

THE STATE OF TEXAS §

§ KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF FORT BEND §

**NON-PROFIT PARTNERSHIP GRANT PROGRAM
FY 2021 AMERICAN RESCUE PLAN ACT (ARPA)
FUNDING AGREEMENT**

This Agreement is made and entered by and between Fort Bend County, a body corporate and politic under the laws of the State of Texas, acting by and through its Commissioners Court, ("County") and Fort Bend Children's Discovery, ("Non Profit"). The Non Profit and the County may be referred to collectively as the "Parties."

RECITALS

WHEREAS, the American Rescue Plan Act (ARPA) provides \$350 billion in aid to state, local, Tribal, and territorial governments to be used for economic relief in response to the COVID-19 pandemic for "assistance to households, small businesses, and non-profits, or aid to impacted industries such as tourism, travel and hospitality;"

WHEREAS, Fort Bend County received an allocation of \$157 million of which a portion has been budgeted for the non-profit partnership grant Program ("Program");

WHEREAS, the Program funds Special Projects related to providing post COVID-19 Programs for Fort Bend residents;

WHEREAS, Non Profit applied to the Program and was approved for Program funding, as will be more fully described herein;

WHEREAS, County has determined that the Program to be provided by Non Profit serves a public purpose; and

WHEREAS, this Agreement is not for an expenditure under Texas Local Government Code Chapter 262, but an Agreement to transfer grant funds from County to a private Non-Profit entity, as specifically authorized by 42 USC 803 (b) (3) (c) (3) for the purpose of meeting ARPA' s goals.

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

I. BASIC SCOPE OF AGREEMENT

- A. County shall transfer the Funds to the Non Profit subject to the terms of this Agreement.
- B. Non Profit accepts the Funds, all on and subject to the terms herein set forth, and the Non Profit shall manage and expend the Funds on the public purpose Project described in Exhibit "A" ("Project"). Non Profit shall make any adjustments necessary to bring the Services to be provided within the amount of funding awarded.

II. FUNDING STANDARDS

- A. The following Funding Standards are hereby approved and imposed upon the Funds (the "Funding Standards"):
- B. Use of Funds. Non Profit agrees to only use funding in accordance with this Agreement, the application submitted to Project (incorporated and attached as Exhibit A) and as allowed by 31 CFR Part 35 (incorporated and attached as Exhibit B).
- C. Documentation of Expenditures. The Non Profit shall track and document the expenditure of the Funds in order to substantiate that the Funds were, in fact, expended only on the Project.
- D. Unauthorized Expenditure of Funds. If, at any time during the term of this Agreement, the Non Profit expends any portion of the Funds for a purpose that is inconsistent with these Funding Standards (hereinafter referred to as an "Unauthorized Expenditure"), the Non Profit shall immediately reimburse the County for the entire amount of the Unauthorized Expenditure.
- E. Discontinuance of Project. In the event the Non Profit ceases or otherwise discontinues the Project during the term of this Agreement or if this Agreement is otherwise terminated prior to the expiration of the term of this Agreement, the portion of any unexpended Funds shall be immediately returned to the County.
- F. Federal funds. Non Profit understands and acknowledges that this Agreement may be totally or partially funded with federal funds. As a condition of receiving these funds, Non Profit represents that it is and will remain in compliance with all federal terms as stated in Exhibit C. These terms flow down to all third party contractors and their subcontracts at every tier that exceed the simplified acquisition threshold, unless a particular award term or condition specifically

indicates otherwise. Non Profit shall require that these clauses shall be included in each covered transaction at any tier.

III. TERM OF AGREEMENT

Except as otherwise set forth herein, this Agreement is effective as of the date executed by both Parties and shall terminate on the sooner of the expenditure of funds or December 31, 2024 (unless sooner terminated in accordance with this Agreement).

IV. TERMINATION

If the Non Profit fails to fulfill its obligations under this Agreement in a timely and proper manner, or if the Non Profit violates any of the terms, agreements or stipulations of this Agreement, the County shall thereupon have the right to terminate this Agreement by giving written notice to the Non Profit of such termination, specifying the default or defaults, and stating that this Agreement shall be terminated 30 days after the giving of such notice unless such default or defaults are remedied within such cure period. In the event of such termination, the Non Profit shall promptly repay to the County the full amount of the Funds.

V. AMOUNT OF THE FUNDS

A. The County shall transfer and the non Profit hereby agrees to accept the Funds for performance of the public purpose Project described in the attached Exhibit "A," as follows:

\$175,000.00	for calendar year 2022
\$175,000.00	for calendar year 2023
Total amount to be transferred:	\$350,000.00

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. The County is not obligated to provide Non Profit with any further funds beyond the amounts stated herein or provide any other sources of funding or reimbursements.

VI. COUNTY'S RIGHT TO AUDIT

A. County's Right to Audit. Non Profit shall allow inspection of all documentation and records related to its expenditure of funding 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 Non Profit's final receipt of its portion of the funding; and

B. Non Profit Reports and Independent Audit Report. Provide the County with a report which includes success meeting Project objectives, the total number of persons and agencies directly served, and the number of County citizens served.

VII. 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
Richmond, Texas 77469

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

Non Profit: Fort Bend Children's Discovery Center
1500 Binz St.
Houston, Texas 77004

VIII. GENERAL TERMS AND CONDITIONS

A. Interest of County Officials. No member of the governing body of the County, no officer, employee, official or agent of the County, or other local public official who exercises any functions or responsibilities in connection with the review, approval or carrying out of the Project to which this Agreement pertains, shall have any private interest, direct or indirect, in this Agreement.

B. Conflict of Interest. The Non Profit covenants that it has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Project to be undertaken through this Agreement. The Non Profit further covenants that in the performance of this Agreement, no person having such an interest shall be employed by the Non Profit.

C. Assignment; Successors and Assigns. The Non Profit shall not assign or transfer any interest in this Agreement without the prior written approval of the County. Any assignment

made without such consent shall be void. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

D. Force Majeure. The County may, in its sole discretion, grant relief from the performance of this Agreement if the Non Profit is prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the Non Profit. The burden of proof for the need of such relief shall rest upon the Non Profit. To obtain a release based on force majeure, the Non Profit shall file a written request with the County.

E. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof, but rather this entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligation of the parties shall be construed and enforced in accordance therewith. The parties acknowledge that if any provision of this Agreement is determined to be invalid or unenforceable, it is the desire and intention of each that such provision be reformed and construed in such a manner that it will, to the maximum extent practicable, give effect to the intent of this Agreement and be deemed to be validated and enforceable.

F. Illegality. If the purpose of this Agreement or if the performance of any of the terms of this Agreement is found, by a court of competent jurisdiction, to be illegal, either party may immediately terminate this Agreement. In that event, the Non Profit shall refund all of the Funds that were tendered by the County to the Non Profit prior to such finding.

I. NON PROFIT SHALL INDEMNIFY AND DEFEND COUNTY AGAINST ALL LOSSES, LIABILITIES, CLAIMS, CAUSES OF ACTION, AND OTHER EXPENSES, INCLUDING REASONABLE ATTORNEYS FEES, ARISING FROM ACTIVITIES OF NON PROFIT, ITS AGENTS, SERVANTS OR EMPLOYEES, PERFORMED UNDER THIS AGREEMENT THAT RESULT FROM THE NEGLIGENT ACT, ERROR, OR OMISSION OF NON PROFIT OR ANY OF NON PROFIT'S AGENTS, SERVANTS OR EMPLOYEES.

J. Venue and Governing Law. Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in either Fort Bend County, Texas. Furthermore, except to the extent that this Agreement is governed by the laws of the United

States, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.

K. No Third-Party Beneficiaries. This Agreement is for the sole and exclusive benefit of the parties hereto and nothing in this Agreement, express or implied, is intended to confer or shall be construed as conferring upon any other person any rights, remedies or any other type or types of benefits.

L. Compliance with Laws. Each party to this Agreement shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, salary and wage statutes and regulations, licensing laws and regulations.

M. Incorporation of Exhibits. All of the Exhibits referred to in this Agreement are incorporated by reference as if set forth verbatim herein.

N. Construction. Each party to this Agreement acknowledges that it and its counsel have reviewed this Agreement and that the normal rules of construction are not applicable and there will be no presumption that any ambiguities will be resolved against the drafting party in the interpretation of this Agreement.

O. Relationship of the Parties. Each party to this Agreement, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever.

P. No Waiver of Immunities. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents or employees, nor to create any legal rights or claim on behalf of any third party. County does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

Q. No Waiver. The failure or delay of any party to enforce at any time or any period of time any of the provisions of this Agreement shall not constitute a present or future waiver of such provisions, nor the right of either party to enforce each and every provision. Furthermore, no term or provision hereof shall be deemed waived, and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other,

whether expressed or implied, shall not constitute consent to, waiver of or excuse for any other, different or subsequent breach.

R. Entire Agreement. This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by each party to this Agreement. NO OFFICIAL, EMPLOYEE, AGENT, OR REPRESENTATIVE OF THE COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO AMEND THIS CONTRACT, EXCEPT PURSUANT TO SUCH EXPRESS AUTHORITY AS MAY BE GRANTED BY THE FORT BEND COUNTY COMMISSIONERS COURT.

S. Conflict. In the event there is a conflict between this Agreement and the attached exhibits, priority shall be given as follows (from first to last) to Exhibit B, then this document titled NON-PROFIT PARTNERSHIP GRANT PROGRAM FY 2021 AMERICAN RESCUE PLAN ACT (ARPA) FUNDING AGREEMENT AND LAST TO EXHIBIT A.

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{Execution to Follow}

IX. EXECUTION

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

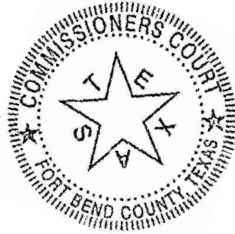
FORT BEND COUNTY

KP George
County Judge KP George

KP George
County Judge

12-21-2021

Date



ATTEST:

Laura Richard

Laura Richard, County Clerk

FORT BEND CHILDREN'S DISCOVERY CENTER

Tammie Kahn
Authorized Agent- Signature

Authorized Agent- Signature

Tammie Kahn

Authorized Agent- Printed Name

Executive Director

Title

12/17/21

Date

Date: 12/21/2021

AUDITOR'S CERTIFICATE

I hereby certify that funds are available in the amount of \$ 350,000.00 to accomplish and pay the obligation of Fort Bend County under the terms of this Agreement.

Robert Ed Sturdivant

Robert Ed Sturdivant, Fort Bend County Auditor

Exhibit A: Project Application

Exhibit B: 31 CFR Part 35

Exhibit C: Federal Clauses

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Fort Bend Children's Discovery Center
Sugar Land, TX United States

Certificate Number:
2021-833972

Date Filed:
12/17/2021

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Fort Bend County

Date Acknowledged:
12/21/2021

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

34634
Non-Profit ARPA Grant

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)