

LANCASTER COUNTY CONVENTION CENTER AUTHORITY
CARES ACT FUNDING AGREEMENT

This AGREEMENT (this "Agreement") is made and entered into this 15th day of July 2020, by and between the COUNTY OF LANCASTER (hereinafter the "County") a third class county of the Commonwealth of Pennsylvania with an address of 150 North Queen Street, Lancaster, PA 17603, and the LANCASTER COUNTY CONVENTION CENTER AUTHORITY, an authority created and operated pursuant to the Third Class Convention Center Act, 16 P.S. § 2399.51 *et seq.*, with a principal address of 25 S. Queen Street, Lancaster, Lancaster, PA 17603, (hereinafter the "Authority"), and, solely for the limited purposes, rights and obligations set forth herein. The County and the Authority are referred herein individually as a "Party" and, collectively, as the "Parties."

WHEREAS, the COVID-19 pandemic has adversely impacted the travel and tourism, and lodging industry in Lancaster County and has prevented the Lancaster County Convention Center ("Convention Center") from hosting events since March 12, 2020; and

WHEREAS, the Lancaster County Convention Center Authority operates subject to a Trust Indenture entered into on or about August 1, 2014, relating to the Hotel Room Rental Tax Revenue bonds ("**2014 Bond Series**"); and

WHEREAS, the Authority's fixed and non-operational bond expenses pursuant to the 2014 Bond Series average Three Hundred Ten Thousand Dollars (\$310,000.00.00) per month , including principal, interest, bond swap and professional fees, and are expected to equal Two Million Nine Hundred Forty Five Thousand Dollars (\$2,945,000.00) for the period between March 2020 and December 30, 2020; and

WHEREAS, in order to safely host future events, both the Authority and the Convention Center must demonstrate compliance with CDC requirements, requiring the purchase of supplies, equipment and training about safety procedures, which are expected to cost approximately Three Hundred Seventy Nine Thousand Dollars (\$379,000.00); and

WHEREAS, the County has received Ninety Five Million Two Hundred Twenty Four Thousand Six Hundred Twenty Nine Dollars (\$95,224,629.00) pursuant to the Coronavirus Aid, Relief and Economic Security Act (CARES Act) (P.L. 116-136), to be used for necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19), which include expenditures incurred to respond to second-order effects of the emergency, such as providing economic support to those suffering from business interruptions due to COVID-19 ("**County Funds**"); and

WHEREAS, the Authority adopted a Resolution on June 25, 2020, authorizing the Executive Director to seek and receive funding for the Authority from the County Funds for payment of expenses relating to COVID-19.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of

which are hereby acknowledged, the County and the Authority, for the limited purposes set forth in the preamble, agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are incorporated by reference.

2. Allocation of Funding. The County shall allocate to the Authority County Funds in an amount equal to Three Million Three Hundred Twenty-Four Thousand Dollars (\$3,324,000.00), which shall be used by the Authority for COVID-19 related expenses, as follows:

A. Two Million Nine Hundred Forty-Five Thousand Dollars (\$2,945,000.00) for payment of Bond Finance Expenses in connection with the 2014 Bond Series, including but not limited to principal, interest, bond swap and professional fees ("**Bond Finance Expenses**"); and

B. Three Hundred Seventy-Nine Thousand Dollars (\$379,000.00) for the procurement of supplies and equipment, including but not limited to cleaning products, thermometers, face masks, tables, and signage, and safety training and support incurred in connection with such procurement as set forth on the LCCCA/LCCC Budget for COVID-19 Safety Expenses ("**COVID-19 Safety Expenses**") attached hereto as Exhibit A.

3. Award of County Funds. All disbursements of the County Funds shall be made directly from the County to the Authority.

4. Timing of County Funds Payment to the Authority. The County shall pay all Bond Finance Expenses to the Authority by July 23, 2020. The County shall reimburse the Authority for all COVID-19 Safety Expenses on a monthly basis through December 30, 2020, upon receipt of the Authority's COVID-19 Safety Expenses invoices as set forth in Paragraph 6.D herein.

5. COVID-19 Safety Expenses. The parties acknowledge and agree that the COVID-19 Safety Expenses shall be paid by the County to the Authority in accordance with the terms of this Agreement, but that the amounts set forth in Paragraph 2.b are to constitute a maximum amount not to exceed (subject to any amendment of this Agreement) and a reimbursement of approved actual expenses, not a representation that the entirety of those amounts shall be expended by the Authority. In addition, the attached Budget for COVID-19 Safety Expenses attached hereto as Exhibit A represents an estimate and a maximum amount not to exceed.

6. Authority Obligations. The Authority shall:

A. Make timely payment of all Bond Finance Expenses as well as all other payments and actions necessary so as to comply with requirements imposed by all applicable contractual, statutory and regulatory provisions, including those associated with the 2014 Bond Series.

B. Designate an employee as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this

Agreement (the “**Authority Contract Manager**”), with such designation to remain in force unless and until a successor Authority Contract Manager is appointed. The Authority Contract Manager shall be Kevin Molloy, Executive Director, 717-207-4100, krmolloy@lccca.com.

C. Require that the Authority Contract Manager respond promptly to any reasonable requests from the County for information.

D. Submit invoices for all incurred COVID-19 Safety Expenses to the County on a monthly basis, no later than December 15, 2020.

E. Maintain complete and accurate books, program, and financial records, documents, and other evidence relating to the provision and use of the County Funds, the Authority’s Bond Finance Expenses and COVID-19 Safety Expenses which records shall be produced for inspection by the County upon request. The Authority shall maintain and keep current a spreadsheet of Bond Expenditures and projections, capital and operating expenditures for calendar year 2020. The Authority shall provide an accounting of the Bond Finance Expenses funds to the County no later than November 10, 2020 which accounting will project whether there may be any excess, unexpended Bond Finance Expenses funds as of December 30, 2020. The Authority shall provide an additional accounting of the Bond Finance Expenses funds to the County no later than December 1, 2020 as well as a final accounting as of December 30, 2020. The Authority shall return any unused Bond Finance Expenses to the County on or before December 30, 2020.

F. The Authority shall use products, goods, materials and or other benefits identified as COVID-19 Safety Expenses in Paragraph 2 b) in the course of its regular business operations, and no such goods shall be donated or given away, offered for sale or re-sale, or used for any purpose or in any manner that violates applicable federal, state or local laws or regulations, including without limiting the generality of the foregoing, the CARES Act.

7. County Obligations. The County shall:

A. Designate an employee to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement (the “**County Contract Manager**”), with such designation to remain in force unless and until a successor County Contract Manager is appointed. The County Contract Manager is Patrick Mulligan, County Budget Director, 717-735-1595, PMulligan@co.lancaster.pa.us

B. Respond promptly to any reasonable requests from the Authority for instructions, information, or approvals required by the Authority.

8. Representations of the Authority.

A. The Authority represents that it shall utilize the County Funds to cover those costs that are necessary expenditures incurred due to the public health emergency with respect to COVID-19; and were incurred during the period that began on March 1, 2020 and ends on December 30, 2020.

B. The Authority certifies that it will utilize the County Funds for reimbursement for costs of business interruption caused by required closures, and/or reimbursement for expenses associated with the provision of economic support in connection with the COVID-19 public health emergency.

C. The Authority certifies that the County Funds will not be used to pay for or reimburse damages covered by insurance, expenses that have been or will be reimbursed under any Federal, State, or Local program or expenses that have been or will be reimbursed by any other source of grant funding.

D. The Authority understands and acknowledges that its failure to comply with the provisions of this Agreement and the misuse, misappropriation, or misrepresentation with respect to the County Funds shall result in forfeiture and recoupment of funds and/or goods.

E. The Authority understands and acknowledges that the COVID-19 Safety Expenses specified in the Communications Section of the LCCCA/LCCC Budget for COVID-19 Safety Expenses, attached hereto as Exhibit "A", will be incurred to publicize the resumption of activities and steps taken to ensure a safe experience as necessitated by the public health emergency, and not for the development of a long-term plan to reposition the convention center.

F. The Authority shall ratify, confirm and approve this Agreement at its next duly-held board meeting on August 20, 2020.

G. In order to protect the County's goodwill, the Authority agrees to conduct itself reasonably, prudently and courteously in such a manner so as not to reflect adversely upon the County. The Authority will act in conformity with all statutes and ordinances of the United States, Commonwealth, and County.

H. The Authority shall not discriminate against any person because of age, race, color, religious creed, ancestry, national origin, sex, or disability.

I. The Authority shall certify that it is in compliance with the Drug-free Workplace Act. Use, possession, sale, manufacture, or distribution of illegal drugs or other controlled substances (not documented as for medical reasons) on the work site by employees, subcontractors, or agents is prohibited. Employees, subcontractors, and agents shall be notified of this prohibition and violators of this policy may be removed or barred from the work site at the discretion of the County.

9. Representations of the County. The County will act in conformity with all statutes and ordinances of the United States, Commonwealth, and County, expressly including the CARES Act and any applicable regulations regarding the disbursement of CARES Act funds.

10. Term. This Agreement shall commence as of the Effective Date and shall continue thereafter until December 30, 2020 (the "Term"). Notwithstanding the anticipated length of the Term, the Parties acknowledge and agree that the provisions of Paragraph 4 apply regarding the timing of disbursement of the Bond Finance Expenses and COVID-19 Safety Expenses.

11. Indemnification.

A. The Authority agrees to indemnify, defend and hold harmless the County and its managers, commissioners, employees, agents and permitted assigns (the "**County Indemnitees**"), against any losses, claims, damages, expenses or liabilities to which the County Indemnitees may become subject by reason of (i) breach or non-fulfillment of any provision of this Agreement by the Authority or the Authority's personnel; (ii) any negligent or more culpable act or omission of the Authority or its personnel (including any reckless or willful misconduct) in connection with the performance of its obligations under this Agreement; (iii) any bodily injury, death of any person, or damage to real or tangible personal property caused by the negligent, willful misconduct or more culpable acts or omissions of the Authority or its personnel (including any reckless or willful misconduct); or (iv) any failure by the Authority or its personnel to comply with any applicable federal, state or local laws, regulations, or codes in the performance of its obligations.

B. The Authority shall have the right to assume the defense and settlement of any claim or suit for which it may be responsible for indemnification under this Paragraph with counsel reasonably satisfactory to the County. The County may participate in any such defense or settlement, but the Authority shall not be liable to the County for any legal or other expenses incurred by the County in connection with the defense thereof; provided, however, that (i) if the Authority fails to take reasonable steps necessary to defend in good faith the action or proceeding within ten (10) business days after receiving notice from the County that the County believes it has failed to do so; or (ii) if the County is a defendant in any action or proceeding which is also brought against the Authority and has reasonably concluded, based on the advice of counsel, that there may be one or more legal defenses available to the County which are not available to the Authority ; or (iii) if representation of both parties by the same counsel is impermissible under applicable standards of professional conduct, then, in any such case, the County shall have the right to assume or continue its own defense as set forth above and the Authority shall be liable for any reasonable expenses therefor. The Authority shall not, without the written consent of the County, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any action or claim in respect of which indemnification or contribution may be sought hereunder unless such settlement, compromise or judgment (A) includes an unconditional release of the County from all liability arising out of such action or claim, and (B) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of the County.

12. Entire Agreement. This Agreement, including and together with any related exhibits, schedules, attachments, and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

13. Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all Notices must be delivered by electronic mail AND by personal delivery, nationally recognized overnight

courier, or first class, certified or registered mail (in each case, return receipt requested, postage prepaid).

Notice to County:

County of Lancaster
150 North Queen Street
Lancaster, PA 17603
Attention: Christina Hausner, County Solicitor
chausner@co.lancaster.pa.us

Notice to the Authority:

Lancaster County Convention Center
Authority
Hempfield Center, Suite 300
930 Red Rose Court
Lancaster, PA 17601
Attention: Julie B. Miller, Esq.
jbm@rkglaw.com

14. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to effect the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

15. Amendments. No amendment to, or modification of, or rescission, termination, or discharge of this Agreement is effective unless it is in writing, identified as an amendment to or rescission, termination, or discharge of this Agreement, and signed by an authorized representative of each Party.

16. Waiver. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

17. Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not

preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise.

18. Assignment. No Party shall assign, transfer, delegate, or subcontract any of its rights or delegate any of its obligations under this Agreement without the prior written consent of each other Party. Any purported assignment or delegation in violation of this Paragraph 18 shall be null and void. No assignment or delegation shall relieve the County of any of its obligations under this Agreement.

19. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

20. No Third-Party Beneficiaries. Subject to the next paragraph, this Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

21. Choice of Law. This Agreement and all related documents, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania, United States of America (including its statutes of limitations), without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the Commonwealth of Pennsylvania.

22. Choice of Forum. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be brought against any of the Parties in the courts of the Commonwealth of Pennsylvania, County of Lancaster, or, if it has or can acquire jurisdiction, in the United States District Court for the Eastern District of Pennsylvania, and each of the Parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any Party anywhere in the world. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

23. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. Notwithstanding anything to the contrary in Paragraph 13, a signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

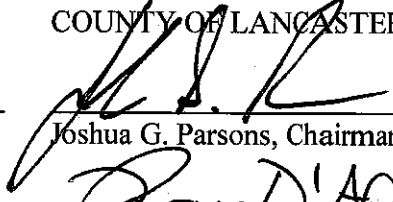
24. Signer Authorized. The individuals signing this Agreement are legally authorized to do so and with the understanding that the parties are legally bound hereby.

[Signatures on Next Page]

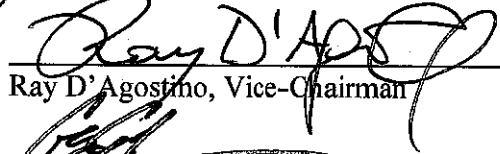
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date by their respective duly authorized officers.

ATTEST:

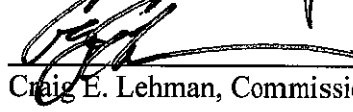
COUNTY OF LANCASTER



Joshua G. Parsons, Chairman



Ray D'Agostino, Vice-Chairman



Craig E. Lehman, Commissioner

LANCASTER COUNTY CONVENTION CENTER AUTHORITY

By: 

Name: Kevin R. Molloy

Title: Executive Director

lccca.com

EXHIBIT A

LCCCA / LCCC Budget for Covid-19 Safety Expenses

Summary:

Personal Protection Equipment	\$ 18,000	
Staffing & Training	\$ 87,000	
Contract Cleaning	\$ 40,000	
Equipment	\$ 178,000	
Communications	\$ 56,000	
Total LCCCA / LCCC Budget for Covid-19 Safety Expenses:	\$	379,000

Personal Protection Equipment:

Face Masks for Staff & Clients	\$ 5,000	Branded Masks (Front of House Staff & Clients)
PPE Gloves, Masks, etc	\$ 8,000	Guests & Back of House Staff
Hand Sanitizer & Stands	\$ 5,000	Required
Total Personal Protection Equipment:	\$ 18,000	

Staffing & Training:

Implement GBAC STAR program staffing	\$ 80,500	Staffing on set up/ tear down/ move in/ move out & event days
Cleaning Supplies	\$ 5,500	Cleaners and disposable cleaning supplies
GBAC STAR	\$ 1,000	Accreditation Application Fee
Total Staffing & Training:	\$ 87,000	

Contract Cleaning:

Carpet Shampooing	\$ 20,000	Levels 2, Freedom Hall Level, Vine St and Stairs
Contract Cleaning	\$ 20,000	Meeting, Ball Rooms, Freedom Hall, Public Areas
Total Contract Cleaning:	\$ 40,000	

Equipment:

Touchless Water Faucets	\$ 21,000	30 Faucets (Levels 2, Freedom Hall Level, Vine St)
Linenless Tables	\$ 60,000	w/o Power (18x72 and converts to 30X72)
Linenless Tables with Power	\$ 73,500	w/Power (18x72 and converts to 30X72)
Water Dispenser for Bottles	\$ 14,000	Replace water fountains with water dispensers for water bottles
Glass Partitions/Sneeze Guards	\$ 2,500	Coffee Stations, Buffets, Registration tables, etc
Cleaning equipment	\$ 7,000	Sprayers & UV Light Cleaning Devices etc
Total Equipment:	\$ 178,000	

Communications:

PR Campaign Development - Open & Covid Protocols	\$ 15,000	Awareness campaign of re-launch, implemented safety measures, and new capacity – Direct media, Editorials, social media influencers. Build consumer confidence of safe and successful events.
Website Revision - Covid Environment	\$ 6,000	Modifications to www.lancasterconventioncenter.com & LCCCA.com websites. New seating capacity charts with social distancing, safety requirements, cleaning protocols, imagery of new event set-ups.
Collateral - Covid protocols	\$ 3,000	Print material for event planner utilization demonstrating new capacity, services, menus, and guidelines. Build consumer confidence.
Signage for Interior - Covid Reminders	\$ 5,500	Interior signage reinforcing commitment to clean, healthy safe event guide lines. Please wear masks, keep 6 ft. apart, where possible, wayfinding, etc.
Re-opening Communications Campaign	\$ 22,000	Digital, Social Media and print advertising for general awareness campaign to heighten LCCC visibility in the meetings, conference, convention and event industry
Photo Shoot	\$ 4,500	Image capture of event set ups in alignment of CDC/GBAC guidelines to re-position Lancaster as a premiere destination
Total Communications:	\$ 56,000	

Total LCCCA / LCCC Budget for Covid-19 Safety Expenses	\$	379,000
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On motion of Commissioner D'Agostino, seconded by Commissioner Lehman, it was agreed for the County of Lancaster to approve the following:

CARES Act Funding Agreement

Lancaster County Convention Center Authority
Lancaster, Pennsylvania

With:

Purpose:

To provide CARES Act funding necessary for the payment of the Authority's fixed and non-operational bond expenses for the period of March 1, 2020 through December 30, 2020 in the amount of \$2,945,000 and for the procurement of \$379,000 of supplies, equipment and services including but not limited to cleaning products, thermometers, face masks, tables, signage, safety training and support and communication services as set forth on the LCCCA/LCCC Budget for COVID-19 Safety Expenses, Exhibit A to the Agreement, all of which represent necessary expenditures incurred due to the public health emergency with respect to COVID-19 and/or reimbursement for the costs of business interruption resulting from required closures, and/or reimbursement for expenses associated with the provision of economic support in connection with the COVID-19 public health emergency.

Motion passed unanimously.

7/15/20