

THE STATE OF TEXAS §
 § **KNOW ALL MEN BY THESE PRESENTS:**
COUNTY OF FORT BEND §

**CARES ACT FUNDING ALLOCATION DISTRIBUTION AGREEMENT
FORT BEND COUNTY AND
ORCHARD, TEXAS**

This Agreement is made and entered into pursuant to the Interlocal Cooperation Act, Chapter 791 of the TEXAS GOVERNMENT CODE, by and between the City of Orchard, Texas, a municipal corporation and general law city of the State of Texas, principally situated in Fort Bend County, acting by and through its City Commission, (“City”), and Fort Bend County, a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court, (“County”). The City and the County may be referred to collectively as the “Parties”.

RECITALS

WHEREAS, the County received federal funding 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”) to address and respond to the effects of the COVID-19 emergency; and

WHEREAS, the CARES Act established the Coronavirus Relief Fund (the “Fund”) and appropriated \$150 billion to the Fund, of which the County received \$134,262,393 from the State of Texas to cover necessary expenditures related to COVID-19 that were not accounted for in the County’s budget and incurred between March 1 and December 30, 2020 (“Local Allocation”); and

WHEREAS, the Commissioners Court of Fort Bend County approved a budget to distribute the Local Allocation, attached hereto as Exhibit “A” and incorporated herein for all purposes, (the “Detailed Budget”), which includes direct payments to municipalities to reimburse expenditures that are eligible to recovery under the CARES ACT and the U.S. Department of the Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments as it applies to municipalities; and

WHEREAS, the Commissioners Court of Fort Bend County finds that assisting municipalities within the County in recovering their costs directly incurred in responding to the COVID-19 emergency serves a County purpose, and is a legitimate and lawful use of the Fund; and

WHEREAS, the governing bodies of the City and County have authorized this Agreement;

NOW, THEREFORE, for and in consideration of the mutual covenants, agreements and benefits to both Parties, it is agreed as follows:

AGREEMENT

Section 1. Incorporation of Recitals

The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are incorporated into this Agreement.

Section 2. Purpose

The purpose of this Agreement is to outline the obligations related to the distribution of the Local Allocation issued to the County for distribution to the City.

Section 3. Eligible Expenditures

A. Costs that are necessary expenditures incurred due to public health emergency with respect to the Coronavirus Disease (COVID-19);

B. Costs that 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 local government; and

C. Costs that were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

Section 4. City's Rights and Obligations.

A. The City agrees to only use its portion of the Local Allocation in compliance with this Agreement and for Eligible Expenditures related to the COVID-19 emergency made between March 1, 2020 and 11:59 p.m., December 30, 2020;

B. The City may submit to the County a request for reimbursement for Eligible Expenditures at Auditor.Covid@fortbendcountytexas.gov as follows:

1. Reimbursement for Eligible Expenditures related to Personnel and Equipment must be submitted in the form of the document attached hereto as Exhibit "B" and incorporated herein for all purposes,;

2. All other submissions for reimbursement shall include an invoice reflecting payments made with reference to the payment date and check-ACH number;

3. Each submission shall include a description of the emergency purpose served for each invoice submitted for reimbursement as an Eligible Expenditure in a free-form document from an authorized representative of the City representing and warranting that the amount requested for reimbursement meets the requirements of the CARES Act on the City's letterhead and contact information for the preparer; and

4. All submissions for reimbursement shall be delivered to the County no later than January 15, 2021.

C. The City agrees and acknowledges that, as a subrecipient of the Local Allocation granted to the County, the City is subject to the same terms and conditions binding the County regarding the use of the Local Allocation. The City agrees to reimburse and return to the County any portion of the Local Allocation received that the County, the U.S. Department of Treasury, or their designee, deems were not used for COVID-19 purposes, or not used pursuant to the terms of this Agreement within thirty (30) days of City's receipt of notification by the County of such determination;

D. The City shall allow inspection of all documentation and records related to its expenditure of its portion of the Local Allocation by the County or the U.S. Department of Treasury upon reasonable request, and retain such for a minimum of four (4) years from the date of City's final receipt of its portion of the Local Allocation; and

E. As a condition of receiving its portion of the Local Allocation, the City represents and warrants that it is and will remain in compliance with all applicable federal provisions, including those attached as Exhibit "C" attached hereto and incorporated herein for all purposes.

Section 5. County's Rights and Obligations

A. The County's sole obligation under this Agreement is to reimburse the City for Eligible Expenditures from the Local Allocation up to an amount not to exceed \$22,385.00 in accordance with the CARES Act. This is the total maximum funding the County shall have available specifically allocated to fully discharge any and all liabilities that may be incurred by the County under this Agreement;

B. Upon receipt of the City's request for reimbursement submitted pursuant to Section 4. B. above, the County Auditor will review such submission to make a good faith determination whether the expenditures, are eligible for recovery under the CARES ACT and the U.S. Department of the Treasury's Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments as it applies to municipalities:

1. If deemed as an Eligible Expenditure, the County will forward the requested reimbursement amount to the City within ten (10) business days.

2. If the County Auditor does not find the expenses submitted meet the requirements for determination as an Eligible Expense or requires additional information, the County Auditor will notify the City within five (5) business days of such determination of denial or request for additional information. The City shall have five (5) business days to provide additional information for consideration or the request for reimbursement shall be permanently denied.

C. The County is not obligated to reimburse the City any further funds above \$22,385.00 for expenses submitted as Eligible Expenditures for the Local Allocation or any other sources of funding;

Section 6. Liability

The City and County are entitled to the immunities and defenses of the Texas Tort Claims Act. Nothing in the Agreement shall be construed to waive either party's sovereign immunity.

Section 7. Limit of Appropriation

A. Prior to the execution of this Agreement, the City has been advised by the County, and the City clearly understands and agrees, such understanding and agreement being of the absolute essence to this Agreement, that the County shall have available the total maximum amount of \$22,385.00 or any available amount under other applicable categories of allotments reflected in the Detailed Budget as determined by the County Auditor, specifically allocated to fully discharge any and all liabilities that may be incurred by the County under this Agreement.

B. The City does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum funding that the City may become entitled to hereunder and the total maximum amount that the County will reimburse the City hereunder will not under any condition, circumstance or interpretation hereof exceed \$22,385.00 or any available amount under other applicable categories of allotments reflected in the Detailed Budget as determined by the County Auditor.

C. Each party paying for the performance of its obligations under this Agreement shall make those payments from current revenues available to that party.

Section 8. Assignment

No party hereto shall make, in whole or in part, any assignment of this Agreement or any obligation hereunder without the prior written consent of the other party.

Section 9. No Third Party Beneficiaries

The Parties do not intend that any specific third party obtain a right by virtue of the execution or performance of this Agreement.

Section 10. Notices

All notices and communications under this Agreement shall be mailed by certified mail, return receipt requested, or delivered to the following addresses:

County:	Fort Bend County
	Attention: County Judge
	401 Jackson Street, 1 st Floor
	Richmond, Texas 77469

With a copy to: Fort Bend County
Attention: County Auditor
301 Jackson Street, Suite 701
Richmond, Texas 77469

City: City of Orchard, Texas
Attention: Mayor
P.O. Box 59
Orchard, Texas 77464

Section 11. Entire Agreement

This Agreement contains the entire agreement between the Parties relating to the rights granted and the obligations assumed. Any modifications concerning this instrument shall be of no force or effect, unless a subsequent modification in writing is signed by all Parties hereto. If a court finds or rules that any part of this Agreement is invalid or unlawful, the remainder of the Agreement continues to be binding on the Parties.

Section 12. Execution

This Agreement has been executed by the City and the County upon and by the authority of their respective governing bodies. This Agreement shall become effective on the date executed by the final party, and remain in effect until the obligations under Sections 4 and 5 of this Agreement are fulfilled.

IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple counterparts, each of which shall be deemed to be an original.

FORT BEND COUNTY, TEXAS

KP George, County Judge

Date _____

ATTEST:

Laura Richard, County Clerk

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$_____ to accomplish and pay the obligation of Fort Bend County under the terms of this Agreement.

Robert Ed Sturdivant, Fort Bend County Auditor

CITY OF ORCHARD, TEXAS

Rod Pavlock
Rod Pavlock, Mayor

Date: 5/27/20

ATTEST:

Melissa Andel
Melissa Andel, City Secretary

EXHIBIT A

CARES Act Funds Distribution

FUNDS	
CARES Funds	\$134,262,393
TOTAL FUNDS	\$134,262,393
PROPOSED DETAIL BUDGET	
Budget Contingency	\$13,426,239
City Budget Allotment (\$55 per capita of 2019 Census)	
Arcola	\$137,060
Beasley	\$36,465
Fairchilds Village	\$67,320
Fulshear	\$659,450
Katy	\$118,745
Kendleton	\$21,835
Meadows Place	\$253,935
Missouri City	\$3,763,760
Needville	\$169,235
Orchard	\$22,385
Pearland	\$56,155
Pleak	\$88,605
Richmond	\$661,815
Rosenberg	\$2,093,355
Simonton	\$48,345
Stafford	\$990,165
Sugar Land	\$6,523,000
Thompsons	\$18,535
Weston Lakes	\$210,100
Reimbursement to Fort Bend County for eligible COVID-19 expenses to date	\$7,000,000
FBC Health & Human Services Testing, Tracking, Treatment, Communications, Personnel	\$20,395,889
Office of Emergency Management	\$3,000,000
Fort Bend County Facility Renovation and Sanitization	\$5,000,000
Rental assistance for persons affected by COVID-19:	
(Phase 1) June-July	\$6,500,000
(Phase 2) August-September	\$6,500,000
(Phase 3) October-November	\$6,500,000
PPE Distribution to County Residents	\$5,000,000
Reimbursement to Local Hospitals and Clinics for uncompensated care due to COVID-19	\$15,000,000
Health Services provided by Political Subdivisions	\$1,000,000
Small Business COVID-19 Mitigation Grant Program	\$22,000,000
Food/Nutrition Distribution Program	\$5,000,000
Utility Assistance Program	\$2,000,000
TOTAL PROPOSED DETAIL BUDGET	\$134,262,393

EXHIBIT B

FORT BEND COUNTY LOCAL GOVERNMENTS

Personnel and Equipment Log Event: 2019 nCoV Public Health Event

LAST NAME, FIRST _____

LOCAL GOVERNMENT _____

DEPT. NAME _____

Supervisor Name _____

START TIME _____

DATE _____

END TIME _____

TOTAL HOURS WORKED _____

Circle type of work

EMERGENCY WORK NORMAL OPERATIONS

LOCATION:

Work Description

- 1 _____
- 2 _____
- 3 _____
- 4 _____
- 5 _____

- _____
- _____
- _____
- _____
- _____

	EQUIPMENT DESCRIPTION / TYPE	FEMA Code	TAG # or ID	Begin Mileage/Hours	End Mileage/Hours	Total Miles/Hours
1						-
2						-
3						-
4						-
5						

	MATERIALS DESCRIPTION	UNITS / QTY	STOCK	Unit Cost	Rental

Employee Signature _____

Date _____

Supervisor Signature _____

Date _____

EXHIBIT C

Code of Federal Regulations

Title 2 - Grants and Agreements

Volume: 1

Date: 2014-01-01

Original Date: 2014-01-01

Title: Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards
Context: Title 2 - Grants and Agreements. Subtitle A - Office of Management and Budget Guidance for Grants and Agreements. CHAPTER II - OFFICE OF MANAGEMENT AND BUDGET GUIDANCE. - Reserved. PART 200 - UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS.

Pt. 200, App. II

Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in

the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award of \$100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

(K) See § 200.322 Procurement of recovered materials.