

REIMBURSEMENT AGREEMENT

This Reimbursement Agreement (the "Agreement"), dated this 30th day of September, 2020 between the County of Essex (the "County") located at 465 Martin Luther King Boulevard, Newark, New Jersey 07102, and Township of West Orange (the "Municipality") located at 66 Main St., West Orange, New Jersey 07052.

WHEREAS, the United States of America, the State of New Jersey, the County, and the Municipality have become victims of the COVID-19 Virus and Pandemic (the "Coronavirus"); and

WHEREAS, the Coronavirus has caused economic damage and hardships to states, counties, and municipalities throughout the United States of America; and

WHEREAS, on March 27, 2020 the Coronavirus Aid Relief and Economic Security Act (the "CARES Act") was signed by President Donald J. Trump; and

WHEREAS, the CARES Act was enacted, among other purposes, in order to combat the economic damage caused to states, counties and municipalities because of the Coronavirus; and

WHEREAS, the County has received CARES Act funds from the United States Treasury (the "Stimulus Funds") to be used to reimburse the County and the municipalities and agencies within the County (the "Municipalities") including the Municipality due to economic damage caused to them by the Coronavirus; and

WHEREAS, as the recipient of the Stimulus Funds it will be the responsibility of the County to disburse the Stimulus Funds to eligible recipients in accordance with the terms and provisions of the CARES Act and any guidelines or regulations issued by United States government or any of its agencies and/or departments.

NOW THEREFORE, it is stipulated and agreed as follows:

1. *Purpose of Stimulus Funds.* The Municipality understands and agrees that its eligibility for the receipt of any Stimulus Funds shall be determined by the County in accordance with the terms of the "Coronavirus Relief Fund - Guidance for State, Territorial, Local and Tribal Governments -April 22, 2020" (the Guidelines"), attached hereto as Schedule A, and any subsequent amendments and/or

changes to the Guidelines. Excluded from the Guidelines as an eligible reimbursement are the categories detailed in number 4, related to long distance learning, and in number 5, on page 3 of the Guidelines.

2. *Role of County.* As the recipient of the Stimulus Funds it shall be the responsibility of the County to establish a reasonable process for the acceptance of an application by the Municipality for an eligible reimbursement from the Stimulus Funds. The Municipality agrees and understands that the decision as to whether the reimbursement sought by the Municipality is not within the discretion of the County but is governed by the Guidelines. Attached hereto as Schedule B is the process to be employed by the County to accept applications for a reimbursement from the Stimulus Funds.

3. *Use of Stimulus Funds.* The Municipality understands that the Stimulus Funds represent an amount of funds for which the County along with the Municipalities in Essex County are eligible to file a claim for reimbursement. However, neither the County, nor any of the Municipalities in Essex County, has a vested right to receive any of the funds and the receipt of funds shall be subject to any claim for reimbursement meeting the eligibility requirements established by the CARES Act and the Guidelines. It should also be noted that the Municipality shall not receive reimbursement for eligible expenses pursuant to this Agreement if reimbursement for those same eligible expenses has been received pursuant to another source including but not limited to FEMA. **Please note that claims for Stimulus Funds must be filed and disbursed by no later than December 30, 2020 or the Stimulus Funds must be returned to the Secretary of Treasury, so time is of the essence.**

4. *Processing of Claims.* The County shall process and accept all claims for reimbursements in the order in which the claim is received and shall pay any eligible payment in the order it is determined to be eligible. Subject to the provisions of paragraph 8 hereinafter written, any claim of the Municipality cannot exceed the initial allocation provided to the Municipality pursuant to the provisions of paragraph 8 hereinafter contained.

5. *Non-Liability of the County.* The Municipality understands that the County cannot guaranty that a claim for reimbursement is eligible for payment nor that any claims for reimbursements beyond the amount of the Stimulus Funds can be paid. In the event there is dispute by the Municipality as to determination made by the County, either as to the eligibility for a reimbursement or the amount of a reimbursement, then the County shall, if requested by the Municipality, pursue an appeal or a request for clarification with the United States Treasury, at the cost of the Municipality.

6. *Indemnification by Municipality.* The Municipality acknowledges that the role of the County as to the distribution of the Stimulus Funds shall be as an intermediary. Consequently, if as the result of any audit performed by the United States Treasury or any other auditing agency, department or office of the Government of the United States determines that any reimbursement made to the Municipality by the County from the Stimulus Funds was not eligible for reimbursement, then the Municipality shall repay any ineligible reimbursement within the time mandated by the United States Treasury or the agency, department or office of the Government of the United States for the return of any Stimulus Funds. The Municipality shall indemnify and hold harmless the County from any claim made by the United States Treasury or any agency, department or office of the Government of the United States for the return of any payment received by the Municipality from the Stimulus Funds. Included in the claim for reimbursement shall be any legal fees, court costs or professional fees incurred by the County in defense of any claim made for return of any Stimulus Funds received by the Municipality.

7. *Documents Required and Preservation of Records.* Any application for reimbursement must be sufficiently documented so that the County can determine the eligibility of the claim for reimbursement including a provision whereby the Municipality certifies that it has not applied to the State or Federal governments for the reimbursement of the same claim submitted to the County. The Municipality agrees that it will not destroy or discard any documents or records maintained and/or relied upon by the Municipality in filing any claim to the County for the receipt of Stimulus Funds without providing written notice to the County at the address first written, or at any other address provided to the Municipality by the County in writing. Any notice shall be given not less than thirty (30) days prior to the date on which the records are to be destroyed or discarded. The County shall at its sole cost and expense have the right to make copies of any documents or records pertinent to the claim for Stimulus Funds and the Municipality shall provide the County with reasonable access to the documents and records .

8. *Allocation to Municipality.* The County has allocated \$ 1,245,341.97 of the Stimulus Funds for the benefit of the Municipality (the "Allocation"). However, the Municipality understands that the Allocation is not a guaranty of the receipt of a reimbursement to the Municipality from the Allocation. The Municipality understands that each of the Municipalities has also received an

Allocation. The Municipality acknowledges that the Allocation is only an estimate of that portion of the Stimulus Funds which the Municipality will be eligible to receive. Any reimbursement will be subject to the claim being eligible for reimbursement as per the Guidelines. Claims for reimbursements must be filed by no later than December 18, 2020. Beginning on the date of approval and on December 18, 2020, the County shall review the Allocation and make an adjustment to the Allocation dependent upon the claims for reimbursement made by and paid to date to the Municipality and the Municipalities and the estimated budgets of future expenditures to be made by the Municipality and the Municipalities in the ensuing time period. The Municipality understands that the decision by the County as to any adjustment to the Allocation shall take into consideration the needs of the County, the Municipalities and the Municipality; the amounts of reimbursements made to the County, the Municipalities and the Municipality to date; and the remaining balance contained in the Stimulus Funds.

9. *Subsequent Funds.* Should the County be in receipt of any additional funds provided by the Government of the United States to combat the Coronavirus which the Municipality shall be eligible to receive payment, then in the event the Municipality files a claim for those funds the terms and provisions of this Agreement shall apply to the disposition and processing of those claims.

10. *Applicable Law and Attorney Fees.* Any action for the enforcement of any term or provision of this Agreement shall be governed by the law of the State of New Jersey and shall be filed in the Superior Court of the State of New Jersey having a venue in Essex County. In addition to any other relief which a party may receive, the prevailing party shall receive an award of reasonable attorney fees and court costs against the non-prevailing party.

11. *Duration of Agreement.* This Agreement shall begin on the date first written and shall Continue until either party terminates it upon thirty (30) days written notice or the depletion of the Stimulus Funds, whichever event occurs sooner.

12. *Approval.* By signing below the individual signing this Agreement represents that this Agreement has been approved and ratified by the governing body of the party signing it or that the

Party has been advised by its counsel that the approval is not legally necessary.

IN WITNESS WHEREOF, the parties have signed and sealed this Agreement on the date set forth above.

COUNTY OF ESSEX

By _____

ATTEST:

MUNICIPALITY

BY.....

ATTEST:

SCHEDULE 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.

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 pays.
8. Legal settlements.

SCHEDULE B

Essex County, New Jersey

Municipal Application for
CARES ACT Reimbursement

Page 1 of 2

Municipal Application for Reimbursement to Essex County pursuant to Section 5001 of the CARES Act

_____	_____
_____	_____
Applicant Municipality	Date of Application
_____	_____
Street Address	City State Zip code
Primary Contact:	Alternate Contact:
_____	_____
Name	Name
_____	_____
Title	Title
_____	_____
Business Phone	Business Phone
_____	_____
Cell Phone	Cell Phone
_____	_____
Fax Number	Fax Number
_____	_____
Email address	Email address
_____	_____
Total Amount of this application:	_____
For costs expended between:	_____

Certification:

As Chief Financial Officer of the Municipality identified below, I certify that I have the authority to submit this request for reimbursement to Essex County in accordance with the Reimbursement Agreement between the Municipality and Essex County. I further certify that:

- a. All items claimed for reimbursement include only eligible costs in accordance with the Reimbursement Agreement and 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.116-135, div. A, Title V (Mar. 27, 2020);
- b. Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19).
- c. Were not accounted for in the Municipal budget most recently approved as of March 27, 2020; and
- d. The Municipality has not submitted and will not submit the same items claimed herein for reimbursement from any other Federal grant, State grant, insurance carrier, or other source.

Printed name

Signature

Municipality

Title

Insert Eligible Activity Category:

Note: Insert numeric number and short title from listing of Eligible Expenditure Categories on page 3

Description of activity:

Note: Use the box below to describe the activity, location(s), duration, use addendum pages if required

[Empty box for activity description]

Salary and Wage portion of Eligible Activity Category:

Each Salary and Wage line must be supported with an attachment listing the name and title of each employee, amount of salary claimed, dates worked, work location, check numbers, check dates, salary rates and category (i.e. regular pay rate, overtime, etc.)

List all Budget Appropriation Salary and Wage line items claimed, use an addendum page if needed

Description		Amount claimed	
_____	_____	_____	
_____	_____	_____	
_____	_____	_____	
_____	_____	_____	
_____	_____	_____	
_____	_____	_____	
_____	_____	_____	
		Subtotal Salary & wages	\$ _____

Other Expense portion of Eligible Activity Category:

Each Other Expense line item must be supported with an attachment listing the description and amount of the services or goods purchased, include copies of purchase orders, invoices, cancelled checks, etc.

List all Budget Appropriation Other Expense line items claimed, use an addendum page if needed

Description		Amount claimed	
_____	_____	_____	
_____	_____	_____	
_____	_____	_____	
_____	_____	_____	
_____	_____	_____	
		Subtotal Other Expense	\$ _____

Total Expenditure for this Eligible Activity Category during this period: \$ _____
Add Salary and Wage subtotal and Other Expense subtotal

SCHEDULE C

ESTIMATED TIMELINE FOR REIMBURSEMENT AGREEMENT ACTIONS

From date of Approval through December 18, 2020- CARES Act Unit continues to work with each municipality to identify recurring & eligible costs, incurred after 3/1/20, and expended from 10/1/20 through 12/16/20.

No later than December 30, 2020-The County issues the final payment pursuant to the Reimbursement Agreement.

The County will accept submission prior to December 16th.