

MEMORANDUM OF AGREEMENT
FOR ADMINISTRATION OF MARTIN COUNTY'S CARES ACT
FOOD RELIEF PROGRAM BETWEEN
MARTIN COUNTY AND THE UNITED WAY OF MARTIN COUNTY

This Memorandum of Agreement (the "Agreement") is made and entered into by Martin County, a political subdivision of the State of Florida (hereinafter referred to as the "County") and the United Way of Martin County, a Florida not-for-profit corporation (hereinafter referred to as the "United Way").

WHEREAS, the County has entered into a CARES Act Funding Agreement with the State of Florida, Division of Emergency Management to receive funding from the Coronavirus Relief Fund pursuant to the CARES Act section 601(d) of the Social Security Act;

WHEREAS, the County has determined that citizens of Martin County have experienced financial hardship due to Coronavirus Disease 2019 and there is an economic need for a food relief program in Martin County to assist local nonprofit agencies and nonprofit food pantries for the free distribution of food to residents of Martin County; and

WHEREAS, the County desires to collaborate with the United Way of Martin County for the administration of the Martin County's CARES Act food relief program; and

WHEREAS, the United Way of Martin County is required to strictly comply with the eligibility and reimbursement requirements for use of the Coronavirus Relief Act funds.

NOW, THEREFORE, in consideration of the cooperative effort between the parties contained herein, the parties agree as follows:

1. **PURPOSE.** The purpose of this Agreement is to provide for cooperation and coordination between the parties in carrying out the responsibilities to receive and allocate funding from the Coronavirus Relief Fund.

2. **TERM OF AGREEMENT.** The term of this Agreement is from March 1, 2020 and shall end on December 30, 2020 unless terminated earlier pursuant to this Agreement.

3. **FUNDING.**

a. The County was awarded funds from the Coronavirus Relief Fund pursuant to the CARES Act section 601(d) of the Social Security Act. As a condition of the receipt of such funds, the County entered into a CARES Act Funding Agreement with the State of Florida, Division of Emergency Management ("CARES Act Funding Agreement"), which is attached and incorporated into this Agreement as Exhibit 1.

b. Payments under the CARES Act Funding Agreement may only be used to cover expenses that:

i. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);

ii. were not accounted for in the most recently approved budget of the United Way as of March 27, 2020; and

iii. were incurred during the period that begins on March 1, 2020 and ends on December 30, 2020. Funds transferred to United Way must qualify as a necessary expenditure incurred due to the public health emergency and meet the criteria of section 601(d) of the Social Security Act.

4. RESPONSIBILITIES OF UNITED WAY.

a. United Way agrees to administer United We Care: Martin County's COVID-19 CARES Food Relief Fund ("Program") on behalf of Martin County. The Program will assist eligible nonprofit agencies and nonprofit food pantries who serve Martin County by providing food for free distribution to residents who have experienced a loss of income because of COVID-19. Full guidelines are attached as Exhibit 2, United We Care: Martin County's COVID-19 Food Relief Guidelines.

i. For purposes of this Agreement, eligible nonprofit agencies and nonprofit food pantries are nonprofit organizations serving the residents of Martin County that have food distribution as part of their mission.

ii. United Way is authorized to expend up to a total of \$3,500,000.00 as needed for the Program ("Allocated Program Fund"), which includes food costs, transportation costs and administrative costs as provided below. It is the responsibility of United Way to track the funds expended under the Program to ensure the Allocated Program Fund is not exceeded. Any expenditures that exceed the Allocated Program Fund will not be reimbursed by the County.

iii. The Allocated Program Fund can only be expended as follows:

1. For the purchase of food by United Way for distribution to local nonprofit agencies and nonprofit food pantries to serve Martin County residents;
2. For transportation costs for food purchased under the Program; and
3. For United Way's Program administrative fee equaling 9% of actual food and transportation costs expended under the Program.

iv. United Way will administer the Program in strict compliance with the following guidelines:

1. United Way will purchase food to distribute to local nonprofit agencies and nonprofit food pantries for further distribution to Martin County residents who have experienced financial hardship due to COVID-19 at no cost to the residents.
2. United Way must include farm fresh produce from local farms in Martin County for the Program, when available.
3. United Way must include the Treasure Coast Food Bank as one of the eligible nonprofits to receive assistance under this Program.

4. The Program Funds will be utilized for the purchase food, and associated transportation costs, for distribution to local nonprofit agencies and nonprofit food pantries as defined in paragraph 4(a). Program Funds will not be directly distributed to local nonprofit agencies and nonprofit food pantries.

5. There can be no mass distributions of food.

6. United Way must complete a CARES Act Funding Request Form, attached as Exhibit 3 (“Request Form”), to request funding for food and transportation costs under the Program. United Way must include a line item in each Request Form for the 9% administration fee due to administer the Program and provide all documentation and information necessary to justify and support the payment request, including any additional documentation requested by the County. Any Request Form submitted shall not exceed \$250,000.00 and shall not be less than \$25,000.00.

7. For every Request Form submitted under this Program, within 60 days of receipt of the funds, United Way must provide the County with a distribution report evidencing the actual food and transportation costs expended and evidencing that the food purchased under the Program was distributed to Martin County residents at no cost.

b. United Way will work with all agencies and food pantries that benefit from the food relief to promote and advertise the Program on behalf of Martin County to inform Martin County residents about the Program and the extra availability of food.

5. **COMPENSATION FOR SERVICES.** Martin County will compensate United Way an administrative fee of 9% of the actual food and transportation costs expended under the Program, which will be billed with each Request Form submitted.

6. **CONDITIONS FOR RECEIVING FUNDING.** In order to receive payment for Program expenses and the costs associated with administering the Program, the United Way must strictly adhere to the following conditions.

a. United Way acknowledges it has thoroughly reviewed and understands the terms and conditions of the CARES Act Funding Agreement between the County and the State of Florida, Division of Emergency Management and agrees to strictly abide by the terms and conditions of the CARES Act Funding Agreement.

b. United Way must provide a CARES Act Coronavirus Relief Fund Recipient Certification with each Request Form submitted signed by the official who has the legal authority to bind the United Way attesting to the accuracy of the of the Request Form and its attachments. A copy of the required CARES Act Certification is attached as Exhibit 4.

c. United Way must provide a CARES Act Coronavirus Relief Fund Certification Regarding Lobbying signed by the official who has the legal authority to bind the United Way. A copy of the Certification Regarding Lobbying is attached as Exhibit 5.

7. PAYMENT TO UNITED WAY FOR ELIGIBLE EXPENSES.

a. The County agrees to process requests for all eligible expenses provided all Conditions for Receiving Funding in paragraph 6 above are strictly met. The only eligible expenses under the terms of this Agreement include payment for food, transportation costs for purchased food and the administrative fee due to United Way for administering the Program.

b. Upon the completion of all of the requirements in paragraph 6 and the County's receipt of the documents in sections 6(b) through (d) ("CARES Act Documentation"), the County shall have 30 days to review such documentation for expense eligibility. Payment of eligible expenses shall be contingent upon the County's review of documentation submitted by the United Way and determination that the requested expenses are eligible under the terms of the CARES Act Funding Agreement and this Agreement.

c. Upon the County's determination of eligibility, the County will issue payment to the United Way.

8. MANDATED CONDITIONS AND OTHER LAWS. United Way acknowledges that the use of the funds received under this Agreement are subject to strict compliance with the terms and conditions of the CARES Act Funding Agreement and agrees to comply therewith. In accordance with the CARES Act Funding Agreement, United Way agrees to comply with the following provisions of that Agreement as if it were a party to that Agreement:

- a. Paragraph 10, Audits
- b. Paragraph 20, Mandated Conditions and Other Laws.
- c. Paragraph 21, Lobbying Prohibition
- d. Paragraph 24, Equal Opportunity Employment
- e. Paragraph 25, Copeland Anti-Kickback Act
- f. Paragraph 26, Contract Work Hours and Safety Standards
- g. Paragraph 27, Clear Air Act and Federal Water Pollution Act
- h. Paragraph 28, Suspension and Debarment
- i. Paragraph 29, Byrd Anti-Lobbying Amendment
- j. Paragraph 30, Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms

9. NO DISCRIMINATION. United Way, as a part of the consideration for this Agreement, does hereby covenant and agree that no person shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in administration of the Program on the basis of age, sex, physical handicap or other disability, race, color, national origin, religion or ancestry.

10. NOTICE. The parties shall direct all matters arising in connection with the performance of this Agreement to the attention of the respective contact persons named below for resolution or action:

For the County:

George Stokus
Assistant County Administrator
2401 SE Monterey Road
Stuart, FL 34996
(772) 221-2352
gstokus@martin.fl.us

For the United Way of Martin County:

Carol G. Houwaart-Diez
President/CEO
10 SE Central Parkway, Suite 101
Stuart, FL 34994
(772) 283-4800
chdiez@unitedwaymartin.org

11. **APPROPRIATIONS.** The County's performance under this Agreement is contingent upon the availability of funding under the CARES Act and does not obligate future appropriation for the obligations created under this Agreement.

12. **AVAILABILITY OF FUNDS.** The obligations of the County under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the Board of County Commissioners of Martin County.

13. **RECORDS.** The United Way shall maintain adequate records to justify all charges, expenses and costs incurred pursuant to this Agreement for the period of time specified in the appropriate retention schedule published by the Florida Department of State.

14. **PUBLIC RECORDS.** Failure to comply with the following provisions shall be deemed a material default subject to termination as provided herein. To the extent that disclosure of information is required by law or regulation or applicable legal or regulatory process, the County shall give notice as is practicable to the United Way that such disclosure is required. United Way shall comply with public records laws, specifically, United Way shall:

- a. keep and maintain public records required by County to perform the service;
- b. upon request from County's custodian of public records, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
- c. ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of this Agreement if United Way does not transfer the records to County; and

- d. upon completion of this Agreement, transfer, at no cost, to County all public records in possession of United Way or keep and maintain public records required by County to perform the service. If United Way transfers all public records to County upon completion of this Agreement, United Way shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If United Way keeps and maintains public records upon completion of this Agreement, United Way shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County, upon request from County's custodian of public records, in a format that is compatible with the information technology systems of County.

IF UNITED WAY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO UNITED WAY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT COUNTY'S CUSTODIAN OF PUBLIC RECORDS AT (772) 419-6959, PUBLIC.RECORDS@MARTIN.FL.US, MARTIN COUNTY, ATTN: PUBLIC RECORDS LIAISON, 2401 SE MONTEREY ROAD, STUART, FLORIDA 34996.

15. AUDIT.

- a. In accordance with the receipt and expenditure of funds under this Agreement, United Way must follow Generally Accepted Accounting Principles as defined in 2 C.F.R. §200.49.

- b. As a condition of receiving funds under this Agreement, the County, the State of Florida Division of Emergency Management, the Florida Auditor General or any authorized representative, shall enjoy the right to access to any documents, financial statements, papers or other records of the United Way which are pertinent to this Agreement in order to make audits, examinations, excerpts and transcripts. The right to access also includes timely and reasonable access to United Way's personnel for the purpose of interview and discussion related to such documents.

16. TERMINATION OF AGREEMENT. The parties may terminate this Agreement at any time upon 30 days written notice.

17. LIABILITY. Each party hereto agrees that it shall be solely responsible for the negligent or wrongful acts of its employees and agents. Nothing contained herein shall constitute a waiver of the County's sovereign immunity, or the provisions of section 768.28, Florida Statutes. Nothing herein shall be construed as consent by either party to be sued by third parties.

18. INDEMNIFICATION. The United Way agrees to be fully responsible and to defend and indemnify the County, for the negligent acts or omissions of the United Way, its employees and agents and agrees to be liable for any damages proximately caused by said acts or omissions. Nothing herein is intended to serve as a waiver of the County's sovereign immunity or the provisions of Section 768.28. Nothing herein shall be construed as consent by the County to be sued by third parties in any manner arising out of this Agreement.

19. **GOVERNING LAW AND VENUE.** This Agreement shall be governed, interpreted, and construed in accordance with the laws of the State of Florida. Venue for any legal action by a party to this Agreement to interpret, construe or enforce this Agreement shall be in a court of competent jurisdiction in and for Martin County, Florida.

20. **WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT EITHER OF THEM MAY HAVE TO A TRIAL BY JURY FOR ANY LITIGATION BASED HEREIN, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

21. **SEVERABILITY.** The invalidity or unenforceability of any provision of clause in this Agreement shall not affect the validity or enforceability of any other clause or provision.

22. **DISPUTE RESOLUTION.** Disputes under this Agreement may be resolved by the County's Authorized Representative and the United Way's Authorized Representative. If such Authorized Representatives are unable to reach a resolution and the parties agree that the issue is of sufficient merit, prior to initiating any lawsuit or proceeding, the parties must select a mediator mutually acceptable to both parties to conduct a mediation of the issues involved. The parties agree to be responsible for their respective costs and fees incurred during the mediation and that the mediator's fees and costs shall be paid in equal amounts by each party.

23. **AUTHORIZATION.** United Way certifies that it has the legal authority to receive funds under this Agreement and its governing body has authorized the execution and acceptance of this Agreement. The undersigned also certifies that it has the authority to execute and bind the United Way.

24. **ATTACHMENTS**

- a. Exhibit 1: CARES Act Funding Agreement Between Martin County and State of Florida, Division of Emergency Management
- b. Exhibit 2: United We Care: Martin County's COVID-19 Food Relief Guidelines
- c. Exhibit 3: CARES Act Funding Request Form
- d. Exhibit 4: CARES Act Certification
- e. Exhibit 5: Certification Regarding Lobbying

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the dates appearing beneath their respective signatures.

MARTIN COUNTY,

UNITED WAY OF MARTIN COUNTY,

By: _____
Taryn Kryzda,
County Administrator

By: _____
Carol G. Houwaart-Diez
President/CEO

Date

Date

DRAFT