



November 6, 2020

M E M O R A N D U M

TO: Frank Abbate, County Manager

RE: Approval of Additional CARES Act Funding for Health First and Parrish Medical Center

The Board of County Commissioners, in special session on November 5, 2020, denied additional CARES Act funding to Health First and Parrish Medical Center.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Kimberly Powell, Clerk to the Board

cc: Each Commissioner
County Attorney
Finance
Budget

INTERLOCAL AGREEMENT

CARES ACT FUNDING

THIS INTERLOCAL AGREEMENT is made and entered into by and between the BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as "County," and North Brevard County Hospital District, dba Parrish Medical Center, a public not for profit organized under the Laws of Florida, hereinafter referred to as "Hospital."

RECITALS:

WHEREAS, the United States Congress passed and the President signed on March 27, 2020, the "Coronavirus Aid, Relief, and Economic Security Act (CARES Act) Act" to appropriate funding for a wide variety of needs and tremendous costs related to the coronavirus pandemic response to include an appropriation of \$150 billion to States, Tribal governments, and units of local government;

WHEREAS, funds were authorized to be allocated as a direct payment from the Department of the Treasury to certain units of local governments of a State that submit a certification for the purpose of receiving a direct payment;

WHEREAS, by relative population Brevard County was an eligible unit and submitted a certification and has received an appropriation of \$105 Million Dollars;

WHEREAS, in order to receive the allocation, the County was required to certify the funds will be used only in the County's response to COVID-19 and as further set forth herein;

WHEREAS, the County recognizes that the Hospital has incurred costs in responding to the COVID-19 pandemic and/or experience financial losses as a result of the pandemic and wishes to provide financial assistance to the Hospital, in compliance with the CARES Act (including the Guidance issued by the Department of Treasury) and as otherwise authorized by the Board of County Commissioners, as set forth herein;

WHEREAS, on May 5, 2020, the Board of County Commissioners authorized CARES funds to be used for expenditures for COVID-19 testing and antibody testing;

WHEREAS, on November 5, 2020, the Board of County Commissioners, at a CARES funding Workshop, authorized a \$5 Million allocation in CARES funds to each commissioner to spend within the county, subject to the expenditure of the funds being COVID-19 related, vetted by the County designated consultant and being considered low risk for the federal government disallowing the expenditure;

WHEREAS, the District 1 commissioner has stated she wishes to designate the \$5 Million allocation to District 1 be used to reimburse Parrish Medical Center for CARES eligible expenses as further provided herein;

WHEREAS, on November 5, 2020 the Board of County Commissioners authorized the County Manager to execute grant agreements with CARES fund recipients receiving \$50,000 or more in CARES Act funding, to include audit and claw back provisions that any expenditure found to be not in accordance with the Federal or Treasury guidelines, that the sub-recipient be required to reimburse the County;

WHEREAS, this assistance will be of great benefit to the health, safety and welfare of the public.

NOW THEREFORE, the County and the Hospital covenant and agree that they have full power and authority to enter into this Agreement and bind their respective governmental entities as follows:

SECTION 1. RECITALS.

The above recitals are true and correct and by this reference are hereby incorporated into and made an integral part of this Agreement.

SECTION 2. STATUTORY AUTHORITY. This Agreement shall be considered an Interlocal Agreement pursuant to the authority of Florida Statutes, Chapter 163, Part 1, 2020.

SECTION 3. CARES ACT REQUIREMENTS.

CARES Act funds may only be used to cover Hospital expenses that:

- (a) are necessary expenditures incurred due to the public health emergency with respect to COVID-19; and
- (b) were not accounted for in the Hospital's Budget most recently approved as of March 27, 2020; and
- (c) were or will be incurred during the period that began on March 1, 2020, and ends on December 30, 2020. The expense is incurred when the County has expended the funds to cover the expense or reimbursed the Hospital for the expense.

The expenditure or reimbursement for expenditure must comply with the CARES Act and the Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments (and Answers to Frequently Asked Questions which supplement the Guidance) issued by the Department of Treasury.

Revenue replacement is not a permissible use of CARES Act funds under the terms of this Agreement.

The Hospital will not receive any CARES Act funding for any expense or cost for which the Hospital received funds or was reimbursed by another source or for supplies or goods which the Hospital received by donation. Likewise, if the Hospital receives funding from another source to pay for, or reimburse the Hospital, for part or all of the Hospital's expenses/costs for which the County previously provided CARES Act funds to the Hospital under this Agreement or other county program, the Hospital shall reimburse the County for the amount of the CARES funds for which it received duplicate funding.

SECTION 4. RESPONSIBILITY FOR EXPENDITURE OF CARES ACT FUNDS.

- (a) The County, as the recipient of \$105 million dollars of CARES Act funds, is responsible for ensuring that all expenditures, including those made or incurred on behalf of the Hospital, meet the requirements set forth in Section 3 above.
- (b) The County has no legal obligation to appropriate or set aside any CARES Act funding for the Hospital. This Agreement does not create a contractual right to any expenditure for the Hospital.
- (c) The Hospital, by submitting a request for expenditure of CARES Act funds, represents to the County that the request, relevant budgetary background for the budget most recently approved as of March 27, 2020, and associated documentation has been appropriately reviewed by its staff to determine that the expenditure meets the requirements set forth in Section 3 above.
- (d) The Hospital understands that the County will be audited in the future both internally and by the federal government to evaluate the eligibility of expenditures; that if an expenditure made to or on behalf of the Hospital is determined to be ineligible, the County may be required to reimburse or pay the federal government back for the ineligible expenditure; and that the Hospital agrees to pay the County back to the extent that the federal government requires the County to reimburse the federal government for the ineligible expenditure. The Hospital shall remit such payment to the County within 30 calendar days from the date the County notifies the Hospital, in writing, that the federal government has demanded the return of CARES Act funds expended by the County at the request of the Hospital, subject to any applicable appeal of the federal government's eligibility determination.
- (e) The County will not be responsible for any expenditure it agrees to make on behalf of the Hospital if it is disallowed by the federal government.
- (f) All decisions by the County for the expenditure of funds under this Agreement, from the County's CARES Act appropriation, are final and not subject to any grievance,

appeal, or litigation administratively or otherwise by the Hospital. All decisions are solely within the discretion of the County.

SECTION 5. COUNTY GUIDELINES; PROCEDURE FOR REQUESTING FUNDS.

(a) The Provisions of the "Whereas clauses" are hereby adopted as provided above.

Upon approval of the County's designated consultant of the Hospital's expenditures for COVID-19 and related antibody testing as being COVID-19 related and low risk (for the federal government denying the expenditure), County staff may issue such reimbursement for such testing.

Upon the District 1 Commissioner finalizing her decision on the reimbursement to the Hospital for COVID-19 eligible expenses, County staff may issue such reimbursement in accordance with the District 1 Commissioner's direction subject to the amounts being approved by the County designated consultant as COVID-19 related and low risk (for the federal government denying the expenditure).

Should the Board approve additional CARES eligible funding to reimburse the Hospital in the future, such reimbursement is authorized under this Agreement without further amendment to this Agreement.

(b) The County will provide the Hospital with procedures for requesting CARES Act funds. The Hospital agrees to provide, or has provided, documentation requested by the County in order to justify requested expenditures incurred due to the public health emergency with respect to COVID-19.

(c) All purchase orders or contracts, whether issued by the Hospital or the County, shall include the OMB Uniform Guidance contract clauses and FEMA required contract clauses.

SECTION 6. RIGHT TO AUDIT.

(a) The Hospital shall keep books, records, and accounts of all activities, related to this Agreement, in compliance with generally accepted accounting procedures. Books, records and accounts related to the performance of this Agreement shall be open to inspection during regular business hours by an authorized representative of the County and shall be retained by the Hospital for a period of five years after termination of this Agreement.

(b) In the event the audit shows that any or all of the CARES Act funds disbursed to the Hospital hereunder were not spent in accordance with the conditions of this Agreement, the Hospital shall reimburse the County of all such funds within thirty days after the County has notified the Hospital in writing of such noncompliance.

(c) No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this Agreement shall be subject to copyright by Hospital in the United States or any other country. All records, books and accounts related to the performance of this Agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. All records or documents created by the County or provided to Hospital by the County in connection with activities or services provided by the Hospital under the terms of this Agreement, are public records and the Hospital agrees to comply with any request for such public records or documents made in accordance with section 119.07 Florida Statutes and as provided for in Section 7 below.

SECTION 7. PUBLIC RECORDS DISCLOSURES

(a) The Hospital agrees and understands that Florida has broad public disclosure laws, and that any written communications with the Hospital, to include emails, email addresses, a copy of this Agreement, and any supporting documentation related to this Agreement are subject to public disclosure upon request, unless otherwise exempt or confidential under Florida Statute.

Public records are defined as all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. In this case, the portion of the Hospital's records relating to the acceptance and use of the CARES funds in the nature of a grant or reimbursement of eligible expenses or losses are public records that may be subject to production upon request. The Hospital agrees to keep and maintain these public records for five years after the termination/end of this Agreement.

Upon a request for public records related to this Agreement, the Hospital will forward any such request to the County. The County will respond to any public records request. Upon request, the Hospital will provide access or electronic copies of any pertinent public records related to this Agreement to the County within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes. Upon

completion of the Agreement, Hospital will transfer, at no cost, to the County, any public records in its possession.

IF THE HOSPITAL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE HOSPITAL'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE COUNTY, JILL HAYES, JILL.HAYES@BREVARDFL.GOV, 2725 JUDGE FRAN JAMIESON WAY, VIERA, FL 32940.

(b) The Hospital agrees and acknowledges that the County will consider all documentation the Hospital submits to support payment of this grant to the Hospital to be subject to public records disclosure.

SECTION 8. HOSPITAL'S WARRANTIES/REPRESENTATIONS AND INDEMNIFICATION

(a) The Hospital represents that it is possessed with all requisite lawful authority to enter into this Agreement, and the individual executing this Agreement is possessed with the authority to so sign and bind the Hospital.

(b) The Hospital shall indemnify and hold the County harmless for any claims or actions of any nature resulting from or arising out of this Agreement, including denial or rejection of any expenditure of CARES funds (by the County on behalf of the Hospital) by the United States Department of the Treasury or any other federal agency, office, or department.

SECTION 9. E-VERIFY.

(a) The Hospital agrees as follows:

(1) shall utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the Hospital during the term of the Agreement; and

(2) shall expressly require any subcontractors performing work or providing services pursuant to this Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the term of this Agreement; and

(3) to maintain records of its participation and compliance with the provisions of the E-Verify program, including participation by its subcontractors as provided above, and to make such records available to the County consistent with the terms of the Hospital's enrollment in the program. This includes maintaining a copy of proof of enrollment by the Hospital and its subcontractors in the E-Verify Program.

(b) Compliance with the terms of this Section is made an express condition of this Agreement and the County may treat a failure to comply as a material breach of this Agreement.

(c) The Hospital, registered with and participating in the E-Verify program, may not be barred or penalized under this section if, as a result of receiving inaccurate verification information from the E verify program, the Hospital hires or employs a person who is not eligible for employment.

(d) Nothing in this Section may be construed to allow intentional discrimination of any class protected by law.

SECTION 10. NOTICES.

All Notices required under this Agreement, and as not otherwise directed herein, shall be in writing and delivered to the parties by United States mail, hand delivery, express mail or electronic mail (email) as follows:

(a) Hospital Representative:

George Mikitarian
President/CEO
Parrish Medical Center
951 N. Washington Ave.
Titusville, FL 32796
George.mikitarian@parrishmed.com

(b) County Representative:

Jill Hayes, Director, Budget Office
Brevard County Board of County Commissioners
2725 Judge Fran Jamieson Way
Bldg C
Viera, FL 32940
jill.hayes@brevardfl.gov
(321) 633-2153

SECTION 11. DEFAULT.

Either Party to this Agreement, in the event of any act of default by the other, shall have all remedies available to it under the laws of the State of Florida.

SECTION 12. SEVERABILITY

If any part of this Agreement is found to be invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can still be accomplished.

SECTION 13. EFFECTIVE DATE.

Pursuant to Chapter 163, Florida Statutes, the effective date of this Agreement shall be the date on which it is recorded with the Clerk of the Circuit Court in and for Brevard County.

SECTION 14. RECORDING.

Upon execution of this Agreement, the County shall record a fully executed original of this Agreement in the Public Records of Brevard County, Florida, and shall return a recorded copy of the Agreement to the Hospital representative listed in Section 10.

SECTION 15. TERMINATION.

If no funding has been provided by the County to the Hospital under this Agreement, either party can terminate this Agreement, with or without cause, by furnishing thirty days prior written notice as provided for in Section 10; however, the parties agree that under such early termination, no funding will be provided.

Once the County provides funding to the Hospital, termination of the Agreement will not occur until the federal government completes its audit of the County's expenditures of the CARES funds and has not requested reimbursement of any funds provided to the Hospital hereunder.

SECTION 16. ATTORNEYS FEES.

In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs.

SECTION 17. VENUE AND NON-JURY TRIAL.

Any legal action to enforce, interpret, or construe the terms of this Agreement, shall be in a court of competent jurisdiction in and for Brevard County, Florida and any trial shall be a non-jury trial.

SECTION 18. COMPLIANCE WITH STATUTES.

It shall be each party's responsibility to be aware of and comply with all federal, state, and local laws.

SECTION 19. ENTIRETY.

This Agreement represents the understanding and agreement of the parties in its entirety. There shall be no amendments to this Agreement unless such amendments are in writing and signed by both parties

In witness whereof, the parties hereto have set their hands and seals on the date and year written below.

North Brevard County Hospital District, dba
Parrish Medical Center,


(Signature of authorized officer, title)

George Mikitanian
Printed name of authorized officer, title

December 7, 2020
Date of Execution

ATTEST:


Scott Ellis, Clerk to the Board


**BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA**


Frank Abbate, County Manager

As approved by the Board on: 11/05/20

Date of execution 12/16/20

Approved as to legal form and content:

 12/14/20
Attorney for the County
Shannon L. Wilson

FORM 8B MEMORANDUM OF VOTING CONFLICT FOR COUNTY, MUNICIPAL, AND OTHER LOCAL PUBLIC OFFICERS

LAST NAME—FIRST NAME—MIDDLE NAME ISNARDI, KRISTINE		NAME OF BOARD, COUNCIL, COMMISSION, AUTHORITY, OR COMMITTEE BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS	
MAILING ADDRESS 490 CENTRE LAKE DRIVE, SUITE 175		THE BOARD, COUNCIL, COMMISSION, AUTHORITY OR COMMITTEE ON WHICH I SERVE IS A UNIT OF:	
CITY PALM BAY	COUNTY BREVARD	<input type="checkbox"/> CITY <input checked="" type="checkbox"/> COUNTY <input type="checkbox"/> OTHER LOCAL AGENCY	
DATE ON WHICH VOTE OCCURRED 11/05/20		NAME OF POLITICAL SUBDIVISION: BREVARD COUNTY	
		MY POSITION IS: <input checked="" type="checkbox"/> ELECTIVE <input type="checkbox"/> APPOINTIVE	

WHO MUST FILE FORM 8B

This form is for use by any person serving at the county, city, or other local level of government on an appointed or elected board, council, commission, authority, or committee. It applies to members of advisory and non-advisory bodies who are presented with a voting conflict of interest under Section 112.3143, Florida Statutes.

Your responsibilities under the law when faced with voting on a measure in which you have a conflict of interest will vary greatly depending on whether you hold an elective or appointive position. For this reason, please pay close attention to the instructions on this form before completing and filing the form.

INSTRUCTIONS FOR COMPLIANCE WITH SECTION 112.3143, FLORIDA STATUTES

A person holding elective or appointive county, municipal, or other local public office **MUST ABSTAIN** from voting on a measure which would inure to his or her special private gain or loss. Each elected or appointed local officer also **MUST ABSTAIN** from knowingly voting on a measure which would inure to the special gain or loss of a principal (other than a government agency) by whom he or she is retained (including the parent, subsidiary, or sibling organization of a principal by which he or she is retained); to the special private gain or loss of a relative; or to the special private gain or loss of a business associate. Commissioners of community redevelopment agencies (CRAs) under Sec. 163.356 or 163.357, F.S., and officers of independent special tax districts elected on a one-acre, one-vote basis are not prohibited from voting in that capacity.

For purposes of this law, a "relative" includes only the officer's father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, and daughter-in-law. A "business associate" means any person or entity engaged in or carrying on a business enterprise with the officer as a partner, joint venturer, coowner of property, or corporate shareholder (where the shares of the corporation are not listed on any national or regional stock exchange).

* * * * *

ELECTED OFFICERS:

In addition to abstaining from voting in the situations described above, you must disclose the conflict:

PRIOR TO THE VOTE BEING TAKEN by publicly stating to the assembly the nature of your interest in the measure on which you are abstaining from voting; *and*

WITHIN 15 DAYS AFTER THE VOTE OCCURS by completing and filing this form with the person responsible for recording the minutes of the meeting, who should incorporate the form in the minutes.

* * * * *

APPOINTED OFFICERS:

Although you must abstain from voting in the situations described above, you are not prohibited by Section 112.3143 from otherwise participating in these matters. However, you must disclose the nature of the conflict before making any attempt to influence the decision, whether orally or in writing and whether made by you or at your direction.

IF YOU INTEND TO MAKE ANY ATTEMPT TO INFLUENCE THE DECISION PRIOR TO THE MEETING AT WHICH THE VOTE WILL BE TAKEN:

- You must complete and file this form (before making any attempt to influence the decision) with the person responsible for recording the minutes of the meeting, who will incorporate the form in the minutes. (Continued on page 2)

APPOINTED OFFICERS (continued)

- A copy of the form must be provided immediately to the other members of the agency.
- The form must be read publicly at the next meeting after the form is filed.

IF YOU MAKE NO ATTEMPT TO INFLUENCE THE DECISION EXCEPT BY DISCUSSION AT THE MEETING:

- You must disclose orally the nature of your conflict in the measure before participating.
- You must complete the form and file it within 15 days after the vote occurs with the person responsible for recording the minutes of the meeting, who must incorporate the form in the minutes. A copy of the form must be provided immediately to the other members of the agency, and the form must be read publicly at the next meeting after the form is filed.

DISCLOSURE OF LOCAL OFFICER'S INTEREST

I, KRISTINE ISNARDI, hereby disclose that on NOVEMBER 5, 20 20 :

(a) A measure came or will come before my agency which (check one or more)


- ☐ inured to my special private gain or loss;
- ☐ inured to the special gain or loss of my business associate, _____;
- ☐ inured to the special gain or loss of my relative, _____;
- ☐ inured to the special gain or loss of _____, by whom I am retained; or
- ☒ inured to the special gain or loss of Health First, Inc., which is the parent subsidiary, or sibling organization or subsidiary of a principal which has retained me.

(b) The measure before my agency and the nature of my conflicting interest in the measure is as follows:

The Board of County Commissioners is considering distribution of CARES funds to Health First, Inc., which owns the company which employs me, Health First Medical Group. Pursuant to the informal opinion provided by the Commission on Ethics on August 11, 2020, I am declaring a voting conflict and I will not participate in the Board's decision regarding distribution of CARES funding to Health First, Inc.

If disclosure of specific information would violate confidentiality or privilege pursuant to law or rules governing attorneys, a public officer, who is also an attorney, may comply with the disclosure requirements of this section by disclosing the nature of the interest in such a way as to provide the public with notice of the conflict.

11/5/20
Date Filed


Signature

NOTICE: UNDER PROVISIONS OF FLORIDA STATUTES §112.317, A FAILURE TO MAKE ANY REQUIRED DISCLOSURE CONSTITUTES GROUNDS FOR AND MAY BE PUNISHED BY ONE OR MORE OF THE FOLLOWING: IMPEACHMENT, REMOVAL OR SUSPENSION FROM OFFICE OR EMPLOYMENT, DEMOTION, REDUCTION IN SALARY, REPRIMAND, OR A CIVIL PENALTY NOT TO EXCEED \$10,000.