



500 West Big Beaver
Troy, MI 48084
troymi.gov

CITY COUNCIL AGENDA ITEM

Date: June 16, 2020

To: Honorable Troy City Council Members

From: Mark F. Miller, City Manager
Lori Grigg Bluhm, City Attorney

Subject: Approval of Inter-local Agreement with Oakland County for CARES Act Reimbursement

On June 4, 2020, the Oakland County Board of Commissioners established the Oakland Together Local Government Partnership Program (Program), allocating \$35,000,000, received under the Coronavirus Aid, Relief and Economic Security Act's (CARES Act) Coronavirus Relief Fund. Through the creation of this program, Oakland County acknowledges the front line and essential services performed by the local governmental units (cities, villages, and townships) within Oakland County, and provides a mechanism to request reimbursement towards the unanticipated financial burden related directly to the COVID-19 public health emergency.

As a condition of eligibility for the CARES Act funding, each local unit of government is required to approve an Inter-local Agreement with Oakland County. An Inter-local Agreement memorializes duties and responsibilities between separate governmental entities, and is authorized under the Urban Cooperation Act, MCL 124.501 et.seq.. Under the attached proposed Inter-local Agreement, each governmental entity assumes responsibility to be in compliance with federal funding mandates, since the Program funding flows from a federal allocation. Under this Program, each request for reimbursement must be submitted to an Oakland County oversight committee, who will vet each application for compliance with the CARES Act program. Only those eligible expenses actually incurred by a local unit of government from March 1 until November 30, 2020 can be reimbursed. Also, the expenditures must not have been anticipated or budgeted in the 2020 fiscal year budget. The Program also allows for reimbursement of any required 25% local match for FEMA funding, but will not allow any duplicate reimbursement or funding. The Program also requires record keeping in accordance with federal mandates, with a minimum records retention of ten years. Requests for reimbursement must be submitted on the approved application form within 30 days of the expenditure. Previously documented municipal expenditures are also eligible for reimbursement.

Oakland County has presented the attached Inter-local Agreement to each of the local units of government. City Administration has reviewed the Inter-local Agreement, and recommends approval.

We are happy to answer any questions that you have concerning the Oakland Together Local Government Partnership Program.

AGREEMENT FOR CARES ACT DISTRIBUTION BETWEEN OAKLAND COUNTY AND CITY OF TROY

This Agreement (the "Agreement") is made between Oakland County, a Municipal and Constitutional Corporation, 1200 North Telegraph Road, Pontiac, Michigan 48341 ("County"), and the City of Troy ("Public Body"), 500 W. Big Beaver Road, Troy, MI 48084. County and Public Body may be referred to individually as a "Party" and jointly as "Parties".

PURPOSE OF AGREEMENT. County and Public Body enter into this Agreement pursuant to the Urban Cooperation Act of 1967, 1967 Public Act 7, MCL 124.501 *et seq.*, for the purpose of County distributing a portion of its CARES Act funds to Public Body. County has allocated a portion of its CARES Act funds to be distributed to CVTs within Oakland County, which will be used to assist CVTs in meeting certain areas of need caused by the COVID-19 pandemic.

In consideration of the mutual promises, obligations, representations, and assurances in this Agreement, the Parties agree to the following:

1. **DEFINITIONS.** The following words and expressions used throughout this Agreement, whether used in the singular or plural, shall be defined, read, and interpreted as follows:
 - 1.1. **Agreement** means the terms and conditions of this Agreement and any other mutually agreed to written and executed modification, amendment, Exhibit and attachment.
 - 1.2. **Claims** mean any alleged losses, claims, complaints, demands for relief or damages, lawsuits, causes of action, proceedings, judgments, deficiencies, liabilities, penalties, litigation, costs, and expenses, including, but not limited to, reimbursement for reasonable attorney fees, witness fees, court costs, investigation expenses, litigation expenses, amounts paid in settlement, and/or other amounts or liabilities of any kind which are incurred by or asserted against County or Public Body, or for which County or Public Body may become legally and/or contractually obligated to pay or defend against, whether direct, indirect or consequential, whether based upon any alleged violation of the federal or the state constitution, any federal or state statute, rule, regulation, or any alleged violation of federal or state common law, whether any such claims are brought in law or equity, tort, contract, or otherwise, and/or whether commenced or threatened.
 - 1.3. **Confidential Information** means all information and data that County is required or permitted by law to keep confidential, including records of County' security measures, including security plans, security codes and combinations, passwords, keys, and security procedures, to the extent that the records relate to ongoing security of County as well as records or information to protect the security or safety of persons or property, whether public or private, including, but not limited to, building, public works, and public water supply designs relating to ongoing security measures, capabilities and plans for responding to violations of the Michigan Anti-terrorism Act, emergency response plans, risk planning documents, threat assessments and domestic preparedness strategies.
 - 1.4. **County** means Oakland County, a Municipal and Constitutional Corporation, including, but not limited to, all of its departments, divisions, the County Board of Commissioners, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, volunteers, and/or any such persons' successors.
 - 1.5. **Day** means any calendar day beginning at 12:00 a.m. and ending at 11:59 p.m.

- 1.6. **Public Body** means the City of Troy including, but not limited to, its Council, its Board, its departments, its divisions, elected and appointed officials, directors, board members, council members, commissioners, authorities, committees, employees, agents, subcontractors, attorneys, volunteers, and/or any such persons' successors.
- 1.7. **Public Body Employee** means any employees, officers, directors, members, managers, trustees, volunteers, attorneys, representatives of Public Body, licensees, concessionaires, contractors, subcontractors, independent contractors, agents, and/or any such persons' successors or predecessors (whether such persons act or acted in their personal, representative or official capacities), and/or any persons acting by, through, under, or in concert with any of the above who use or have access to the Oakland Together CVT funds provided under this Agreement. "Public Body Employee" shall also include any person who was a Public Body Employee at any time during the term of this Agreement but, for any reason, is no longer employed, appointed, or elected in that capacity. "Public Body Employee" does not include an individual resident of Public Body who receives an authorized distribution of Oakland Together CVT funds.
- 1.8. **CARES Act funds** means the money distributed to the County by the United States Department of Treasury pursuant to section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act.
- 1.9. **CVTs** means Cities, Villages, and Townships.
- 1.10. **Oakland Together CVT funds** means that portion of the CARES Act funds which the County has allocated to CVTs within Oakland County.
- 1.11. **Expenditure Submission Form** means the form which Public Body must complete and submit to the Office of the County Executive (OCE) prior to any disbursement of Oakland Together CVT funds to Public Body.
- 1.12. **OCE** means the Office of the Oakland County Executive, which includes the Chief Deputy and other Deputy County Executives.
- 1.13. **Oversight Committee** means the committee established by the Oakland County Board of Commissioners in the resolution allocating the Oakland Together CVT funds.
2. **COUNTY RESPONSIBILITIES.**
 - 2.1. OCE will review Public Body's Expenditure Submission Form(s) to determine whether Public Body is eligible to receive a distribution of Oakland Together CVT funds. This determination will be in the OCE's discretion pursuant to the "Coronavirus Relief Fund Guidance for State, Territorial, Local and Tribal Government" or other guidance issued by the Federal Government. OCE may request any supporting documentation it deems necessary to fully evaluate Public Body's eligibility.
 - 2.2. If OCE determines that Public Body is eligible to receive a distribution, County will distribute the eligible amount to Public Body.
 - 2.3. County is not obligated or required to distribute any Oakland Together CVT funds to Public Body if OCE determines that Public Body is not eligible to receive the funds, or if the amount of Oakland Together CVT funds available are not sufficient to fulfill Public Body's Expenditure Submission Form.
 - 2.4. After November 30, 2020, County will not accept any further Expenditure Submission Forms from Public Body, and County will retain the balance of any Oakland Together CVT funds for which Public Body was originally eligible, but which are not covered by an approved Expenditure Submission Form.

- 2.5. If County retains the balance of Oakland Together CVT funds not covered by an approved Expenditure Submission Form under Section 2.4, County may redistribute any or all of that amount to other eligible CVTs or as otherwise deemed appropriate by OCE.
- 2.6. OCE will work in collaboration with the Oversight Committee in determining Public Body's eligibility for Oakland Together CVT funds, and the amount of said funds to be distributed to Public Body.

3. PUBLIC BODY RESPONSIBILITIES.

- 3.1. Public Body may be eligible to receive a portion of Oakland Together CVT funds. Public Body shall complete and submit an Expenditure Submission Form to OCE and receive OCE approval prior to the receipt of any Oakland Together CVT funds.
- 3.2. In its first Expenditure Submission Form, Public Body shall only apply for Oakland Together CVT funds to pay for expenditures or programs already made by Public Body, or for funds to pay Public Body's required 25% "cost share" or "local match" required to obtain a FEMA grant.
- 3.3. Public Body shall follow all guidance established by the United States Treasury Department, and the County, when expending Oakland Together CVT funds, including, but not limited to, Section 601(d) of the Social Security Act and the "Coronavirus Relief Fund Guidance for State, Territorial, Local and Tribal Governments."¹
- 3.4. Public Body shall not submit an Expenditure Submission Form for any expense which is eligible to be covered by a FEMA (Federal Emergency Management Agency) Public Assistance Reimbursement. Public Body may use Oakland Together CVT funds to pay the required 25% "cost share" or "local match" required to obtain a FEMA grant.
- 3.5. Public Body shall only expend Oakland Together CVT funds to pay for expenses incurred due to the COVID-19 public health emergency, and which expenses were not accounted for in Public Body's most recently approved budget as of March 27, 2020.
- 3.6. Public Body shall only expend Oakland Together CVT funds for expenses incurred during the period that begins on March 1, 2020 and ends on December 30, 2020.
- 3.7. Public Body shall not use Oakland Together CVT funds as revenue replacement.
- 3.8. Public body shall not redistribute Oakland Together CVT funds, except Public Body shall be allowed to provide direct assistance to individual residents of Public Body, and pay vendors and service providers, as permitted by the CARES Act.
- 3.9. Public Body shall not expend Oakland Together CVT funds in any manner that Public Body did not include in a submitted and approved Expenditure Submission Form.
- 3.10. If Public Body receives an amount of funding from the federal or state government to cover expenses for which Public Body received Oakland Together CVT funds, Public Body shall return that amount of Oakland Together CVT funds to County.
- 3.11. Public Body shall keep records of all expenditures of Oakland Together CVT funds sufficient to demonstrate that said expenditures were in accordance with the guidance documents included in Section 3.3 for a period of 10 (ten) years, at a minimum.
- 3.12. Public Body shall produce said records of expenditures upon request by County or OCE, or as required by any future audit of the CARES Act program.

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

- 3.13. Public Body shall submit records to OCE within 30 (thirty) days after expenditure of Oakland Together CVT funds with a detailed description of how the funds were expended and how the expenditure of funds complied with the CARES Act guidance unless Public Body has already submitted said records with its Expenditure Submission Form.
- 3.14. In the event it is determined by OCE, or any other audit under the CARES Act program, that Public Body expended an amount of Oakland Together CVT funds in violation of the CARES Act requirements or this Agreement, Public Body shall be required to return that amount of money to County.
- 3.15. In any case where Public Body is required to return an amount of money to County under this Agreement, Public Body agrees that unless expressly prohibited by law, County or the Oakland County Treasurer, at their sole option, shall be entitled to set off from any other Public Body funds that are in County's possession for any reason, including but not limited to, the Oakland County Delinquent Tax Revolving Fund ("DTRF"), if applicable. Any setoff or retention of funds by County shall be deemed a voluntary assignment of the amount by Public Body to County. Public Body waives any Claims against County or its Officials for any acts related specifically to County's offsetting or retaining of such amounts. This paragraph shall not limit Public Body's legal right to dispute whether the underlying amount retained by County was actually due and owing under this Agreement.
- 3.16. Nothing in this Section shall operate to limit County's right to pursue or exercise any other legal rights or remedies under this Agreement or at law against Public Body to secure payment of amounts due to County under this Agreement. The remedies in this Section shall be available to County on an ongoing and successive basis if Public Body becomes delinquent in its payment. Notwithstanding any other term and condition in this Agreement, if County pursues any legal action in any court to secure its payment under this Agreement, Public Body agrees to pay all costs and expenses, including attorney fees and court costs, incurred by County in the collection of any amount owed by Public Body.
- 3.17. Public Body shall respond to and be responsible for Freedom of Information Act requests relating to Public Body's records, data, or other information.

4. **DURATION OF INTERLOCAL AGREEMENT.**

- 4.1. This Agreement shall be effective when executed by both Parties with resolutions passed by the governing bodies of each Party. The approval and terms of this Agreement shall be entered in the official minutes of the governing bodies of each Party. An executed copy of this Agreement and any amendments shall be filed by the County Clerk with the Secretary of State.
- 4.2. This Agreement shall remain in effect until January 31, 2021, or until cancelled or terminated by any of the Parties pursuant to the terms of the Agreement. Public Body shall comply with the record keeping, reporting, audit response, and fund return requirements of Section 3 after the termination of this Agreement if necessary.

5. **ASSURANCES.**

- 5.1. **Responsibility for Claims.** Each Party shall be responsible for any Claims made against that Party by a third party, and for the acts of its employees arising under or related to this Agreement.
- 5.2. **Responsibility for Attorney Fees and Costs.** Except as provided for in Section 3.16, in any Claim that may arise from the performance of this Agreement, each Party shall seek its own

legal representation and bear the costs associated with such representation, including judgments and attorney fees.

- 5.3. **No Indemnification.** Except as otherwise provided for in this Agreement, neither Party shall have any right under this Agreement or under any other legal principle to be indemnified or reimbursed by the other Party or any of its agents in connection with any Claim.
- 5.4. **Costs, Fines, and Fees for Noncompliance.** Public Body shall be solely responsible for all costs, fines and fees associated with any misuse of the Oakland Together CVT funds and/or for noncompliance with this Agreement by Public Body Employees.
- 5.5. **Reservation of Rights.** This Agreement does not, and is not intended to, impair, divest, delegate or contravene any constitutional, statutory, and/or other legal right, privilege, power, obligation, duty, or immunity of the Parties. Nothing in this Agreement shall be construed as a waiver of governmental immunity for either Party.
- 5.6. **Authorization and Completion of Agreement.** The Parties have taken all actions and secured all approvals necessary to authorize and complete this Agreement. The persons signing this Agreement on behalf of each Party have legal authority to sign this Agreement and bind the Parties to the terms and conditions contained herein.
- 5.7. **Compliance with Laws.** Each Party shall comply with all federal, state, and local ordinances, regulations, administrative rules, and requirements applicable to its activities performed under this Agreement.

6. TERMINATION OR CANCELLATION OF AGREEMENT.

- 6.1. County may terminate or cancel this Agreement at any time if it determines that Public Body has expended Oakland Together CVT funds in violation of CARES Act requirements or this Agreement. Either OCE or the Board of Commissioners is authorized to terminate this Agreement under this provision. If County terminates or cancels this Agreement, Public Body shall be liable to repay County the amount of money expended in violation of CARES Act requirements or this Agreement. County may utilize the provisions in Sections 3.15 – 3.16 to recoup the amount of money owed to County by Public Body.
- 6.2. Public Body may terminate or cancel this Agreement at any time if it determines that it does not wish to receive any Oakland Together CVT funds. If Public Body terminates or cancels this Agreement, it shall immediately return to County any and all Oakland Together CVT funds it has already received.
- 6.3. If either Party terminates or cancels this agreement they shall provide written notice to the other Party in the manner described in Section 13.

7. **DELEGATION OR ASSIGNMENT.** Neither Party shall delegate or assign any obligations or rights under this Agreement without the prior written consent of the other Party.
8. **NO THIRD-PARTY BENEFICIARIES.** Except as provided for the benefit of the Parties, this Agreement does not and is not intended to create any obligation, duty, promise, contractual right or benefit, right to indemnification, right to subrogation, and/or any other right in favor of any other person or entity.
9. **NO IMPLIED WAIVER.** Absent a written waiver, no act, failure, or delay by a Party to pursue or enforce any rights or remedies under this Agreement shall constitute a waiver of those rights with regard to any existing or subsequent breach of this Agreement. No waiver of any term, condition, or provision of this Agreement, whether by conduct or otherwise, in one or more instances shall be deemed or construed as a continuing waiver of any term, condition, or provision of this Agreement.

No waiver by either Party shall subsequently affect its right to require strict performance of this Agreement.

10. **SEVERABILITY**. If a court of competent jurisdiction finds a term or condition of this Agreement to be illegal or invalid, then the term or condition shall be deemed severed from this Agreement. All other terms, conditions, and provisions of this Agreement shall remain in full force.
11. **PRECEDENCE OF DOCUMENTS**. In the event of a conflict between the terms and conditions of any of the documents that comprise this Agreement, the terms in the Agreement shall prevail and take precedence over any allegedly conflicting terms and conditions.
12. **CAPTIONS**. The section and subsection numbers, captions, and any index to such sections and subsections contained in this Agreement are intended for the convenience of the reader and are not intended to have any substantive meaning. The numbers, captions, and indexes shall not be interpreted or be considered as part of this Agreement. Any use of the singular or plural, any reference to gender, and any use of the nominative, objective or possessive case in this Agreement shall be deemed the appropriate plurality, gender or possession as the context requires.
13. **NOTICES**. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (i) the date of actual receipt; (ii) the next business day when notice is sent express delivery service or personal delivery; or (iii) three days after mailing first class or certified U.S. mail.
 - 13.1. If Notice is sent to County, it shall be addressed and sent to: Oakland County Executive, 2100 Pontiac Lake Rd., Waterford, MI, 48328, and the Chairperson of the Oakland County Board of Commissioners, 1200 North Telegraph Road, Pontiac, MI, 48341.
 - 13.2. If Notice is sent to Public Body, it shall be addressed to: Troy Ctiy Manager, 500 W. Big Beaver Road, Troy, MI 48084.
14. **GOVERNING LAW/CONSENT TO JURISDICTION AND VENUE**. This Agreement shall be governed, interpreted, and enforced by the laws of the State of Michigan. Except as otherwise required by law or court rule, any action brought to enforce, interpret, or decide any Claim arising under or related to this Agreement shall be brought in the 6th Judicial Circuit Court of the State of Michigan, the 50th District Court of the State of Michigan, or the United States District Court for the Eastern District of Michigan, Southern Division, as dictated by the applicable jurisdiction of the court. Except as otherwise required by law or court rule, venue is proper in the courts set forth above.
15. **SURVIVAL OF TERMS**. The following terms and conditions shall survive and continue in full force beyond the termination or cancellation of this Contract (or any part thereof) until the terms and conditions are fully satisfied or expire by their nature: Definitions (Section 1); Assurances (Section 5); No Third-Party Beneficiaries (Section 8); No Implied Waiver (Section 9); Severability (Section 10); Precedence of Documents (Section 11); Governing Law/Consent to Jurisidiction and Venue (Section 14); Survival of Terms (Section 15); Entire Agreement (Section 16), and the record keeping, reporting, audit compliance, and fund return provisions of Section 3.
16. **ENTIRE AGREEMENT**.
 - 16.1. This Agreement represents the entire agreement and understanding between the Parties regarding the Oakland Together CVT funds With regard to the Oakland Together CVT funds, this Agreement supersedes all other oral or written agreements between the Parties.

16.2. The language of this Agreement shall be construed as a whole according to its fair meaning, and not construed strictly for or against any Party.

IN WITNESS WHEREOF, Ethan D. Baker hereby acknowledges that he has been authorized by a resolution of the Troy City Council, a certified copy of which is attached, to execute this Agreement on behalf of Public Body and hereby accepts and binds Public Body to the terms and conditions of this Agreement.

EXECUTED: _____
Ethan D. Baker, Mayor of City of Troy MI

DATE: _____

WITNESSED: _____
M. Aileen Dickson, Clerk, City of Troy MI

DATE: _____

IN WITNESS WHEREOF, David Woodward, Chairperson, Oakland County Board of Commissioners, hereby acknowledges that he has been authorized by a resolution of the Oakland County Board of Commissioners to execute this Agreement on behalf of Oakland County, and hereby accepts and binds Oakland County to the terms and conditions of this Agreement.

EXECUTED: _____
David Woodward, Chairperson
Oakland County Board of Commissioners

DATE: _____

WITNESSED: _____
Oakland County Board of Commissioners
County of Oakland

DATE: _____