

FEDERALLY-FUNDED SUBAWARD AND FUNDING ASSISTANCE AGREEMENT

The following information is provided pursuant to 2 C.F.R. §200.331(a)(1):

Name of Beneficiary: **Midwest Food Bank NFP, Inc.**

SAM Organization Identifier: **KN17TNZBPP57**

ARPA Project Unique identifier: **ARPAB-NE021A2**

Federal Award Identification Number: **SLT-2390**

Federal Award Date: **June 14, 2021 (first payment/tranche received)**

Period of Performance: Start Date: **December 1, 2021**

Period of Performance: End Date: **December 31, 2024**

Total Amount Obligated by this Action: **Not to exceed \$1,218,114.27**

Total Federal Obligation by Lee County to Beneficiary: (including this obligation):

\$1,320,000.00

Total Federal Award Commitments by Lee County to Beneficiary: **\$1,320,000.00**

Award is R&D: 0

Federal Award Program Description: On March 11, 2021, the American Rescue Plan Act (ARPA) was signed into law by the President. Section 9901 of ARPA amended Title VI of the Social Security Act (the Act) to add section 602, which establishes the Coronavirus State Fiscal Recovery Fund, and section 603, which establishes the Coronavirus Local Fiscal Recovery Fund (together, the Fiscal Recovery Funds). The Fiscal Recovery Funds are intended to provide support to state, local, and tribal governments (together, recipients) in responding to the impact of COVID-19 and in their efforts to contain COVID-19 on their communities, residents, and businesses. The Fiscal Recovery Funds build on and expand the support provided to these governments over the last year, including through the Coronavirus Relief Fund (C.R.F.).

The American Rescue Plan will deliver \$350 billion for state, local, territorial, and tribal governments to respond to the COVID-19 emergency and restore jobs. The Coronavirus State and Local Fiscal Recovery Funds provide a substantial infusion of resources to help turn the tide on the pandemic, address its economic fallout, and lay the foundation for a strong and equitable recovery. Recipients may use Coronavirus State and Local Fiscal Recovery Funds to:

- Support public health expenditures by funding COVID-19 mitigation efforts, medical expenses, behavioral healthcare, and certain public health and safety staff;
- Address negative economic impacts caused by the public health emergency, including economic harms to workers, households, small businesses, impacted industries, and the public sector;
- Replace lost public sector revenue by using this funding to provide government services to the extent of the reduction in revenue experienced due to the pandemic;
- Provide premium pay for essential workers by offering additional support to those who have borne and will bear the greatest health risks because of their service in critical infrastructure sectors; and,
- Invest in water, sewer, and broadband infrastructure by making necessary investments to improve access to clean drinking water, to support vital wastewater and stormwater infrastructure, and to expand access to broadband internet.

Federal awarding agency: **U.S. Department of Treasury**

Pass-through entity: **Lee County, FL**

CFDA number: **21.027**

CFDA name: **Coronavirus State and Local Fiscal Recovery Funds (CSLFRF)**

R&D designation: **Non R&D**

Should you have any question about this sub-award, please contact: **Glen Salyer, Assistant County Manager at 239-533-2221**

As required by Federal Regulations and the terms and conditions of this award, the applicant agrees to complete and sign this document to ensure that they are eligible for any future COVID-19 funding from Lee County. This also includes that the Sub recipient agrees to report any fraud, waste or abuse of these funds to Lee County Administration.

**BENEFICIARY CONTRACT BETWEEN
THE LEE BOARD OF COUNTY COMMISSIONERS
AND MIDWEST FOOD BANK NFP, INC.**

THIS AGREEMENT is entered into by Lee County, a charter county and political subdivision of the State of Florida, herein referred to as COUNTY and **Midwest Food Bank NFP, Inc.** whose address is **5601 Division Dr, Fort Myers, FL 33905**, herein referred to as BENEFICIARY.

RECITALS

WHEREAS, Lee County is a body corporate and politic established under the Florida Constitution and the Laws of Florida, and is authorized to, among other things, accept and administer grants from State and Federal authorities to enhance the quality of life in Lee County; and

WHEREAS, Congress passed the American Rescue Plan Act (ARPA) on March 10, 2021 and President Biden signed the American Rescue Plan Act into law on March 11, 2021; and

WHEREAS, the American Rescue Plan Act, in part, amends the Social Security Act (42 U.S.C. 601) by establishing the Fund in the amount of \$350 billion dollars for payments to States, Tribal governments and units of local government based on their populations.

WHEREAS, Lee County accepted American Rescue Plan Act funding from the United States Department of the Treasury; and

WHEREAS, this Agreement is consistent with American Rescue Plan Act guidelines to respond to the public health emergency or its negative economic impacts; and

WHEREAS, the BENEFICIARY requests and the COUNTY agrees, to provide funding to the BENEFICARY for eligible expenditures under the American Rescue Plan Act, specifically pursuant to the terms and conditions specified herein relating to COVID-19; and

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Section 1. Recitals

The foregoing recitals are true and correct and form a material part of this Agreement upon which the Parties relied.

Section 2. Term

This Agreement is effective upon full execution by both parties and ends on December 31, 2024 unless terminated earlier in accordance with this Agreement.

The Subaward Budget Period is from Start Date December 1, 2021 and ends on December 31, 2024.

Section 3. American Rescue Plan Act Funding

A. The American Rescue Plan (ARP) Act, Section 603(c)(1) of the Social Security Act, established the \$350 billion Coronavirus State and Local Fiscal Recovery Funds. The United

States Department of Treasury made payments from the Fund to States and eligible units of local government. The American Rescue Plan Act requires that payments from the Coronavirus State and Local Fiscal Recovery Fund (CSLFRF) only be used to cover expenses that: (a) To respond to the public health emergency or its negative economic impacts, including assistance to households, small businesses, and nonprofits, or aid to impacted industries such as tourism, travel, and hospitality; (b) To respond to workers performing essential work during the COVID-19 public health emergency by providing premium pay to eligible workers; (c) For the provision of government services to the extent of the reduction in revenue due to the COVID-19 public health emergency relative to revenues collected in the most recent full fiscal year prior to the emergency; and (d) To make necessary investments in water, sewer, or broadband infrastructure.

- B. For the purposes this Agreement, the COUNTY serves as the pass-through entity for a Federal award and the BENEFICIARY serves as the recipient of a sub award. This Agreement is entered into based on the following representations:
1. The BENEFICIARY represents that it is fully qualified and eligible to receive these grant funds per the funding requirements.
 2. The COUNTY received these funds from the Federal government, and the COUNTY has the authority to grant these funds to the BENEFICIARY upon the terms and conditions outlined below.
 3. The COUNTY has authority to disburse the funds under this Agreement.

The COUNTY agrees to provide financial assistance to the BENEFICIARY in an amount not-to-exceed **\$1,218,114.27**. The BENEFICIARY must use this financial assistance for expenses eligible under 603(c)(1) of the Social Security Act, specifically the Coronavirus State and Local Fiscal Recovery Fund (CSLFRF) to mitigate financial hardships incurred because of COVID-19 during the Term. These funds must be spent in accordance with the guidance on the United States Treasury's website <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/state-and-local-fiscal-recovery-funds>.

- C. BENEFICIARY acknowledges that it has read, understands, will be bound by and agrees to have carried out, shall carry out, or cause to be carried out the terms, conditions, and services as described in the agreement attachments, including:
4. ATTACHMENT A: PROJECT SCOPE – Overview (Need and Response), eligible activities.
 5. Award Payment:
 - a. Payments made under this Agreement shall be on a reimbursement basis. These reimbursement monies are from CFDA 21.027. In order to obtain reimbursement for expenditures, the BENEFICIARY must file with the COUNTY, through the portal, its request for reimbursement and any other information required to justify and support the payment request. Reimbursement requests may be submitted as frequently as monthly. The final reimbursement request is due on or before January 10, 2025 for costs incurred through December 31, 2024.
 - b. Reimbursement requests must include a certification, signed by an official who is authorized to legally bind the BENEFICIARY, which reads as follows:

By signing this request, I certify to the best of my knowledge and belief that the request is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the reimbursement. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729–3730 and 3801–3812).

- c. The COUNTY shall verify all documentation received prior to expending Funds under this Agreement and may request additional documentation, if needed. Reimbursements will only be made for expenditures that the COUNTY provisionally determines are eligible under the CSLFRF. The COUNTY retains the right to deny any requests for Funds under this Agreement if in the COUNTY’S sole discretion the request is not for and documentation does not substantiate an eligible expenditure. However, the COUNTY’S provisional determination that an expenditure is eligible does not relieve the BENEFICIARY of its duty to repay the COUNTY for any expenditures that are later determined by the COUNTY or the Federal government to be ineligible.
- d. COUNTY shall not be liable to any vendor, supplier or subcontractor for any expenses or liabilities incurred in connection with any Project and BENEFICIARY shall be solely liable for such expenses and liabilities.

BENEFICIARY acknowledges that the COUNTY intends to award a portion of the CSLFRF funding to BENEFICIARY, and further acknowledges that the CSLFRF funding may be utilized only for the uses authorized by American Rescue Plan Act. Accordingly, BENEFICIARY covenants that the use of the CSLFRF funding by BENEFICIARY pursuant to this Agreement is limited to only those uses for which the CSLFRF funding may be utilized under American Rescue Plan Act.

Section 4. Recapture of Expenses

- A. Any funds that are not expended as authorized under this Agreement must be refunded to the COUNTY within fourteen (14) days of receipt of written notice provided by the COUNTY.
- B. If requested by the COUNTY, all refunds due to the COUNTY under this Agreement are to be made payable to Lee County and mailed directly to the COUNTY pursuant to Section 15 Notice and this Agreement.

Section 5. Maintenance and Review of Records

BENEFICIARY shall maintain all records and accounts, including property, personnel and financial records, contractual agreements, memoranda of understanding, subcontracts, proof of insurance, and any other records related to or resulting from the Agreement to assure a proper accounting and monitoring of all funds awarded and shall maintain all accounts pertaining to such services, including, but not limited to, property, personnel and financial records, and supporting documentation, and any additional records required as a result of or associated with the utilization of the CSLFRF funding as outlined in the United States Treasury Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds, or as maybe amended, which, among other things, shall enable ready identification of BENEFICIARY’S cost of

goods and use of funds. If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues that arise from it, or the end of the required period, whichever is later.

Section 6. Closeout

BENEFICIARY will comply will all closeout procedures of the awards, to include full compliance with the agreement terms and conditions and ARPA, CSLFRF rule and guidance. Key tasks will be closeout communications and confirmation for maintenance of records and financial documents.

Section 7. Indemnification

BENEFICIARY shall indemnify, hold harmless, and defend COUNTY from and against any and all liabilities, losses, claims, damages, demands, expenses or actions, either at law or in equity, including court costs and attorneys' fees (at the trial and all appellate levels), that may hereafter at any time be made or brought by anyone on account of personal injury, property damage, loss of monies, or other loss, allegedly caused or incurred, in whole or in part, as a result of any negligent, wrongful, or intentional act or omission, or based on any act of fraud or defalcation or breach of any provision or covenant of this Agreement or applicable law by the BENEFICIARY, its agents, subcontractors, assigns, heirs, and employees resulting from or arising under this Agreement.

The provisions of this Section 8 shall survive the termination of this Agreement.

Section 8. Termination

This Agreement may be terminated by the BENEFICIARY or the COUNTY at any time, with Cause or without Cause, upon not less than thirty (30) days prior written notice delivered to the BENEFICIARY as provided for in this Agreement or, at the option of COUNTY, immediately in the event that BENEFICIARY fails to fulfill any of the terms, understandings, or covenants of this Agreement. When an award is terminated, or partially terminated, the BENEFICIARY is still responsible to return unused funds to LEE COUNTY.

Section 9. Remedies

The COUNTY may exercise any other rights or remedies, which may be available under law. If the COUNTY waives any right or remedy in this Agreement or fails to insist on strict performance by the BENEFICIARY, it will not affect, extend or waive any other right or remedy of the COUNTY, or affect the later exercise of the same right or remedy by the COUNTY for any other default by the BENEFICIARY.

Section 10. Equal Opportunity; Non-Discrimination

BENEFICIARY shall comply with the requirements of all applicable federal, state and local laws, rules, regulations, ordinances and executive orders prohibiting and/or relating to discrimination, as amended and supplemented. All of the aforementioned laws, rules, regulations, and executive orders are incorporated herein by reference.

Section 11. Governing Laws; Venue

This Agreement and terms and conditions shall be governed by the laws, rules, and regulations of the State of Florida, and venue shall be in Lee County, Florida.

Section 12. Public Records Law

This Agreement, including attachments, is subject to disclosure under Florida's public records law subject to limited applicable exemptions. BENEFICIARY acknowledges, understands, and agrees that, except as noted below, all information in its application and attachments will be disclosed, without any notice to BENEFICIARY, if a public records request is made for such information, and the COUNTY will not be liable to BENEFICIARY for such disclosure. Social security numbers are collected, maintained and reported by the COUNTY must comply with IRS 1099 reporting requirements and are exempt from public records pursuant to Florida Statutes §119.071.

If BENEFICIARY believes that information in the Agreement, including attachments, contains information that is confidential and exempt from disclosure, BENEFICIARY must include a general description of the information and provide reference to the Florida Statute or other law which exempts such designated information from disclosure in the event a public records request is made. The COUNTY does not warrant or guarantee that information designated by BENEFICIARY as exempt from disclosure is in fact exempt, and if the COUNTY disagrees, it will make such disclosures in accordance with its sole determination as to the applicable law.

IF THE BENEFICIARY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BENEFICIARY 'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, <http://www.leegov.com/publicrecords>.

Section 13. Independent Contractor

BENEFICIARY acknowledges that it is acting as an independent contractor and not as an agent, officer or employee of COUNTY. In no event shall any provision of this Agreement make COUNTY liable to any person or entity that contracts with or provides goods or services to BENEFICIARY in connection with this Agreement. There is no contractual relationship, either express or implied, between COUNTY or any political subdivision of the State of Florida and any person or entity supplying any work, labor, services, goods or materials to BENEFICIARY as a result of this Agreement.

Section 14. Compliance with Applicable Laws

BENEFICIARY shall comply with the requirements of all applicable federal, state and local laws and the rules and regulations promulgated thereunder, including, but not limited to, Florida's Public Records Act, Chapter 119, Florida Statutes and specifically including, but not limited to ARPA rules and guidance.

Section 15. Notice

Any notice delivered with respect to this Agreement must be in writing and will be deemed to be delivered (whether or not actually received) when (1) hand delivered to the persons designated below, or (2) when deposited in the United States Mail, postage prepaid, certified mail, return-receipt requested, addressed to the person at the address for the party as set forth below, or such other or to such other person as the Party may have specified by written notice to the other Party delivered according to this Section:

As to COUNTY:

Roger Desjarlais
County Manager
PO Box 398
Fort Myers, FL 33902

As BENEFICIARY:

Midwest Food Bank NFP, Inc.
Karl Steidinger, Executive Director
5601 Division Dr.
Fort Myers, Florida 33905

Section 16. Risk Management

A. Hold Harmless and Indemnity Clause

To the fullest extent permitted by applicable law, BENEFICIARY shall protect, defend, indemnify, save and hold the COUNTY, the BoCC, its agents, officials, and employees harmless from and against any and all claims, demands, fines, loss or destruction of property, liabilities, damages, for claims based on the negligence, misconduct, or omissions of the BENEFICIARY resulting from the BENEFICIARY 'S work as further described in this contract and its attachments, which may arise in favor of any person or persons resulting from the BENEFICIARY 'S performance or non-performance of its obligations under this contract except any damages arising out of personal injury or property claims from third parties caused solely by the negligence, omission(s) or willful misconduct of the COUNTY, its officials, commissioners, employees or agents, subject to the limitations as set out in Florida general law, Section 768.28, Florida Statutes, as amended from time to time. Further, BENEFICIARY hereby agrees to indemnify the COUNTY for all reasonable expenses and attorney's fees incurred by or imposed upon the COUNTY in connection therewith for any loss, damage, injury, liability or other casualty. BENEFICIARY additionally agrees that the COUNTY may employ an attorney of the COUNTY's own selection to appear and defend any such action, on behalf of the COUNTY, at the expense of the BENEFICIARY. The BENEFICIARY further agrees to pay all reasonable expenses and attorney's fees incurred by the COUNTY in establishing the right to indemnity.

The BENEFICIARY further agrees that it is responsible for any and all claims arising from the hiring of individuals relating to activities provided under the contract. All individuals hired are employees of the BENEFICIARY and not of the COUNTY.

B. Insurance Requirements

Insurance – Nonprofit BENEFICIARIES

The BENEFICIARY agrees to secure and maintain the insurance coverage outlined below during the term of this contract. The BENEFICIARY agrees that this insurance requirement shall not relieve or limit S BENEFICIARY'S liability and that the COUNTY does not in any way represent that the insurance required is sufficient or adequate to protect the BENEFICIARY'S interests or liabilities, but are merely minimums. It is the responsibility of the BENEFICIARY to insure that all subcontractors comply with the insurance requirements.

Certificate(s) of Insurance *naming Lee Board of County Commissioners as Certificate Holder and additional insured* will be attached to this contract as an exhibit. Name and address for Certificate Holder should be: Lee Board of County Commissioners, P.O. Box 398, Fort Myers, FL 33902. Certificate(s) must be provided for the following coverage's at the time of contract execution and upon policy renewal. Renewal certificates are due to the COUNTY on or before expiration date.

1. Workers' Compensation– Statutory benefits as defined by Florida Statute 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees. Employers' liability will have minimum limits of:

\$100,000 per accident

\$500,000 disease limit

\$100,000 disease limit per employee

2. Commercial General Liability – Coverage shall apply to premises and/or operations, products and/or completed operations, independent contractors, contractual liability, and broad form property damage exposures with minimum limits of:

\$500,000 bodily injury per person (B.I.)

\$1,000,000 bodily injury per occurrence (B.I.)

\$500,000 property damage (PD) or

\$1,000,000 combined single limit (C.S.L.) of B.I. and P.D.

The General Liability Policy Certificate shall name "Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials" as "Additional Insured". The SUBRECIPIENT agrees that the coverage granted to the Additional Insured applies on a primary basis, with the Additional Insured's coverage being excess.

3. Business Auto Liability – The following Automobile Liability will be required and coverage shall apply to all owned, hired, and non-owned vehicles used with minimum limits of:

\$100,000 bodily injury per person (B.I.)

\$300,000 bodily injury per occurrence (B.I.)

\$100,000 property damage (PD) or

\$300,000 combined single limit (C.S.L.) of B.I. and P.D.

4. Directors & Officers Liability – Entity coverage to cover claims against the organization directly for wrongful acts with limits not less than \$100,000.
5. Fidelity Bonding – Covering all employees who handle the agency's funds. The bond amount must be equivalent to the highest daily cash balance or a minimum amount of \$50,000.

Insurance – Government/Municipality

Documentation of the above coverage requirements are not applicable to government/municipalities that are self-insured.

Section 17. Disclaimer of Third Party Beneficiaries

This Agreement is made for the sole benefit of the Parties of this Agreement and their respective successors and assigns, and is not intended to and will not benefit any third party. No third party will have any rights under this Agreement, because of this Agreement or any right to enforce any provisions of this Agreement.

Section 18. Dispute Resolution

In the event of a dispute related to any performance or payment obligation arising under this Agreement, the Parties shall exhaust COUNTY administrative dispute resolution procedures prior to filing a lawsuit or otherwise pursuing legal remedies.

In the event that COUNTY administrative dispute resolution procedures are exhausted, either Party to this Agreement may notify the other Party in writing that it wishes to commence formal dispute resolution with respect to any unresolved problem under this Agreement. The Parties agree to submit the dispute to a Florida Certified Circuit Court Civil Mediator for mediation, within sixty (60) days following the date of this notice. In the event that any dispute cannot be resolved by mediation, the dispute may be filed as a civil action in the Circuit Court of the Twentieth Judicial Circuit of Florida, in and for Lee County, Florida, which is the sole venue for any such civil action.

Section 19. Assignment

This Agreement may not be assigned nor subcontracted in whole or in part without the prior written consent of the COUNTY.

Section 20. Headings

Article headings have been included in the Agreement solely for the purpose of convenience and shall not affect the interpretation of any of the terms of this Agreement.

Section 21. Survivability

Any term, condition, covenant or obligation which requires performance by either party subsequent to termination of this Agreement shall remain enforceable against such party subsequent to such termination.

Section 22. Modifications

This writing embodies the entire agreement and understanding between the parties hereto and there are no other agreements and/or understandings, oral or written, with respect to the subject matter hereof, that are not merged herein and superseded hereby. This Agreement may only be amended or extended by a written instrument executed by the COUNTY and the BENEFICIARY expressly for that purpose.

Section 23. Entire Agreement

It is understood and agreed that the entire agreement of the Parties is contained in this Agreement, which supersedes all oral agreements, negotiations, and previous agreements between the Parties relating to the subject matter of this Agreement.

Any alterations, amendments, deletions, or waivers of the provisions of this Agreement will be valid only when expressed in writing and duly signed by the Parties, except as otherwise specifically provided in this Agreement.

IN WITNESS WHEREOF, the BENEFICIARY and the COUNTY respectively, have caused this Agreement to be executed by their duly authorized representatives.

BENEFICIARY: Midwest Food Bank NPF, Inc.

BY: 

Signature

5-25-22

Date

Karl Steidinger
Name (print)

ATTEST:
THE CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____

Deputy Clerk

BY: _____

Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

County Attorney's Office

ATTACHMENT A: PROJECT DETAILS

SCOPE

Midwest Food Bank NFP, Inc. will use the funds to cover the economic impact their food distribution program(s) suffered during the COVID-19 pandemic. Their program(s) address food insecurity for low income, minority, and other households in Lee County that were impacted by Covid-19. Funds may be used to purchase food, and supplies, as well as to fund operational expenses to continue assisting Lee County residents.

ELIGIBLE ACTIVITIES

Responding to Negative Economic Impacts. Household Assistance: Food Programs.

Final Rule 31 CFR 35.6(b)(3)(ii)

“(ii) Responding to the negative economic impacts of the public health emergency for purposes including:

(A) Assistance to households and individuals, including:

(1) **Assistance for food**; emergency housing needs; burials, home repairs, or weatherization; internet access or digital literacy; cash assistance; and assistance accessing public benefits;”

NEGATIVE IMPACT

The COVID-19 pandemic and the economic crisis, including unprecedented increases in inflation, directly impacted food distribution programs. The pandemic impacted distribution models and methods, which impacted operating budgets. The economic and health impact of COVID-19 in our area has been enormous. Southwest Florida became an epicenter for the pandemic, with inflation rates that both exceeded other parts of Florida and the national average. The economic impact of the pandemic was the primary driver behind increased food insecurity and demand for food.