidance provides that eligible expenditures may include expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures. What is meant by a “small business,” and is the Guidance intended to refer only to expenditures to cover administrative expenses of such a grant program?

Governments have discretion to determine what payments are necessary. A program that is aimed at assisting small businesses with the costs of business interruption caused by required closures should be tailored to assist those businesses in need of such assistance. The amount of a grant to a small business to reimburse the costs of business interruption caused by required closures would also be an eligible expenditure under section 601(d) of the Social Security Act, as outlined in the Guidance.

The Guidance provides that expenses associated with the provision of economic support in connection with the public health emergency, such as expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures, would constitute eligible expenditures of Fund payments. Would such expenditures be eligible in the absence of a stay-at-home order?

Fund payments may be used for economic support in the absence of a stay-at-home order if such expenditures are determined by the government to be necessary. This may include, for example, a grant program to benefit small businesses that close voluntarily to promote social distancing measures or that are affected by decreased customer demand as a result of the COVID-19 public health emergency.

May Fund payments be used to assist impacted property owners with the payment of their property taxes?

Fund payments may not be used for government revenue replacement, including the provision of assistance to meet tax obligations.

May Fund payments be used to replace foregone utility fees? If not, can Fund payments be used as a direct subsidy payment to all utility account holders?

Fund payments may not be used for government revenue replacement, including the replacement of unpaid utility fees. Fund payments may be used for subsidy payments to electricity account holders to the extent that the subsidy payments are deemed by the recipient to be necessary expenditures incurred due to the COVID-19 public health emergency and meet the other criteria of section 601(d) of the Social Security Act outlined in the Guidance. For example, if determined to be a necessary expenditure, a government could provide grants to individuals facing economic hardship to allow them to pay their utility fees and thereby continue to receive essential services.

Could Fund payments be used for capital improvement projects that broadly provide potential economic development in a community?

In general, no. If capital improvement projects are not necessary expenditures incurred due to the COVID-19 public health emergency, then Fund payments may not be used for such projects.

However, Fund payments may be used for the expenses of, for example, establishing temporary public medical facilities and other measures to increase COVID-19 treatment capacity or improve mitigation measures, including related construction costs.

The Guidance includes workforce bonuses as an example of ineligible expenses but provides that hazard pay would be eligible if otherwise determined to be a necessary expense. Is there a specific definition of “hazard pay”?

Hazard pay means additional pay for performing hazardous duty or work involving physical hardship, in each case that is related to COVID-19.

The Guidance provides that ineligible expenditures include “[p]ayroll or benefits expenses for employees whose work duties are not substantially dedicated to mitigating or responding to the COVID-19 public health emergency.” Is this intended to relate only to public employees?

Yes. This particular nonexclusive example of an ineligible expenditure relates to public employees. A recipient would not be permitted to pay for payroll or benefit expenses of private employees and any financial assistance (such as grants or short-term loans) to private employers are not subject to the restriction that the private employers’ employees must be substantially dedicated to mitigating or responding to the COVID-19 public health emergency.

May counties pre-pay with CARES Act funds for expenses such as a one or two-year facility lease, such as to house staff hired in response to COVID-19?

A government should not make prepayments on contracts using payments from the Fund to the extent that doing so would not be consistent with its ordinary course policies and procedures.

Must a stay-at-home order or other public health mandate be in effect in order for a government to provide assistance to small businesses using payments from the Fund?

No. The Guidance provides, as an example of an eligible use of payments from the Fund, expenditures related to the provision of grants to small businesses to reimburse the costs of business interruption caused by required closures. Such assistance may be provided using amounts received from the Fund in the absence of a requirement to close businesses if the relevant government determines that such expenditures are necessary in response to the public health emergency.

Should States receiving a payment transfer funds to local governments that did not receive payments directly from Treasury?

Yes, provided that the transferred funds are used by the local government for eligible expenditures under the statute. To facilitate prompt distribution of Title V funds, the CARES Act authorized Treasury to make direct payments to local governments with populations in excess of 500,000, in amounts equal to 45% of the local government's per capita share of the statewide allocation. This statutory structure was based on a recognition that it is more administratively feasible to rely on States, rather than the federal government, to manage the transfer of funds to smaller local governments. Consistent with the needs of all local governments for funding to address the public health emergency, States should transfer funds to local governments with populations of 500,000 or less, using as a benchmark the per capita allocation formula that governs payments to larger local governments. This approach will ensure equitable treatment among local governments of all sizes.

For example, a State received the minimum \$1.25 billion allocation and had one county with a population over 500,000 that received \$250 million directly. The State should distribute 45 percent of the \$1 billion it received, or \$450 million, to local governments within the State with a population of 500,000 or less.

May a State impose restrictions on transfers of funds to local governments?

Yes, to the extent that the restrictions facilitate the State's compliance with the requirements set forth in section 601(d) of the Social Security Act outlined in the Guidance and other applicable requirements such as the Single Audit Act, discussed below. Other restrictions are not permissible.

If a recipient must issue tax anticipation notes (TANs) to make up for tax due date deferrals or revenue shortfalls, are the expenses associated with the issuance eligible uses of Fund payments?

If a government determines that the issuance of TANs is necessary due to the COVID-19 public health emergency, the government may expend payments from the Fund on the accrued interest expense on TANs and unbudgeted administrative and transactional costs, such as necessary payments to advisors and underwriters, associated with the issuance of the TANs.

May recipients use Fund payments to expand rural broadband capacity to assist with distance learning and telework?

Such expenditures would only be permissible if they are necessary for the public health emergency. The cost of projects that would not be expected to increase capacity to a significant extent until the need for distance learning and telework have passed due to this public health emergency would not be necessary due to the public health emergency and thus would not be eligible uses of Fund payments.

Are costs associated with increased solid waste capacity an eligible use of payments from the Fund?

Yes, costs to address increase in solid waste as a result of the public health emergency, such as relates to the disposal of used personal protective equipment, would be an eligible expenditure.

May payments from the Fund be used to cover across-the-board hazard pay for employees working during a state of emergency?

No. The Guidance says that funding may be used to meet payroll expenses for public safety, public health, health care, human services, and similar employees whose services are substantially dedicated to mitigating or responding to the COVID-19 public health emergency. Hazard pay is a form of payroll expense and is subject to this limitation, so Fund payments may only be used to cover hazard pay for such individuals.

May Fund payments be used for expenditures related to the administration of Fund payments by a State, territorial, local, or Tribal government?

Yes, if the administrative expenses represent an increase over previously budgeted amounts and are limited to what is necessary. For example, a State may expend Fund payments on necessary administrative expenses incurred with respect to a new grant program established to disburse amounts received from the Fund.

May recipients use Fund payments to provide loans?

Yes, if the loans otherwise qualify as eligible expenditures under section 601(d) of the Social Security Act as implemented by the Guidance. Any amounts repaid by the borrower before December 30, 2020, must be either returned to Treasury upon receipt by the unit of government providing the loan or used for another expense that qualifies as an eligible expenditure under section 601(d) of the Social Security Act. Any amounts not repaid by the borrower until after December 30, 2020, must be returned to Treasury upon receipt by the unit of government lending the funds.

May Fund payments be used for expenditures necessary to prepare for a future COVID-19 outbreak?

Fund payments may be used only for expenditures necessary to address the current COVID-19 public health emergency. For example, a State may spend Fund payments to create a reserve of personal protective equipment or develop increased intensive care unit capacity to support regions in its jurisdiction not yet affected, but likely to be impacted by the current COVID-19 pandemic.

Questions Related to Administration of Fund Payments***Do governments have to return unspent funds to Treasury?***

Yes. Section 601(f)(2) of the Social Security Act, as added by section 5001(a) of the CARES Act, provides for recoupment by the Department of the Treasury of amounts received from the Fund that have not been used in a manner consistent with section 601(d) of the Social Security Act. If a government has not used funds it has received to cover costs that were incurred by December 30, 2020, as required by the statute, those funds must be returned to the Department of the Treasury.

What records must be kept by governments receiving payment?

A government should keep records sufficient to demonstrate that the amount of Fund payments to the government has been used in accordance with section 601(d) of the Social Security Act.

May recipients deposit Fund payments into interest bearing accounts?

Yes, provided that if recipients separately invest amounts received from the Fund, they must use the interest earned or other proceeds of these investments only to cover expenditures incurred in accordance with section 601(d) of the Social Security Act and the Guidance on eligible expenses. If a government deposits Fund payments in a government's general account, it may use those funds to meet immediate cash management needs provided that the full amount of the payment is used to cover necessary expenditures. Fund payments are not subject to the Cash Management Improvement Act of 1990, as amended.

May governments retain assets purchased with payments from the Fund?

Yes, if the purchase of the asset was consistent with the limitations on the eligible use of funds provided by section 601(d) of the Social Security Act.

What rules apply to the proceeds of disposition or sale of assets acquired using payments from the Fund?

If such assets are disposed of prior to December 30, 2020, the proceeds would be subject to the restrictions on the eligible use of payments from the Fund provided by section 601(d) of the Social Security Act.

Are Fund payments to State, territorial, local, and tribal governments considered grants?

No. Fund payments made by Treasury to State, territorial, local, and Tribal governments are not considered to be grants but are “other financial assistance” under 2 C.F.R. § 200.40.

Are Fund payments considered federal financial assistance for purposes of the Single Audit Act?

Yes, Fund payments are considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance, 2 C.F.R. § 200.303 regarding internal controls, §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements.

Are Fund payments subject to other requirements of the Uniform Guidance?

Fund payments are subject to the following requirements in the Uniform Guidance (2 C.F.R. Part 200): 2 C.F.R. § 200.303 regarding internal controls, 2 C.F.R. §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements.

Is there a Catalog of Federal Domestic Assistance (CFDA) number assigned to the Fund?

Yes. The CFDA number assigned to the Fund is 21.019, pending completion of registration.

If a State transfers Fund payments to its political subdivisions, would the transferred funds count toward the subrecipients’ total funding received from the federal government for purposes of the Single Audit Act?

Yes. The Fund payments to subrecipients would count toward the threshold of the Single Audit Act and 2 C.F.R. part 200, subpart F re: audit requirements. Subrecipients are subject to a single audit or program-specific audit pursuant to 2 C.F.R. § 200.501(a) when the subrecipients spend \$750,000 or more in federal awards during their fiscal year.

Are recipients permitted to use payments from the Fund to cover the expenses of an audit conducted under the Single Audit Act?

Yes, such expenses would be eligible expenditures, subject to the limitations set forth in 2 C.F.R. § 200.425.

If a government has transferred funds to another entity, from which entity would the Treasury Department seek to recoup the funds if they have not been used in a manner consistent with section 601(d) of the Social Security Act?

The Treasury Department would seek to recoup the funds from the government that received the payment directly from the Treasury Department. State, territorial, local, and Tribal governments receiving funds from Treasury should ensure that funds transferred to other entities, whether pursuant to a grant program

or otherwise, are used in accordance with section 601(d) of the Social Security Act as implemented in the Guidance.

Exhibit C



County of Orange

County Executive Office

April 13, 2020

I, Frank Kim, am the chief executive of the County of Orange, and I certify that:

1. I have the authority on behalf of the County of Orange to request direct payment from the Department of the Treasury ('Treasury') pursuant to section 601(b) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, div. A, Title V (Mar. 27, 2020).
2. I understand that Treasury will rely on this certification as a material representation in making a direct payment to the County of Orange.
3. The County of Orange's proposed uses of the funds provided as direct payment under section 601(b) of the Social Security Act will be used only to cover those costs that-
 - a. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
 - b. were not accounted for in the budget most recently approved as of March 27, 2020, for [insert name of local government entity]; and
 - c. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

By: Frank Kim

Signature: 

Title: County Executive Officer

Date: 4/13/20

PAPERWORK REDUCTION ACT NOTICE

The information collected will be used for the U.S. Government to process requests for support. The estimated burden associated with this collection of information is two hour per response. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Privacy, Transparency and Records, Department of the Treasury, 1500 Pennsylvania Ave., N.W., Washington, D.C. 20220. DO NOT send the form to this address. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

EXHIBIT D



OFFICE OF
INSPECTOR GENERAL

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

July 2, 2020

OIG-CA-20-021

MEMORANDUM FOR CORONAVIRUS RELIEF FUND RECIPIENTS

FROM: Richard K. Delmar /s/
Deputy Inspector General

SUBJECT: Coronavirus Relief Fund Reporting and Record Retention Requirements

Title VI of the Social Security Act, as amended by Title V of Division A of the *Coronavirus Aid, Relief, and Economic Security Act* (Public Law 115-136), provides that the Department of the Treasury (Treasury) Office of Inspector General (OIG) is responsible for monitoring and oversight of the receipt, disbursement, and use of Coronavirus Relief Fund payments. Treasury OIG also has authority to recover funds in the event that it is determined a recipient of a Coronavirus Relief Fund payment failed to comply with requirements of subsection 601(d) of the Social Security Act, as amended, (42 U.S.C. 801(d)). Accordingly, we are providing recipient reporting and record retention requirements that are essential for the exercise of these responsibilities, including our conduct of audits and investigations.

Reporting Requirements and Timelines

Each prime recipient of Coronavirus Relief Fund payments¹ shall report Coronavirus Disease 2019 (COVID-19) related "costs incurred" during the "covered period"² (the period beginning on March 1, 2020 and ending on December 30, 2020), in the manner of and according to the timelines outlined in this memorandum. As described below, each prime recipient shall report interim and quarterly data and other recipient data according to these requirements. Treasury OIG is working on development of a portal with GrantSolutions³ that is expected to be operational on

¹ Prime recipients include all 50 States, Units of Local Governments, the District of Columbia, U.S. Territories, and Tribal Governments that received a direct payment from Treasury in accordance with Title V.

² Refer to Treasury's guidance dated June 30, 2020 for more information on costs incurred and the covered period.

³ A grant management service provider under the U.S. Department of Health and Human Services.

September 1, 2020, for recipients to report data on a quarterly basis. Until the GrantSolutions portal is operational, each prime recipient shall follow the interim reporting requirements. Treasury OIG will notify each prime recipient when GrantSolutions is operational or of any changes to the expected September 1, 2020 start date.

Interim Reporting for the period March 1 through June 30, 2020

By no later than July 17, 2020, each prime recipient is responsible for reporting costs incurred during the period March 1 through June 30, 2020. For this interim report, prime recipients need only report totals by the following broad categories:

- a. Amount transferred to other governments;
- b. Amount spent on payroll for public health and safety employees;
- c. Amount spent on budgeted personnel and services diverted to a substantially different use;
- d. Amount spent to improve telework capabilities of public employees;
- e. Amount spent on medical expenses;
- f. Amount spent on public health expenses;
- g. Amount spent to facilitate distance learning;
- h. Amount spent providing economic support;
- i. Amount spent on expenses associated with the issuance of tax anticipation notes; and
- j. Amount spent on items not listed above.

Recipients should consult Treasury's guidance and Frequently Asked Questions in reporting costs incurred during the period March 1 through June 30, 2020. The total of all categories must equal the total of all costs incurred during that period. A spreadsheet is attached for your use in providing the data. As discussed below, the prime recipient will be required to report information for the period March 1 through June 30, 2020 into GrantSolutions once it is operational.

Quarterly Reporting

Each prime recipient of Coronavirus Relief Fund payments shall report COVID-19 related costs into the GrantSolutions portal. Data required to be reported includes, but is not limited to, the following:

1. the total amount of payments from the Coronavirus Relief Fund received from Treasury;
2. the amount of funds received that were expended or obligated for each project or activity;
3. a detailed list of all projects or activities for which funds were expended or obligated, including:
 - a. the name of the project or activity;
 - b. a description of the project or activity; and

4. detailed information on any loans issued; contracts and grants awarded; transfers made to other government entities; and direct payments made by the recipient that are greater than \$50,000.

The prime recipient is responsible for reporting into the GrantSolutions portal information on uses of Coronavirus Relief Fund payments.

Recipient Portal Access: For future quarterly reporting, each prime recipient will have GrantSolutions portal access for three (3) individuals: two (2) designees (preparers) to input quarterly data and one (1) official authorized to certify that the data is true, accurate, and complete.⁴ **By no later than July 17, 2020**, please provide the name, title, email address, phone number, and postal address of these individuals so that portal access can be granted. After this information is received, guidance on the GrantSolutions portal access and data submission instructions will be issued separately.

Reporting timeline

By no later than September 21, 2020, recipients shall submit via the portal the first detailed quarterly report, which shall cover the period March 1 through June 30, 2020. Thereafter, quarterly reporting will be due no later than 10 days after each calendar quarter. For example, the period July 1 through September 30, 2020, must be reported no later than October 13, 2020 (Tuesday after the 10th day of October and the Columbus Day Holiday). Reporting shall end with either the calendar quarter after the COVID-19 related costs and expenditures have been liquidated and paid or the calendar quarter ending September 30, 2021, whichever comes first.

Record Retention Requirements

Recipients of Coronavirus Relief Fund payments shall maintain and make available to the Treasury OIG upon request all documents and financial records sufficient to establish compliance with subsection 601(d) of the Social Security Act, as amended, (42 U.S.C. 801(d)), which provides:

(d) USE OF FUNDS.—A State, Tribal government, and unit of local government shall use the funds provided under a payment made under this section to cover only those costs of the State, Tribal government, or unit of local government 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 the date of enactment of this section for the State or government; and

⁴ The certifying official is an authorized representative of the recipient organization with the legal authority to give assurances, make commitments, enter into contracts, and execute such documents on behalf of the recipient.

3. were incurred⁵ during the period that begins on March 1, 2020, and ends on December 30, 2020.

Records to support compliance with subsection 601(d) may include, but are not limited to, copies of the following:

1. general ledger and subsidiary ledgers used to account for (a) the receipt of Coronavirus Relief Fund payments and (b) the disbursements from such payments to meet eligible expenses related to the public health emergency due to COVID-19;
2. budget records for 2019 and 2020;
3. payroll, time records, human resource records to support costs incurred for payroll expenses related to addressing the public health emergency due to COVID-19;
4. receipts of purchases made related to addressing the public health emergency due to COVID-19;
5. contracts and subcontracts entered into using Coronavirus Relief Fund payments and all documents related to such contracts;
6. grant agreements and grant subaward agreements entered into using Coronavirus Relief Fund payments and all documents related to such awards;
7. all documentation of reports, audits, and other monitoring of contractors, including subcontractors, and grant recipient and subrecipients;
8. all documentation supporting the performance outcomes of contracts, subcontracts, grant awards, and grant recipient subawards;
9. all internal and external email/electronic communications related to use of Coronavirus Relief Fund payments; and
10. all investigative files and inquiry reports involving Coronavirus Relief Fund payments.

Records shall be maintained for a period of five (5) years after final payment is made using Coronavirus Relief Fund monies. These record retention requirements are applicable to all prime recipients and their grantees and subgrant recipients, contractors, and other levels of government that received transfers of Coronavirus Relief Fund payments from prime recipients.

Thank you and we appreciate your assistance.

⁵ Refer to Treasury's guidance dated June 30, 2020 for more information on the definition of costs incurred.